Doing Business

IN CANADA

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DOING BUSINESS IN CANADA

A. GOVERNMENT AND LEGAL SYSTEM

1. Levels of Government

Canada is a constitutional monarchy and a parliamentary democracy. There is a nationally elected Parliament which sits in Ottawa. Each of the ten provinces has its own elected legislature which sits in the relevant province. The three territories (Yukon, Northwest Territories, and Nunavut) are governed by their respective government and receive their legislative authority from the federal government, which has provided the territories with authority similar to that held by the provinces.

The *Constitution Act*, 1867 assigns exclusive legislative authority over specific matters to the federal and provincial governments respectively. There is overlap in the federal and provincial legislative jurisdictions in some areas. In the event of a conflict between valid federal and provincial legislation, federal laws prevail – this is known as the doctrine of paramountcy.

a. Federal

The federal government's legislative jurisdiction includes foreign affairs, international trade, banking, telecommunications, bankruptcy, intellectual property, immigration, criminal law, and national defence.

b. Provincial

The provincial governments' legislative jurisdiction includes real and personal property, education, hospitals, natural resources and intra-provincial trade and commerce. Note that certain aspects of the provincial powers related to municipalities are delegated to municipal governments.

Each of Canada's two levels of government is subject to the limits provided by the *Canadian Charter of Rights and Freedoms*, which forms part of the *Constitution Act*, 1982. Aboriginal communities in different parts of Canada also exercise a variety of governmental powers within specific geographic areas as a result of agreements with the federal and provincial governments.

2. Legal System

a. Common Law and Civil Law

In nine of the ten provinces and all of the three territories, the legal system is based on common law. In the province of Quebec, the legal system is based on civil law.

b. Courts

The Canadian judiciary enjoys independence from the government in its decision-making powers.

Each province has both provincial courts and superior courts. The provincial courts try most criminal and family law matters, as well as certain regulatory offences. The superior courts deal with matters such as commercial litigation, constitutional litigation, judicial review and serious criminal offences.

There is a separate system of federal courts. The federal courts include the Federal Court, the Federal Court of Appeal, and the Tax Court of Canada. The Federal Court and the Federal Court of Appeal have jurisdiction over matters specifically assigned to them by the *Federal Courts Act*. The Tax Court of Canada has jurisdiction over appeals from assessments under

the *Income Tax Act*, the *Excise Tax Act*, the *Employment Insurance Act* and the Canada Pension Plan. Decisions of the Federal Court and Tax Court of Canada can be appealed to the Federal Court of Appeal.

The highest court in Canada is the Supreme Court of Canada. It has the final authority over all questions of Canadian law. For most cases, there is no right of appeal to the Supreme Court, and leave to appeal must be obtained. To be granted leave, an appeal must raise a question that is of sufficient public importance to justify the appeal.

B. QUEBEC CIVIL LAW AND QUEBEC LANGUAGE COMPLIANCE

Special considerations are involved in establishing and carrying on business in Quebec. There are two main features that make Quebec a unique business environment as compared to the rest of Canada: first, Quebec's legal system is based on a civil law system - the *Civil Code of Quebec* (the **Code**), and second, Quebec's official language is French. As a result, non-residents operating in Quebec are subject to the Code, as opposed to the common law applicable to other provinces and territories in which the non-resident may also be operating.

Quebec's governing language legislation is the *Charter of the French Language* (the **Quebec Language Charter**), which is designed to guarantee and preserve French language rights by requiring the use of French in various situations. The Quebec Language Charter provides a framework governing the language that may be used by government, as well as the language used in work, education, communication, commerce and business in Quebec.

The Quebec Language Charter applies to all enterprises operating in Quebec, including not-for-profits and charities, regardless of the jurisdiction in which the entity was constituted. Businesses under federal jurisdiction are also subject to the Quebec Language Charter, to the extent they operate in Quebec.

On May 24, 2022, an *Act respecting French, the official and common language of Quebec* (Bill 96) was adopted and received assent on June 1, 2022, thereby amending the Quebec Language Charter. The purpose of Bill 96 is to make French the only common language of the Quebec nation. The following sets out the most notable obligations for businesses operating in Quebec with respect to language.

1. Language of the Courts

Bill 96 reinforces French as the language of the courts in Quebec. Notably for businesses, Bill 96 proposed to require that if a pleading is filed by a legal person (i.e., including a corporation) in a language other than French, it must include a certified French translation prepared by a certified translator, at the legal person's expense. Absent a certified translation, the pleading could not be filed at a court office or tribunal. Remarkably, the coming into force of this particular section of Bill 96 was suspended by a decision of the Superior Court of Quebec on September 1, 2022.

2. Francization of Businesses

a. Certificate of Francization

Currently, businesses which employ 50 employees or more for a period of six months must register with the Office Québécois de la Langue Française (the **OQLF**). Effective on June 1, 2025, this obligation will be imposed on any business with 25 or more employees. The OQLF will assess whether the general use of French in a business is sufficient. If so, the OQLF will issue a certificate of francization. Otherwise, the business will be subject to a francization program.

b. Francization Committee

The OQLF may order any business with fewer than 100 employees to establish a francization committee. In addition, the committee is required to meet at least every six months and send its minutes of meeting to the management of the business and to the OQLF.

3. Language of Business and Commerce

The Quebec Language Charter reinforces the obligation on businesses to use French in their activities, including in marketing and advertising. Bill 96 amends the Quebec Language Charter to include the following new obligations:

a. Information and Service in French

Consumers of goods and services have a right to be informed and served in French. Moreover, every person has the right to have all enterprises doing business in Quebec communicate with them in French. This applies in the context of both business-to-consumer and business-to-business communications.

Catalogues, brochures, folders, commercial directories, order forms and any other documents that are made available to the public must be composed and distributed in French. Such documents may also be offered to the public in another language, provided the French version is available on at least equally favourable terms.

b. Trademarks on Goods and Their Packaging

Currently, a non-registered trademark (i.e. a common law mark) can benefit from an exemption allowing it to be displayed in a language other than French. Effective on June 1, 2025, only registered trademarks that do not

have a French registered version will benefit from this exemption. If a trademark is registered in a language other than French, and if a generic term or a description of the product is included in a trademark, a French translation of any such generic term or description must be affixed to the product.

c. Trademarks on Public Signs and Posters and in Commercial Advertising

Effective on June 1, 2025, only registered trademarks that do not have a French registered version will benefit from an exemption allowing them to be displayed in a language other than French. In addition, on public signs and posters visible from outside premises, French will need to be "markedly predominant" where such a trademark appears in a language other than French. Currently, only a "sufficient presence of French" is required.

d. Goods, Promotional Material, and Other Information

All goods, packaging, documents supplied with goods, promotional material (including material on digital platforms such as websites and social media) and purchase orders must display French text at least as prominently as any text displayed in another language. The French version of text must be made available on terms which are at least as favourable as those set out in another language, and the French version must be understandable without having to refer to a version in another language.

e. Software

All computer software must be available in French unless no French version exists. Software may be made available in a language other than French, provided that the French version can be obtained on equally favourable terms (except for price), and provided the French version has equivalent or better technical characteristics.

4. Language of Contracts Between Private Parties

a. Contracts of Adhesion

Contracts of adhesion, which are contracts drafted by one party which have pre-set or non-negotiable terms, must be drafted in French. The adhering party will only be able to waive the obligation to have the agreement in French, and be bound to a contract in a language other than French, after the French version has been provided to the adhering party,

free of charge. In addition, documents related to such a contract must be sent in French unless this obligation has been waived by the adhering party in the contract. Contracts used in relations outside Quebec are not subject to these obligations.

