Doing Business in Canada

Goodmans LLP

About This Guide

Designed for executives, legal counsel, and potential U.S. and international investors, the Goodmans LLP *Doing Business in Canada* guide offers a practical overview of Canada's legal landscape and key business legislation.

The discussion in this Guide is confined to the laws of the Province of Ontario, as well as the federal laws of Canada that apply in Ontario as of January 1, 2025. Because the laws and policies of governments and regulatory authorities change, some of the information may not be accurate after that date.

This Guide provides general information only and should not be relied upon as legal advice.

Table of Contents

INTRODUCTION....6
BUSINESS ORGANIZATION TYPES....7
Sole Proprietorships....7
Corporations....8
Partnerships....10
Real Estate Investment Trusts (REITs) and Income Trusts....12
Contractual Arrangements....12
Choosing a Business Organization Type....13
CORPORATE GOVERNANCE....14
Director Duties and Liabilities....14
Shareholder Rights and Agreements....16
FOREIGN INVESTMENT....17
Investment Canada Act....17
Reviewable Transactions....18
Cultural Industries....21
National Security....22
COMPETITION LAW....24
Competition Act....24
Merger Notification....24
Substantive Merger Provisions....26
Anti-Competitive Activities and Consequences....27
CORPORATE FINANCE....31
Equity Versus Debt Financing....31
Securities Law....32
Personal Property Security....35
Real Property Security....36
Government Assistance Programs....36
MERGERS AND ACQUISITIONS....37
Public Mergers and Acquisitions....37
Private Mergers and Acquisitions....38

CANADA'S TAX REGIME 39
- Income Tax 39
- Taxation of Canadian Residents 39
- Basis of Taxation 40
- Goods and Services/Harmonized Sales Tax 43
- Other Commodity Taxes and Duties 44

EMPLOYMENT AND LABOUR 46
- Employment Standards 46
- Severance 47
- Human Rights 48
- Labour Relations 49
- Pay Equity 50
- Employment Equity 50
- Privacy 51
- Occupational Health and Safety and Workers' Compensation 51
- Accessibility for Individuals with Disabilities 52
- Payroll Deductions and Remittances 52
- Pensions 53

DISPUTE RESOLUTION 57
- Canada's Court System 57
- Civil Litigation 57
- Class Actions 58
- Alternative Dispute Resolution 58

INSOLVENCY AND RESTRUCTURING 59
- Bankruptcy 59
- Receivership 59
- CCAA Restructuring 60
- CBCA Restructuring 61
- Proposals Under The BIA 62

CONSUMER PROTECTION 63
- Product Standards 63
- Canadian Standards Association International 65
- Consumer Protection 65

PRIVACY AND DATA PROTECTION....68
Canadian Privacy Landscape and Scope of Application....68
Definition of Personal Information....69
Key Obligations Imposed by Canadian Privacy Legislation....70
Enforcement....74
Non-Canadian Businesses....75
Anti-Spam Legislation....75
E-COMMERCE AND TECHNOLOGY....76
Jurisdiction....76
E-Commerce Legislation....77
Emerging Technology Businesses....77
INTELLECTUAL PROPERTY....80
Copyright....80
Domain Names....85
Trademarks....86
Industrial Design....89
Patents....91
ENVIRONMENTAL LAW....94
Jurisdiction....94
Federal Environmental Law....94
Ontario Environmental Law....96
REAL ESTATE....98
Capacity to Buy, Hold, and Sell Real Property....98
Forms of Land Ownership....98
Joint Ventures....98
Agreements to Buy, Sell and Lease Land....100
Land Use Planning....101
Property Taxes and Fees....103
FINANCIAL SERVICES REGULATORY....105
ABOUT GOODMANS LLP....107

Introduction

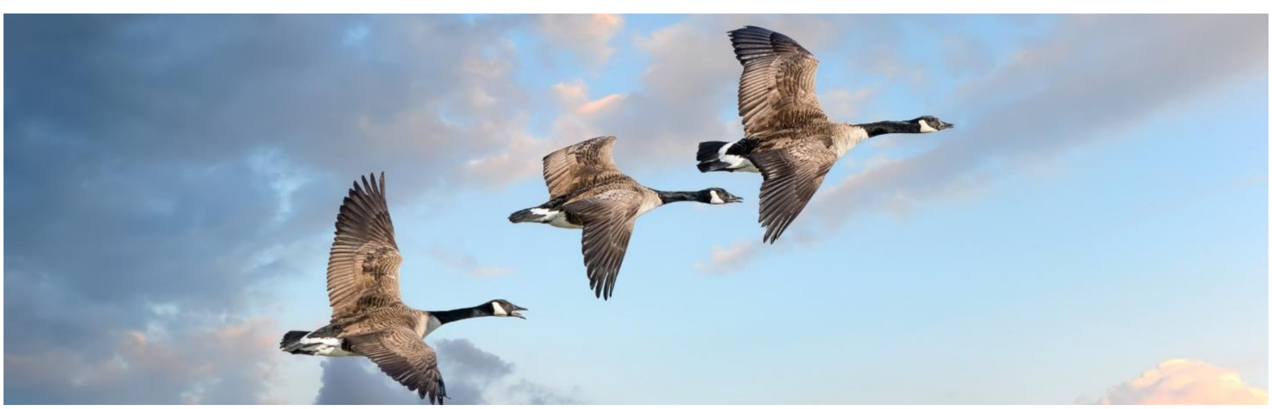
Canada is a federal state in which jurisdiction is constitutionally divided between two levels of government – federal and provincial. In some areas, either the federal government or the provincial government has exclusive jurisdiction. In others, both levels of government regulate different aspects of a particular activity. In addition, provincial governments delegate certain powers to municipal governments. A business may therefore be regulated at three levels – federal, provincial, and municipal. It may also be affected by policies and decisions of administrative tribunals.

Canada is a constitutional monarchy. Although King Charles III is Canada's official head of state, the governments of Canada are democratically elected by the population. At each level, the elections are independent, which sometimes results in a different political party governing at the federal and the provincial levels. In addition, Canada is governed by a Charter of Rights and Freedoms that guarantees certain rights of individuals as against the state.

All of the provinces of Canada, except Québec, are common law jurisdictions with strong historical ties to the British common law. Québec is a mixed common law/civil law jurisdiction in which private law matters, such as contract and property, are governed by a Civil Code.

Canada provides an attractive climate for foreign businesses. It has stable political and economic systems, one of the world's soundest banking systems, and it is rich in both natural and human resources.

Canada ranks among the top nations in global competitiveness, ease of doing business, transparency, political stability, and human development. Its cities are among the world's best for quality of life, health and safety, infrastructure, and education.



Business Organization Types

Sole Proprietorships

A business owned by one person is called a sole proprietorship. This is the simplest form of business organization. The individual is responsible for all of the business's obligations and their personal assets may be seized to meet these obligations.

There is no commercial legislation dealing specifically with sole proprietorships. However, a sole proprietor may need to comply with federal, provincial and/or municipal regulations affecting trade and commerce, licensing, and registration. For example, in Ontario, a sole proprietor who carries on business or identifies their business to the public under a name other than the owner's name, must register the name.

A sole proprietorship might be suitable for a small enterprise because it avoids many of the costs of setting up and running a corporation and the complex regulatory scheme that governs corporations. In addition, non-capital start-up losses of the business are generally deductible from the sole proprietor's income from other sources. One disadvantage of a sole proprietorship is the owner's unlimited liability. Another disadvantage is that the business can be transferred only by selling the assets.

Corporations

General

The corporation is the most common form of business organization in Canada. A corporation has a legal personality distinct from its shareholders and management. A corporation's existence is potentially perpetual, since it is not affected by the departure or death of any or all of its shareholders or managers.

As a separate legal entity, a corporation has the rights, powers, and privileges (and potentially the obligations) of a natural person. It can hold property and carry on a business, and it is subject to legal and contractual obligations.

The main advantages of the corporation are: (a) the limited liability of the shareholders; (b) the possibility of perpetual existence; and (c) the flexibility of the corporate form for financing and estate planning purposes. The disadvantages include the costs associated with incorporation, operation, and dissolution. In addition, every corporation resident in Canada or carrying on business in Canada that deals with non-arm's length non-residents must file an annual information return with Canada Revenue Agency containing information about those transactions.

A corporation may be public or private. In a public corporation, shares may be bought and sold by members of the general public subject to applicable securities legislation. By contrast, the sale or transfer of shares in a private corporation is usually restricted and might require the consent of a majority of the directors or shareholders. Transfers of the shares of a private corporation must comply with applicable securities legislation.

Incorporation Process

Both federal and provincial legislation provide for the incorporation and regulation of corporations. Those establishing a corporation can choose which statute they prefer.

A company is incorporated federally under the *Canada Business Corporations Act* (CBCA). In Ontario, the governing legislation is the *Business Corporations Act* (OBCA). The CBCA and OBCA prescribe essentially the same requirements (with some exceptions):

- *Corporate names and registration.* Under the CBCA, a federal corporation typically has the right to carry on business under its corporate name in any province of Canada, although it will be required to register or obtain a licence in a province in which it does business and may still be required to obtain consent pursuant to the rules of that province. An Ontario corporation applying for a licence or registering in another province cannot be licensed or registered under its name if that name is already being used there by another entity, and may be required to obtain the consent of the existing entity in that province in that case. If this is a concern, incorporation under the CBCA might be advantageous, although as a practical matter a CBCA corporation may need to operate under a different name in any province where its corporate name would be confusing. Both federally and provincially incorporated companies must satisfy the registration requirements of every province in which they carry on business.

- *Residency requirements for directors.* The CBCA requires that at least 25% of directors be Canadian residents. If a corporation has fewer than four directors, at least one director must be a Canadian resident (in the case of the CBCA, there is an exception for certain business sectors and corporations subject to federal ownership restrictions). Ontario and certain other provinces do not have residency requirements for directors.

- *Amendments to articles.* The CBCA and OBCA do not provide flexibility on shareholder approvals. A special resolution of shareholders must be passed by not less than two-thirds of the votes cast by shareholders to carry out amendments to articles and other fundamental changes.

- *Modification of directors' powers.* The OBCA and CBCA allow all of the shareholders to enter into a unanimous shareholders' agreement. Such an agreement can effectively transfer responsibility for the management of the corporation from the directors to the shareholders.

Management of a Corporation

The directors of a corporation are responsible for its management. Refer to the Director Duties and Liabilities section of this Guide for further details on the role of directors. The daily operations of a corporation are normally carried out by its officers, who can be non-residents of Canada.

Shareholders are the owners of a corporation, but they are not necessarily responsible for its management and normally cannot bind the corporation. Generally, the authority to bind the corporation rests with its directors and officers. However, by agreement, the CBCA and OBCA permit the directors' powers to be transferred to the shareholders, which could include the authority to bind the corporation.

Subsidiary or Branch

A foreign organization may carry on business in Canada by setting up a new corporation as a subsidiary or through a branch of an existing foreign corporation. The choice will be based primarily on tax considerations.

If a branch is chosen, the foreign corporation must register in all provinces in which it wishes to carry on business. The corporation cannot register if its name is the same as, or similar to, one already in use in that province. A foreign corporation that establishes a branch in Ontario must apply to the Ministry of Government and Consumer Services for a licence.

Partnerships

A partnership is the relationship among natural persons, corporations or other partnerships carrying on business in common with a view to profit. The rights and obligations of the partners among themselves are usually set out in a written partnership agreement. If there is no agreement to the contrary, the rights and obligations of partners will be those stipulated by provincial legislation.

In Ontario, legislation governing partnerships and limited partnerships sets out presumptive rules for the relationship among partners and governs the rights and obligations of the partnership to third parties.

Income and losses of a partnership, although determined at the partnership level, are taxed in the partners' hands. This tax treatment is the primary reason for using a partnership rather than a corporation, since each partner may offset its share of the partnership's business tax losses against income from other sources.

General Partnerships

In a general partnership, each partner has unlimited liability for the partnership's liabilities. Contributions from each partner may be in money, property or services, and, unless otherwise stated in the partnership agreement, all contributions are deemed to be equal. Each partner is jointly liable for all debts and obligations incurred by the partnership. However, a partner is generally not liable for obligations incurred before it became, or after it ceased to be, a partner. All partners may take an active role in operating a general partnership. Each partner may bind the others unless there are restrictions in the partnership agreement of which third parties have actual notice. The main disadvantages of a general partnership are the unlimited liability of the partners and that each partner may bind the others.

In Ontario, all of the partners of a general partnership must register the partnership name unless the business is carried on under the partners' names.

Limited Partnerships

A limited partnership provides both limited liability and the ability to flow tax losses through to passive investors. This form of business structure is often used to finance businesses that may have tax losses in the early years that are more valuable to investors than to the enterprise itself. A limited partnership is made up of one or more general partners, each of whom has the same rights and obligations as a partner in a general partnership, and one or more limited partners, whose powers and liabilities are limited.

The general partner or partners manage the partnership. A limited partner may not take part in the control or management of the partnership without jeopardizing its limited liability.

The primary advantage of a limited partnership over a general partnership is the limited liability of the limited partners. This enables passive investors to receive returns proportional to the amount of their contribution with minimal personal risk.

To establish a limited partnership in Ontario, a declaration must be signed by all of the general partners on behalf of all of the partners and filed under limited partnership legislation. The declaration must be renewed every five years. If the partnership wishes to cease operations, a declaration of dissolution must be filed.

Real Estate Investment Trusts (REITs) and Income Trusts

In Canada, as in other common law legal systems, a trust is a relationship whereby property (real or personal, tangible or intangible) is held by one party for the benefit of another. The trust is governed by the terms under which it was created.

The trust form in Canada is a popular vehicle for publicly-traded issuers, in that (a) trusts holding certain assets are tax efficient and generally can distribute pre-tax operating income to unitholders, thereby reducing entity-level tax; and (b) there is significant and enduring demand in Canada for investment vehicles that offer "yield" to investors.

Publicly-traded trusts that own Canadian real estate can qualify for "flow-through" tax treatment by satisfying the qualifying REIT rules (i.e., certain annual asset tests and revenue tests that generally require owning passive real estate and earning rent therefrom). If a publicly-traded Canadian REIT does not satisfy these tests, it may be subject to an entity-level tax that approximates corporate taxes ("SIFT tax"). However, publicly-traded trusts that only own foreign assets generally should not be subject to SIFT tax whether or not the trust satisfies the qualifying REIT rules.

Publicly-traded trusts also provide limited liability to the beneficiaries of the trust (the public investors, who hold "units" and are referred to as "unitholders"). The business and affairs of publicly-traded trusts are typically governed by a contractual declaration of trust, which mirrors in significant part the requirements of corporate law concerning matters such as unitholder meetings, governance, unitholder rights and similar matters.

Contractual Arrangements

Although the following contractual arrangements are not forms of business organization per se, they are alternatives to the forms described above.

Joint Ventures

A joint venture is an arrangement between two or more parties (individuals, partnerships or corporations) to pool capital and skills for the purpose of carrying out a specific undertaking. Since a joint venture is not a recognized entity for tax purposes, income and losses for tax purposes are computed separately by each joint venturer. A joint venture is thus a means to carry out a single operation using common resources, with each party retaining a substantial degree of independence.

Joint venturers who do not want their joint venture to be a partnership should enter into a written agreement setting out their respective rights and obligations in detail. Otherwise, there is a risk that the joint venture may be characterized as a general partnership. If so, each partner would be fully liable for partnership obligations and subject to tax as a partner rather than as a joint venturer.

Since joint ventures are most commonly used in the real estate context, this form of business organization is discussed in more detail in the Real Estate section of this Guide.

Franchising

A franchise is an agreement whereby one party, the franchisor, gives another, the franchisee, the right to use a trademark or trade name within a certain territory. Franchising involves an ongoing relationship between the parties. The franchisor generally retains some degree of control over the manner in which the franchisee carries on its business, but neither party is the agent of the other. In Ontario, franchise disclosure legislation imposes pre-sale disclosure obligations on franchisors and regulates the relationship between franchisors and franchisees. The legislation applies if the franchise is operated wholly or partly within Ontario and imposes serious penalties for violations.

Licensing

Licensing is a contractual relationship between two parties whereby a licensor grants a licensee the right to use a copyright, industrial design, patent, trademark, trade name, or know-how. The relationship is governed solely by contract.

Choosing a Business Organization Type

In choosing the most appropriate form of business organization or contractual arrangement, the specific needs of the business must be assessed. Factors that require particular consideration include: (a) the extent of liability; (b) participation in management; (c) separate legal existence; (d) transferability of interest; (e) financing requirements; (f) complexity of organization; (g) the nature of the business; and (h) tax implications.

Corporate Governance

Corporate governance in Canada is shaped by a combination of legal requirements and best practices. It continues to evolve, influenced by global trends, regulatory changes, and stakeholder expectations.

Corporations in Canada can be incorporated under federal law (CBCA) or provincial laws. Each jurisdiction has its own corporate statutes and regulations. In addition to requirements under corporate laws, public companies are required to comply with securities laws regulated by provincial and territorial securities commissions. Under these laws, companies must provide regular financial statements and disclose material information to shareholders and the public. These laws ensure transparency, fair trading, and investor protection.

A number of evolving trends have influenced legal requirements and best governance practices in Canada. There is a growing emphasis on board diversity, including gender, ethnicity, and skills diversity. Increasingly, companies are expected to disclose information on environmental, social, and governance factors. New legislation in Canada address issues like forced and child labor in supply chains, enhancing corporate accountability.

Director Duties and Liabilities

The board of directors of a corporation oversees the company's management, sets strategic goals, and ensures compliance with laws and regulations. Under Canadian corporate statutes, directors and officers have two principal duties – a fiduciary duty of loyalty and a duty of care.

The fiduciary duty of loyalty requires that directors act honestly and in good faith with a view to the best interests of the corporation. This duty requires them to prioritize the corporation's interests over their own and avoid conflicts of interest. The duty of care requires that each director and officer of a corporation, in exercising their powers and discharging their duties, exercise the care, diligence, and skill a reasonably prudent person would exercise in comparable circumstances. The duty of care requires that directors and officers make sufficient inquiries to inform themselves and consider all material information available to them before acting.

Directors and officers can be held personally liable for certain statutory obligations, such as unpaid wages, taxes, and environmental damages in certain circumstances. They can also face personal liability for breaches of their fiduciary duty or duty of care. This includes liability for negligence, misrepresentation, or failure to act in the corporation's best interests. Failure to comply with securities regulations, competition laws, and other regulatory requirements can also result in personal liability.

While directors do not have a fiduciary duty to stakeholders, shareholders and other interested parties have the ability under Canadian corporate statutes to seek redress against a corporation or its directors under the oppression remedy. This statutory right is available to a complainant in circumstances where their reasonable expectations were violated by conduct that was oppressive or unfairly prejudicial to the complainant, or that unfairly disregarded the complainant's interest. The Supreme Court of Canada has also affirmed that directors can be held personally liable under the oppression remedy where the impugned conduct is attributable to directors because of their action or inaction.

Under the business judgment rule, if a board acts in good faith and on an informed basis, it is afforded wide latitude under the shield of the business judgment rule and is presumed to have acted in the best interests of the corporation and its shareholders. While a high degree of diligence is required, courts do not require perfection. Where a director's decision is reasonable in light of all the circumstances about which the director knew or ought to have known, courts will not interfere with that decision.

Corporations often indemnify directors and officers against certain liabilities, provided they acted in good faith and in the corporation's best interests. Directors' and officers' liability insurance can provide protection against personal liability for their actions in their corporate roles.

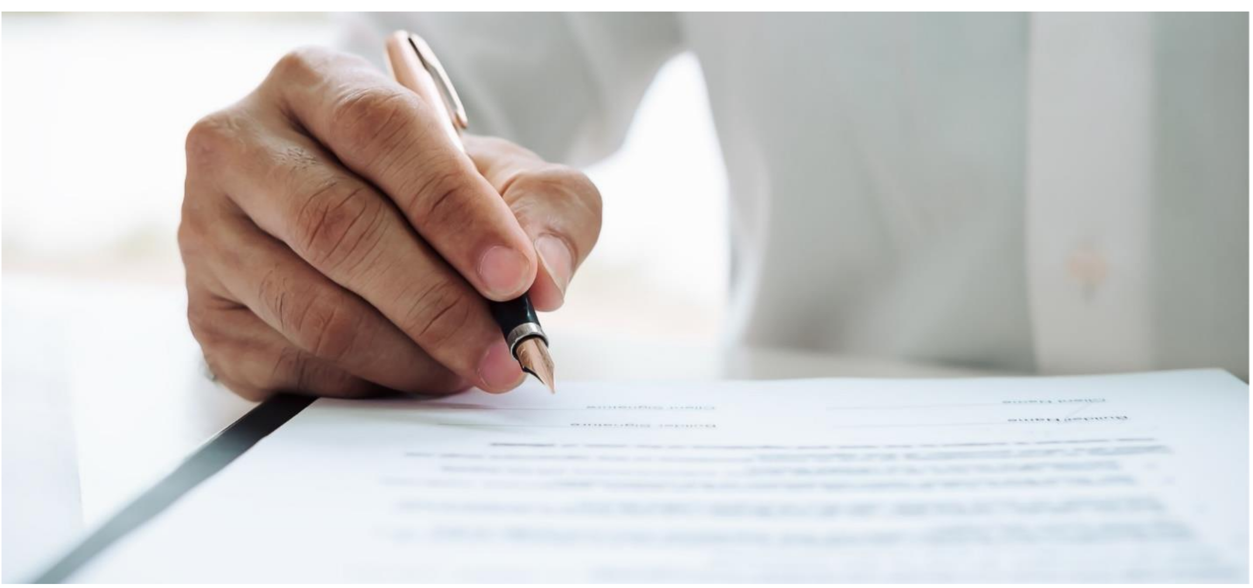
A director may also limit their liability by having their dissent entered into the minutes in respect of a decision or, ultimately, by resigning from the board. Resignation will not absolve a director from liabilities incurred while serving as a director.

Shareholder Rights and Agreements

Shareholders have the right to vote on key issues, including the election of directors and major corporate changes. Canadian laws protect minority shareholders from unfair practices, ensuring they have a voice in significant decisions. In the context of major transactions, such as mergers and asset sale transactions, dissenting shareholders can demand the "fair value" of their shares and exit the company. Under both federal and provincial laws, minority shareholders can seek court protection if they feel they have been unfairly treated or their interests have been disregarded.

Shareholders may receive dividends if declared by the board. There is no automatic entitlement to dividends. Shareholders have rights to inspect certain information of the corporation, such as financial statements, minute books, and shareholder registers. Inspection rights may be limited in private corporations unless indicated in agreements.

Shareholder agreements – private contracts among shareholders (and sometimes with the corporation) – can set out shareholder rights and obligations beyond what the corporate statutes provide for. The purpose of these agreements can be to protect minority shareholders, clarify governance and control, and plan for exits, disputes, and succession. For example, a shareholder agreement might address share transfers, dividend policies, voting arrangements, and buy-sell mechanisms. A unanimous shareholder agreement may operate to limit or remove the power of directors entirely or in part. If shareholders assume powers normally held by directors, they may also assume the corresponding duties and liabilities.



Foreign Investment

Investment Canada Act

Any non-Canadian proposing to establish a new business or acquire an existing business in Canada, should be aware of the provisions of the *Investment Canada Act* (ICA) governing investments in Canada by non-Canadians. There are two separate review processes contemplated by the ICA: (i) economic or cultural review, and (ii) national security review.

Under the ICA, certain acquisitions of control, or establishments, of Canadian businesses by non-Canadians are subject to review by the Foreign Investment Review and Economic Security Branch of Innovation, Science and Economic Development Canada (Investment Canada) to determine if the investment is of "net benefit to Canada". If the Canadian business being proposed or acquired carries on a "cultural" business, the review will be conducted by the Cultural Sector Investment Review Division of the Department of Canadian Heritage. If an investment is reviewable, the investor must file an application for review and obtain the relevant Minister's approval or deemed approval before completing the investment.

Other acquisitions of Canadian businesses or establishments of new businesses by non-Canadians in Canada below applicable monetary thresholds are not automatically reviewable, but a non-Canadian investor must file a notification of the investment with Investment Canada. Currently, the investment notification can be filed up to 30 days after the investment is completed.[1]

[1] Due to recent amendments to the ICA, after Investment Canada implements certain regulations, notifications of certain non-reviewable investments will need to be filed before the investment's completion. These prior-notice non-reviewable investments include those (i) where a non-Canadian acquires control of a Canadian business that carries out (a currently undefined) "prescribed business activity"; and (ii) where a non-Canadian's investment in a Canadian business that carries out a prescribed business activity gives a non-Canadian access to "material non-public technical information or material assets"; and allows a non-Canadian either to appoint or nominate a person to direct the affairs of the Canadian business (e.g., a director or senior manager) or to "gain prescribed special rights". The definitions of all the foregoing terms are subject to definition in the forthcoming regulations.

Reviewable Transactions

Monetary Thresholds

The following acquisitions of control by non-Canadians are reviewable:

- A direct acquisition of a Canadian business with assets of $5 million or more. For example, control of a Canadian corporation may be directly acquired by acquiring voting shares of the corporation or all or substantially all of the assets used in carrying on the Canadian business.
- An indirect acquisition of a Canadian business with assets of $50 million or more. For example, indirect control of a Canadian corporation is acquired by purchasing voting shares in a non-Canadian corporation that controls the Canadian corporation.
- An indirect acquisition of a Canadian business with assets of $5 million or more if the assets of the Canadian business represent more than 50% of all of the assets acquired in the transaction.

These thresholds for review are significantly increased or eliminated for (a) World Trade Organization (WTO) investors (i.e., non-Canadian investors controlled by persons who are nationals of WTO member states or by governments of such countries); and (b) investors from countries with which Canada has entered into trade agreements ("**trade agreement investor**").

Below is a table summarizing the minimum enterprise value of a Canadian business being acquired by a WTO investor or trade agreement investor that would make it reviewable under the ICA. The enterprise value is calculated based on regulations under the ICA but is generally similar to the cash-free, debt-free purchase price of the Canadian business. These higher thresholds and exceptions for WTO investors and trade agreement investors do not apply to investments in Canadian cultural businesses.

Enterprise Value Thresholds Triggering ICA Net Benefit Review

Type of Acquisition (Non-cultural)	Type of Investor	Monetary Threshold (CAD$ 2025)
Direct	State-owned WTO or Trade Agreement	$551 million[2]
Direct	Private WTO	$1.386 billion
Direct	Private Trade Agreement	$2.079 billion
Indirect	Private WTO	Not reviewable
Indirect	Private Trade Agreement	Not reviewable

Control Thresholds

The ICA sets out comprehensive rules for determining whether an investor has acquired control of a Canadian business. The following are examples of some of the rules to determine whether an investor has acquired direct control of a corporation:

- Acquisition of a majority of voting shares[3] is deemed to be an acquisition of control.
- Acquisition of one-third or more but less than a majority of voting shares is presumed to be an acquisition of control, unless it can be shown that the acquired shares do not give control in fact to the investor.
- Acquisition of less than one-third of the voting shares is deemed not to be an acquisition of control.

Other rules may also apply in the case of corporations, as well as other forms of business organization.

[2] The Minister of Innovation, Science and Economic Development Canada may get an order from the Governor in Council (i.e., the Canadian federal government's Cabinet) to make any state-owned acquisition or establishment of a Canadian business reviewable under the ICA.

[3] "Voting share" is a defined term in the ICA.

Net Benefit Review

After an investor has filed an application for review, the Minister of Innovation, Science and Economic Development Canada ("**Minister**") has an initial 45-day period to determine whether the investment is likely to be of net benefit to Canada. The Minister may, and typically does, unilaterally extend that period by 30 days or longer, on consent. If the Minister does not notify the applicant of his determination within the prescribed period, the Minister is deemed to be satisfied that the investment is likely to be of net benefit to Canada.

Under the ICA, the Minister considers the following factors in determining whether an investment is likely to be of net benefit to Canada:

- the effect of the investment on the level and nature of economic activity in Canada;
- the degree of participation by Canadians in the Canadian business, in particular, and in the relevant industry in Canada, in general;
- the effect of the investment on productivity, industrial efficiency, technological development, product innovation, and product variety in Canada including the effect of the investment on any rights relating to intellectual property whose development has been funded by the Government of Canada;
- the effect of the investment on competition in the relevant industry or industries in Canada;
- the compatibility of the investment with Canadian industrial, economic, and cultural policies, taking into account the policy objectives of affected provinces, including the effect of the investment on the use and protection of Canadians' personal information; and
- the effect of the investment on Canada's ability to compete in world markets.

If the Minister is not satisfied that the investment is likely to be of net benefit to Canada, the Minister notifies the applicant and invites the applicant to make representations and undertakings. The Minister's final determination takes into account such representations and undertakings.

The undertakings required by the Minister for any investment are negotiated with the parties and specify how the Canadian business will be operated following the investment. They generally include minimum levels of employment, investment in Canada, Canadian involvement in management and more. Guidelines issued regarding investment by state-owned enterprises (i.e., entities that are either controlled or influenced by foreign governments or agencies) indicate these investments will generally be subject to undertakings, including those related to corporate governance and commercial orientation.

Cultural Industries

There are special provisions in the ICA for investments that affect Canada's cultural heritage or national identity ("**cultural industries**").

Cultural industries include:

- publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine-readable form;
- production, distribution, sale or exhibition of film or video products;
- production, distribution, sale or exhibition of audio or video music recordings;
- publication, distribution or sale of music in print or machine-readable form; and
- 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.

The establishment of a new business or the acquisition of control of a Canadian business that would not otherwise be reviewable under the ICA may be reviewable if it falls within this category. Where a non-Canadian notifies it has established a new business in a cultural industry,[4] the federal Cabinet, composed of the Prime Minister and the other Ministers, has 21

[4] What constitutes a new business can have a lower standard for cultural industries. For example, an investment by a non-Canadian to, directly or indirectly, publish, distribute or sell a magazine or periodical in Canada is deemed to be a new Canadian business (whether or not that non-Canadian already sells another magazine or periodical in Canada or the same magazine or periodical in Canada from another country).

days to decide whether the investment should be reviewed. Acquisitions of control are automatically reviewable if they exceed the CAD$5 million direct acquisition threshold and the CAD$50 million indirect acquisition threshold described above (regardless of the nationality of the investor).

The Ministry of Canadian Heritage is responsible for reviewing investments related to cultural industries. The Cultural Sector Investment Review Division of the Department of Canadian Heritage is the counterpart to Investment Canada for these investments (jurisdiction is shared for investments that involve both cultural industries and non-cultural businesses). The Minister of Canadian Heritage also has discretion to make determinations that could result in the review of investments in cultural industries that would not otherwise be reviewable. For example, an investor that thinks it is Canadian-controlled because it complies with the ICA rules might find that the Minister of Canadian Heritage has determined otherwise. The Minister can use this authority to review investments retroactively to June 18, 1992. Unless appropriate steps are taken, investors must accept a certain amount of risk in proceeding with investments involving cultural industries without review.

National Security

In addition to a "net benefit" review, an investment by a non-Canadian may be reviewed to determine if it could be injurious to national security.[5] Ultimately, if the Minister and Cabinet believe the investment would be injurious to national security, an order may be made to take any measures to protect national security, including prohibiting the investment or requiring divestment of a completed investment.

"National security" is not defined in the legislation but, on March 5, 2025, the Government of Canada issued updated guidelines concerning the factors the Minister and Cabinet may consider when making determinations relating to national security under the ICA. The factors cited by the guidelines are relatively broad. In addition to factors traditionally expected to implicate national security, such as the potential effects of the investment on Canada's defence capabilities and interests, the guidelines clarify that national security may be implicated in (i) the transfer of sensitive technology

[5] Amendments enacted but not yet in force deem a non-Canadian investor who has been convicted of corruption as sufficient to merit a national security review.

or know-how outside of Canada; (ii) the security of Canada's critical infrastructure, including processes, systems, facilities, technologies, networks, assets and services essential to the health, safety, security or economic well-being of Canadians and the effective functioning of government; (iii) the supply of critical goods and services to Canadians or goods and services to the Government of Canada; (iv) critical minerals and their supply chains; (v) Canada's economic security; (vi) foreign surveillance or espionage; (vii) hindering current or future intelligence or law enforcement operations; (viii) Canada's international interests; (ix) facilitating the activities of criminals; and (x) enabling access to sensitive personal data.

Non-Canadian investors must consider whether there is a possible national security issue associated with a transaction involving the establishment, or an acquisition, of any interest (not necessarily a controlling interest) in a Canadian business, including businesses that are located in close proximity to sensitive infrastructure.

A national security review can take 200 days or more to be completed from the time the government is first notified, or deemed to be notified, of the investment. During that period, the Minister may impose conditions on the investment to prevent injury to national security (e.g., prohibit the sharing of certain information). Investors subject to a national security review may make representations and submit undertakings to address the Minister's concerns that the investment could be injurious to national security.

If a non-Canadian investor fails to notify the Minister of its notifiable investment, the investment may be subject to a national security review for up to five years after it is implemented.

Competition Law

Competition Act

Federal competition legislation may affect a person's ability to invest in Canada. The *Competition Act* aims to maintain and encourage competition in Canada. The legislation creates criminal offences for serious anti-competitive activities such as price-fixing conspiracies, bid-rigging, and deceptive marketing practices. The legislation also creates a system for civil review of business activities that could affect competition, including mergers and acquisitions of businesses.

The Competition Bureau ("**Bureau**") is an independent law enforcement agency responsible for the *Competition Act*. The Bureau is headed by the Commissioner of Competition ("**Commissioner**"). The Bureau investigates both criminal and civil matters under the *Competition Act*. With court approval, it can use certain tools to gather evidence, including search warrants, subpoenas for production of documents, and the taking of oral testimony under oath. In relation to the criminal provisions, the Commissioner may refer matters to the Attorney General of Canada for prosecution. For civil matters, including merger review, the Commissioner may apply to the Competition Tribunal ("**Tribunal**") for remedial relief.

Merger Notification

Subject to certain exceptions, merger activity is subject to notification requirements where two financial thresholds are both met. First, the target of the transaction has Canadian assets or revenues exceeding CAD$93 million. Second, all of the parties to the transaction, together with all of their affiliates, have Canadian assets or revenues exceeding CAD$400 million. Where required, the parties to the transaction must notify the Commissioner in advance and cannot complete the transaction before the expiry of a waiting period, absent affirmative approval from the Bureau.

For share transactions, the merger notification rules will not apply unless the acquiring party, as a result of the proposed transaction, would own more than 20% of the voting shares of a publicly traded company or more than 35% of the voting shares of any other company (unless the acquiring party already owns more than these limits, in which case it must be acquiring additional shares to own more than 50% of the voting shares).

The CAD$93 million transaction threshold applied in 2025 and periodically is adjusted.

The procedure for notification is substantially similar to the process required in the US under the *Hart-Scott-Rodino Antitrust Improvements Act of 1976* (commonly, the HSR Act). Where the notification thresholds are met and no exemption applies, each of the parties must file a merger notification that includes information about the parties, their major customers and suppliers, and documents prepared for or received by an officer or director of the corporation (or individuals who serve in a similar capacity for unincorporated entities) that analyze or evaluate the proposed transaction with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into new products or geographic regions. In some transactions, parties elect to forgo formal notifications and rely on an exemption that the Bureau may grant if substantially similar information was provided in a request for an advance ruling certificate ("**ARC Request**"). The ARC Request is a customary letter describing the transaction and requesting affirmative approval. Irrespective of whether the parties proceed by formal notifications, an ARC Request, or both, there is a filing fee of $888,690.45 to file the merger notification, which is adjusted annually.

Once the merger notification is filed, the parties may not close their proposed transaction for 30 days. This waiting period can be terminated earlier by the Commissioner or extended if, during the initial waiting period, the Commissioner requires the parties to respond to a supplementary information request, in which case the waiting period is extended to 30 days after compliance with this request.

A supplementary information request is burdensome, closely analogous to a 'second request' under the US HSR Act merger notification process. Parties receiving a supplementary information request are often required to produce hundreds of thousands of business records to the Bureau. Supplementary information requests are issued in about 5% of merger reviews, typically where the Bureau has prima facie concerns regarding the transaction.

The great majority of mergers subject to review do not raise competition concerns. In these cases, the Commissioner may respond with an affirmative approval, such as an advance ruling certificate or no-action letter. The receipt of an affirmative approval terminates the waiting period. One recent development in Canadian competition laws is a marked increase in the number of non-contested mergers that do not receive any form of affirmative approval.

Substantive Merger Provisions

The Commissioner has discretion to challenge any merger in Canada, irrespective of whether notification is required. Where a merger has been notified, the Commissioner may challenge until one-year post-closing. In other mergers, the Commissioner may challenge until three years post-closing. The Commissioner may not challenge a merger where an advance ruling certificate (one of several forms of affirmative approval) has been granted.

A merger is broadly defined in the *Competition Act* to mean the acquisition or establishment, direct or indirect, of control over, or significant interest in, the whole or a part of a business of a competitor, supplier, customer or other person. Significant interest is not defined in the *Competition Act*, but relates to the ability to materially influence the economic behaviour of another party. Thus, even the acquisition of a minority interest may constitute a 'merger', depending on the facts.

The substantive legal test is whether the merger prevents or lessens, or is likely to prevent or lessen, competition substantially. The Bureau's analytical approach to merger examination is set out in detail in its merger enforcement guidelines, which can be found on its website. In light of recent legislative amendments, the Bureau is overhauling its guidelines, and certain aspects of the existing guidelines are no longer current. The key elements in the analysis include market definition, market concentration and market share, an assessment of entry conditions, competitive effects, and effective competition remaining. International practitioners should be aware that Canada's former 'efficiencies defence' (which previously allowed otherwise anti-competitive mergers to proceed if the gains in efficiency resulting from the merger would likely be greater than, and offset, the anti-competitive effects) has been abolished.

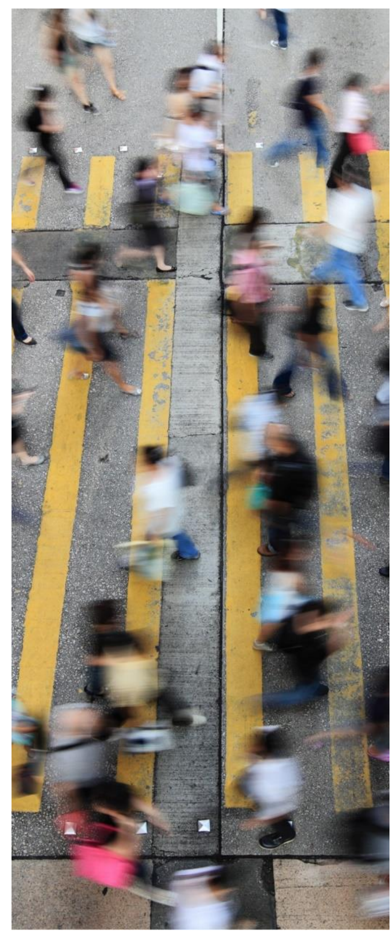
Merger review is essentially a regulatory function in Canada as the great majority of mergers do not raise substantive competition concerns, and those that do are often resolved by negotiating appropriate remedies with the Bureau. The *Competition Act* streamlines the process for remedies by allowing for the registration with the Tribunal of consent agreements between the Commissioner and the parties. Once registered, the consent agreement has the same force and effect as if it were an order of the Tribunal.

If a merger raises significant competition issues that cannot be resolved through negotiation, the Commissioner can file an application for relief from the Tribunal, including interim relief (i.e., an injunction to prevent closing). Where the Commissioner applies for an injunction, the parties may not close the transaction until the Tribunal has disposed of the application. If the Tribunal, after considering the evidence of the Commissioner and the parties, finds that the merger prevents or lessens or is likely to prevent or lessen competition substantially, it may (a) prohibit closing all or any part of a proposed transaction; (b) dissolve a completed transaction; (c) order divestiture of assets or shares; or (d) make other orders to which the Commissioner and the parties to the transaction consent.

Anti-Competitive Activities and Consequences

As noted above, in addition to merger review, the *Competition Act* deals with certain anti-competitive conduct and practices and includes criminal provisions for more serious anti- competitive activities.

Civil Provisions



The civil provisions of the *Competition Act* permit the Tribunal to provide for remedial relief from certain anti-competitive conduct and practices on application by the Commissioner, or certain private parties that have obtained leave of the court. The most important civil provisions of the *Competition Act* are the abuse of dominance provision and anti-competitive agreements provision.

Under the abuse of dominance provision, the Tribunal may make a civil order against a dominant firm that engages in a practice of anti-competitive acts, or conduct that has had, is having, or is likely to have, the effect of lessening or preventing competition substantially in a market. The provision is roughly analogous to section 2 of the *Sherman Antitrust Act* (US) and to article 102 of the *Treaty on the Functioning of the European Union* (European Union). Anti-competitive acts are exclusionary, predatory or disciplinary in nature. They may include practices such as long-term exclusive contracts or other contractual provisions that make it very difficult or uneconomic for customers to switch suppliers, thereby protecting or extending the market power held by the dominant firm or firms. Where the Tribunal determines that a dominant firm has engaged in *only one of* (i) anti-competitive practices; or (ii) conduct which had an anti-competitive effect, the Tribunal's only recourse is to make an order prohibiting the conduct. Where the Tribunal determines that a dominant firm has engaged in *both* (i) anti-competitive practices; and (ii) conduct which had an anti-competitive effect, the Tribunal may make additional remedial orders, such as ordering a divestiture of shares or business assets, or ordering administrative monetary penalties. The Tribunal's ability to impose administrative monetary penalties has been expanded, and such penalties may now be the greater of CAD$25 million (or higher for subsequent order), three times the value of the benefit derived from the conduct, or where that cannot be determined, 3% of a person's worldwide gross revenues. Canada's parliament significantly expanded the abuse of dominance provision in 2023, and the Bureau is still in the process of revising its policy guidance.

The civil provision concerning refusal to deal may be relevant to the termination of a customer by a supplier, such as the termination of a retailer or distributor by a manufacturer. The provision may apply if (a) a person is substantially affected in their business or precluded from carrying on business due to their inability to obtain adequate supplies of a product anywhere in a market on usual trade terms due to insufficient competition among suppliers in a market, where the product is in ample supply; (b) the person is able to meet the usual trade terms; and (c) the refusal to deal is having or is likely to have an adverse effect on competition in a market. If these conditions are met, the Tribunal may order the supplier to accept the customer on usual trade terms.

Further, the *Competition Act* contains a civil provision regarding agreements or arrangements that prevent or lessen, or are likely to prevent or lessen, competition substantially in a market. This provision is intended to cover anti-competitive agreements or arrangements that are not subject to the criminal conspiracy provision discussed below. It may apply, for example, to an agreement between a distributor and a supplier where the supplier supplies products to a distributor and also competes with that distributor, if the agreement can be shown to have the requisite anti- competitive effect.

The *Competition Act* also contains standalone provisions relating to exclusive dealing, tied selling, and price maintenance, although such provisions have fallen into disuse, and as such, this type of conduct is normally examined as part of an abuse of dominance case or anti-competitive agreement case.

Finally, the *Competition Act* contains civil provisions targeted at deceptive marketing practices, such as misleading advertising. A major enforcement priority of the Bureau at present is litigating matters involving 'drip pricing' (i.e., where a person advertises an unattainable price). The Tribunal recently imposed an approximately CAD$39 million monetary penalty on company found to have engaged in drip pricing, and additional matters are currently before the Tribunal. Some deceptive marketing practices, such as deceptive telemarketing or misleading representations that are knowingly or recklessly made, can be pursued as criminal conduct, though such criminal prosecutions are rare.

Criminal Provisions

The *Competition Act* makes it a criminal offence for competitors to conspire, agree or arrange with each other with respect to (a) the prices at which a product is supplied; (b) the markets, territories, or customers that are served; or (c) the level of production or supply of a product. Importantly, this provision applies to the prohibited conduct regardless of the actual or potential effect on competition.

A limited defence is available for conduct that is ancillary to a broader agreement or arrangement and that is directly related to, and reasonably necessary for giving effect to, the objective of the broader agreement or arrangement, provided the broader agreement or arrangement does not itself contravene the conspiracy provision. For example, a non-competition provision that restricts the seller of a business from re-entering into competition with the buyer can, in some situations, be justified as necessary to protect the goodwill being purchased as part of the business. However, if the non-competition provision is unreasonably long in duration or includes products or businesses not being sold, this defence may not be available.