Where there is a discrepancy between the French version and a version in another language of such a contract, the adhering party may invoke either version, according to their interests.

b. Other Contracts

Contracts other than employment contracts and contracts of adhesion may be entered into in a language other than French if it is the express wish of the parties to do so. A party is prohibited from requesting or demanding payment in any amount from the other party to prepare a French version of the contract or of the related documents.

c. Other Documents

Invoices, receipts, acquittances, and other documents of a similar nature must be drafted in French. Such documents may also be offered to the public in a language other than French, provided the French version is available on at least equally favourable terms.

d. Registration and Enforcement of Security Interests and Rights

In Quebec, where the law provides, some rights as well as security interests are enforceable against third-parties when published in public registers. Such applications for registration must be made exclusively in French. Additionally, when the applications are accompanied by documents in a language other than French or English, the translation of those documents much be in French whereas previously translations in English were allowed.

5. Relations with the Civil Administration

There are several requirements regarding the use of French by the civil administration, which includes the Government of Quebec, Quebec government agencies, most municipalities, school bodies, and bodies in the health and social services network.

a. Language of Contracts

Contracts entered into with the civil administration, including all related documents, must be drafted exclusively in French. Written communications

sent for the purpose of entering into such contracts and written documents sent by a legal person (including a corporation) must also be exclusively in French, subject to certain limited exceptions.

b. Services Provided to the Civil Administration

All services provided to the civil administration must be rendered in French.

c. Interactions with the Civil Administration

The civil administration uses French exclusively in its written and oral communications, subject to certain limited exceptions. Written communications with legal persons established in Quebec will also be exclusively in French.

6. Enforcement and Sanctions

a. Enforcement

The OQLF will receive any complaints related to failure to comply with any of the provisions in the Quebec Language Charter and manage investigations into such complaints.

b. Administrative Sanctions

i. Prohibition from obtaining government contracts

Businesses that fail to meet the obligations of the Quebec Language Charter may not contract with or obtain subsidies from the civil administration.

ii. Suspension of permits

Repeated contraventions of the Quebec Language Charter by a business may be a ground for the suspension of certificates and permits issued to the business, which may result in the loss of contracts with or subsidies from the civil administration.

c. Penal Sanctions

i. Fines for contravention

Any person who interferes with an inspection or contravenes an order issued by the Minister of the French Language or the OQLF is liable to a fine of between $700 to $7,000 in the case of an individual, $1,400 to $14,000 in the case of a director, or $3,000 to $30,000 in other cases.

ii. Fines for reprisal

Anyone who takes a reprisal or threatens to do so against a person making a disclosure or cooperating with an investigation by the OQLF is liable to a fine of between $2,000 to $20,000 in the case of an individual, $4,000 to $40,000 in the case of a director or, in any other case, a fine of between $10,000 to $250,000.

iii. Subsequent offences

The minimum and maximum fines prescribed by the Quebec Language Charter are doubled for a second offence, and tripled for a subsequent offence. Moreover, if an offence continues for more than one day, it constitutes a separate offence for each day it continues.

A judge also has the discretion to impose an additional fine not exceeding the financial benefit gained from the offence.

iv. Director liability

Directors of a legal person are presumed to have committed the offence committed the offence of the legal person, unless the directors can demonstrate that sufficient due diligence was exercised.

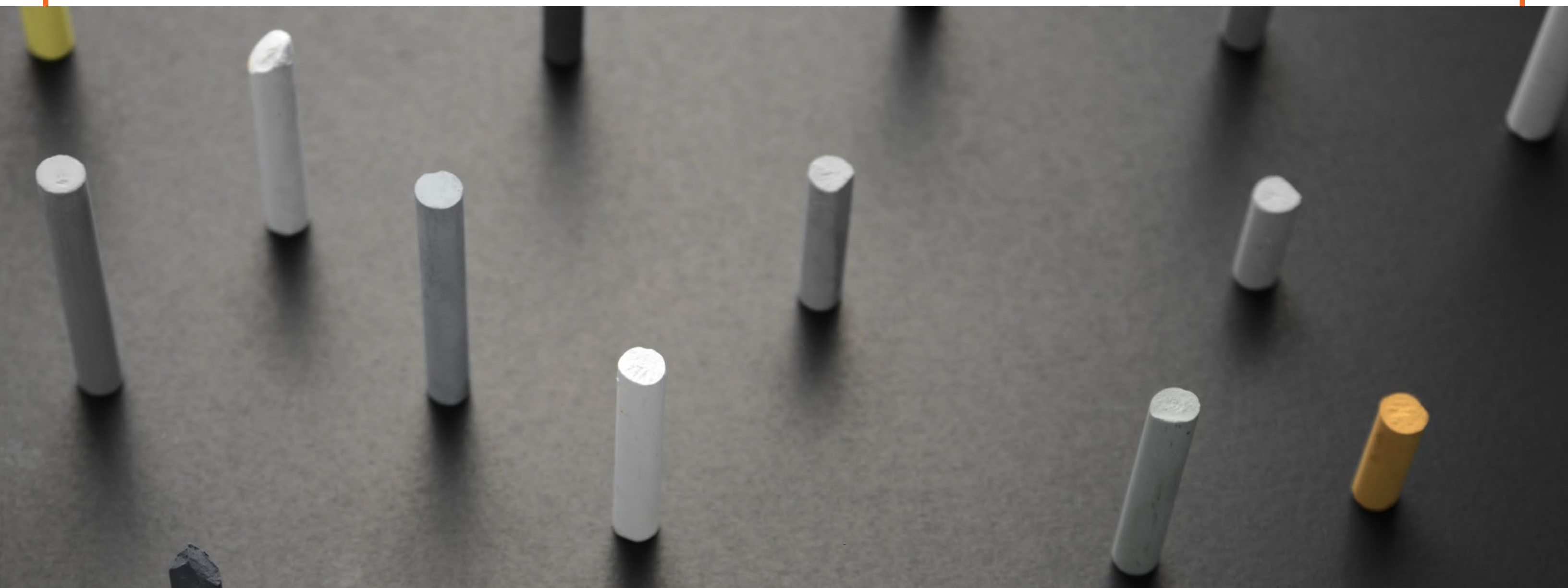
C. BUSINESS ORGANIZATIONS

1. Introduction

There are a number of different legal vehicles through which a foreign corporation or other foreign entity may carry on business in Canada. In choosing a particular legal vehicle, the tax consequences in Canada and in the relevant foreign jurisdiction should be considered. Non-tax factors such as limited liability and registration requirements should also be taken into account. The most frequently used business organization in Canada is a corporation with share capital. Partnerships, limited partnerships, business trusts and co-ownerships are also common.

2. Corporations

A Canadian corporation is a separate legal entity. A corporation also generally has the capacity of a natural person. This means that a corporation can enter into contracts or own property in its own name, separate and apart from the individual owners of the corporation. This generally provides limited liability protection to the shareholders as owners of the corporation.