While the criminal conspiracy provision generally only applies to 'sell-side' cartels, the provision was recently expanded to prohibition agreements between competitors to fix wages or other conditions of employment, or to enter into bilateral agreements to not solicit or hire each other's employees. Like other agreements prohibited by the conspiracy provision, a limited exception is available for restrictions that are ancillary, directly related to, and reasonably necessary to give effect to a broader legitimate agreement. The Bureau has not yet taken any enforcement action related to employment-related conspiracies.

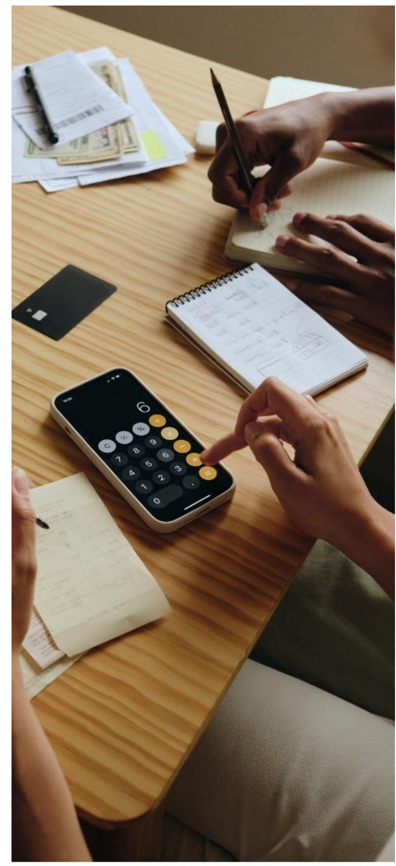
The criminal conspiracy provisions carry the risk of severe sanction. Those persons found guilty can be subject to prison terms of up to 14 years, fines (in the discretion of the court), or both. In addition, private parties may sue for damages as a result of conduct that is contrary to the criminal provisions – litigation which typically occurs in the form of class action litigation.

The criminal provision concerning bid-rigging makes it a criminal offence to agree or arrange with another person with respect to making a bid, withdrawing a bid or deciding not to bid, unless a party to the agreement or arrangement makes it known to the person calling for the bids, at or before the time the bids are submitted or withdrawn. This provision also applies to tenders, and carries the same risk of severe sanction as the conspiracy provision.

Corporate Finance

Equity Versus Debt Financing

Businesses commonly raise capital by equity and debt financings. Equity financing involves the issuance of shares of capital stock of a corporation or units of a limited partnership or trust. Various classes of shares or units may be issued. The rights and privileges attaching to each class of shares or units will depend on the requirements of the issuer and the investors. In the event of dissolution or insolvency of a corporate issuer, capital can be returned to shareholders only after all creditors have been paid in full. The advantage of share or unit ownership is that the investor can share in the success of the issuer by receiving dividends or through an increase in the value of the shares or units.



Debt financing may be provided by shareholders, partners or third-party lenders such as banks, other financial institutions or private debt funds. Lenders to a corporation who do not have a personal interest in it usually require that a certain level of equity investment be maintained by the corporation's shareholders. Lenders may also require personal guarantees from the shareholders of small private corporations. The advantage of debt financing is that the equity interest of the corporation's shareholders is not diluted, as lenders will be paid a fixed return. In addition, certain types of interest charges incurred in connection with business activities may be tax deductible in Canada.

Third-party lenders typically offer two principal forms of financing to Canadian businesses: operating financing and term financing. Operating financing supports the ongoing operations of a business, and is typically structured as a revolving credit facility with interest rates that fluctuate based on market conditions. Term financing, designed for capital investments, requires scheduled repayments over a defined period and offers various interest rate structures. Term lenders frequently provide borrowers with options to select fixed or floating interest rates, along with the flexibility to convert between these options as market conditions change.

Securities Law

The issuance of securities and trading in securities between investors is governed by legislation intended to create orderly markets and protect investors. Shares, bonds, and options are common forms of security. The term "security" is broadly defined and includes any document evidencing title to or an interest in the capital, assets, property, profits, earnings or royalties of a person or corporation, and any document, instrument or writing commonly known as a "security". In addition, a number of different types of agreements and instruments involving monetary consideration, including a broad category referred to as "investment contracts", are specifically included in the definition of security. Depending on the circumstances, both equity and debt financing may come within the definition of security and may therefore be subject to securities legislation.

Each province and territory of Canada has securities regulation. However, there is no overarching federal securities regulator (unlike, for example, the Securities and Exchange Commission in the US). That said, many provinces and territories have harmonized elements of securities regulation by interpreting certain securities laws in the same manner through the adoption of national or multilateral instruments.

Any person or corporation engaged in the business of trading in securities or giving advice about securities must be registered under the relevant provincial securities legislation. In addition, distributions of securities must be qualified by a prospectus filed with and cleared by the relevant provincial securities commissions, unless the distribution is subject to an exemption. A prospectus is a document describing in detail the business and affairs of the issuer, the type of security involved, and other relevant information.

There are a number of important exemptions from these registration and prospectus requirements. Three of the most commonly-used exemptions are:

- Accredited investor exemption. This exemption allows an issuer of securities to raise any amount of funds from any number of investors provided that each investor meets the definition of an "accredited investor" (i.e., is an institutional investor or other person or company that meets certain minimum income or asset tests) and, in certain circumstances where the investor is an individual, the issuer has obtained a signed risk acknowledgement in the required form from the investor.

- **Private issuer exemption.** This exemption permits "private issuers" to sell securities to certain categories of persons (e.g., a director, officer or employee of the issuer or an affiliate of the issuer, a founder or control person of the issuer, specified family members of the issuer, close personal friends or close business associates of a director, executive officer, founder or control person of the issuer, accredited investors or security holders of the issuer or other persons that do not constitute the "public" vis-à-vis the issuer). An issuer is a "private issuer" if (a) it is not a reporting issuer (i.e., it has not filed a prospectus or listed its securities on a Canadian stock exchange) or an investment fund; (b) its securities (other than non-convertible debt securities) are subject to restrictions on transfer; (c) such securities are beneficially owned, directly or indirectly, by not more than 50 holders (excluding employees and former employees of the issuer or its affiliates); and (d) it has distributed securities only to persons who fit within the permitted categories (referred to above).

- **Minimum investment amount exemption.** This exemption is available where an issuer sells, to a person who is not an individual, securities that have an acquisition cost to the purchaser of not less than CAD$150,000, and such purchase price is paid in cash at the time of the trade.

Securities sold pursuant to an exemption like the ones mentioned above are usually subject to resale restrictions. In the case of certain exempt trades, it may be necessary to file a report with, and pay a fee to, the securities commissions of each of the provinces and/or territories in which the purchasers of the securities reside.

Securities legislation requires, among other things, continuous disclosure of any material changes in the affairs of public companies (known as reporting issuers), and also includes provisions relating to activities such as insider trading and take-over bids.

The multijurisdictional disclosure system (MJDS), the result of a co-operative effort between Canadian provincial securities regulators and the SEC, gives US issuers easier access to the Canadian financial markets, whereby securities could be offered by eligible US issuers in Canada primarily in accordance with SEC rules (known as "Northbound MJDS"). Rights offerings, take-over and issuer bids, business combinations, offerings of debt, and preferred shares that have received an approved rating, and offerings of equity and other securities by certain large issuers, are included within the MJDS. There is also a reciprocal "Southbound MJDS" pursuant to which eligible Canadian issuers may offer securities into the US primarily in accordance with Canadian disclosure requirements.

The major main stock exchanges in Canada are the:

- Toronto Stock Exchange (TSX), Canada's principal exchange for the trading of senior equities. The TSX is the largest stock exchange in Canada and the third largest in North America.
- TSX Venture Exchange (TSX-V), a public venture capital marketplace for emerging companies that do not yet meet the listing requirements of the TSX. The TSX-V is headquartered in Calgary, and also has offices in Toronto, Vancouver, and Montreal.
- CBOE Canada Exchange (CBOE), a senior recognized exchange in Canada. Trading on the CBOE (formerly known as the NEO Exchange) commenced in March 2015.
- Canadian Securities Exchange, a junior exchange targeted at micro cap and emerging companies.

Each of Canada's stock exchanges has enacted rules, by-laws, procedures, and policies applicable to listed companies and companies seeking to become listed. There are also a number of "alternative trading systems" that facilitate the trading of Canadian securities.

Personal Property Security

Lenders operating in Canada normally require some form of security over property of the business to protect their investment. If the borrower defaults, the lender can enforce its security and sell or take ownership of the secured property. Operating financing is usually secured primarily by inventory and accounts receivable. Term financing is usually secured primarily by capital assets, such as machinery and equipment, real estate, or by a security interest covering all the borrowers' assets. The exact nature of the security taken in each instance will depend on the borrowers' financial situation and the nature of its assets.

Canadian law distinguishes between real estate or immovables (land, buildings and movables that are permanently attached, joined to, or incorporated into real property) and personal property or movables (anything not attached to land, including vehicles, equipment, inventory, accounts receivable and other intangibles). This section deals with security over personal property.

All Canadian provinces and territories (other than Québec) have implemented personal property security legislation modelled on Article 9 of the American Uniform Commercial Code. This legislation applies to every transaction which, in substance, creates a security interest, including financing leases, and conditional transfers of title. To ensure priority in collateral as against third parties, a secured party must either take possession of the applicable collateral or register a financing statement at a computerized central registry. While computer-based searches provide efficiency, secured parties must ensure their financing statements are correctly completed, as even minor technical error (e.g., an incorrect letter in the debtor's name) may invalidate the registration. Additional registrations may be necessary in specific circumstances to ensure continued perfection of a security interest, including debtor name changes, collateral transfers, or registration renewals.

Securities transfer legislation and related amendments to personal property security legislation (collectively, the STA) have now been adopted by all Canadian provinces and territories. The STA establishes rules governing property rights for investment property (including securities, futures, and other financial assets) when bought, sold, or used as collateral. Designed to accommodate modern securities settlement systems where securities are typically held indirectly through intermediaries and settled via computerized book entries, the STA provides enhanced certainty regarding perfection priority by enabling secured parties to perfect by control. Based on Article 8 of the American Uniform Commercial Code, these rules address perfection steps for security interests in (a) securities directly held by a debtor; and (b) securities and other financial assets indirectly held through securities intermediaries.

Real Property Security

In Canada, security can be granted over real property, typically in the form of a mortgage or charge (or a hypothec in Québec) which gives the lender(s) a secured interest in the property. This means the lender can sell the property to recover the loan amount if the borrower defaults. Once a mortgage or charge is executed, it is registered with the local land registry or land titles office, which publicly records the lender's interest.

As an added layer of security beyond the value of the real estate, lenders may also require an assignment of leases and rents. This is an agreement in which the borrower (as landlord or land owner) transfers their right to receive income from leases and rents to a lender(s) as additional security for a loan. Assignments of leases and rents are also usually registered on title.

Government Assistance Programs

Federal and provincial governments in Canada offer numerous programs to support businesses. Government assistance comes in a variety of forms, including cash grants, forgivable loans, guarantees to lenders, cost sharing and advisory services. Additionally, the Business Development Bank of Canada (BDC), a Crown corporation wholly owned by the Government of Canada, has expanded its financing programs for small and medium-sized enterprises, with particular emphasis on supporting Canadian business growth and competitiveness. These programs are too numerous to review in this Guide, but they usually have fairly rigid eligibility requirements and involve extensive documentation. In general, applicants must demonstrate that they have the ability and resources to carry out a given project and that the project will benefit Canada. Close attention should be paid in each case to the detailed requirements of a particular program.

Mergers and Acquisitions

When acquiring or investing in a Canadian company or business in Canada, significant requirements may apply under corporate and securities laws. In a proposed acquisition, the ownership structure of the target business will impact the applicable level of regulation.

Certain sectors, such as broadcasting and media, telecommunications, transportation, and financial services, are subject to additional regulations and oversight which may restrict foreign ownership. In addition, as set out in the Foreign Investment and Competition Law sections of this Guide, investments in, or acquisitions of, a Canadian business may be subject to the *Investment Canada Act* and/or the *Competition Act* and thereby subject to the regulatory oversight of Canada's Competition Bureau.

Public Mergers and Acquisitions

Public merger and acquisition transactions can generally be undertaken by:

- a takeover bid, whereby an acquirer offers to buy shares directly from shareholders or a major shareholder,
- a plan of arrangement, which is a court-supervised process approved by the target's shareholders and the court, or
- an amalgamation, which is a statutory merger under corporate legislation.

Less common is a purchase by the acquirer of specific assets and liabilities of the target company.

A target business that is a publicly-traded company will be subject to a notably higher degree of regulation than a privately-held company. These transactions are governed by corporate and securities legislation, and oversight is by provincial securities regulators, such as the Ontario Securities Commission.

Acquisitions of control of publicly-traded companies, or investments in publicly-traded companies in Canada, are subject to regulation under applicable securities laws as well as the rules of the stock exchange on which the target company's securities are listed, such as the TSX and the

TSX-V. Publicly-traded companies must also comply with applicable corporate, trust or partnership laws, incorporating statutes, and judicial decisions.

To ensure the target's shareholders are well informed to make decisions concerning their shares, substantial public disclosure of a public merger and acquisition transaction is required (e.g., press releases, information circulars, and material change reports).

Private Mergers and Acquisitions

In transactions where the target business is a privately-held company, the buyer will have to comply with the target's incorporating statute, articles of incorporation, by-laws, any shareholders' agreement, partnership agreement, and any applicable partnership legislation. Shareholder approval will depend on the target company's articles or bylaws and the transaction size.

Private company acquisitions are usually structured as share or asset purchase transactions. The terms and conditions of the transaction largely depend on the negotiated deal. The purchase agreement typically includes post-closing price adjustment mechanisms, representations and warranties, ordinary course covenants, and indemnity provisions for any post-closing claims, such as claims for breach of a representation or warranty. Negotiations between the parties are kept confidential, including details about valuation, which are typically based on financials confidentially shared.

There are few applicable legal requirements for private mergers and acquisitions, beyond regulatory approvals (mainly for competition or anti-trust if thresholds are met) and any applicable industry-specific regulations.

Canada's Tax Regime

Canada's tax regime is governed by the federal *Income Tax Act* (ITA) and its regulations, as well as the sales and other tax laws of Canada and its provinces and territories. Persons planning to do business in Canada should also note that the administrative policies of the Canada Revenue Agency (CRA) and the provinces are relevant to taxation in Canada, but have not been described in depth in this Guide.

Income Tax

The primary basis for income taxation in Canada is the residence of the taxpayer. Canadian residents generally are subject to Canadian tax on their worldwide income. Non-residents of Canada generally are subject to Canadian tax only on certain types of Canadian-source income.

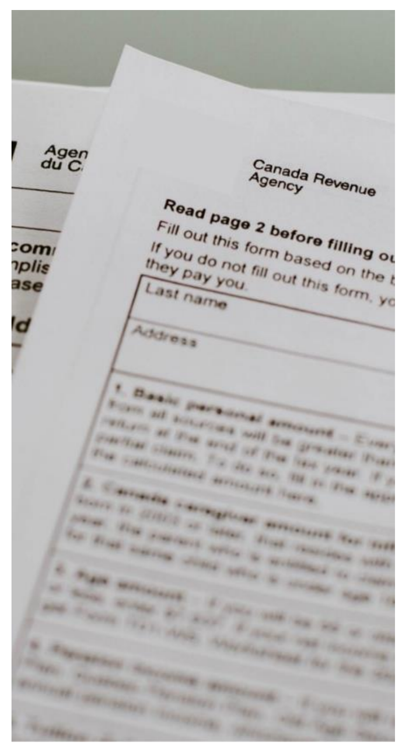
Taxation of Canadian Residents

Individuals, trusts, and corporations are, or are deemed to be, residents of Canada in the following circumstances:

- Individuals. Generally, an individual who, as part of his or her settled routine, regularly or normally lives in Canada will be considered to be a resident in Canada for Canadian tax purposes. In addition, an individual who sojourns in Canada for 183 days or more during a calendar year will be deemed to be resident in Canada for the year.

- Trusts. A trust generally is considered to be resident in Canada if its central management and control is located in Canada. This generally is the case if the trustees of the trust meet in Canada.

- Corporations. A corporation incorporated in Canada after April 26, 1965 (or earlier in certain situations) is deemed to be resident in Canada. A corporation may also be resident in Canada if its central management and control is located in Canada. This generally is the case if the corporation's board of directors meets in Canada.



A person is deemed not to be resident in Canada if the person is deemed to be a non-resident under an income tax treaty Canada has with another country.

Basis of Taxation

Individuals and Trusts

Canadian resident individuals are subject to Canadian tax at graduated rates on all sources of business, property and employment income, as well as on capital gains realized on the disposition of capital property. Most Canadian trusts (which are deemed to be individuals for the purposes of the ITA) are taxed at the top marginal tax rate on their undistributed income. In 2024, the combined federal-provincial individual marginal tax rates ranged from 20.05% to 53.53% in Ontario.

Corporations

Canadian resident corporations are subject to Canadian tax on all of their business and property income, as well as on capital gains realized on the disposition of capital property. As of January 1, 2025, the combined effective federal-provincial tax rate for corporations (including non-resident corporations) carrying on business in Ontario was 26.5%.

Taxation of Non-Residents

Under Part I of the ITA, individuals, trusts, and corporations that are, or are deemed to be, not resident in Canada are liable for Canadian tax on certain types of Canadian-source income, including:

- income from employment exercised in Canada;
- income from business carried on in Canada; and
- capital gains realized on the disposition of "taxable Canadian property", which includes (among other things):
    - real property situated in Canada;
    - property used or held in a business carried on in Canada;
    - shares of private corporations, or interests in partnerships or certain trusts, where more than 50% of the fair market value of the particular share or interest is, or was, at any time in the previous 60 months, derived from real or certain resource property situated in Canada;

- shares of public corporations where the non-resident, non-arm's length persons;

- partnerships in which the non-resident or such persons have an interest, or any combination of the above, owns, at any time in the previous 60 months, more than 25% of the shares of any class of the corporation, and the particular shares derive more than 50% of their fair market value from real or resource property situated in Canada; and

- an interest, option or right in any of the foregoing properties.

Choice of Business Entities

Non-residents can use a variety of different legal forms to carry on business in Canada. A non-resident may carry on business in Canada through an incorporated Canadian subsidiary or through an unincorporated branch.

A Canadian incorporated subsidiary of a non-resident is a Canadian resident for Canadian income tax purposes and, therefore, is subject to tax in Canada on its worldwide income at the corporate tax rates for Canadian resident corporations, as discussed above. Certain types of payments (including dividends, interest, management fees and royalties) made by the Canadian subsidiary to its non-resident shareholder, are subject to withholding tax, as discussed below.

When the business is carried on in Canada through an unincorporated branch, the non-resident generally is liable for tax on its Canadian source business income. In addition, the non-resident would be liable for branch tax of 25% of an amount approximately equal to the after-tax earnings of the branch not reinvested in Canada (in addition to any liability for income tax on its Canadian-source business income). Branch tax generally serves as a proxy for Canadian tax that would apply to dividends that are distributed to a non-resident shareholder if the non-resident carried on business in Canada through an incorporated Canadian subsidiary, rather than through a branch.

A non-resident also may carry on business in Canada through a partnership, which gives rise to unique Canadian tax issues. Although a partnership is not itself subject to tax in Canada, income of the partnership is allocated to its members based on their respective interests in the partnership and the non-resident partner will be subject to Canadian tax on its share of the partnership's income.

Withholding Tax

Amounts paid to a non-resident by a Canadian resident (or by other non-residents in certain circumstances) in respect of most forms of passive income (including dividends and royalties) generally are subject to Canadian withholding tax at a rate of 25%, subject to any applicable treaty relief. In addition, certain management fees paid by a resident of Canada to a non-arm's length non-resident, are subject to withholding tax at a rate of 25%. The ITA generally does not impose withholding tax on most interest payments paid to non-residents dealing at arm's length with the payor.

Treaties

A non-resident's liability to Canadian tax may be reduced or eliminated under an applicable income tax treaty that Canada has entered into with another country. Generally, Canada's income tax treaties exclude from Canadian tax *de minimis* employment income earned in Canada by non-residents, and limit Canadian tax on a non-resident's income from carrying on a business in Canada to only those profits that are attributable to a permanent establishment (e.g., a fixed place of business) situated in Canada. Employees or agents who regularly conclude contracts in Canada on behalf of a non-resident may be deemed to be permanent establishments of the non-resident. In addition, US residents who spend a significant amount of time providing services in Canada may be deemed to have a permanent establishment in Canada even if they do not have a fixed place of business in Canada.

Generally, treaties provide exemptions from Canadian tax on certain types of capital gains realized by non-residents and reduced rates of withholding tax on other types of Canadian-source income. Branch tax may also be reduced by an applicable treaty.

Transfer Pricing

Transfer pricing is the pricing of goods or services transferred between a resident of Canada and a non-resident with whom the Canadian resident does not deal at arm's length. In a non-arm's length transaction, pricing may not be determined by market dynamics. Consequently, taxing authorities generally attempt to ensure there is an appropriate division of profits from the transaction between the Canadian resident and the non-resident. Amounts in respect of the transaction may therefore be subject to adjustment. It is important to pay particular attention to transfer pricing where non-resident corporations and their Canadian subsidiaries are transferring goods and services between them.

Goods and Services/Harmonized Sales Tax

General Rules

Canada's Goods and Services Tax (GST) is a comprehensive value-added tax on the consumption of nearly all property and services in Canada. The rate of GST is currently 5%.

GST is imposed on every person who receives a "taxable supply" of property or a service "in Canada". Property is broadly defined to include virtually every kind of real, personal, tangible and intangible property other than money. Service is also broadly defined to include anything other than property, money, and employment duties. A taxable supply means the provision of property or a service by any means whatever in the course of the supplier's commercial activities, unless the supply is expressly exempted (principal categories of exempt supplies include financial services, residential rent, sales of "used" residential real estate, and most healthcare services). In addition, certain supplies are zero-rated – that is, they are taxable supplies but the rate of GST is zero. Zero-rated supplies include supplies of food, agricultural products, and exports from Canada.

A supplier who is registered for GST purposes is entitled to claim an input tax credit (ITC) equal to all GST paid in connection with property or services acquired by it for consumption, use or supply for the purpose of making taxable supplies (including zero-rated supplies) in its commercial activities. Therefore, GST does not become a cost or expense for a supplier engaged in commercial activities.

GST, although imposed on the recipient, must in most cases be collected and remitted to the federal government by the supplier. Registrants may offset their ITCs against GST collected and remit only the balance to the government.

Non-resident suppliers of digital goods and services to Canadian consumers that are not themselves GST registrants, may be required to register and collect GST under a simplified GST regime.

Harmonized Sales Tax and Provincial Sales Tax

Each province in Canada (other than Alberta) also levies a sales tax on most sales of property and services provided within the province. Several provinces (including Ontario) have harmonized their provincial sales taxes with the GST to form a single Harmonized Sales Tax (HST). The tax regime for the GST and the HST is generally the same. HST uses the same registration number as the GST and is reported on the registrant's GST return. The combined federal and provincial components of the HST result in a combined rate of 13% in Ontario. Québec's provincial sales tax mirrors, but is not harmonized with, the federal GST.

Each of Manitoba, Saskatchewan and British Columbia retain an independent retail sales tax. Generally, retail sales tax applies to transfers of tangible personal property and a smaller range of services than GST/HST. There is no input tax credit mechanism in the retail sales tax regimes. Rather, retail sales tax paid by a person engaged in a business is a cost of doing business.

Other Commodity Taxes and Duties

Businesses involved in importing goods into Canada, exporting goods to Canada, or manufacturing or selling goods in Canada, may be affected, directly or indirectly, by certain other taxes and duties imposed in Canada. Many products imported into or sold in Canada are subject to GST and provincial sales tax (or HST), as well as customs and excise duties and taxes.

Customs Duties

The rate of customs duty payable on imported goods depends on both the country of origin of the goods and the classification of the goods.

The amount of duty is based on the "value for duty" of the imported goods, which generally is determined by the "transaction value" of the goods. The transaction value generally is the price paid or payable by the importer of the goods, subject to adjustment for items such as commissions, brokerage fees, royalties, packaging, and transportation costs.

There are special methods of valuation when the transaction value is not applicable or cannot be determined, for example, when a relationship between the vendor and the purchaser has affected the price of the particular goods, or where the importer is a Canadian branch of a foreign exporter. Under certain circumstances, refunds, drawbacks, and remission of duty are available.

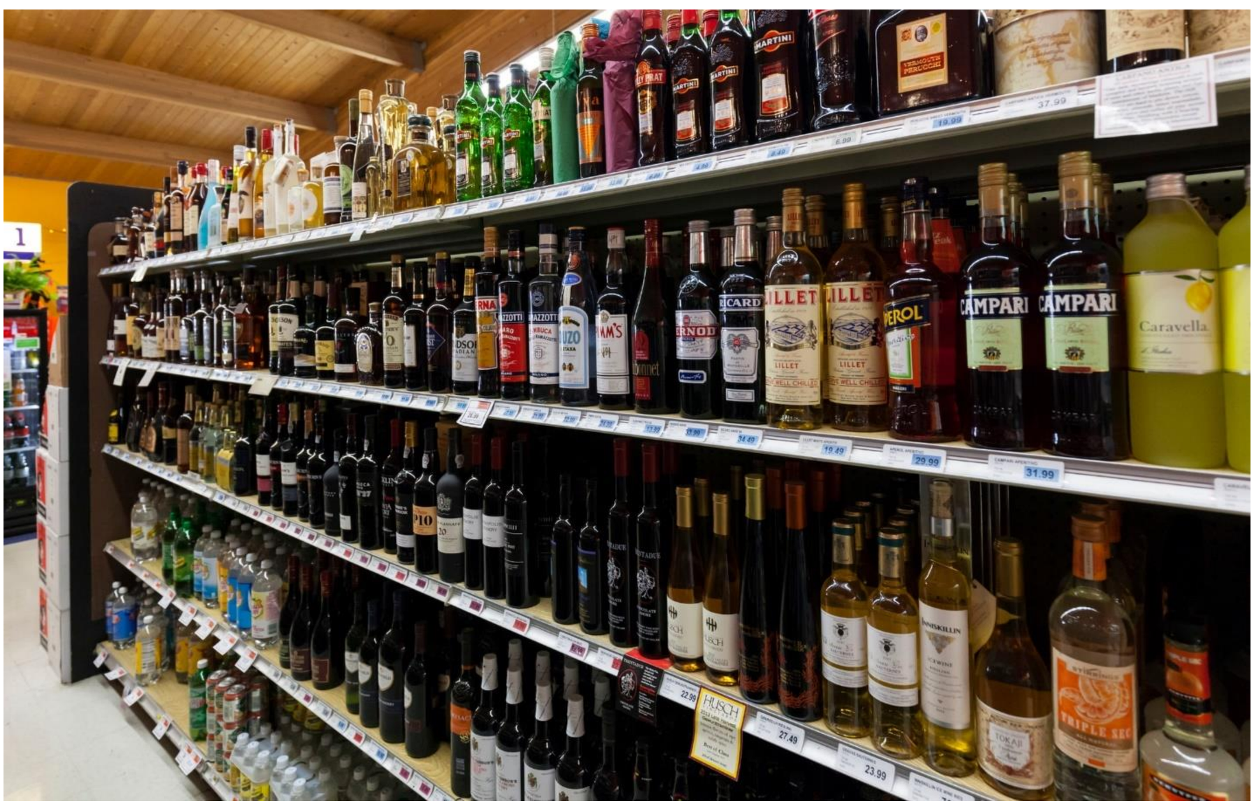
The Canadian tariff classification system incorporates the principles of the Harmonized Commodity Description and Coding System, an internationally accepted system of classification.

Canada has entered into free trade agreements with several countries. Pursuant to these trade agreements, Canada has reduced or eliminated customs duties payable on goods imported into Canada from these countries.

Excise Duties and Taxes

Certain goods (including jewellery and gasoline) manufactured in or imported into Canada are subject to an excise tax, which applies at varying rates depending on the type of product manufactured or imported, in addition to any applicable customs duties and GST/HST.

Excise duties are imposed on spirits, wine, beer, tobacco, and cannabis products manufactured in Canada or imported into Canada, in addition to GST/HST and customs duties.



Employment and Labour

The federal government and all provincial governments have enacted minimum employment standards legislation as well as legislation regarding human rights, occupational health and safety, workers' compensation, pay equity, labour relations, and privacy.

Whether an employer operates in a provincially or federally regulated industry will determine whether federal or provincial employment laws apply. Most industries, such as manufacturing and retail, are provincially regulated, and the relationship between the employer and employees will be governed by the laws of the province in which the business is located. Industries that are inter-provincial in nature (e.g., railways and airlines), as well as certain specific industries (e.g., banking and telecommunications), are federally regulated and federal employment laws apply. Although provincial and federal legislation contain the same basic principles, specific rules can vary significantly.

Employment Standards

Each province and the federal government have enacted their own employment standards legislation that provide specific workplace standards, such as maximum hours of work, minimum wage rates, overtime, compulsory public or statutory holidays, minimum vacation time and vacation pay, protected leaves of absence (including rights to pregnancy and/or parental leave), minimum notice of termination or pay in lieu of such notice, and severance pay requirements. These are minimum standards with which employers must comply and they cannot be contracted out of or waived.

Employment standards legislation provides protection for employees in the event of a sale or transfer of a business or a bankruptcy or restructuring. Such legislation generally provides that a purchaser who hires the employees of the seller's business must recognize the employees' past service with the seller for the purposes of calculating future minimum statutory entitlements to notice of termination and severance pay.

Under federal and provincial employment standards legislation (with the exception of Prince Edward Island), additional termination obligations may also arise when an employer terminates or lays off a large number of employees within a short period of time. Group termination requirements vary by jurisdiction, but generally include a requirement to provide additional notice or pay in lieu of notice to the affected group of employees and to government authorities.

Most employment standards legislation establish priority for employee claims for unpaid wages and accrued vacation pay in a bankruptcy or restructuring. Employment standards legislation also commonly imposes personal liability on the directors of a business for these types of employee claims.

It is relatively easy and inexpensive for employees to pursue their rights under employment standards legislation. Employment standards are not enforced by the courts, but by specialized labour tribunals which have relatively informal rules of procedure and independent adjudicators. Employees do not have to retain legal counsel to file a complaint and appear before such tribunals.

Severance

In Canada, unlike most of the jurisdictions in the US, there is no concept of “employment at will” or “termination at will”, where employers are not required to give employees advance notice of termination.

Notwithstanding legislative minimum standards for notice of termination or pay in lieu of such notice and severance pay, employees may be (and typically are) entitled to more generous treatment based on common law principles. In the absence of just cause for termination, all employees are entitled to reasonable notice of termination at common law. The notice may be by way of “working notice” or pay in lieu of such notice, and all employee benefits (including group insurance, pension, stock options, and other bonus or equity compensation and perks) must be continued during this reasonable notice period. Reasonable notice is a fact-based determination, and factors that a court would consider in determining the reasonable notice period include, but are not limited to, the following: the employee’s length of service, age of the employee, character of the employment, availability of similar employment (having regard to the employee’s experience, training and qualifications), and whether the employee was induced to leave secure employment to join the new employer.

The risks of common law notice or payment in lieu of notice, can be mitigated for employees located outside of the province of Québec by a well-drafted employment agreement containing a contractual agreement to a pre-determined severance amount and period of benefits continuation upon a termination of an employee's employment without cause. Employers and employees cannot contract out of or waive the minimum standards provided by legislation. Accordingly, if an employment contract provides less than the minimum notice of termination, severance pay, and continuation of benefits required by the applicable employment standards legislation, it will be unenforceable, and the more generous common law requirements will govern. The law on the enforceability of termination clauses in Canada is continually changing, making it important for employers to review and update their employment contracts on a regular basis.

Human Rights

The federal government and all provincial governments have adopted human rights legislation prohibiting discrimination and harassment in the workplace. This legislation generally provides that an employer must treat all people equally without discrimination on various bases, including race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex (including pregnancy), sexual orientation, gender identity, gender expression, political beliefs, age, record of offences, marital status, family status, or physical or mental disability. In exceptional cases, discriminatory treatment may be justified if a requirement is determined to be a valid occupational requirement.

Human rights legislation also prohibits indirect discrimination. This type of discrimination typically occurs when a company rule, which appears neutral on its face, negatively impacts a particular group or class of employees. For example, a requirement to work on Sundays may discriminate against employees whose religious beliefs and practices do not allow them to work on Sundays.

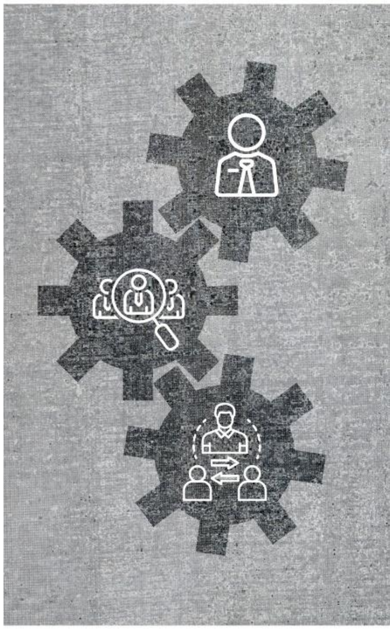
Human rights legislation sets a stringent standard for employers with employees or job applicants who have protected characteristics under human rights legislation. Employers are required to accommodate employees to the point of undue hardship, which is a high standard and difficult to meet.

Alcohol and drug dependence has been found to be a disability, and employers are required to accommodate employees who suffer from disabilities. Almost all provincial human rights commissions have established written policies on alcohol and drug testing. In most jurisdictions, random alcohol and drug testing is prohibited, but it might be allowed in a highly dangerous workplace where an employee occupies a safety sensitive position.

Generally, human rights legislation is enforced through a complaint driven system. The federal government and all provincial and territorial governments (with the exception of Nunavut) have established human rights commissions (to investigate and mediate complaints) and most provinces have human rights tribunals (to adjudicate complaints that are not settled through mediation). These tribunals have the authority to issue orders requiring employers to comply with legislation, to impose financial penalties and, in certain circumstances, to reinstate a terminated employee to their former position. Employees are not required to retain counsel to file a complaint and appear before a tribunal.

Labour Relations

The federal government and all provincial governments have enacted labour relations legislation to allow employees to unionize and to facilitate collective bargaining between unions and employers. Employers are obliged to bargain in good faith with a union and to recognize a union's exclusive bargaining rights with respect to the "bargaining unit" that it represents.



Independent labour relations boards are established by the legislation to oversee the administration of labour relations laws and to provide investigative and adjudicative functions. Boards have significant enforcement powers to ensure employers comply with the legislation.

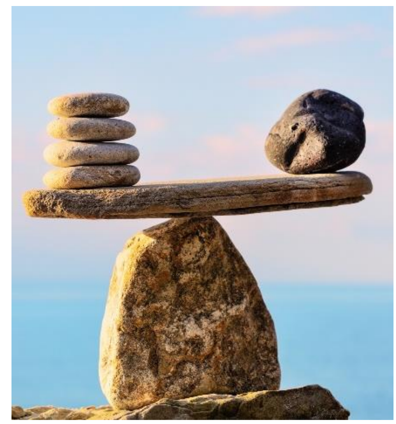
A union can apply for certification to become the exclusive bargaining agent of a group of employees of an employer. Certification is granted if the right level of employee support is established through a vote or other evidence. Following certification, the employer is required to bargain in good faith with the union to establish a collective agreement covering all the terms of employment between the employer and unionized employees.

Labour relations legislation includes mandatory conciliation, mediation, and arbitration provisions designed to facilitate the settlement of workplace disputes or grievances without work stoppages. It includes a number of conditions that must be met before employees can lawfully strike or before an employer can lawfully lock employees out.

Labour relations legislation also protects a union's bargaining rights when a business is sold, unless the appropriate labour board or similar governmental entity declares otherwise. These provisions have been interpreted broadly so that the buyer of a business effectively "steps into the shoes" of the seller and is bound by the seller's collective bargaining agreement and becomes party to any union proceedings or grievances.

Pay Equity

The federal government and certain provinces in Canada (including Ontario and Québec) have passed legislation and regulations providing for pay equity. While employment standards legislation typically requires employers to provide equal pay for equal work, pay equity legislation requires employers to provide equal pay for work of equal value to address gender discrimination with respect to the payment of female employees. It is aimed at addressing the historical wage gap between men and women, particularly in certain jobs which traditionally have paid lower wages. Women in female job classes who perform jobs of equal value to employees in male job classes have the right to salary adjustments. Such legislation requires employers to complete internal pay equity assessments to establish that they are in compliance with the legislation. Employers must make job comparisons using a gender-neutral comparison system taking into account skill, effort, responsibility, and working conditions. Employees' pay must be fair and based on the results of these job comparisons. Like human rights legislation, pay equity legislation establishes a commission and tribunal to adjudicate disputes.



Employment Equity

Employment equity legislation establishes an affirmative action/hiring quota system designed to encourage employers to hire and promote women, aboriginal people, people with disabilities and visible minorities. Currently, no province has such legislation in force and the federal employment equity legislation applies only to businesses that employ 100 or more employees in connection with a federal work, undertaking or business. This includes any corporation established to perform a function or duty on behalf of the Canadian government.

Privacy

The federal and certain provincial governments have established privacy legislation which applies to certain employers. The legislation requires employers to obtain employees' consent to the collection and use of personal information. Privacy commissions oversee the administration and enforcement of privacy laws. Please see the Privacy and Data Protection section of this Guide for more information.

Occupational Health and Safety and Workers' Compensation

All provinces and the federal government have legislation that sets out certain standards for occupational health and safety and provides for compensation to employees who are injured in the course of employment. The legislation imposes duties on employers, supervisors, workers, and other persons (e.g., owners) concerning workplace safety (including workplace harassment and workplace violence). It also permits employees to refuse to work where they have reason to believe their safety or that of another employee is endangered. The legislation is enforced internally by mandatory workplace health and safety committees and externally by government-appointed health and safety inspectors. The penalties for offences under the legislation are very significant. For example, the maximum fine for a corporation under Ontario's legislation is $2 million for each offence. The maximum penalty for an individual for each offence is $500,000 and/or one year in prison. A corporation's directors and officers may also be liable for a fine up to $1.5 million and/or one year in prison. The Criminal Code provides for criminal liability for corporations found to be in breach of occupational health and safety standards.

Workers' compensation legislation establishes a no-fault insurance system. It provides compensation to employees for workplace injuries, including rehabilitation and retraining, and benefits to dependents of workers who are killed at work. Benefits are provided on a no-fault basis and workers covered by the system are prohibited from suing their employer. Each provincial workers' compensation system is administered by a provincial board that has significant investigative and enforcement powers. Disputes regarding the interpretation of the legislation and the administration of the overall system are adjudicated by an independent tribunal.

Accessibility for Individuals with Disabilities

In addition to human rights legislation, the federal government and most provincial governments have adopted legislation that requires employers to ensure certain standards of accessibility are being met for disabled individuals, including with respect to customer service, employment, information and communications, transportation, and design and use of public spaces.

Payroll Deductions and Remittances

Employers are required to make certain deductions and remittances and, in some cases, payments to various governments and agencies based on the wages paid to their employees.

This includes employment insurance premiums, Canada Pension Plan (CPP) contributions, workers' compensation assessments and, in some provinces, employer health tax remittances.

Employment Insurance

The employment insurance program is an income replacement program for employees who are temporarily unemployed. Employment insurance benefits are paid to employees who lose their jobs due to lay-off or termination. Employees who are on maternity leave, parental leave, compassionate care leave or are absent due to illness are also covered. No benefits are paid to those who quit a job without cause. Employees who are terminated for just cause may also be ineligible. Self-employed persons are ineligible. Both employees and employers are required to contribute to the funding of this program which is administered by the federal government. Although the exact amount of the contributions varies from year to year, employers' contributions typically range from 1% to 2% of the employees' insurable earnings, and employees' contributions typically range from 2% to 3%. The employer's contributions are deductible for tax purposes as a normal business expense.

Canada Pension Plan

With the exception of employers and employees in Québec, all employers and employees in Canada are also required to contribute to the CPP, Canada's national pension plan. Québec has its own provincial pension scheme, the Québec Pension Plan (QPP), which provides benefits comparable to the CPP. The CPP provides retirement pensions to contributors who have reached 65 years of age (although employees may access their retirement pension as early as age 60 at a reduced rate), benefits to a surviving spouse and/or surviving dependent child of the contributor, and disability benefits to a contributor who is no longer able to secure substantially gainful employment. The employee's contribution under the CPP or QPP is a percentage of earnings that is matched by the employer's contribution. The employer can deduct contributions under the CPP or QPP for tax purposes as a business expense. All provinces have pension benefits legislation governing the establishment and financial administration of private pension plans.

Workers' Compensation

With the exception of a few industries, most employers are required to participate in provincially- based workers' compensation systems. Employers who are required to participate in these systems must pay premiums calculated as a percentage of workers' wages.

Employer Health Tax

Employers operating in certain provinces (including Ontario, British Columbia, Québec, Manitoba and Newfoundland and Labrador) must pay an employer health tax calculated as a percentage of their payroll. Eligible employers may be exempt from employer health tax depending on the size of their payroll (these exemption thresholds vary by province). Self-employed individuals do not pay health tax on their self-employment incomes. Employees in the territories of Northwest Territories and Nunavut are subject to an employee health tax, which is deducted from their gross pay.

Pensions

Employee Benefits

Employers frequently establish some form of retirement income arrangement as an employee benefit. Payments under these arrangements supplement, and often significantly exceed, governmental benefits provided under the Canada Pension Plan or Québec Pension Plan. Retirement plans can be capital accumulation plans (CAPs), which are tax-assisted investment or savings plans that allow members to accrue contributions and investment earnings based on investment decisions within a defined framework. These plans are often offered by employers, unions, or other associations to help members save for retirement or other long-term goals. CAPs include options like group registered retirement savings plans, tax-free savings accounts, deferred profit-sharing plans, or other similar types of plans where members can choose from various investment vehicles. Such plans are regulated by Canada's *Income Tax Act*, which governs the contribution rates, accumulation, and decumulation of benefits accrued in a CAP.

Another form of retirement income arrangement is a registered pension plan. A registered pension plan is a savings plan registered with the Canada Revenue Agency (CRA) and a provincial pension regulator that helps employees save for retirement. A pension plan can be a defined benefit or defined contribution plan, with employees also having the option to contribute. Similar to CAPs, pension plans offer tax advantages by allowing tax-deferred savings and growth, with contributions and investment earnings only taxed when withdrawn during retirement. But unlike CAPs, pension plans are subject to pension minimum standards legislation.

Types of Pension Plans

A single employer pension plan (SEPP) is one in which a single employer, or several related employers within a corporate group, participate and contribute to the same pension plan. A SEPP can be provided to all employees, or just certain classes of employees (e.g., all unionized employees). It is usually governed and administered by the plan sponsor without input from plan members.

In addition to SEPPs, multi-employer pension plans (MEPPs) are established by a group of two or more employers and are prevalent in construction and similar industries. MEPPs are governed by a board of trustees, with board representation evenly split between employer and union-appointed representatives. Contribution amounts are established under the applicable collective agreements in unionized environments and, therefore, the benefit is not predefined or guaranteed and may be reduced.

Broader public sector employees in Canada (teachers, civil servants, municipal workers, healthcare professionals, police, firefighters, etc.) typically participate in pension plans jointly sponsored by the employee and the relevant public sector agency. These plans are subject to the same basic funding and management regulations as the pension plans outlined above, except that they are exempt from solvency funding requirements, and benefits may be reduced on wind up if the plan is not fully funded.

Pension Minimum Standards

Each province (except Prince Edward Island) and the federal government have enacted their own pension standards legislation that provides specific minimum standards that apply to each pension plan registered in that province, including with respect to eligibility, vesting, benefits accrual, funding, termination and retirement. These are minimum standards with which any pension plan must comply.

Pension standards legislation prescribes minimum standards for pension plans. Pension standards legislation requires the employer to periodically calculate its present and future pension liabilities for defined benefit pension plans, and to fund them on both a going-concern basis and a solvency basis. The objective of “going concern” and “solvency” funding is to ensure that contributions associated with pension benefits are paid regularly throughout the working life of the employee, and invested prudently, so that the necessary funds will exist upon retirement to pay the pension and other benefits that were promised in the plan text.

Pension standards legislation is overseen by a provincial authority, which interprets and regulates the legislation. Any filings, communications, compliance issues or audits related to the pension plan are done through the provincial authority.