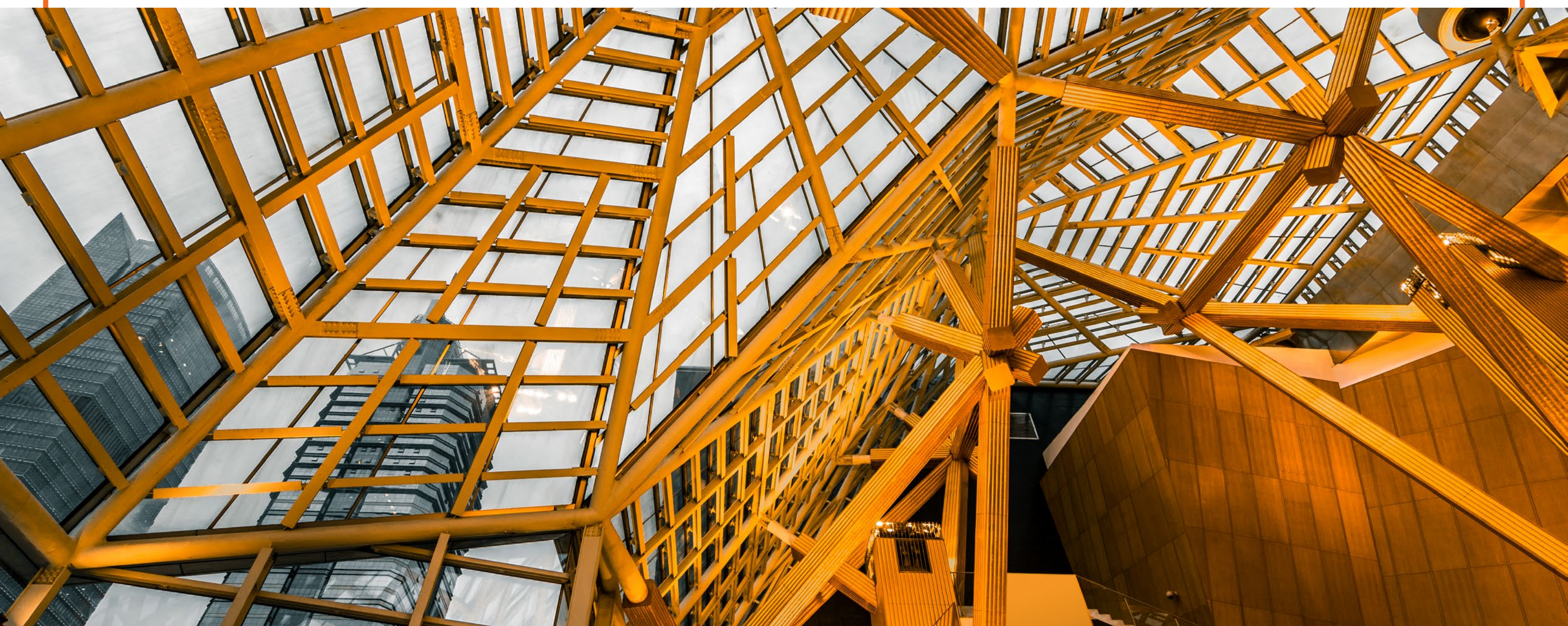


Most corporations in Canada are incorporated as corporations with share capital under the federal, provincial or territorial business corporations' statutes. These statutes provide comprehensive legislative rules dealing with incorporation, amalgamation, liquidation, other fundamental corporate structure changes, share capital, the rights and obligations of shareholders and directors, books and records and other matters.

Incorporating under a business corporation's statute is usually a simple process effected by filing Articles of Incorporation (or a similar document) with the relevant government authority and paying a filing fee. The Articles of Incorporation generally set out the name of the corporation, the authorized share capital, the terms of different classes of shares, restrictions on the transfer of shares, the number of directors who are to control the corporation and the names of the first directors along with certain other provisions.

The Articles of Incorporation are a public document and can often be filed electronically. Other than in British Columbia, more detailed rules for the operation of the corporation (for example, quorum for directors and shareholders' meetings, notice requirements for such meetings, etc.) are contained in the by-laws, which are typically not a public document.

A corporation is not permitted to incorporate using a name which is the same as or similar to the name of another corporation or entity. A corporation carrying on business in Quebec must use a French version of its corporate name. A corporation may incorporate under a number name (e.g. 123456 Ontario Inc.)



whereby the number is assigned on incorporation by the governmental authority. Incorporating under a specific name provides some rights with respect to that name, but this is not equivalent to the rights that flow from a trademark registration.

Corporations with share capital incorporated under the business corporations' statutes can have different classes of shares with different rights. The business corporations' statutes provide significant flexibility in setting the terms of different share classes. There is no minimum or maximum dollar amount of share capital required.

a. Federal or Provincial/Territorial Incorporation

Corporations incorporated under the federal *Canada Business Corporations Act* (the "**CBCA**") or under the business corporations' statutes of the provinces and territories can carry on business throughout Canada. The choice of jurisdiction of incorporation will therefore often depend on convenience of dealing with the relevant government department for filings, requirements in the applicable corporate statute for Canadian resident directors and similar factors.

If a corporation is incorporated in a jurisdiction and carries on business in another jurisdiction, then it generally must register to carry on business in the other province or territory. This registration is a simple process, but usually must be renewed annually and requires payment of registration or filing fees.

Often, corporations will choose to incorporate federally under the CBCA. This is because the corporation may have greater mobility in moving its operations or registering a new business location through the *Canada Business Corporations Act*. Lawyers and other professionals are often well-versed with the federal Act, making it easier to attain professional assistance with greater ease. Still, Canadian jurisdictions offer corporations ample flexibility when choosing a jurisdiction for incorporation.

b. Types of Corporations

Federal and provincial legislation allow for corporations with share capital (which are generally incorporated under the business corporations' statutes) and non-share capital corporations. The latter are used for charitable and non-profit activities.

Nova Scotia, Alberta, Prince Edward Island and British Columbia have legislation allowing for the incorporation of unlimited liability companies. The unlimited liability company ("ULC"), as the name suggests, does not provide limited liability protection for the shareholder in the same way as a business corporation. A ULC is a separate legal entity under Canadian corporate law and is treated as a separate corporation for Canadian income tax purposes. The hybrid nature of the ULC for Canadian and US income tax purposes has proven to be a popular tool for cross border tax planning. The Canadian income tax consequences of using a ULC should be carefully considered because of the anti-hybrid rules in the Canada-U.S. Income Tax Convention, and rules that Canada recently announced will be introduced to deny the deductibility (or result in an income inclusion) of certain cross border payments made by ULCs where there is, for example, no corresponding inclusion in the income of a non-resident recipient of the payment. Canada enacted similar legislation that came into affect on June 20, 2024 to deny the tax benefits associated with "hybrid instruments".

Corporations which offer their shares to the public are subject to additional rules and regulations under the relevant securities legislation in each province. For more information, navigate to Securities Law below.

c. Residency Requirements for Directors

In Saskatchewan and under the federal CBCA, at least 25% of a corporation's directors must be resident Canadians; where there are less than four directors, at least one must be a resident Canadian. A Canadian resident for corporate purposes includes a Canadian citizen ordinarily resident in Canada or a permanent resident as defined in the *Immigration Act* who is ordinarily resident in Canada. Alberta, Ontario, British Columbia, Quebec, Yukon, Nova Scotia, New Brunswick, Prince Edward Island, Nunavut, and the Northwest Territories do not have a residency requirement for directors. The elimination of residency requirements is said to improve the business environment and attract a greater number of investors in these jurisdictions.

d. Rights and Obligations of Directors

A non-offering corporation does not need to have more than one director. Directors are not required to own shares in the corporation.

Directors have a duty to act honestly and in good faith with a view to the best interests of the corporation. They must also exercise their powers with the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Their decisions must be in accordance with the governing statutes, regulations, incorporating documents and any shareholder agreements that the corporation may be subject to. If there are any conflicts of interests between the directors and the corporation, these must be disclosed by following stringent disclosure requirements in the governing legislation.

Directors can be personally liable in certain circumstances, including to employees for unpaid wages owing, and to the tax authorities for unremitted employee source deductions, non-resident withholding tax and HST. Directors' and officers' liability insurance is often purchased by corporations in respect of these and other potential liabilities.

e. Directors' and Shareholders' Meetings

Both shareholders' and directors' meetings can be held in person inside or outside of Canada, via telephone or via other electronic means. Meetings of directors can be held at any time as long as they comply with the notice requirements set out in the governing documents of the corporation. Meetings of shareholders are held at least annually at a place determined by the directors or as indicated in the corporation's governing documents.

All jurisdictions governing corporations in Canada mandate an annual shareholder meeting for matters of fundamental importance to the corporation. This often includes the election of directors, the appointment of an independent auditor and a review of the corporation's financial health. Apart from this mandatory, annual meeting, shareholders may requisition a meeting under certain circumstances and by following the guidelines stipulated by the corresponding legislation that governs the corporation.

The annual meeting is when a corporation's financial statements are presented to its shareholders. The financial statements of a private corporation can be audited or unaudited, while offering corporations (i.e., a corporation that offers its securities to the public) must have audited financial statements. The financial statements of an offering corporation are required to be filed with the applicable securities regulatory authorities. A business corporation's statutes allow directors' and shareholders' resolutions to be passed by written resolution signed by all the directors or shareholders, as the case may be. Written resolutions in lieu of meetings are commonly used for private corporations.

Shareholders' and directors' resolutions are typically not available to the public. Directors' resolutions are the formal decisions formed by a vote that are made at a directors' meeting. The board of directors are charged with handling the organization's daily operations and thereby discuss and decide on matters such as past performance, strategic goals and formal plans of action. Shareholders' resolutions are the decisions made in a shareholders' meeting which, as with directors' resolutions, are made by vote.

There are two different types of resolutions in shareholder meetings – an ordinary resolution and a special resolution. The former requires a simple majority and involves matters of a lesser degree of importance, such as electing directors or appointing an auditor. A special resolution requires the approval of two-thirds of the votes cast by either group of voters. This latter form of resolution involves making a fundamental change in the corporation, such as an amalgamation of corporate entities or amending the Articles of Incorporation.

f. Shareholder Agreements

Shareholders' agreements are commonly used to address corporate governance issues. They are much like by-laws that require no public disclosure. Topics often covered in the shareholders' agreement include

the management, control and governance of the corporation. A sub-category of shareholders' agreements is the unanimous shareholder agreement ("**USA**"). A USA may cover a multitude of topics which include a limitation on the powers of the directors as per the governing legislation. If a USA were to restrict certain powers of the directors, the shareholders would then become liable for the fulfillment of these directors' duties instead. In other words, a USA may simultaneously limit the liability of directors while expanding the potential liability of shareholders.

g. Disclosure Requirements in Public Corporate Filings

A non-offering corporation is generally not required to publicly file its financial statements. An offering corporation is generally required to file its financial statements with the relevant provincial securities regulatory authority.

All corporations must generally make information filings (which are available to the public) identifying their directors, officers and registered office. Shareholders generally do not have to be disclosed in these information filings.

3. Partnerships

A partnership, unlike a corporation, is not a separate legal entity but rather a relationship between persons carrying on business together with a view to profit. Partnerships are governed by partnership legislation (which is all provincial) and, where one exists, a partnership agreement. Partnership agreements are generally not public documents.

A detailed partnership agreement is advisable in order to clearly set out the governance and operational rules for the partnership and to oust certain legislative rules that apply in the absence of agreement to the contrary.

There are three types of partnerships in Canada:

- general partnerships
- limited partnerships
- limited liability partnerships

In a **general partnership**, all partners are jointly and severally liable for the liabilities of the partnership.

In a **limited partnership**, the general partner is liable for the liabilities of the partnership. Limited partners are only liable for their agreed upon capital contribution, unless they lose their limited liability protection by becoming involved in the management of the partnership business. It is common to use a sole-purpose corporation as the general partner of a limited partnership that will have a nominal profit/loss participation in the limited partnership. Formation of a limited partnership also requires a public filing.

A **limited liability partnership** may only be used by certain regulated professionals (e.g., law firms and accounting firms), and it provides certain limited liability to its partners with respect to the negligence of other partners.

4. Other Ways to Carry on Business in Canada

a. Branch

Instead of forming a Canadian corporate subsidiary, a foreign entity can conduct business in Canada by establishing a branch (i.e., a fixed place of business like an office). In this case, the foreign entity is carrying on business in Canada directly. Although opening a company in Canada is not inexpensive, a branch is a suitable option for those looking to invest a smaller sum of money into a project.

b. Carrying on Business in Canada Directly Without a Branch

Some foreign entities conduct business in Canada without establishing a fixed place of business. This may be done by way of electronic commerce and/or by use of employees or agents who come to Canada for short periods to see customers and potential customers. The Canadian tax consequences of this approach are discussed further below.

c. Business Trusts

Business trusts are mostly encountered as mutual fund trusts, real estate investment trusts, and income trusts, which issue securities in the public securities markets. A business trust may operate as a partner in a partnership or as a shareholder in a corporation with accompanying tax consequences.

d. Co-ownerships

Co-ownerships are commonly used in the real estate joint venture context, and provide for each co-owner to hold an undivided percentage interest in the whole.

5. Registering a Business

Corporations, partnerships and certain other forms of businesses may have varying registration requirements, depending on the governing jurisdiction. All forms of businesses, save for sole proprietorships operating under the sole proprietor's name, are required to register their business' name. Apart from naming requirements, registration of the businesses itself may be required depending on the type of business and various other factors.

a. Corporations

A corporation is required to research its corporate name prior to governmental approval by using the corresponding search system of the provincial or federal jurisdiction. Corporate names must end with a legal element indicating the business is a corporation. This includes one of the following: Limited (Ltd.), Incorporated (Inc.), or Corporation (Corp.).

Each name search, the Articles of Incorporation, and the corresponding filing fee must be submitted to the appropriate government agency before the corporation is created. Barring any statutory compliance failures, the corporation will be registered by the government. A Certificate of Incorporation will be issued to the corporation by the relevant jurisdiction on the date the corporation comes into existence.

b. Partnerships

Much like corporations, partnerships are required to register their business name in their relevant jurisdiction. Some jurisdictions may penalize partnerships that have failed to comply with such requirements such as refusing to uphold court actions initiated by unregistered businesses.

General partnerships may come into existence in spite of any registration requirement in certain Canadian jurisdictions. For instance, in Ontario, a partnership is formed when two or more people conduct business in common with a view to profit. Other forms of partnerships do require registration. A limited partnership must be registered with the relevant government authority. The registration requirement would include such details as the names of the minimum number of required general and limited partners in the limited partnership. A limited liability partnership similarly requires registration. Prior to registering this form of business, permission must be obtained from the governing body of the profession (only a limited number of professions may register as an LLP in Canada).

Each province has its own registration requirements. As such, when conducting business through an extra-provincial form of business, the relevant jurisdiction’s legislative registration requirements must be adhered to.

6. Quebec's Corporate Transparency Requirements

The *Act respecting the legal publicity of enterprises* (the "**LPA**"), among other things, sets rules relating to which entities must be registered and the information required to be recorded by enterprises in the Quebec Enterprise Register (the "**REQ**"). Its objective is to increase the transparency of enterprises operating or registered in Quebec and to optimize the reliability of the information contained in the REQ, in an effort to prevent and combat against tax evasion, money laundering and corruption.