In the context of a transaction, pension standards legislation governs the transfer of assets or recognition of service by the successor pension plan. Such legislation generally protects the members’ benefits and accrued service so that any benefits accrued under a predecessor pension plan are preserved and all service with the employer is recognized by the successor pension plan.

Treatment in Bankruptcy and Insolvency

In Canada, pensions, including CAPs, are generally protected in bankruptcy and insolvency under the *Bankruptcy and Insolvency Act* (BIA) and *Companies' Creditors Arrangement Act* (CCAA). Since the assets of the plans are held in a separate fund, the plans are exempt from seizure during bankruptcy and cannot be taken to pay off debts. As well, contributions owing but not remitted to a pension plan are granted a deemed trust under bankruptcy legislation and such assets of the insolvent corporation are given a priority over secured creditors. The court can only approve a BIA proposal or CCAA plan if it provides for payment in full of those amounts.

The federal government has passed new amendments to the BIA and CCAA that will come into effect on April 23, 2027. The amendments expand the priorities given to assets relating to pension plans to include all unfunded liabilities or solvency deficiencies of a pension plan.

In Ontario, the Pension Benefit Guarantee Fund will cover pension benefits for certain defined benefit pension plans if they are wound up due to employer bankruptcy and there is a funding shortage.

Supplemental Pension Plans

Employers may also establish supplemental pension plans that provide benefits to executives or highly compensated employees that exceed the limits set by the *Income Tax Act*, such as supplemental executive retirement plans (SERPs) or retirement compensation arrangements (RCAs). Unlike registered pension plans, these plans are contractual in nature and are not given the same preferential tax treatment. These supplemental pension plans are not registered or regulated under minimum standards legislation, provided they are properly drafted. They are also not protected in a bankruptcy or insolvency like registered pension plans. Employers can define their own vesting and other rules. Supplemental pension plans can be structured as a defined benefit or defined contribution arrangement and with or without employee contributions.

Dispute Resolution

Canada's dispute resolution system includes various options for resolving disagreements, from informal negotiations to court proceedings.

Canada's Court System

Each province and territory in Canada has a superior court of general jurisdiction which deals with civil and criminal matters. Canada also has a Federal Court, which has jurisdiction over suits against the federal government and certain matters under federal control, such as federal taxation, intellectual property, and competition law. Appeals from the provincial and territorial superior courts lie to the court of appeal for the province or territory, and from the Federal Court to the Federal Court of Appeal. Appeals from these courts to Canada's highest appellate court, the Supreme Court of Canada, are heard only with leave except for certain criminal appeals.

Civil Litigation

All of the provinces and territories in Canada, with the exception of Québec, have common law systems of justice. Québec has a civil code system (though it has been heavily influenced by the common law). Provincial and territorial lower courts hear cases relating to relatively minor criminal offences, offences under provincial or territorial statutes ranging from the *Highway Traffic Act* (Ontario) to the *Securities Act* (Ontario), and some aspects of family law. The superior courts try more serious (indictable) criminal offences and have general jurisdiction over private commercial disputes, though disputes under a certain monetary threshold ($35,000 in Ontario) are tried either in the lower court or the "small claims" branch of the superior court, depending on the province or territory. In Toronto, the Ontario Superior Court of Justice maintains a "Commercial List", a specialized court dealing with business matters such as shareholder disputes, securities litigation, corporate arrangements, restructurings, and receiverships. Throughout Canada, jury trials are highly unusual for civil litigation matters except for personal injury proceedings.

Many disputes involving matters subject to regulation are adjudicated by provincial or federal tribunals; the availability and trajectory of appeals from their decisions to provincial or federal courts will depend on the tribunal's governing statute.

Class Actions

Class actions are permitted in all provinces of Canada (with some variation). Once certified to proceed, a class action has certain features and procedural mechanisms to facilitate group claims. Typical class action claims involve product liability, breaches of consumer or employment law, securities fraud, environmental contamination, and price-fixing.

Alternative Dispute Resolution

Various Alternative Dispute Resolution procedures are available for parties to resolve their disputes outside of the courtroom, often more quickly and less expensively than in a traditional lawsuit. Arbitration can be pursued under institutional or bespoke rules agreed upon by the parties. It is usually private and the arbitrators chosen are often experts in the subject matter of the dispute. While Canadian courts may refuse to apply arbitration provisions in consumer and employment contracts in some circumstances, they will generally enforce commercial arbitration agreements and resulting arbitral awards. Canada adheres to the New York Convention and is, generally, an arbitration/mediation friendly jurisdiction.

Insolvency and Restructuring

Canada's insolvency and restructuring regime consists primarily of the *Companies' Creditors Arrangement Act* (CCAA) and the *Bankruptcy and Insolvency Act* (BIA). Corporate reorganizations can also be effected under the *Canada Business Corporations Act* (CBCA), or similar provincial corporate legislation.

Bankruptcy

The liquidation of most insolvent businesses in Canada is conducted under the BIA. On bankruptcy, whether voluntarily or on the application of a creditor, the BIA imposes a stay of proceedings in respect of the debtor, and a trustee in bankruptcy, in whom the debtor's property is vested, is appointed. In the liquidation context, the stay of proceedings does not generally apply to secured creditors, who are free to exercise their rights of self-help or to otherwise realize on their security. For this reason, receiverships are often run in parallel to a BIA liquidation. In exceptional cases, and on the application of the trustee in bankruptcy, the bankruptcy court may stay the rights of a secured creditor for up to six months.

Receivership

Where provided for in the security agreement, a secured creditor may have the right to appoint a private receiver or receiver and manager to take possession of and realize on the collateral on behalf of the secured creditor. This is often done where the secured creditor desires the assistance of a professional, usually an accounting firm, to act as its agent for the realization process.

A secured creditor can also seek the appointment of a court-appointed receiver or receiver and manager to assist in the enforcement or realization process. This remedy is usually used where there are anticipated challenges in utilizing self-help remedies or appointing a private receiver, or where the secured party wants the protection of a court appointment. While this process is generally slower and more costly, it allows the secured creditor to have its enforcement and realization process approved by the court, thereby minimizing the risk of criticism or lender liability issues.

CCAA Restructuring

The CCAA is a federal statute and has been the favourite refuge of mid-sized and large Canadian companies in financial difficulty. This relief is available only to corporate entities and to income trusts. Partnerships may be able to avail themselves of protection if their corporate partners or general partners seek relief. The CCAA can be used to stay non-creditors, secured creditors, and unsecured creditors from taking any action against the debtor or from exercising contractual rights (including the right to terminate contracts and leases), while the company's secured and unsecured debt is restructured.

The CCAA can be used together with corporate statutes to restructure equity. The court's ability to adapt procedures and relief to unique or new circumstances has made the CCAA especially popular for cross-border reorganizations and other complex restructurings.

CCAA proceedings are commenced by the issuance of a court order on an application brought by the debtor or, in rare cases, a creditor. A debtor will be a company to which the CCAA applies if it:

- is a Canadian company, has assets in Canada, or carries on business in Canada;
- is insolvent or has committed "an act of bankruptcy" (a defined term in the BIA); and
- has outstanding indebtedness in excess of $5 million.

Commonly, on an initial application, debtors seek court approval of new interim financing arrangements, known as debtor-in-possession (DIP) financing, to ensure sufficient cash flow to fund operations. The CCAA requires the court to appoint a monitor whose principal role is to act as the court's eyes and ears in ensuring the restructuring is proceeding appropriately and whose role includes the dissemination of information to stakeholders. The monitor is typically a major accounting firm but cannot be the debtor's auditor or accountant.

The CCAA provides for the filing of a plan of arrangement intended to propose a compromise of the debtor's debts. Once the plan is finalized and accepted by the court for circulation, a meeting of all creditors affected by the plan is held for the purpose of voting on the plan. To become effective, a plan must be accepted by a statutory majority of the creditors of each class (into which the creditors have been separated based on similar economic interests) and then approved by the court. The court will only sanction the plan if it is fair and reasonable based on a number of statutory criteria. Once sanctioned, the plan is binding on all members of all classes of creditors affected by the plan, as if it were a contract between the debtor and those creditors.

CBCA Restructuring

A number of Canadian companies have restructured their debt through the arrangement provisions of their governing corporate statutes, especially the CBCA. The CBCA arrangement provisions are very broad and give flexibility both to the company in proposing a plan and to the court in making orders. Canadian companies have used the CBCA to restructure bond debt as well as equity. The CBCA does not specifically mandate creditor class votes or any particular level of approval. Rather, the court is authorized to make any interim or final order it thinks fit and to require the applicant to conduct meetings "in such manner as the court directs." The court will take the views of affected creditor classes into account but the votes are not determinative.

There are three statutory requirements for a CBCA plan of arrangement:

- the proposed plan must be an "arrangement" (as defined in s. 192 of the CBCA);
- the applicant must not be insolvent (as discussed below); and
- it must be impractical to effect the desired changes under any other provision of the CBCA (e.g., it must be something more than simply an amalgamation).

An arrangement under the CBCA does not involve a declaration of insolvency and insolvent companies cannot use the CBCA arrangement provisions, subject to important caveats:

- In a number of cases, a new company was incorporated under the CBCA and acted as one of the solvent applicants. The courts have held that the arrangement provisions could be used since the one of the applicants was solvent.
- The court stated it could consider the financial condition of the applicant after the implementation of the arrangement rather than before.

In other words, it is accepted in Canada that the CBCA arrangement provisions might be used in the case of a corporate group, even if strictly speaking the existing members of the corporate group would not meet a balance sheet solvency test before the arrangement is implemented.

Proposals Under The BIA

The BIA has an effective legislative framework for reorganization in Canada in which judicial participation is encouraged to balance the rights of creditors in general and the debtor's opportunity to reorganize.

Commercial reorganizations under the BIA are conducted by way of "proposals" which may be made by an "insolvent person", a receiver, a liquidator, a bankrupt, or the trustee of the bankrupt's estate. By definition, an "insolvent person" includes all forms of business entities and, therefore, the BIA's proposal provisions are not restricted to corporate entities. In proposal proceedings under the BIA, the debtor must name a licensed trustee in bankruptcy to act as trustee under the proposal. The trustee has a number of legislatively mandated duties and responsibilities in respect of the debtor and the proposal itself, including assisting with the preparation of financial information regarding the debtor and reporting to both the court and creditors. A proposal is initiated when it is filed with the Official Receiver, the federal government appointee responsible for administering the BIA.

Proposals under the BIA may be made to creditors generally or to classes of creditors, both secured and unsecured. Proposals may only be initiated by the debtor or a person acting on behalf of the debtor. A creditor cannot commence a proposal. Applications brought by creditors against a debtor under the BIA may only seek its liquidation.

Consumer Protection

Businesses involved in importing or trading goods may be subject to domestic legislation dealing with product standards and consumer protection.

Product Standards

Product standards legislation in Canada is intended to prevent deceptive labelling and potential health and safety problems. This legislation requires goods being imported into Canada to meet prescribed standards. Both the federal and provincial governments have legislated extensively in this area. Non-governmental bodies are also involved in prescribing technical standards.

Federally, consumer packaging and labelling legislation regulates packaging and labelling of pre-packaged consumer products. The legislation requires display of information including product identity, quantity, and the manufacturer or person for whom the product was manufactured or produced for resale. The size and placement of the required information is also prescribed by law. Certain information is also required to be displayed in both English and French. The legislation prohibits false or misleading representations.

Additional requirements are imposed for certain products including food and drugs. This legislation requires display of additional information relating to the durable life of food, storage, ingredients and nutritional facts.

In October 2016, the federal government announced the launch of a comprehensive, multi-year Healthy Eating Strategy, with commitments to: reduce sodium in processed foods, eliminate industrially produced trans-fat, provide consumers with more information about sugars and food colours, and introduce restrictions on the commercial marketing of unhealthy foods and beverages to children. Since the launch, the government has (a) amended the Food and Drug Regulations to make the Nutrition Facts table and list of ingredients on packaged foods easier for consumers to use and understand; (b) made it illegal for manufacturers to add partially hydrogenated oils (i.e., trans-fats) to food sold in Canada; (c) implemented front-of-package labelling requirements for foods that are high in sugars, sodium and saturated fat (the food industry has been given until January 1, 2026 to comply); and (d) introduced a new version of Canada's Food Guide.

In April 2023, Health Canada (the federal department of the Canadian government responsible for national public health) published a policy update announcing its proposal to amend the Food and Drug Regulations to restrict advertising to children under the age of 13 for foods that contribute to excess intakes of sodium, sugars, and saturated fat. The proposed thresholds generally align with the thresholds for pre-packaged foods in the current Code for the Responsible Advertising of Food and Beverage Products to Children, a marketing industry code that is administered by Ad Standards, Canada's advertising self-regulatory body. Draft regulations are expected to be published for public consultation before they are finalized and made effective.

A former federal bill, Bill C-252 that proposed to amend the *Food and Drugs Act* to prohibit advertising "prescribed foods that contain more than the prescribed level of sugars, saturated fat or sodium in a manner that is primarily directed at persons who are under 13 years of age" died on the order paper when Canada's federal election was called March 23, 2025.

For drugs, additional information relating to medicinal ingredients, lot numbers, directions for use, and expiration dates must be displayed. New drugs cannot be sold or advertised without a notice of compliance from Health Canada. Particularly stringent prohibitions, controls, manufacturing, and labelling requirements are imposed on narcotics and certain other drugs.

Canada's federal Food and Drug Regulations contain labelling and packaging requirements for non-prescription and prescription pharmaceutical and biologic drugs for human use. The Regulations require (a) plain language labelling of drugs; (b) contact information be placed on labels; (c) non-prescription drug labels to include a standard format table of important information; (d) drug submissions to include mock-ups of labels and packages; and (e) drug submissions to include evidence that the drug would not be confused with another drug due to similar names.

Metric units of measurements (e.g. metres, grams, litres) must be used for all aspects of trade.

Provincial legislation may also regulate specific products. For example, each province has its own legislative scheme regulating the practice of pharmacy, including specific provisions relating to the sale of drugs. Provincial legislation also controls such activities as inspecting, grading, labelling, and marketing certain food products (e.g., margarine and edible oil products). This legislation may impose different and sometimes higher standards than those set federally.

Specialized federal legislation also regulates hazardous or potentially dangerous products, pesticides and other pest control products, textiles, and precious metals.

Canadian Standards Association International

The Canadian Standards Association International ("**CSA International**") is a private, not-for-profit organization that develops standards and applies them through product certification, management systems registration and information products. CSA International tests and certifies products for sale in Canada, wherever produced. CSA International certification informs consumers that a product or system has been evaluated in a formal process that includes examination, testing, and follow-up inspection, and that the product or system complies with all applicable standards.

Products and services that meet CSA International's safety or performance standards are permitted to bear the internationally-recognized CSA International mark. The CSA International program is voluntary. The burden of application and compliance is on the manufacturer or person wishing to apply the CSA International mark.

As CSA International can test and certify products for both US and Canadian markets, duplicate testing is unnecessary. CSA International also helps exporters conform to the requirements for marketing products in the European Union. As a member of the International Certification Bodies Scheme, CSA International can test and certify a wide range of products. Testing is performed locally and is recognized in over 50 countries.

Compliance with CSA International standards or standards of other testing and certification companies (such as Intertek Testing Services and Underwriters' Laboratories) or testing and approval authorities (such as Ontario's Electrical Safety Authority), is sometimes required by law.

Consumer Protection

Each of Canada's provinces and territories have some form of consumer protection legislation.

Ontario consumer protection legislation applies to all consumer transactions where the consumer, or the person with whom the consumer is conducting the transaction, is located in Ontario. The legislation provides broad protection to consumers through consumer rights and warranties (e.g., an implied warranty that services are of a reasonably acceptable quality), prohibition of unfair practices (e.g., false or misleading representation, and negative option marketing where businesses demand payment for unsolicited goods or services), and requirements for certain types of consumer agreements. The legislation also creates effective consumer remedies.

On December 6, 2023, Ontario Bill 142 - *Better for Consumers, Better for Businesses Act, 2023* received Royal Assent and introduced a revised *Consumer Protection Act, 2023* ("**New Ontario CPA**") that will, once proclaimed, replace the current *Consumer Protection Act, 2002* ("**Current Ontario CPA**"). The New Ontario CPA requires the development of regulations to be effective and therefore will not come into force until key regulations are developed and approved. Until then, the Current Ontario CPA remains in effect.

The Current Ontario CPA imposes information requirements for particular types of consumer agreements over $50, including future performance agreements, internet agreements, direct (e.g., door-to-door sales) and remote agreements, gym memberships, credit agreements, motor vehicle repair and leasing agreements, time share agreements, and agreements for personal services. Among other things, the New Ontario CPA provides for a unified set of core rules for contracts and pre-disclosures to apply to most consumer contracts over $50, with supplementary or distinctive rules for a limited number of contract types. The New Ontario CPA also includes rules for newly defined types of contracts, such as purchase-cost-plus-leases, and contracts for contract breaking services.

The information requirements are intended to inform consumers of exactly what they are contracting to receive, what they will be paying, and with whom they are contracting. In some cases, a written copy of the agreement must be given to the consumer, including specific information such as the name and contact information of the supplier, description of goods and services, full pricing, and payment information. The consumer must be given an express opportunity to accept or decline the agreement and to correct errors before entering into it. For direct agreements, time share agreements, and gym memberships, the consumer has a 10-day cooling off period to cancel the agreement for any reason.

A consumer may cancel an agreement by giving notice within certain time periods if the information requirements are not met. If a consumer has the right to cancel an agreement, they may do so by giving notice. The agreement and all related agreements are then cancelled as if they never existed. Consumers may also request that a credit card issuer cancel or reverse a charge where the card was used to pay for a consumer agreement that was cancelled, to make a payment that was received in contravention of the legislation, or to make a payment that was collected for unsolicited goods or services. Similarly, the legislation allows a consumer to rescind an agreement if it was entered into as the result of an unfair practice.

The New Ontario CPA provides enhanced consumer remedies. Once the amendments are in effect, an Ontario consumer will have the right to cancel a consumer contract within one year after entering into the contract if it (or a related agreement) contains a term or acknowledgement that is deemed to be void, and which falls into the following categories: mandatory arbitration; class action waiver; waiver of implied warranties; monetary limits on claims for breach of implied warranties; forum selection other than the Ontario Superior Court of Justice; preventing a consumer from publishing or communicating a review of the supplier or of the goods or services supplied; or preventing, or having the effect of preventing, a consumer from filing a complaint or communicating with the Ontario Ministry of Consumer and Business Services. If an Ontario consumer cancels the contract because it contains any such terms, the supplier would have to refund the consumer any payment made under the contract (or related agreement) within 15 days of cancellation. If the supplier does not issue the refund within this timeframe, the consumer can commence an action and, if successful, obtain three times the amount of the refund, plus exemplary or punitive damages.

Privacy and Data Protection

Canadian Privacy Landscape and Scope of Application

Canada has provincial, territorial, and federal privacy legislation. Organizations that conduct business in Canada are expected to comply with such legislation when they collect, use, or disclose personal information about Canadians in Canada and in certain circumstances where such activities take place outside Canada. The federal *Personal Information Protection and Electronic Documents Act* (PIPEDA), is overarching and applies to all industry sectors, which is different from the US, where personal information protection is governed by a patchwork of sector-specific and state laws. Depending on where they do business, businesses may be subject to the overlapping jurisdiction of one or more provinces and the federal government with respect to privacy legislation.

PIPEDA regulates the collection, use, and disclosure of personal information. It affects almost all personal information being collected, used, or disclosed by any private enterprise (corporation, person, partnership, association or trade union) in the course of commercial activities. The federal legislation does not apply in provinces that have adopted substantially similar legislation.

British Columbia, Alberta, and Québec have enacted private-sector privacy legislation recognized as substantially similar to the federal legislation (although federal law continues to apply to federal works, undertakings or businesses). Although they have certain distinct features, the requirements under British Columbia and Alberta provincial legislation are not significantly different from the federal legislation (except in relation to employee personal information and breach notification, discussed below). In contrast, Québec has recently implemented major reforms to its privacy legislation that introduced more stringent requirements on businesses (including conducting mandatory privacy impact assessments in certain circumstances) and broader access rights for individuals in Québec. Even where there is substantially similar provincial privacy legislation, inter-provincial, and international transfers of personal information remain subject to the federal legislation.

Notably, certain sectors of the economy are subject to specialized privacy requirements. For example, Ontario, New Brunswick, Nova Scotia, and

Newfoundland and Labrador enacted privacy legislation that applies to the collection, use, and disclosure of personal health information. This legislation has also been recognized as substantially similar to the federal legislation, and therefore federal privacy legislation will not apply to health information custodians in Ontario, New Brunswick, Nova Scotia, or Newfoundland and Labrador with respect to activities covered by provincial health legislation. Other provinces and territories have health privacy legislation that is not substantially similar to PIPEDA, and therefore specific health privacy legislation and PIPEDA could apply simultaneously in certain contexts.

PIPEDA does not apply to the collection, use or disclosure of personal information relating to employees, except employees of federal works, undertakings or businesses. Privacy legislation in British Columbia, Alberta, and Québec covers employees' personal information. It is a prudent practice for organizations to address employee personal information in their privacy policies and procedures.

Definition of Personal Information

Personal information is broadly defined in PIPEDA to mean any information about an identifiable individual. This includes data such as name, age, ethnic origin, personal email address, IP address, financial history, behaviour, identification numbers, health information, biometric and location data, viewpoints, and personal opinions (but not business contact information such as individual's name, title, business address, business email address or telephone number). Although considered personal information, specified publicly available information (e.g., information included in a telephone directory) is also excluded. One of the first steps for organizations developing procedures to deal with personal information is to identify what personal information they collect, how they use it, and to whom they disclose it.

Key Obligations Imposed by Canadian Privacy Legislation

Canadian privacy legislation imposes obligations on organizations that collect, use or disclose personal information.

Identifying Purpose and Consent Requirements

Organizations can collect, use, and disclose personal information only (a) for purposes a reasonable person would consider appropriate in the circumstances; and (b) with the informed consent of the individual to whom the information relates. Organizations need to limit the amount and type of personal information they collect to what is required for their identified purposes. Informed consent should generally be obtained expressly, but it can be implied from the circumstances surrounding the exchange of information.

Individuals can withdraw consent at any time, subject to legal or contractual restrictions, and an organization must inform individuals of the implications of consent withdrawal.