The *Act mainly to improve the transparency of enterprises* (Bill 78), which came into effect on March 31, 2023, brought significant amendments to the LPA. As part of the new corporate transparency requirements that came into force, enterprises operating in Quebec, including federal, provincial, and foreign enterprises, must respect the obligations set out below.

a. Declare an Ultimate Beneficiary; Obligations Concerning Ultimate Beneficiary Information

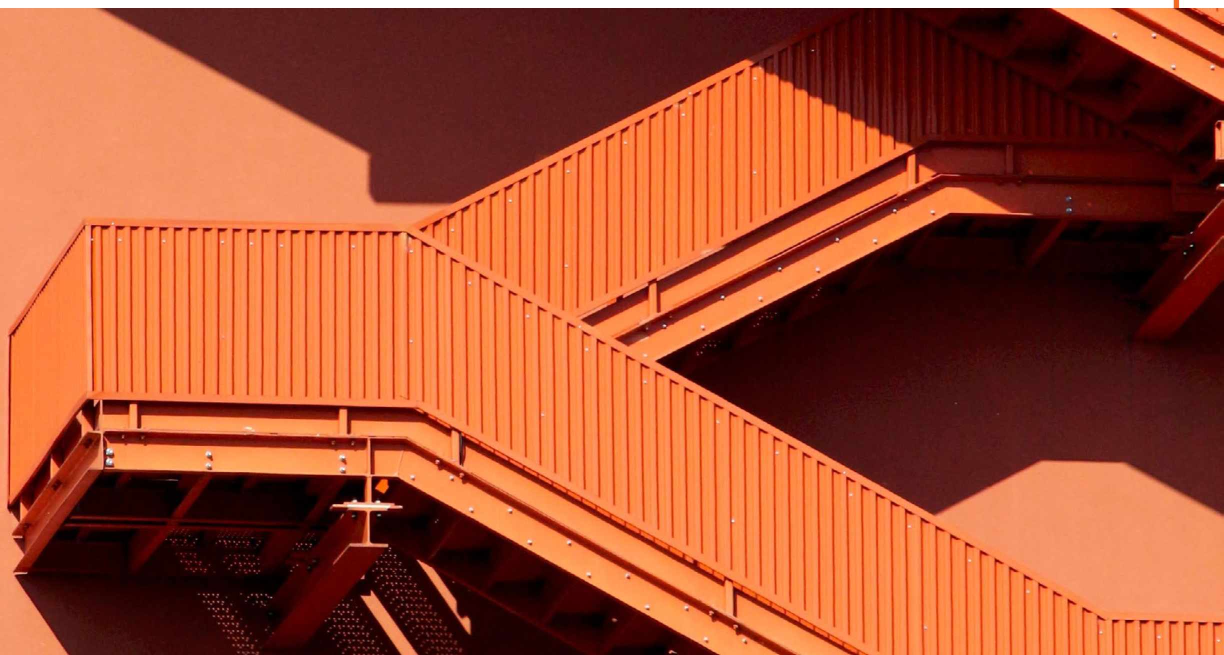
The LPA creates an obligation for any person or group of persons registered voluntarily or for any corporations, trusts operating a commercial enterprise, cooperatives, sole proprietorships and/or partnerships required

to be registered in Quebec (each, a "**Registrant**"), including entities constituted under a regime other than that of the laws of Quebec, to disclose information on its ultimate beneficiaries.

The following information must be reported in respect of every ultimate beneficiary:

- The ultimate beneficiary's name, including any other name(s) they use to identify themselves in Quebec, as applicable;
- Their date of birth (this information will not be published or publicly available in the REQ);
- The address of their domicile (this information will not be published, and publicly available, in the REQ if their professional address is reported);
- The nature of the "significant control" exercised by the ultimate beneficiary or the percentage of shares or units held by or of which each one is a beneficiary; and
- The date on which each person because an ultimate beneficiary and, when applicable, the date on which each person ceased to be an ultimate beneficiary.

Reporting issuers, not-for-profit corporations, certain financial institutions pursuant to the *Insurers Act*, trust corporations, banks and associations within the meaning of the *Civil Code of Quebec* are exempt from this reporting requirement.



Who Is an Ultimate Beneficiary?

An ultimate beneficiary is a natural person or an entity that exercises "control in fact" of the enterprise or that ultimately holds at least 25% of its shares or units, by satisfying one or more of the following conditions:

i. The person is a holder, even indirectly, or a beneficiary of a number of shares or units of the Registrant, conferring on the person at least 25% of the voting rights or at least 25% of the fair market value of all the shares or units issued by the Registrant;

ii. Two or more persons have agreed to jointly exercise their voting rights so that together they have the capacity to exercise at least 25% of the voting rights;

iii. The person has any direct or indirect influence that, if exercised, would result in control in fact of the Registrant;

iv. The person is the general partner of the Registrant or, if a general partner of the Registrant is not a natural person, the person meets one of the conditions described in items (i) and (iii) or is a party to an agreement referred to in the following paragraph in respect of the general partner; and/or

v. The person is the trustee of the Registrant, noting that a legal person acting as a trustee is considered to be a natural person.

Entities that belong to a category of exempted Registrants as described above, as well as a legal person acting as a fiduciary, are considered natural persons for the purpose of determining ultimate beneficiaries.

How to Declare the Ultimate Beneficiary?

The ultimate beneficiary information is to be reported by means of an annual updating declaration or a current updating declaration filed directly with the REQ, by the end of the production period of the annual updating declaration.

Who Will Have Access to This Information?

The information respecting ultimate beneficiaries will be accessible to the public (with the exception of dates of birth, domicile of natural persons if a professional address has been disclosed, and names and domiciles of minors who are ultimate beneficiaries). However, the government may, by

regulation, determine any other information contained in the REQ that may not be available for consultation.

b. Provide Copies of Directors' IDs as Proof of Their Identity

Registrants will need to provide the REQ with copies of valid identification, with or without a photo, issued by a governmental authority for each director.

c. Declare the Dates of Birth of Natural Persons

Registrants will also need to declare to the REQ the dates of birth of the three shareholders holding the most voting rights, the president, the secretary and the chief executive officer who are not members of the board of directors. For partnerships, Registrants will need to declare to the REQ the dates of birth of each partner or, if the partnership is a limited partnership, of each general partner and of the three largest contributors to the partnership among the special partners.

Compliance and Issues with Non-Compliance

Existing penalties and administrative measures under the LPA will be applicable for Registrants who fail to comply with the new transparency requirements. Consequently, non-compliance with the new LPA requirements may result in the cancellation of the registration of the offending enterprise as well as in fines ranging from between $500 to $25,000. The same applies in respect of the Registrant's obligation to provide, for each director, a copy of identification issued by a government authority in support of any declaration concerning the directors.

7. Quebec's Privacy Requirements for Businesses

An *Act to modernize legislative provisions as regards the protection of personal information* (Bill 64), received assent on September 22, 2021, with a majority of its provisions coming into force over the following two years. Bill 64's objectives are to modernize the framework applicable to the protection of personal information in Quebec, alongside providing the regulator tools to enforce the requirements of the new regime, including the imposition of penalties. Bill 64 brings Quebec law in close alignment with those of other jurisdictions, including, the European Union's General Data Protection Regulation (GDPR).

Bill 64 applies to organizations based in Quebec and to any collection of personal information that takes place in Quebec, whether or not the organization is established in the province. Bill 64 may also apply to businesses in the province

that are federally regulated and otherwise subject to the Canadian federal privacy law, the *Personal Information Protection and Electronic Documents Act* ("**PIPEDA**").

Bill 64 amends a number of different Quebec acts, including Quebec's private sector privacy legislation, the *Act respecting the protection of personal information in the private sector* (the "**Quebec PI Act**"). The following constitutes a review of the new requirements for organizations who collect personal information in Quebec.

Rules for the Collection, Use and Disclosure of Information

New rules governing the collection, use and disclosure of personal information were introduced. Organizations that collect personal information in Quebec are required to:

i. obtain meaningful consent, including express consent in some situations;

ii. provide information in clear and simple language (including by way of a privacy policy) upon collection of personal information;

iii. where technological means are used to identify, locate or profile individuals, provide additional information in that respect;

iv. inform individuals when personal information is used to render a decision based exclusively on an automated processing of that information; and

v. destroy the personal information once the purpose for its collection is achieved or anonymize it, but only for legitimate purposes.