Policies and Procedures

Organizations must prepare privacy policies setting out how they deal with personal information they collect, how such information is used, and to whom such information is disclosed.

Organizations are required to implement practices to, for example (a) ensure personal information is properly safeguarded; (b) ensure information in their custody is kept accurate and current (if the organization is making decisions based on such information); (c) receive and respond to complaints and inquiries; and (d) train staff about the organization's privacy obligations, policies and practices.

Designating a Privacy Officer

Every organization must appoint an individual to be responsible for privacy matters. This person's responsibilities include, among other things, dealing with requests for access to information and with complaints relating to non-compliance with the organization's privacy policies or privacy legislation.

Notably, Québec's privacy legislation designates by default the person with the "highest authority" within the organization to be the responsible individual in charge of the protection of personal information. This role can be delegated in writing to any person.

Safeguarding Personal Information

Organizations are required to protect personal information in their possession or control against loss, theft, unauthorized access, disclosure, copying, use, and modification.

Required safeguards include physical measures such as locking filing cabinets and restricting access to offices, organizational measures such as security clearances and limiting access, and technological measures such as the use of passwords, encryption and firewalls. More sensitive information, such as financial and health information, must be safeguarded by a higher level of protection.

Privacy Breach Reporting

Notification of a privacy breach is required by law for matters governed by the federal and provincial privacy legislation in Alberta and Québec. Notification under PIPEDA and Alberta's privacy legislation is required when there is a "real risk of significant harm" to an individual. While PIPEDA requires notification to the Privacy Commissioner of Canada, affected individuals and any other organization or government institution that may reduce the risk of harm, Alberta's privacy legislation only requires notice to the provincial privacy commissioner (although Alberta's commissioner can require an organization to notify affected individuals based on its assessment of the risk of harm to individuals as a result of a breach). Under Québec's privacy legislation, notice is required to Québec's privacy commissioner, the *Comission d'accès à l'information* (CAI), and affected individuals in the event of a "confidentiality incident" involving personal information where there is a "risk of serious injury" based on certain prescribed factors.

Also, irrespective of whether privacy breach notification is required, where PIPEDA applies, an organization must keep a record of every breach of security safeguards involving personal information under its control and provide such record to the Privacy Commissioner of Canada on request. Similarly, organizations subject to Québec's privacy legislation must keep a register of confidentiality incidents and provide a copy of the register to the CAI on request.

Notification is also required in certain provinces regarding breaches of personal health information. However, whether notification is required by privacy legislation or not, organizations need to consider whether they should provide any particular notification (including to third party organizations, such as law enforcement) to avoid liability for failure to warn, mitigate reputational risks, or to meet other relevant legal standards.

Personal Information in a Third Party's Control

If an organization transfers personal information to a third party (e.g., through outsourcing certain functions), whether that third party is located inside or outside Canada, it must ensure information is secure. One way for a transferring organization to protect itself is by including appropriate restrictions and obligations through contractual means, such as requiring the third party transferee to have in place similar privacy protection procedures and policies. If the personal information being transferred is sensitive, the information should be transferred in encrypted form.

In particular, an organization subject to Québec's privacy legislation must conduct a Privacy Impact Assessment (PIA) before transferring personal information outside of Québec to determine whether the information will receive "adequate protection". The transfer of personal information must also be subject to a written agreement that takes into account the results of the PIA. There are other specific circumstances (as discussed below) that mandate organizations to complete PIAs in accordance with Québec's privacy legislation.

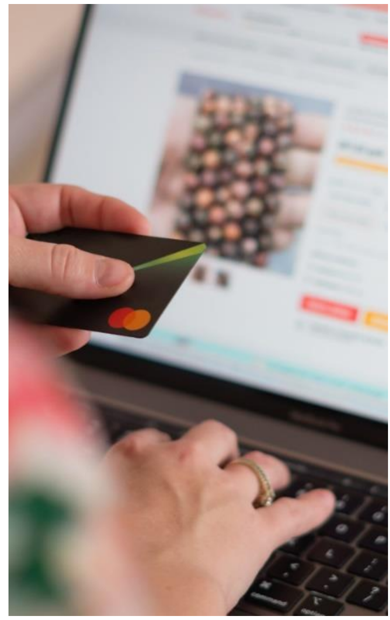
In some instances, the transfer of personal information outside Canada requires notice of the transfer and the associated risks to the affected individuals, but not their consent.

Conducting Privacy Impact Assessments

Québec's privacy legislation mandates organizations to conduct a PIA in the following circumstances: (i) at the outset of a project to acquire, develop or overhaul an information system or electronic service delivery system involving the collection, use, communication, keeping, or destruction of personal information; (ii) before communicating personal information to a third party, without the consent of the concerned individual, for study or research purposes or for the production of statistics; and (iii) before communicating personal information outside Québec.

While completing PIAs is not a legal requirement under PIPEDA or the other provincial privacy legislation, it is considered best practice for organizations to identify and mitigate privacy risks associated with their operations and the handling of personal information. The federal and provincial privacy commissioners encourage private sector organizations to utilize PIAs and other tools to proactively address privacy risks. For instance, British Columbia's privacy commissioner has released guidance for private sector organizations on conducting PIAs to assess compliance with the province's privacy legislation.

Retention of Personal Information



Organizations must develop guidelines and implement procedures with respect to the retention of personal information, including minimum and maximum retention periods based on legal or contractual requirements. Personal information may only be kept for as long as required to satisfy the purpose for which it was collected. Once personal information is no longer required to fulfil the identified purposes, it should be destroyed, erased or made anonymous.

Access to Personal Information

If an individual writes to an organization and requests a copy of any personal information that the organization possesses in relation to the requesting individual, that organization is required to respond promptly (in most cases within thirty days of the request). Individuals also have the right to challenge the accuracy and completeness of their personal information held by an organization. For these reasons, it is important that an organization's document retention policy provide that all information that is no longer required is either destroyed or anonymized.

Notably, individuals in Québec can request that computerized personal information collected about them by an organization subject to Québec's privacy legislation, be provided to them or to another person or organization authorized by law to collect such information, in a "structured, commonly used technological format". Within thirty days of an individual's request, an organization is required to provide such information unless doing so raises serious practical difficulties. This expanded individual right to portability of personal information supports interoperability and easier data transfer, similarly to data portability principles in Europe.

Managing Compliance

Organizations must ensure the proper training of individuals who are assigned the task of responding to access requests and data portability requests (as applicable in Québec), as well as any other staff members who may receive such requests. Organizations must develop policies and procedures to receive and respond to complaints or inquiries about their policies and practices relating to the handling of personal information which must be simple to use.

Enforcement

The Privacy Commissioner of Canada oversees federal privacy legislation. The Commissioner may initiate a complaint and commence an investigation where there are reasonable grounds to investigate a matter. An individual may also register a complaint directly with the Commissioner, which is the most common approach. The Commissioner can make recommendations, but has no power to issue orders or enforce recommendations. The Commissioner has the power to disclose to the public any information relating to the personal information practices of an organization if the Commissioner considers it is in the public interest to do so. Binding orders, including monetary awards, may be made by the Federal Court of Canada under federal privacy legislation.

Provincial privacy commissioners oversee the privacy legislation in their provinces. Some provincial privacy commissioners have the power to make orders to correct non-compliant practices in addition to the power to disclose and publicize information about organizations. Provincial privacy commissioners are more likely to name organizations with deficient privacy practices than the federal privacy commissioner.

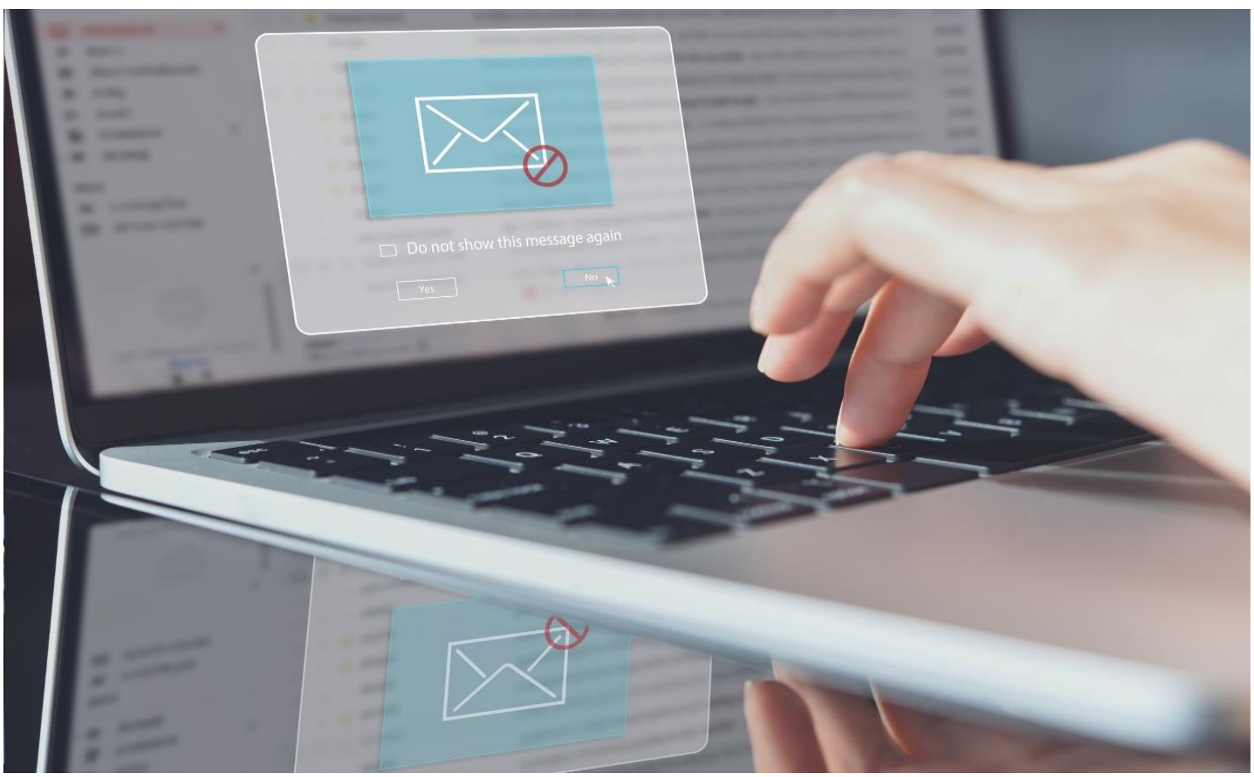
Notably, the CAI has the authority to impose administrative monetary penalties on organizations subject to Québec's privacy legislation. Financial penalties (a) for regulatory non-compliance, may reach up to $10 million or 2% of the worldwide turnover for the preceding fiscal year for an organization, whichever is greater; and (b) for criminal sanctions, may reach up to $25 million or 4% of the worldwide turnover for the preceding fiscal year for an organization, whichever is greater. The federal and the provincial privacy commissioners in Alberta and British Columbia do not have similar powers to impose administrative monetary penalties, although recommendations have been made to introduce such measures.

Non-Canadian Businesses

Although the federal legislation covers collection, use, and disclosure of personal information about Canadians regardless of where the data is collected, used, and disclosed (e.g., outside Canada), as a practical matter the Commissioner's ability to enforce the legislation outside Canada is limited. Nonetheless, the Commissioner can publicize the personal information management practices of an organization if the Commissioner considers that publicity is in the public interest.

Anti-Spam Legislation

Canada's anti-spam legislation generally prohibit, subject to limited exceptions, the sending of commercial electronic messages (meaning email as well as text messages, instant messages, and messages sent through social networking sites) unless (a) the recipient has expressly consented to receiving the message; and (b) the message meets certain form and content requirements and enables the recipient to withdraw consent (such as with an unsubscribe mechanism). The installation of unauthorized computer programs is also addressed by the legislation. Organizations carrying on business in Canada will want to ensure they comply with anti-spam laws as the penalties for non-compliance are potentially severe.



E-Commerce and Technology

Jurisdiction

Responsibility for regulating the internet and e-commerce is shared by the federal and provincial governments.

Regulation of broadcasting content on the internet falls within the jurisdiction of the Canadian Radio-television and Telecommunications Commission (CRTC), a federal administrative tribunal. Before the *Broadcasting Act* was amended pursuant to Bill C-11 - *Online Streaming Act*, which came into effect on April 27, 2023, the CRTC had chosen to exempt internet broadcasting services from regulation, provided such services adhered to the terms and conditions of a digital media exemption order.[6] The revised *Broadcasting Act* provides the CRTC with jurisdiction to regulate Canadian and foreign services that provide broadcasting content over the internet that are carried on in whole or in part within Canada, as a subset of broadcasting undertakings, referred to as "online undertakings". The CRTC is in the process of developing its new regulatory framework, which will apply to both traditional linear broadcasting undertakings and online undertakings.

In transacting with Canadian consumers over the internet, non-Canadian businesses must abide by other Canadian laws of general or overriding application, including, but not limited to, laws with respect to intellectual property aspects of the internet (copyright and trademarks), consumer protection (including prohibitions against deceptive marketing practices found in the *Competition Act* and provincial/territorial consumer protection statutes), anti-spam, and privacy and personal data security. The federal government can also exert an indirect influence on the internet and e-commerce through its regulation of the banking sector, taxation, and national criminal law.

Provincial and territorial legislation covers such issues as the validity of electronic documents, contracts and signatures, the formation and enforceability of electronic contracts and payments, consumer protection

[6] The CRTC had previously exempted from regulation the provision of broadcasting services that are delivered and accessed over the internet or delivered using point-to-point technology and received by way of mobile devices. Such services were required to adhere to the CRTC's *Exemption order for digital media broadcasting undertakings* as set out in Broadcasting Order CRTC 2012-409, dated 26 July 2012.

requirements and advertising restrictions, and privacy and personal data security. As described in the Consumer Protection section of this Guide, consumer protection legislation extends to agreements entered over the internet and, among other things, requires that prescribed information be disclosed to the consumer before and after an e-commerce sale is transacted.

The law concerning jurisdiction in the context of the internet is still developing and not entirely settled. However, in recent years, certain Canadian courts have shown a willingness to assume jurisdiction over non-Canadian businesses that do not have a physical presence in Canada, by finding them to be "carrying on business" in the Canadian jurisdiction in question.

E-Commerce Legislation

Federal, provincial, and territorial e-commerce legislation is modeled on the *Uniform Electronic Commercial Act* (US) which itself was based on the Model Law on Electronic Commerce developed by the United Nations Commission on International Trade Law. In Ontario, the *Electronic Commerce Act, 2000* provides legal validity to most electronic information and documents (some exceptions include wills and documents that purport to transfer real property), electronic signatures, formation of electronic contracts and electronic document retention. So long as there is a clear presentation of the contractual terms and an equally clear acceptance of those terms, an electronic contract will be enforceable in Canada.

Emerging Technology Businesses

The Technology Sector in Canada

The Canadian market for technology, innovation, and entrepreneurship continues to be a critical driver of economic growth and diversification. In recent years, Canada's technology sector has shown remarkable resilience and expansion, even in the face of global economic headwinds. According to Innovation, Science and Economic Development Canada's "Venture Capital Catalyst Initiative":

- Canadian venture capital ecosystem has grown significantly over the past decade, with a total of $7.1 billion invested across 674 deals in 2023; and

- Canada is now ranked third for VC investment according to the Organisation for Economic Co-operation and Development (OECD).

The Canadian Venture Capital & Private Equity Association's *VC & PE Canadian Market Overview* published for H1 2024 released additional enlightening statistics showcasing the growth of venture capital in recent years:

- the Canadian venture capital industry experienced over $7.86 billion across 592 deals nation wide; and

- the information and communication technology sector led in capital, attracting nearly $4.5 billion, while life sciences and clean tech secured approximately $1.4 billion and $1.1 billion, respectively.

The Business Development Bank of Canada reported in its *Canada's Venture Capital Landscape* report several figures that underscored the strong returns venture capital investments afforded and showcased the technology sector's importance to the Canadian economy and impressive size relative to other venture capital sectors. In 2023,

- Canada saw a median of $92.1 million in exit values, the strongest year reported; and

- venture capital activity was highest in the information and communication technology sector, fueled partially by the strong interest in artificial intelligence (AI) which currently includes 670 AI start-ups.

According to CBRE's article, *Canada Leads Tech Talent Growth, Toronto Makes a Comeback*, and its *Scoring Tech Talent 2024* report, Toronto now ranks fourth in Canada and the US for the strength of its technology talent markets. Similarly, London, Ontario has seen 88.5% in technology job growth over the past five years. With a highly educated workforce and a strong concentration of young talent, Canada is uniquely positioned to lead the next wave of technology growth and innovation.

The Canadian technology sector's trajectory remains upward, fuelled by leading post-secondary institutions with globally recognized research programs, forward-looking public policy, and sustained venture capital interest. Major multinational technology companies such as Google, Microsoft, Amazon, and Meta have significantly expanded their Canadian footprints, opening new engineering hubs and research labs in Toronto, Vancouver, Montreal, and Calgary. At the same time, homegrown Canadian companies continue to thrive and scale internationally. Examples include Shopify (now one of Canada's most valuable public companies), Clio (legaltech), Wealthsimple (fintech), and Coveo (AI-powered search and recommendations).

Goodmans is proud to continue its leadership in Canada's technology sector, and has expanded its innovation-focused initiatives through partnerships with leading incubators and accelerators across the country, including The DMZ at Toronto Metropolitan University (formerly Ryerson). The DMZ remains a global leader among university-linked incubators, continuing to connect start-ups with critical resources, customers and funding. Goodmans' support of this ecosystem includes legal mentorship, strategic advisory services, and connections to venture capital stakeholders.

Other Recent Developments

The Government of Canada has continued its commitment to strengthening early-stage investment through the expansion of the Venture Capital Catalyst Initiative (VCCI). In 2021, and again in 2023, the federal government increased its capital commitments to VCCI, bringing the total initiative size to over $1.7 billion. These funds support private-sector-led venture capital investments with a focus on high-growth sectors such as AI, CleanTech, and deep tech. A significant portion has also been earmarked for diverse fund managers and regional innovation ecosystems.

Canada's Start-Up Visa Program has scaled steadily and was made permanent in 2021, now accommodating more than 1,000 start-up entrepreneurs annually. Revisions in 2023 broadened eligibility criteria and streamlined processing for founders with validated commitments from designated incubators and angel groups. This program continues to be an important lever in attracting global tech talent and founders to build high-growth companies in Canada.

Canada's evolving innovation landscape is also reflected in federal and provincial funding programs. In 2023, the Government of Canada announced new CleanTech tax credits and increased research and development support under the Scientific Research and Experimental Development (SR&ED) program. In Ontario, the Ontario Centre of Innovation and Invest Ontario are playing expanded roles in bridging public and private sector partnerships to scale high-growth tech companies

Intellectual Property

Copyright

Canada's *Copyright Act* grants an exclusive right to the copyright owner of any original literary (e.g., novels, magazines and computer programs), dramatic (e.g., films, videos, scripts and plays), musical (e.g., music, lyrics and instrumental compositions) or artistic work (e.g., paintings, photographs, sculptures and architectural works) to control copying and other commercial exploitation of that work. In addition, makers have copyright in their sound recordings, performers have copyright in their performances, and broadcasters have copyright in their communication signals (rights which are often referred to as "neighbouring" as they are in the copyright neighbourhood). The copyright owner of a work has the exclusive right to publish, produce, reproduce, translate, broadcast, adapt, and distribute the work, perform it in public, communicate it to the public by telecommunication, make it available online, and authorize others to do these acts. Generally, copyright in Canada exists for the life of the author plus 70 years following the end of the year of his or her death, after which time the work falls into the public domain. Other terms apply to particular works, such as photographs, sound recordings, home videos, posthumous works, and jointly authored works.

Copyright arises automatically in Canada in any original literary, dramatic, musical or artistic work, including a compilation and sound recording, provided that the creator or author of the work is at the time of its creation a citizen, subject, or person ordinarily resident in Canada or a treaty country, and the work is first published (made available to the public) in Canada or a treaty country. A "treaty country" is a country that is a party to the Berne Copyright Convention or the Universal Copyright Convention, or is a member of the World Trade Organization. To be protected, the work must be fixed (expressed in a more or less permanent tangible form so as to make the work identifiable). In most cases, copyright belongs initially to the author of the work. The most prominent exception to this rule is that copyright in works made in the course of employment belongs initially to the employer unless there is an agreement to the contrary.

The *Copyright Act* also creates certain royalties and levies. Performers and producers of published sound recordings share equally in royalties established under the statute and also have the right to royalties from any of the 50 countries which are party to the Rome Convention. The Act extends similar rights to performers where their performances are embodied in audio recordings. The Act also sets out a regime for the determination and collection of cable and satellite retransmission royalties payable for the retransmission of copyrighted works on distant signals. As a quid pro quo for the legalization (since 1998) of the copying of musical sound recordings onto audio recording media for the private use of the copier, the Act imposes a private copying levy on recordable blank audio recording media (e.g., audio cassettes, CD-R, CD-RW, and Mini Discs), which is payable by manufacturers and importers of such media.

In general, anyone using a work without the copyright owner's consent in a manner that only the copyright owner has the right to do, infringes the copyright in that work. People who rent, sell, distribute, or import infringing works, are indirect infringers of copyright under Canadian law. As well, under the statute, a service that primarily enables acts of copyright infringement via the internet also infringes copyright and copyright owners can sue those who enable acts of copyright infringement. There are exceptions to infringement for non-profit organizations (e.g., schools, libraries and museums) in prescribed circumstances. There are also exceptions to copyright infringement for format shifting, time shifting, backup copying, and non-commercial user-generated content. In addition, fair dealing for the purpose of research or private study, criticism or review, news reporting, education, satire or parody, are defences to infringement (i.e., the Canadian version of "fair use" in the US).

The *Copyright Act* expressly limits the liability for copyright infringement of internet service providers (ISPs) and information location tools used as "search engines" when they are acting solely as intermediaries in communication, hosting, and caching activities. For an ISP or "search engine" to protect itself against being held liable for copyright infringement, it must meet the requirements of the "notice-and-notice" regime which is set out in the *Copyright Act*. In this regime, when an ISP or "search engine" receives a notice of claimed infringement from a copyright holder in prescribed form, it is obliged to promptly forward the notice to the recipient(s) allegedly infringing the copyright. The ISP must also retain identity records on its networks for a prescribed period. However, it is only obliged to reveal the alleged infringer's identity to the copyright holder who sent the notice pursuant to a court order.

The Canadian "notice-and-notice" regime differs significantly from the "notice and take down" regime in the *Digital Millennium Copyright Act* (US) which requires an internet intermediary that receives a notice of alleged infringing material to expeditiously remove or prevent access to the material or face potential liability for copyright infringement. Under the Canadian approach, ISPs and internet storage service providers are not required to remove or disable infringing content, although they may do so voluntarily, and a copyright owner must invoke its available legal remedies (e.g., a copyright infringement proceeding) directly against the alleged infringer.

Copyright infringers may be subject to criminal penalties or to civil remedies sought by copyright owners, including statutory damages in prescribed circumstances. However, statutory damages for non-commercial infringement are significantly lower than those for commercial infringements. ISPs that fail to comply with the "notice-and-notice" regime and infringement "enablers" may also be subject to statutory damages. As well, search engines found to be infringing copyright are only subject to injunctions prohibiting further use of the copyrighted material.

In an effort to prevent copyright infringement and maximize commercial exploitation, copyright owners often use technological protection measures (TPMs) to control access to and copying of their respective works, and digital rights management information (RMI) to monitor the use of their respective works. The *Copyright Act* protects such TPMs by prohibiting (a) the circumvention of TPMs; (b) the offering of services primarily for the purpose of circumventing TPMs; and (c) the manufacture, sale or distribution of devices designed to circumvent TPMs. The Act also prohibits removal of RMI, and persons who circumvent TPMs in the aforementioned ways and/or remove RMI are subject to civil remedies and criminal penalties. However, circumvention of TPMs is allowed for certain "public interest" purposes such as law enforcement and national security activities, security testing of systems, and unlocking wireless devices, among others.

The *Copyright Act* provides a system for registering copyright interests as well as registering assignments and licences of copyright interests. Registration is not necessary to create copyright in a particular work, but it provides public notice of copyright ownership, serves as evidence of copyright ownership in legal proceedings, and strengthens the remedies available to a party whose copyright is infringed. An assignee or a licensee of a copyright interest who fails to register its assignment or licence may risk losing its interest in a priorities contest to a subsequent assignee or licensee who registers its interest in the work. Marking of copyright material is not legally required under the *Copyright Act* but is often prudent and is required to obtain copyright protection under the Universal Copyright Convention. Marking uses the symbol ©, the name of the copyright owner, and the year of first publication.

In addition to the economic rights mentioned above, the *Copyright Act* grants authors and performers (as opposed to owners) certain "moral rights". These include, among others, the right of an author to claim authorship of the work and the right of integrity of the work (i.e., to prevent distortion or modification of the work or its use in association with a product, cause, or institution in a way that prejudices the author's integrity or reputation). Moral rights exist for the same term as copyright in the work. They belong to the author or performer and may not be assigned, although they may be waived in whole or in part. An assignment of copyright in a work does not, by that act alone, constitute a waiver of moral rights.

The *Copyright Act* (Canada) must be also reviewed by Parliament every five years by a committee of the Senate, the House of Commons, or both. In 2019, the Government of Canada initiated the most recent parliamentary review of the *Copyright Act*, which was conducted by The Industry, Technology and Science Standing Committee (INDU), and the Canadian Heritage Standing Committee. On May 15, 2019, Canadian Heritage released its report, *Shifting Paradigms*, which set out 22 policy recommendations, and on June 3, 2019, INDU released its report with 36 separate policy recommendations.

Among the key policy recommendations by each of Canadian Heritage and INDU to the federal government, were the following:

Canadian Heritage Policy Recommendations

- Expand the reversionary right to provide authors with a reversionary interest "25 years after assignment".
- Provide economic and moral rights for audiovisual performers.
- Deem the screenwriter and director as co-authors and co-owners of copyright for cinematographic works.
- Limit the scope of fair dealing for the purpose of education to apply only for educational institutions when the work at issue is not commercially available.
- Increase the statutory damages for non-commercial infringement.

INDU Policy Recommendations

- Implement an artist's resale right.

- Provide that the list of allowable fair dealing purposes is illustrative only, as in the US copyright statute for "fair use".
- Make copyright registration a requirement to enforce copyright in a work during the additional 20 years to be provided by the proposed extension of the basic term of copyright from the life of the author plus 50 years to life plus 70 years.
- Provide a right to terminate an assignment of copyright 25 years after the date of assignment, subject to (a) prior registration of the copyright; (b) five years' notice of intent to exercise the right being given; and (c) the right being exercised within five years from when it is initially available.
- Update the rules governing first authorship and ownership of cinematographic works.
- Provide further clarity around ownership of computer-generated works (e.g., AI works).
- Provide regulations to standardize notices of claimed infringement under the notice-and- notice regime to be in a prescribed format.
- Introduce an exception to copyright to facilitate the use of lawfully acquired copyright protected works and other subject matter for informational analysis.
- Update the minimum and maximum statutory damages awards and periodically adjust these to inflation.

As of the date of this Guide, no changes to the *Copyright Act* have been introduced based on these 2019 recommendations.

Following the 2019 review, in 2021 the Canadian government launched a consultation on Canada's copyright framework to gather insights on how best to adapt it for the digital age called *Consultation on a Modern Copyright Framework for Artificial Intelligence and the Internet of Things*. In 2023, in response to the rapid development and adoption of generative artificial intelligence (AI) tools such as ChatGPT, the Canadian government launched a further consultation re: copyright law in the digital age to ask Canadians their thoughts on Canada's copyright framework and generative AI technology called *Consultation on Copyright in the Age of Generative Artificial Intelligence*, which took place between October 12, 2023 and January 15, 2024.

In February of 2025, the Canadian government released its report *Consultation on Copyright in the Age of Generative Artificial Intelligence: What we heard report*, which outlined the feedback it received during the 2023-2024 public consultation respecting the following three key copyright policy areas related to generative AI:

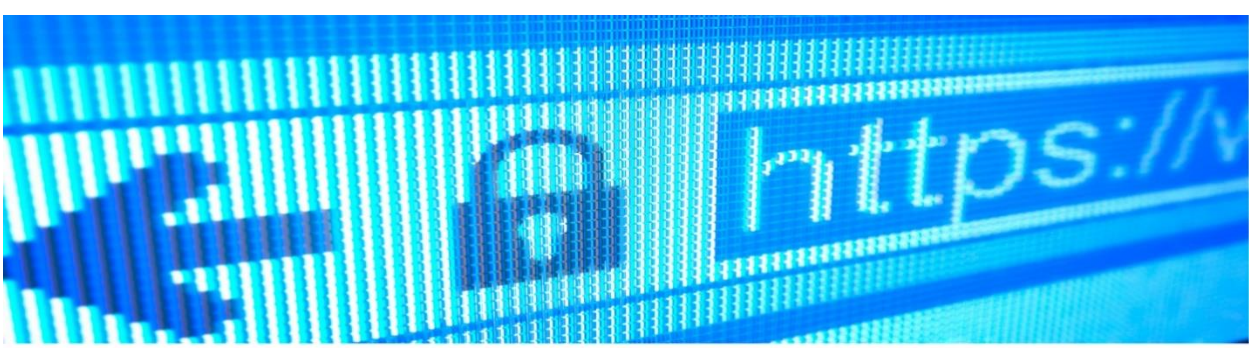
1. the use of copyright-protected works in the training of AI systems, notably for text and data mining (TDM) activities;
2. authorship and ownership rights related to AI-generated content; and
3. questions of liability, notably when AI-generated content infringes copyright.

As of the date of this Guide, no changes to the *Copyright Act* have been introduced based on the foregoing 2025 report.

Domain Names

A domain name is the unique electronic address of a website on the internet for an individual, business or other entity. No two sites can have the same domain name. The administrative organization which governs the Canadian (.ca) domain name regime is the Canadian Internet Registration Authority (CIRA).

Those seeking to register a .ca domain name through a CIRA-approved registrar must meet CIRA's Canadian Presence Requirements. Included in the acceptable categories are Canadian individuals and entities, and foreign individuals and entities that own a Canadian trademark registration or official mark. CIRA may request proof of compliance with a chosen category. Those who qualify may register as many domain names as they wish. CIRA uses a first-come- first-served system. CIRA has adopted a Canadian Domain Name Dispute Resolution Policy (CDRP) for complaints relating to the registration of .ca domain names. There are some significant differences between the CDRP and the Uniform Domain-Name Dispute Resolution Policy.



Trademarks

A trademark is a sign or combination of signs that distinguishes the goods or services of a particular business from those of others. Rights are obtained through either use or registration with the Canadian Intellectual Property Office (CIPO). Registered marks are easier to enforce than unregistered marks and have several important advantages. Most importantly, registered marks are afforded protection throughout Canada, regardless of whether the trademark is used in the area where an infringer is located. In contrast, the owner of an unregistered mark or "common law" mark must establish the distinctiveness of the trademark; that is, that the public exclusively associates the trademark with the goods or services of the owner. Even if the requisite degree of distinctiveness can be shown (and this is sometimes expensive and difficult to prove), the scope of protection is limited to the geographical area in which distinctiveness is proven. A registration provides evidence of trademark ownership. In addition, a registration may have a greater persuasive impact on a potential infringer than an allegation of rights arising through use.

Since Canada's accession to the Madrid Protocol in 2019, foreign applicants from other countries that adhere to the Madrid Protocol can file in Canada through the harmonized filing system administered centrally by the World Intellectual Property Organization and Canadians can now use the system to seek trademark registrations abroad in Madrid member countries.

The scope of protectable marks includes non-traditional trademarks such as sound, holograms, colour, and three-dimensional marks. It is not necessary to indicate if an application for registration is being filed on proposed use, use in Canada, or use and registration abroad. However, in the cases of certain types of marks, particular criteria need to be met for filing and marks may not be registrable without the filing of evidence of distinctiveness in Canada.

Nice Classification is required, accompanied by filing fees based on the number of classes for which coverage is sought.

Applications are examined by CIPO on both technical and substantive grounds. Registration may be refused on a number of bases, including if the applied-for mark is (a) confusing with a registered trademark or earlier filed application; (b) not inherently distinctive; (c) clearly descriptive of the business or goods or services with which it is associated; (d) misdescriptive as to the character and quality of the goods or services; (e) geographically descriptive or misdescriptive; (f) the name in any language of the relevant goods or services; (g) a prohibited mark, which includes official marks and those of universities; (h) primarily merely a name or surname; (i) a protected geographical indication; (j) scandalous; or (k) utilitarian. A trademark which is descriptive or primarily merely a name or surname may be registrable if it was distinctive at the date of filing the application. A claim of distinctiveness will require the filing of evidence to establish that the mark distinguishes the goods or services in association with which it is used from the goods or services of others.

There is also an informal procedure whereby, during the course of the examination of a third party's mark, a trademark owner can submit a Letter of Protest providing information about its prior registered mark or prior application to the Registrar which could impact registration of an application in the case of confusion, non-entitlement, or where a registered mark appears in the specification of goods/services. Once a trademark application has been examined and approved, or once all requirements or citations are overcome, the application will be advertised for potential opposition by third parties. An application can be opposed on several grounds, including confusion where the applied for mark is likely to be confused with a previously used trademark or trade name, or, with a registered trademark, technical grounds such as the mark being clearly descriptive, deceptively misdescriptive, or not registerable under the *Trademarks Act*, and bad faith. As of April 1, 2025, the Registrar has the power to issue confidentiality orders, award costs, and case manage proceedings before the Opposition Board.

It is possible to divide a Canadian trademark application after it has been advertised, but before registration, including during the two-month opposition period and any extended opposition periods.

If no opposition is filed, or an opposition is unsuccessful or withdrawn, the application will then proceed to registration. (For those applications filed before the coming into force of new legislation in 2019, a registration fee will still be payable, but in the case of applications filed based on proposed use, it will no longer be necessary to file a declaration that the mark is in use.) A certificate of registration will then be issued.

The registration term is 10 years and may be renewed indefinitely. Proof of use is not required upon renewal. A registration can be renewed six months before and up to six months after the expiry date of the registration. If a registration does not include classification of goods and services, classification under Nice Classification is required before renewal. The amount due on renewal is commensurate with the number of classes covered.

Following its third anniversary, a mark is vulnerable to cancellation in whole or in part for non- use unless the registrant can provide special circumstances for non-use since a certain date. Summary expungement proceedings for non-use may be commenced by third parties before CIPO pursuant to section 45 of the *Trademarks Act*. In addition, in 2025, CIPO launched a pilot project where the Registrar will randomly select trademark registrations and issue Section 45 notices, requiring registrants to provide evidence of use or justification for non-use. Therefore, while use is no longer required to initially register a trademark in Canada, there is a requirement to use the mark within the first three years after registration to maintain and enforce the registration or risk expungement.

While there are no marking requirements, marking is recommended, especially where a mark is used under licence. Many forms of notice are available, including using a symbol such as ® (in the case of a registered trademark) or ™ (for a trademark which is the subject of a pending application or is being used but is not the subject of an application) in close proximity to the trademark.

Trademarks may be assigned, and it is prudent for assignments of trademark registrations or pending applications or other changes in titles, such as mergers or changes of name, to be filed with CIPO.

Trademarks may be licensed to third parties. The legislation only requires that use of a licensed trademark be subject to the direct or indirect control of the trademark owner. A written licence is recommended. It is not mandatory to register trademark licence agreements with CIPO. Where the existence of a licence is made public, there is a presumption that the use by the licensee of the subject trademark will not jeopardize the distinctiveness of the trademark. Use by a licensee without the control of the trademark owner or without disclosure of the licence, may result in the loss of the trademark's distinctiveness and the possible expungement of the mark.

Trademark legislation provides protection of geographical indications for scheduled wines and spirits, and agricultural product or food.

The unauthorized use of a trademark may lead to civil liability and criminal penalties for counterfeit and forgery. Under Canada's border enforcement regime, a registered trademark owner can file a Request for Assistance with Canada Border Services Agency to detain suspected counterfeit goods at the border.

Industrial Design

The term “industrial design” generally refers to the three-dimensional features of shape and configuration, the two-dimensional features of pattern and ornamentation, or any combination of those features, applied to a finished article that serves a strictly aesthetic and not a functional purpose. Thus, an industrial design does not cover such things as an idea, a method of making an article, the materials used to make an article, or the manner in which an article works or may be used. Other intellectual property rights may cover such aspects of a product. Original design features of finished articles represent valuable intellectual property and are important business assets that should be protected. Federal industrial design legislation recognizes this fact and provides a procedure to obtain and maintain an exclusive right to exploit those assets.

Canada’s *Industrial Design Act* provides for the registration by Canadians and non-Canadians of original features of shape, configuration, pattern, and ornamentation applied to a finished article produced or intended to be produced in numbers greater than fifty. Unlike copyright (which arises automatically upon creation) or trademark rights (which may accrue through use), industrial design rights may only be obtained by registering the design with CIPO. However, a design can only be registered if it was not published in Canada or elsewhere more than one year before the filing date of the application for registration in Canada. Publication means making the design public or offering it for commercial use, and includes distributing samples of an article bearing the design, selling or exhibiting such articles for sale, publishing the design in advertising or other printed material, and publicly using articles bearing the design. Despite the one-year grace period between the publication and application filing date, it is wise to file as soon as possible due to Canada’s first-to-file system; that is, the first person who files the application is entitled to get a registration, regardless of who created the design first. The registration of an industrial design can usually be accomplished within 12 months of filing the application.

If an article is not useful, a design applied to it will not be registrable. Designs applied to articles that have no fixed appearance are not registrable, nor are features of shape or appearance that are invisible at the time of purchase or during normal use.

If a design is an artistic work or was originally created as a work of art, it is automatically protected by copyright, and can be registered. In contrast, if a design is used or intended to be used as a model or pattern to produce 50 or more manufactured articles, it can be protected only by industrial design registration. However, there are many exceptions and the legal distinction between copyright and industrial design is very fine.

A design is registrable only if it is “new”. This essentially means the design was not published more than one year before the application was filed and the design differs substantially from previous designs. The design may be new or old provided that no one previously applied that design to the article in question, and provided the design was not published more than 12 months before filing an application. A slight change or an insubstantial variation from a previous design is not sufficient to obtain registration because there must be some “substantial” difference between the new and old designs.

An industrial design registration protects not only the specific design registered, but also any design not differing substantially from it. The owner of the design is the only one who can apply for registration. The original creator or author of the design is the owner unless the design was created for another person for payment, such as in an employment situation, in which case the other person is the owner and should apply. The right to make, use, and sell a registered design can be licensed within and throughout Canada.

Registration gives the owner an exclusive right to make, import for the purpose of trade or business, or sell, rent or offer or expose for sale or rent any article to which the registered design, or a design not differing substantially therefrom, has been applied. This exclusive right begins on the date of registration and ends on the later of the end of 10 years after registration and 15 years from the Canadian filing date (registrations issued from applications filed before November 5, 2018, last 10 years from the date of registration), subject to the payment of a maintenance fee before the fifth anniversary of registration.

The owner of the registration or an exclusive licensee may bring an action for infringement against any person who infringes the exclusive rights granted by the registration in Canada. All actions for infringement must be brought within three years from the act of infringement. If successful, the owner and/or exclusive licensee may be awarded damages, punitive damages, an injunction, delivery up of all infringing articles, and/or an accounting of the profits made by the infringer. However, the remedies available to a successful owner and/or exclusive licensee are limited if the infringer was not aware, and had no reasonable grounds to suspect, that the design was registered. To avoid this result, the owner and/or exclusive licensee should mark on all, or substantially all, of the articles, and/or on the labels or packaging associated with those articles, the capital letter "D" in a circle and the name, or the usual abbreviation of the name, of the proprietor of the design. This has the effect of providing constructive notice to infringers, thereby allowing the owner and/or exclusive licensee the opportunity to recover all types of remedies.

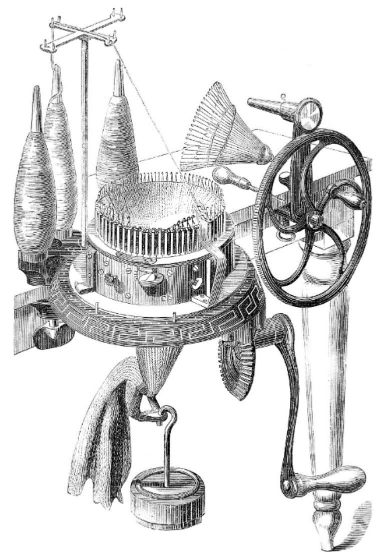
Most countries, including Canada, belong to the Paris Convention. This international treaty allows a design applicant to claim priority in respect of an earlier filed design application. Applications filed in a Paris Convention country within six months of the filing date of the original application are treated as though they were filed on the original filing date.

As of November 5, 2018, Canada joined the Hague System for the International Registration of Industrial Designs. The Hague System allows Canadians to apply for industrial design protection in multiple countries through one application and pay fees in one currency through a single transaction, thereby greatly facilitating the procedure for securing design rights in many countries. Like a Canadian registration, the rights granted by a registration obtained through the Hague System begins on the date of its registration and ends on the later of the end of 10 years after registration or the end of 15 years after the date of International Registration.

Patents

The terms and conditions for receiving a patent in Canada are set out in Canada's *Patent Act* and associated Patent Rules. Patents are granted for an "invention", and to qualify as patentable, an invention must be novel and useful, and must constitute an unobvious step. The invention may be any new and useful art, process, machine, manufacture, composition of matter, or improvement thereof.

The basic principle of the legislation is that a patent is only granted to an original inventor or to their legal representatives. In addition, the exclusivity of a patent is granted on the basis of a first-to-file system, regardless of who may have invented first. Because of the importance of the filing date of an application, an applicant should make every effort to file at least the minimum information permitted under the *Patent Act* and Patent Rules as early as possible. If a person has previously filed an application for a patent in another country, that application may have the same force and effect in Canada as if it had been filed in Canada. The person must be entitled to protection under a treaty or convention to which Canada is a party, and the country in which the original application was filed must give similar protection to citizens of Canada. The Canadian application must be deemed to have been filed within 12 months from the date of filing in the other country.



Novelty has always been a condition of patentability in Canada. Therefore, any public disclosure of an invention in Canada or elsewhere before the filing date of a Canadian patent application or before its priority date is a bar to patentability. However, if the disclosure is by the applicant or a person who has been informed by the applicant of the invention, the applicant has a 12-month period from the first public disclosure of the invention in which to file an application in Canada.

Patents are only available for inventions that have a practical application and whose function does not depend on the exercise of judgment or professional skill. For example, patents are not available for mere scientific principles, abstract theorems or methods of medical treatment. In some circumstances, the Canadian patent office may allow a patent on a method of doing business, but this will depend on the exact nature of the invention.

While computer programmes per se are not patentable, many computer-software related inventions can be claimed as an integral part of an overall system or method. Such software inventions may be patentable if a computer or other hardware is essential to the invention, or if the invention results in some change in the physical environment. For example, an invention that merely creates data or information is not patentable, but a method implemented using software designed to operate machinery more efficiently may be patentable. In addition, recent jurisprudence indicates there may be copyright protection for the non-literal aspects of computer object or source code, for example, in the structure or algorithm of the program.

The term of the patent is 20 years from the date the application is filed in Canada. However, under certain conditions, this term may be extendable on request if excess delays attributable to the patent office occurred during prosecution.

A patent is infringed by the unauthorized trespass on the patentee's exclusive right to make, construct or use the invention or sell it to others for their use. A patentee may seek an injunction to stop the infringement and damages, or an accounting of the infringer's profits from the infringement.

The patent owner or a person claiming rights from the owner may bring an action for infringement against any person who infringes a claim of the patent. All actions for infringement must be brought within six years from the act of infringement. If successful, the owner and/or person claiming rights from the owner may be awarded damages, punitive damages, an injunction, delivery up of all infringing articles, and/or an accounting of the profits made by the infringer.

It is not necessary in Canada to mark an article, its packaging, etc. with an indication that a patent covers an aspect of the article, although it may be advantageous to do so in terms of the remedies that may be recovered from an infringer. However, it is an offence to falsely mark an article as patented if it is not patented in Canada.