Governance Requirements Surrounding Privacy Oversight and Breach Reporting

In addition, there are governance requirements for organizations collecting personal information in Quebec. As of September 22, 2022, organizations collecting personal information in Quebec are required to appoint a Privacy Officer who is tasked with ensuring that the organization implements and complies with the *Quebec PI Act*. The Privacy Officer will be deemed to be the CEO unless the role has been delegated in writing. The Privacy Officer's contact information must be published on the organization's website.

As of September 22, 2022, organizations must also report breaches to the regulator, the Commission d'accès à l'information (CAI), where the breach poses a risk of serious injury to an individual. The "risk of serious injury"

assessment includes the sensitivity of the information concerned, the anticipated consequences of its use, and the likelihood that the information will be used for injurious purposes. Like in PIPEDA, organizations must keep records of breaches.

Policies and Privacy Impact Assessments

By September 22, 2023, organizations must publish governance rules and, if information is collected by technological means, a confidentiality policy. Bill 64 also requires organizations to conduct privacy impact assessments of systems that handle personal information and when personal information is transferred across the Quebec border.

Organizations will also need to enter into written agreements containing specific provisions with third party service providers that act as data processors by way of data processing agreements.

Enforcement Mechanisms and Penalties

To ensure compliance with these changes, Bill 64 contains enforcement mechanisms that will come into force on September 22, 2023. This includes: administrative monetary penalties up to $10 million or 2% of worldwide turnover for non-compliance, penal offences for contravention of the *Quebec PI Act* in some circumstances and a private right of action for individuals impacted by a contravention of the *Quebec PI Act*.

D. INCOME TAX

1. Residents

A resident of Canada (whether a corporation or an individual) is subject to Canadian tax on their worldwide income. Unlike some other jurisdictions, Canada does not provide a different tax treatment for a resident individual who is not domiciled in Canada.

Residence status for tax purposes is determined under common law and under the specific rules in the *Income Tax Act* (the "**ITA**").

A corporation is resident in Canada if its central management and control is in Canada or if it was incorporated in Canada after April 26, 1965.

An individual is resident in Canada if the centre of his or her life (family, home, work, property) is in Canada. An individual who sojourns in Canada for 183 days

or more in a particular calendar year is deemed to be a resident of Canada for that calendar year.

It is more and more common for individuals to have significant personal and business ties with, and to regularly spend significant amounts of time in, more than one country. This may be the case for individuals who spend significant amounts of time in Canada over several years in the course of their work and who also maintain a home, family and personal and business interests in another country. These individuals may be residents of Canada for Canadian income tax purposes and also residents of another country under the income tax law of that other country. Where Canada has a tax treaty with the other country, the treaty will typically contain “tie-breaker” rules to determine which of the two countries the individual is a resident of for tax purposes.

2. Non-residents

An individual or a corporation that is not a resident of Canada is only subject to income tax in Canada under the ITA on Canadian source income. This includes

income from a business carried on in Canada, income from employment performed in Canada and capital gains from taxable Canadian property (e.g., real property situated in Canada or assets used in a business carried on in Canada).

Canada's tax treaties generally provide relief from Canadian taxation of a non-resident's Canadian business income if the non-resident does not have a permanent establishment in Canada to which the income is attributable. Canada's tax treaties also generally provide relief from Canadian taxation of short-term employment (i.e., less than six months) or de minimis employment income.

If a non-resident disposes of taxable Canadian property, section 116 of the ITA requires the purchaser to withhold and remit a certain percent of the purchase price to the Canada Revenue Agency (the "**CRA**"), unless the vendor provides a clearance certificate from the CRA. This is a mechanism to ensure that the non-resident vendor notifies the CRA and provides the CRA with payment of or security for the estimated Canadian tax in advance of the sale.

A non-resident is also subject to a withholding tax on certain passive income paid to it by a resident of Canada (discussed in more detail below)

A non-resident providing services in Canada is subject to a different type of withholding under the Income Tax Regulations. This withholding is remitted to the CRA on account of the non-resident's income tax liability from carrying on business in Canada. The non-resident can generally recover this money from the CRA if they are resident in a country with which Canada has a tax treaty and if the income is not attributable to a Canadian permanent establishment.

3. Computation of Taxable Income

Income subject to tax includes income from business, property, employment and taxable capital gains (net of allowable capital losses).

Employment income includes wages, bonuses and taxable employment benefits. Remuneration paid to directors is income from employment. Allowable expense deductions against employment income are very limited. Employers, including non-resident employers with employees working in Canada, are required, subject to treaty relief, to withhold source deductions from employment income paid to employees. These source deductions are for the employee's income tax, employment insurance premiums and Canada Pension Plan contributions. The employer is required to remit the source deductions to the tax authorities on the employee's behalf. If these source deductions are not withheld and remitted, the directors of the corporation can be personally liable.

Income from a business or property for tax purposes is generally determined by reference to profit calculated under accepted accounting and commercial principles. Expenses must be incurred for the purpose of earning income to be deductible. Profit calculated in this way is subject to various adjustments under the ITA. Interest is generally deductible in computing income from business or property if the interest is payable on borrowed money used for the purpose of earning income or on unpaid purchase price for property acquired for the purpose of earning income.

Only a portion of a capital gain is included in income. Capital losses are generally deductible only against capital gains and are not deductible against income from other sources.

Unlike in the U.S., corporations cannot calculate their income for tax purposes and file a tax return on a consolidated basis. Each corporation in a corporate group must file a separate tax return and calculate its income on a stand-alone basis.

4. Tax Treaties

Canada has almost 100 international tax treaties, most of which are based on the Organization of Economic Co-operation and Development ("**OECD**") Model Tax Convention. These tax treaties generally reduce the rate of withholding tax and provide exemptions from taxation on certain income and capital gains. Most of these tax treaties provide that business profits of the non-resident are not subject to tax under the ITA, except where those profits are attributable to a permanent establishment of the non-resident in Canada.

Most of Canada's tax treaties do not contain anti-treaty shopping provisions. A notable exception is the Canada–U.S. Income Tax Convention which has Limitation on Benefits rules restricting treaty benefits to "qualifying persons".

On December 1, 2019, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the "**Multilateral Instrument**" or "**MLI**") came into force in Canada. The MLI applies to Canada's tax treaties that are covered by the MLI, and is designed to reduce the opportunities for tax avoidance and to prevent treaty abuse. The MLI will not affect the Canada–U.S. Income Tax Convention.

The CRA has not been successful in challenging alleged treaty shopping arrangements in Tax Court of Canada. The federal government is now considering

legislated anti-treaty shopping rules. The Tax Court of Canada has not yet considered the application of the MLI to alleged treaty shopping arrangements.

5. Transfer Pricing

The ITA contains transfer pricing rules based on the OECD Transfer Pricing Guidelines. Generally, these rules require transactions between a Canadian resident and a non-arm's length non-resident to take place on arm's length terms and for arm's length consideration. If transactions are not done on this basis, the CRA will determine the Canadian tax consequences as if the transaction were undertaken on an arm's length basis. CRA transfer pricing adjustments can give rise to significant additional tax and arrears interest. Transfer pricing adjustments can also give rise to significant penalties if the taxpayer does not have contemporaneous documentation to explain and justify the transfer price used.

Canada's transfer pricing rules apply to cross-border inter-company transactions such as the purchase and sale of goods, licences of intellectual property, management and administration services, interest charges and guarantee fees.