For patented medicines, the legislation provides that a company (such as a generic drug company) seeking to market a drug containing a medicine previously marketed by a patentee who has listed patents that contain claims for the medicine or for the use of the medicine in the prescribed manner, must issue an allegation stating why its sale of the drug will not infringe any of the subject patents. The company will not obtain health and safety approval to market its drug until its allegations have been litigated. In addition, the patent legislation provides price control powers to the Patented Medicine Prices Review Board. If the Board determines that a patentee obtained excess revenue by selling a drug at an excessive price, the Board will choose from among a list of remedies which can be directed against the patented or other medicine sold by the patentee.

Environmental Law

Environmental matters in Canada are regulated by the federal, provincial, territorial, and local governments. Canada, like other industrialized countries, continues to experience an increased awareness of environmental issues and, as a result, government regulation of environmental matters is continually increasing and changing. Increased government regulation and attention to the environment has also led to significant overlap with other areas of the law, including natural resources and energy law, Indigenous law, international trade law, and insolvency law.

Jurisdiction

Federal, provincial, and local levels of government share authority to legislate with respect to aspects of the environment, however, most environmental regulation is carried out at the provincial level. Provincial governments may delegate authority to municipalities to enact and enforce local environmental by-laws, including sewer use and site alteration standards. Inevitably, there is some overlap among the levels of government.

Federal Environmental Law

Fisheries Act

At the federal level, the government actively regulates companies in respect of certain discharges, including deposits of deleterious substances, to waterways. The *Fisheries Act* is the main federal statute focused on the protection of fisheries resources in Canada and compliance with this legislation is an important part of operations for various large industrial companies, particularly in the mining sector. Although provincial and territorial governments have overlapping powers over waterways, the largest waterway pollution-related prosecutions in Canada have occurred under the *Fisheries Act*.

Toxic and Hazardous Substances

Federal environmental legislation regulates all aspects of prescribed toxic substances, including development, handling, and transportation, as well as the import and export of certain hazardous materials. However, both federal and provincial legislation deal with the transportation of dangerous goods and hazardous materials.

Conservation

The federal government enforces various conservation matters within its power, including regulating fish habitat, navigable water bodies, migratory birds, parks and protected areas, and certain endangered species. Provincial governments often enact supplementary conservation-related laws or regulate conservation through land use planning instruments.

Impact Assessment

The federal government regulates prescribed projects and developments through an environmental impact assessment regime under the *Impact Assessment Act*. Under this legislation, the federal government can require that a proponent of a designated project (such as, for example, a new mine) assess the project's environmental and social effects, consult with impacted communities (including First Nations), identify measures to mitigate adverse effects of a project, and provide information to the public. The federal government determines whether prescribed projects are within the public interest, based on the proponent's assessment and public participation, and may impose conditions on a project. Provincial governments may also require that proponents undertake an environmental assessment and/or may conduct an environmental assessment jointly with the federal government. Provincial and territorial environmental assessment regimes differ across Canada.

Greenhouse Gas (GHG) Emissions

The federal government regulates GHG emissions through the *Greenhouse Gas Pollution Pricing Act*, which stipulates a minimum price on GHG emissions and requires that all Canadian jurisdictions have a system for documenting and pricing GHG emissions. The federal government's stated goal is to ensure that Canada's GHG emissions are reduced to 30% below 2005 levels by 2030.

Regulation and pricing of GHG emissions has varying impacts across the country and is an area of continuing change that is influenced by political and economic factors.

Ontario Environmental Law

Pollution and Contaminated Lands

Ontario's environmental legislation regulates contamination of land, air, and water, as well as the remediation of brownfield sites. Ontario's occupational health and safety legislation imposes obligations on employers in respect of the use, storage, handling, and manufacturing of controlled substances.

The range of regulated contaminants is broad and includes emissions of odour, noise, and vibration, in addition to the discharge of solids, and liquid and gas substances. "Contaminants" are broadly defined and the regulation of their adverse effects is not limited to a finite list or to prescribed levels or concentrations.

Ontario's laws impose various duties related to pollution, including the following:

- a person must not discharge a contaminant that causes or may cause an "adverse effect";
- a person must not pollute or discharge contaminants without obtaining relevant approvals or permits;
- a person must report spills and discharges of contaminants; and
- a person must do everything practicable to ameliorate the spill's adverse effects.

Provisions in Ontario's laws allow persons impacted by a spill to seek compensation for losses or damage incurred as a direct result of a spill.

Liability

A person who breaches Ontario's environmental legislation may face quasi-criminal liability. When charged with an offence for violating environmental laws, the prosecution is required to prove that the offence occurred but does not need to prove intent to commit an offence.

Ontario's environmental laws also grant broad enforcement powers to the Ministry of the Environment, Conservation and Parks (MECP). MECP officers and directors can issue various abatement orders, including orders to investigate, limit, stop, remediate, and prevent releases and discharges.

Certain orders can be issued to present and past owners and occupiers of land, even if such persons did not cause contamination at the property.

The legislation provides standards, procedures, and approval processes for the remediation of contaminated lands which, in certain circumstances, must be followed to redevelop such lands.

Directors and officers have a duty, under Ontario's main environmental statutes, to take reasonable care to ensure that corporations comply with aspects of environmental laws, including with permits issued under environmental laws. Directors and officers may also be personally liable if they are found to have committed or acquiesced in the commission of an environmental offence. It is important for directors and officers to be aware of their duties and obligations, to establish and implement a system for environmental compliance, as they can be held liable even where a corporation is not charged or sued.

Due Diligence

In light of Ontario's broad environmental liability regime for contamination, as described above, undertaking adequate environmental diligence is an important part of acquiring businesses or real estate in Ontario and across Canada. Lenders will usually require evidence from third party professionals that the property complies with all environmental laws. Specialized consultants are often retained to carry out site investigations and to assist with the development approval process.

Real Estate

Capacity to Buy, Hold, and Sell Real Property

Individuals and corporations can acquire real property (land, buildings and interests in land) in Canada. A non-resident can acquire, hold, and dispose of real property in the same way as a Canadian citizen or resident, subject to a federal prohibition on the acquisition of prescribed types of residential housing that is in place until at least January 1, 2027. Additionally, some provinces have restrictions on the rights of non-residents to acquire real property.

In Ontario, a corporation incorporated in another country must obtain an extra-provincial licence to acquire, hold, or convey real property, otherwise than by way of security, in the province. It can take from two to four weeks to obtain an extra-provincial licence for a non-Canadian corporation. A non-Canadian corporation must also have an agent for service located in Ontario. Additionally, Ontario imposes an extra tax (presently, 25%) on the acquisition of prescribed types of residential housing.

Forms of Land Ownership

Most land in Canada is held on a freehold/fee simple basis (full ownership of indefinite duration) rather than leasehold basis (an estate for a fixed period of time after which the estate reverts to the landlord).

Land can be owned by more than one person in one of two ways. In a joint tenancy, the owners have equal interests, cannot sell or convey their interest (without converting it to a tenancy in common) and have the right to each other's interest when one dies. In a tenancy in common, the owners can have equal or unequal interests, can sell or convey their interests independent of their co-owners, and, on death, ownership passes to the owner's heirs.

Joint Ventures

Commercial properties may also be held in a joint venture. A joint venture is a relationship between two or more entities that have invested or propose to invest cash, property, and expertise, and in some cases, propose to carry on business in concert, with the desire to realize a gain or profit. The three most common vehicles for such arrangements are single joint venture corporations, partnerships (both general and limited), and co-tenancies or co-ownerships.

Joint venture corporations are generally created with a specific investment or project in mind. The usual arrangement is that each joint venture party holds shares of the corporation and the parties enter into a shareholders' agreement to govern their corporate relationship. The advantages of joint venture corporations are essentially the same as those enjoyed by corporations in general. They offer limited liability, ease of transfer of joint venture interests, ease of administration, and, as the arrangement is governed by a set of well-understood legal and accounting principles, certainty of rights and obligations. There are some advantageous tax considerations for joint venture corporations. Participants may roll real estate into the corporation on a tax-deferred basis to avoid a taxable event on the corporation's formation. There is also an advantage where participants propose to sell their interest; a transfer of shares does not attract the Ontario land transfer tax. The predominant drawback is that shareholders bear income tax at two levels, first on the corporation's income and then on the shareholder's income.

Joint venturers may also hold property in either a general or a limited partnership. A partnership is not a separate legal entity, but rather a relationship that subsists between persons carrying on business in common with a view to profit. A partnership agreement is typically used to allocate profits and losses between the partners. For land transfer tax purposes, each partner is treated as having an interest in the underlying real estate. Partnerships generally have greater advantages than joint venture corporations. It is possible to flow losses and profits to partners and to use some of those to off-set profits and losses from other projects. One of the greatest advantages of a partnership is its flexibility. Subject to income tax legislation, the structure allows for a preferential, varying or other non-proportionate share of the profits. Partnerships also share many of the disadvantages associated with joint venture corporations. All capital cost allowance deductions must be claimed at the partnership level; therefore, each partner is not free to choose what best suits its own needs. Other disadvantages of partnerships are that partners are constrained by their fiduciary obligations to each other, and general partners have unlimited liability. The option of limited partnership is available but limited partners cannot participate in the control and management of the business.

Real estate joint ventures are often structured as tenancies in common. A tenancy in common is a relationship between two or more parties who have direct or indirect ownership interest in property. The ownership is undivided, entitling each co-tenant to an equal right of use and possession. Usually, co-tenants enter into a co-ownership agreement which dictates the extent to which each party is at liberty to deal with its interest by way of transfer, mortgage, lease or otherwise without interference by the other co-tenants. In the absence of a contrary provision in the agreement, every co-tenant has a right to receive a proportionate share but has no obligation to fund any portion of the costs. Unlike partnerships, there is no responsibility for the debts of other co-tenants, no right to act as agent for any other co-tenant, and no fiduciary obligations owed to any other co-tenants. Many disadvantages of the corporate vehicle are not present where the joint venture property is held by participants in a co-ownership.

As each co-tenant is an entity unto itself, the tax return of each co-tenant simply reports the co-tenant's percentage of gross revenues and profits, and each co-owner can claim its own capital cost deductions on its own percentage interest in the building. Each co-tenant is entitled to sell or finance its own interest in the joint venture property. Furthermore, where property held by one party before it is contributed to the joint venture appreciates in value, there is a taxable sale only to the extent of the undivided interest being sold to the other joint venture parties. Co-tenancies have the benefit of partially limited liability in that no co-owner is liable for the debts of co-venturers, and co-tenants have great latitude in their dealings as each is at liberty to compete with the project in operation. However, depending on the circumstances, co-tenants can be held to be partners.

Agreements to Buy, Sell and Lease Land

In Canada, land is bought and sold pursuant to written agreements of purchase and sale between the buyer and seller. In Ontario, the Real Estate Board's standard form agreement of purchase and sale is typically used for most transactions for single-family residential property and some simple commercial transactions (supplemented by additional provisions in schedules). More complex transactions are effected by way of agreements prepared by the parties and their counsel and typically address, among other things, the due diligence process, title to the property, covenants, representations and warranties from the parties, and various conditions to the transaction's completion. Similarly, land is typically leased pursuant to written agreements. In Ontario, residential rental units are leased pursuant a prescribed form of residential tenancy agreement. For commercial transactions, parties may begin with an offer to lease setting out the basic terms of the tenancy and contemplating the execution of a formal lease at some point in the future (usually before the tenant takes occupancy). Alternatively, the parties may go straight to a formal lease. Commercial leases are often fully net to the landlord (i.e., all costs related to the premises are passed on to the tenant in addition to the basic or minimum rent payable by the tenant) or they may be gross leases (i.e., where rent is inclusive of all costs and recoveries payable by the tenant) or they may be something in between. Typically, the lease documentation will set out the premises demised, the term of the tenancy, the rent, the recoveries that are to be passed on to the tenant, the various covenants, representations and warranties, events of default, and the landlord's remedies if the tenant defaults.

Land Use Planning

In Canada, land use is subject to regulation and control by provinces, municipalities, and other public agencies. Land use planning affects everything from the location where homes and businesses can be built to whether an owner can subdivide a property.

Land use planning is generally supervised at the provincial level, where policy goals and priorities are established. However, significant planning functions and implementation requirements are delegated to the various regional governments and municipalities. In Ontario, the government has created several provincial plans to guide land use planning decisions within certain defined geographic areas, as well as the Provincial Planning Statement which applies throughout the province.

Municipalities control land use through such instruments as official plans and zoning by-laws (which regulate matters such as permitted uses, height, density, and other performance standards such as parking). Municipalities also issue urban design guidelines regarding numerous types of development, ranging from tall buildings to townhouses to commercial or industrial uses.

For a purchaser of land, the provisions of both the official plan and the zoning by-law(s) that apply to the property are crucial as they determine the permitted uses and other development standards applicable to the property. However, these instruments are often outdated and may underrepresent the development potential of a property. Landowners have the right to make applications to the municipality to amend the official plan or zoning by-law(s) applicable to a property to modify the development permissions. In addition, landowners have the right to appeal those applications to a specialized tribunal, known as the Ontario Land Tribunal, in certain instances.

In Ontario, most municipalities require that site plans be approved before the construction of any new development. Site plans set out the details of a development (including the location of buildings and related facilities such as landscaping, services, driveways and parking spaces). Most municipalities also require the developer to enter into an agreement ensuring construction and ongoing maintenance in accordance with the approved site plans. In addition, municipalities may impose charges against land to pay for the increased capital costs of servicing new development as well as secure the dedication of land for public park purposes or cash-in-lieu. When considering development in a particular municipality, it is advisable to determine whether a development charge by-law or parkland dedication by-law has been, or is in the process of being, enacted.

Any subdivision of land in Ontario requires the consent of the municipal or regional authority. The developer may be required to submit a draft plan of subdivision for approval. Normally, the municipality will require the developer to enter into development agreements agreeing to provide sewers, roads and other services for the subdivision, and to dedicate certain lands for public use or benefit, including the conveyance of land for public park purposes or the payment of cash-in-lieu.

Finally, other special legislation and regulations in Ontario may affect the use and/or development of certain lands, including, for example, the protection of employment lands, cultural heritage resources and natural features, as well as other environmental legislation addressing such matters as endangered species and site remediation, and regulations applicable to designated environmental regions of the province (e.g., in Ontario, the Niagara Escarpment, the Oak Ridges Moraine and the Greenbelt). Municipalities may also have power to enact special by-laws. For example, the City of Toronto is authorized to regulate the provision of green roofs, the erection of signs, and the demolition of rental housing, and has enacted by-laws regarding these matters.

Property Taxes and Fees

A variety of taxes apply to the sale and ownership of land in Canada.

Land Transfer Tax

Ontario imposes tax on transfers of real property. Specifically, provincial land transfer tax applies to the registration of a transfer of land. For these purposes, land includes a lease where the unexpired term of the lease (including revisions and extensions) exceeds 50 years. The provincial tax is 0.5% of the value being paid for the land up to $55,000, 1% of the next $195,000 in value, 1.5% of the next $150,000 in value, and 2% of the value over $400,000. An additional municipal land transfer tax, which applies at the same rates as the provincial tax, applies to the registration of the transfer of land within the City of Toronto. If the land contains at least one and not more than two single-family residences, a 0.5% surtax on the amount of the value which exceeds $2 million is imposed by each of Ontario and the City of Toronto. In addition, any unregistered transfer of a beneficial interest in land gives rise to provincial and, in the City of Toronto, municipal land transfer tax. There are exceptions, such as for certain tax-driven intercorporate transfers.

Ontario imposes an additional 25% non-resident speculation tax on the acquisition of an interest in residential property (other than most multi-unit residential property) located in Ontario by foreign nationals, foreign corporations, and certain trusts with non-resident trustees or beneficiaries. There are rebates available within four years of the acquisition date for foreign nationals who become permanent residents of Canada.

Goods and Services Tax

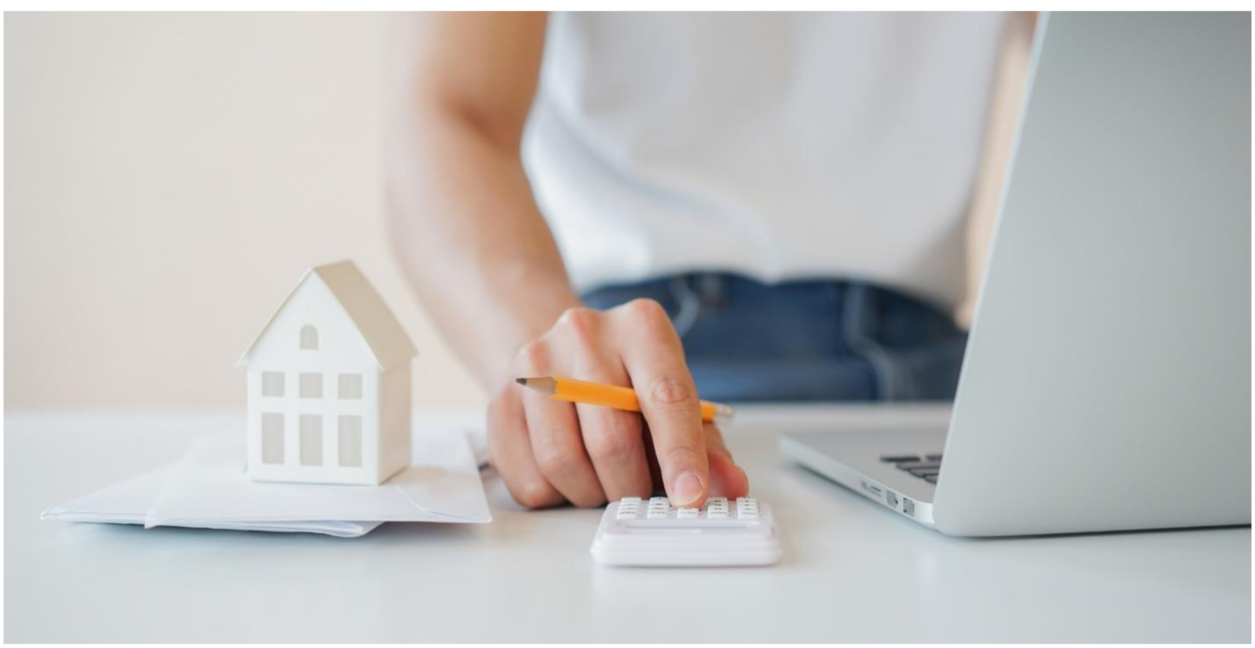
Canada's GST applies to all supplies of Canadian real property, other than sales of used residential real estate and rent of residential real property. In a purchase and sale transaction involving commercial real property, where a purchaser is registered for GST purposes, special rules generally apply so that the purchaser is not required to pay GST in connection with the acquisition of the property. In provinces where HST is applicable, including Ontario, HST applies in the same manner as GST.

Municipal Taxes

Municipalities in Canada levy and collect taxes on real property to fund a wide variety of services. Property owners are required to pay municipal and education taxes every year based on the assessed market value of their property and tax rates established annually to meet the budgetary needs of municipalities and local school boards.

In Ontario, up until 2020, the current value of every parcel of land was re-assessed every four years by the Municipal Property Assessment Corporation, and confirmed annually through an assessment roll provided to each municipality in December. However, in 2021, the Ontario provincial government postponed the re-assessment that was scheduled, due to Covid-related concerns. That deferral has continued up to and including tax year 2025. This means that all assessments up to and including 2025, since 2017, have been based on MPAC's imputed January 2016 market value. The Ministry of Finance has yet to announce whether there will be a re-assessment in 2026 or 2027, which should be the commencement of the next four-year assessment cycle. Whatever year is chosen, the base year for valuation will be two years before the first tax year of the re-assessment.

Property owners can challenge their assessment or tax classification by submitting a request for reconsideration to the Municipal Property Assessment Corporation or by filing an appeal with the Assessment Review Board, an independent tribunal with expertise in adjudicating land valuation disputes.



Financial Services Regulatory

Financial services regulation aims to protect consumers and ensure financial stability. In Canada, financial services regulation covers a wide range of transactions, including those involving domestic and foreign banks, trust companies, investment dealers, insurance companies, lenders, pensions, payment providers, and other financial entities. It also extends to transactions such as loans, mortgages, investments, insurance services, payment services, money transfer services, transactions involving cryptocurrency and blockchain, and more. Regulations and laws that govern these various transactions set out the parties to which they apply, the specific transactions they regulate, as well as the offences for non-compliance and their corresponding penalties.

Financial services in Canada are regulated by several bodies empowered by law to regulate financial services and financial institutions in Canada. At the federal level, these bodies oversee federal financial institutions but may sometimes overlap with provincial or territorial regulators. The principal regulators in Canada are the Financial Consumer Agency of Canada, the Office of the Superintendent of Financial Institutions, the Bank of Canada, and provincial and territorial securities and financial services regulators, such as the Ontario Securities Commission and the Financial Services Regulatory Authority of Ontario.

Laws and regulations are also in place to help prevent activities such as money laundering and the financing of terrorism. The Financial Transactions and Reports Analysis Centre of Canada oversees compliance with the anti-money laundering and terrorist financing requirements imposed by the *Proceeds of Crime (Anti-Money Laundering) and Terrorist Financing Act* on prescribed entities, including financial entities, life insurance companies, dealers in precious metals and precious stones, money services businesses (dealing in fiat or virtual currency), securities dealers, mortgage administrators, brokers and lenders, and real estate brokers, sales representatives and developers. These entities are required to have a comprehensive compliance program in place designed to combat money laundering and terrorist financing.

Canada also has a broad range of economic sanctions laws that apply to all individuals and businesses in Canada and to all Canadian citizens and Canadian businesses doing business outside Canada. These laws are included in a number of different statutes and regulations, such as the *Special Economic Measures Act*, the *United Nations Act*, and the *Justice for*

Victims of Corrupt Foreign Officials Act. Given that many Canadian businesses have dealings with customers, vendors, suppliers or other businesses outside Canada, it is important for businesses to understand how Canada's sanctions laws apply to them.

Canadian sanctions laws and regulations generally restrict or prohibit all individuals and businesses from dealing

- with designated persons, such as persons listed on Canadian government lists and United Nations lists,
- within certain jurisdictions, such as Russia, North Korea, Iran, and
- within specific sectors, such as arms and nuclear materials.

These laws and regulations impose screening, reporting, and asset-freeze obligations. Global Affairs Canada oversees compliance with sanctions requirements.

Canada's financial services regulatory environment is rapidly evolving in response to international developments. Businesses should monitor these developments to ensure they remain in compliance with changing laws and regulations.

About Goodmans LLP

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