6. Canadian Subsidiary

a. Income Subject to Tax

A Canadian subsidiary will be a corporation resident in Canada and therefore subject to tax on its worldwide income.

b. Thin Capitalization Rules

Thin capitalization ("**thin cap**") rules protect the domestic tax base against reduction due to related party interest deductions. Thin cap rules effectively require a domestic subsidiary of a foreign parent to have a minimum equity investment. Historically, Canada was largely a capital importing country. Therefore, thin cap rules and withholding tax on interest payments to non-residents have been important tools in protecting the Canadian tax base.

c. Distributions

Dividends from a Canadian subsidiary are subject to withholding tax as described above.

Any amount paid on a redemption or purchase for cancellation of a share or on a distribution of share capital which is in excess of the paid-up capital

of the share is deemed to be a dividend and subject to withholding tax as such.

7. Canadian Branch of a Non-resident Corporation

a. Income Subject to Tax

Income of a foreign entity from a business carried on in Canada is subject to Canadian tax at the general corporate Canadian tax rate, unless treaty protected (see below). The main advantage of using a branch is that if the foreign investor is expecting to incur losses, the losses may be deducted by the foreign investor in computing its income from other sources (assuming the foreign investor's domestic tax legislation allows this). To the extent that a foreign investor pays Canadian income tax on the profits generated in Canada, the foreign investor may be able to claim a foreign tax credit in its home jurisdiction.

b. Tax Treaty Protection If No Permanent Establishment

Generally, if a foreign investor's country has a tax treaty with Canada, the foreign investor will not be subject to tax in Canada if the foreign investor does not have a permanent establishment in Canada (e.g., a fixed place of business in Canada such as an office, factory, warehouse, or an agent with authority to conclude contracts in the name of the foreign entity). If treaty protection is available and the non-resident has a permanent establishment in Canada, only income attributable to the permanent establishment will be taxed in Canada.

c. Branch Tax

In addition to tax at the general corporate rate, a branch is also subject to an annual "branch tax" on after-tax income. The income subject to branch tax is reduced by an investment allowance to reflect the retention of business assets and retained earnings in Canada. The branch tax is payable whether or not any after-tax income is distributed or repatriated to the foreign jurisdiction. With a subsidiary corporation, withholding tax only applies when dividends are declared and paid to the foreign parent.

d. Thin Capitalization Rules

The thin capitalization rules that apply to subsidiaries also apply to branches of foreign parent corporations.

e. Distributions

As branches are not considered to be separate entities, a transfer of funds out of the branch is not a dividend and is not subject to withholding tax. However, the branch tax (discussed above) is a proxy for the withholding tax that applies to dividends from a Canadian subsidiary.

f. Canadian Tax on Sale

A sale of real property or any other property from the business being carried on in Canada as a branch is a sale of taxable Canadian property subject to Canadian income tax.

E. SALES TAXES

1. Federal Goods and Services Tax

The Goods and Services Tax ("**GST**") imposed by the federal government is a 5% value-added tax on the supply of most goods and services in Canada. As discussed in greater detail in the Customs and International Trade section below, GST may also apply when importing taxable goods and services into Canada.

Under the *Excise Tax Act* (Canada) ("**ETA**"), GST is payable by the recipient of a taxable supply of goods or services made in Canada. Generally, a supplier of such goods or services is required to register for, collect and remit, the applicable GST to the CRA. However, the supplier is eligible to claim input tax credits ("**ITCs**") in

respect of goods or services imported or acquired for use in the course of the supplier's commercial activities. As a result, GST is ultimately imposed only on the end user that is not eligible to claim ITCs.

A non-resident will be required to register for GST if the non-resident is "carrying on business in Canada" (e.g., a non-resident carrying on business in Canada through a Canadian branch). The non-resident will need to review its activities in Canada to determine whether it is carrying on business in Canada for the purposes of the ETA. Generally, a non-resident person must post security as a condition of GST registration. However, a non-resident person that has a permanent establishment in Canada is permitted to register for GST without posting security. A "permanent establishment" is defined as a "fixed place of business through which the person makes supplies". This includes a place of management, a branch, an office, a factory or a workshop, a mine, an oil or gas well, a quarry, timberland or any other place of extraction of natural resources. If the non-resident does not carry on business in Canada, the non-resident may still register for GST on a voluntary basis in order to claim ITCs.

If a Canadian business is carried on through a Canadian subsidiary, the subsidiary would be required to register for GST purposes and collect and remit GST. There is no requirement for security to be posted as the subsidiary would be resident in Canada for GST purposes.

Since July 1, 2021, non-resident suppliers not carrying business in Canada may nonetheless have to register for, collect and remit the GST to the CRA on e-commerce sales. This new regime essentially applies to suppliers such as distribution platform operators, accommodation platform operators (e.g., Airbnb) and non-resident suppliers of certain tangible or intangible personal property and services made to Canadian consumers. Contrary to suppliers registered under the regular rules above-mentioned, those registered under the simplified GST registration are not eligible to claim ITCs.

2. Harmonized Sales Tax

Newfoundland and Labrador, New Brunswick, Nova Scotia, Ontario and Prince Edward Island (the "**Participating Provinces**") have harmonized their provincial retail sales taxes with the federal GST. The combined federal-provincial value-added tax is called the Harmonized Sales Tax ("**HST**"). The rate will vary depending on the province and the specific place of supply rules. Similar to the GST, ITCs are available for HST paid in the course of the supplier's commercial activities. It is to be noted that, the "electronic commerce" rules mentioned above also applies to HST. Thus, non-resident suppliers targeted by the new regime and

generating sales in Participating Provinces will also have to collect and remit HST to the CRA on those sales.

3. Quebec Sales Tax

Effective January 1, 2013, Quebec harmonized its Quebec's sales tax ("**QST**") with the GST. The QST essentially operates in the same manner as the GST/HST. A person carrying on business and making taxable supplies of goods and services in Quebec will be required to register for, and collect and remit QST to Revenu Quebec. Similar to the federal e-commerce rules, Quebec has adopted a specified system for non-resident suppliers, which resembles the federal regime with a few differences.

4. Provincial Retail Sales Tax

British Columbia, Manitoba, and Saskatchewan all impose a provincial retail sales tax ("**PST**") to end users on the sale or lease of most tangible personal property and certain services. Each province provides exemptions for some goods, such as certain foods and medicine and goods purchased for resale. If a non-resident is making sales into a province with PST, the non-resident would generally be required to register with the province, and collect and remit the PST.

Moreover, the three provinces each have their own electronic commerce rules applying to out-of-province suppliers' not conducting business in their territories. Unlike the federal and Quebec regimes, these provinces have not created a distinct registration regime and the rules in effect are narrower. For example, Manitoba only requires non-resident businesses to register as vendors if they are "online sales platforms", while British Columbia requires "marketplace facilitators" and providers of "online marketplace services" to register in order to collect and remit PST.

Alberta, the Northwest Territories, Nunavut and Yukon do not levy a PST and do not have a HST.

F. PAYROLL TAXES

1. Federal Employment Insurance and Federal Canada Pension Plan

Employers in Canada are required to pay Canada Pension Plan contributions and Employment Insurance premiums to the CRA. These payments are calculated as a percentage of payroll, subject to yearly maximums. Employees are also required to pay Canada Pension Plan contributions and Employment Insurance premiums.

The employer is required to withhold the employee contributions/premiums from the employee's salary and remit these to the CRA together with the employer contributions/premiums.

In certain cases, contributions to these plans may not be necessary. If there is a social security agreement between Canada and non-resident employee's home jurisdiction, there may be no Canada Pension Plan contributions required. In some cases, the non-resident employee will need to obtain a certificate evidencing social security coverage in their home jurisdiction.

2. Provincial Payroll Taxes

Certain provinces also impose payroll taxes or premiums. For example, Ontario imposes an Employer Health Tax based on the employer's payroll and the employer may be required to pay premiums to the Workplace Safety and Insurance Board.

G. CUSTOMS AND INTERNATIONAL TRADE

1. Customs Duties

Generally speaking, the importer of goods into Canada is the person who has title to the goods at the time of importation and reports and accounts for the goods to the Canada Border Services Agency ("**CBSA**") upon entry into Canada. The importer must pay any applicable customs duty and GST in respect of the goods to the CBSA at the time the goods are accounted for.

GST is payable on importation of the goods on the "value for tax". The value for tax is deemed under the ETA to be equal to the total of the value for duty (discussed below) plus the amount of duties and taxes, if any, payable on the goods under certain other federal statutes. Provided the foreign investor (or its Canadian subsidiary, as the case may be) is registered for GST at the time the goods are accounted for, the foreign investor (or its Canadian subsidiary) will be entitled to claim ITCs to recover the full amount of GST paid on importation of the goods into Canada. The import/export profile of the company's Business Number (BN) needs to activated in order for the company to import or export commercial goods to and from Canada.

2. Value for Duty

Depending on the tariff classification and tariff treatment of the imported goods, customs duty may also be payable at the time of importation in addition to the

GST. Customs duty will be calculated on the value for duty of the goods. Even if customs duty is not applicable on certain goods, the value for duty must be determined and reported to the CBSA at the time of importation. In most cases, the value for duty is the amount paid to the vendor for the goods. The company's declaration of value for duty should be supported by a receipt or sales invoice from the vendor. This document must include a complete description of the goods, the selling price and conditions and terms of the sale. Memorandum D1-4-1, CBSA Invoice Requirements provides additional information. The value for duty declared to the CBSA is in Canadian funds.

Since most goods are imported to Canada as a result of a sale for export to a purchaser in Canada, the transactional value method ("**TVM**") is applicable. Under the *Customs Act* (the "**Customs Act**"), the primary basis of determining the value for duty of imported goods is the TVM. This method and the five alternate methods of determination are identified in sections 48 to 53 of the Customs Act. The sequential order of these methods must be followed in order to determine value for duty.

The value for duty would be based on the price paid or payable for the goods in that sale, if all the requirements of the transaction value method are met. The transaction value method (section 48 of the Customs Act) can only be applied in cases where the goods being appraised must be the subject of a sale for export to Canada to a purchaser in Canada. Typically, a sale for export to a purchaser in Canada can be identified and it is for this reason that that the primary method of appraisal is the TVM. The remaining five customs valuation methods generally will be applied when no "sale for export to a purchaser in Canada" can be identified. The five alternative customs valuation methods are:

Section 49 – The transaction value method of identical goods

Section 50 – The transaction value method of similar goods

Section 51 – The deductive method of valuation

Section 52 – The computed method of valuation

Section 53 – The residual method of valuation

3. Tariff Classification

The importer will need to determine the correct tariff classification number. These numbers along with the goods country of origin are used to determine the rate of duty applied to the goods at the time of importation.

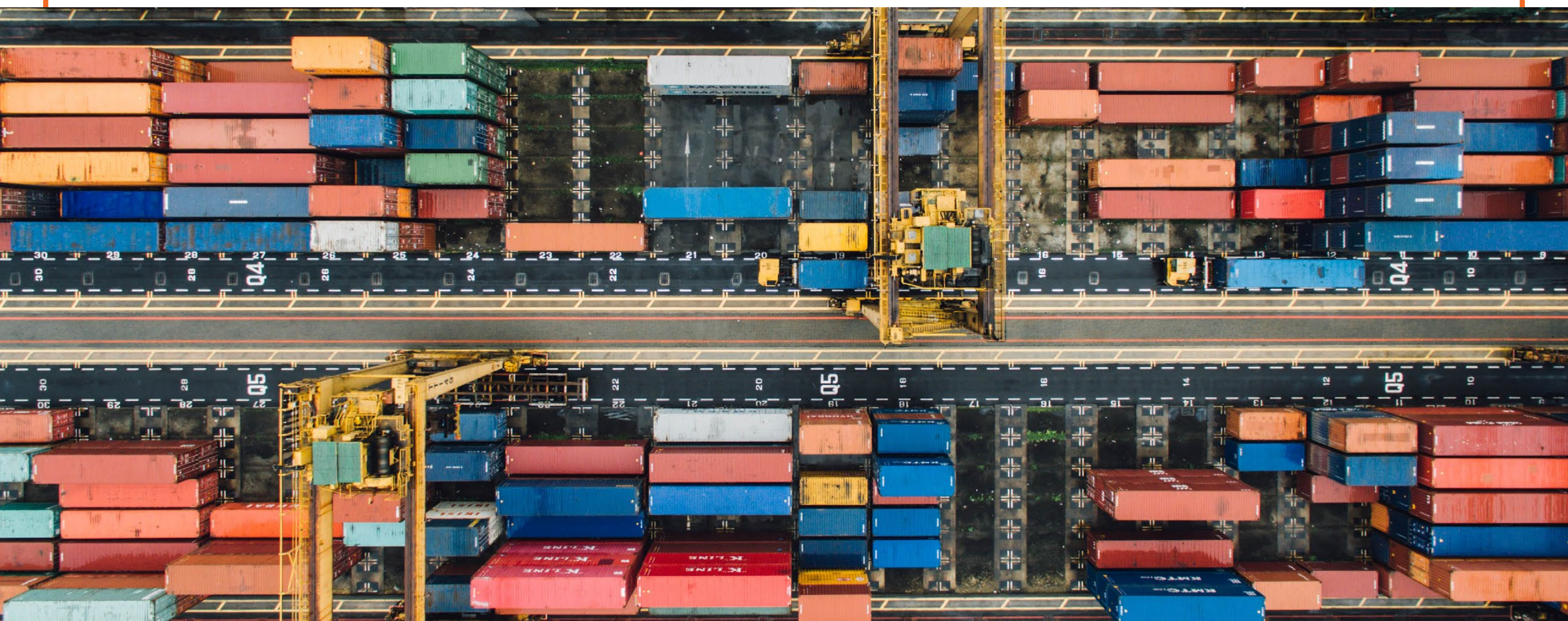
Most countries use the World Customs Organization's ("**WCO**") Harmonized Commodity Description and Coding System, which is generally referred to as the Harmonized System (the "HS"). The classification is composed of 10 digits. The first six digits are a common identifier across all countries using the HS for that particular good. The following four are unique to Canada and used to establish the duty rates and for statistical purposes.

The Customs Tariff stipulates that regard for classifying goods shall be given to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System and the Explanatory Notes to the Harmonized Commodity Description and Coding System, published by the WCO. For more information on classifying goods imported into Canada please refer to Canada customs memorandum D10-13-1 – Tariff Classification of Goods at the following link: https://www.cbsa-asfc.gc.ca/publications/dm-md/d10/d10-13-1-eng.html

4. Origin – Preferential Tariff Treatment

There are two elements that establish the customs rate of duty payable on imported goods. One of the elements is the tariff classification of the goods and the other is the origin of the goods.

A lower rate of duty on goods (i.e., typically duty-free rate) may be applied on imported goods for goods originating from countries with whom Canada has free trade agreements (each, a "**FTA**"). Other preferential tariff treatments (e.g., Least Developed Country Tariff, General Preferential Tariff) also provide duty-relief.



The importer must have valid proof of origin in their possession at the time of accounting to be provided to the CBSA upon request. All claims for a preferential tariff treatment must also meet the shipping requirements (such as direct shipment, transit and transhipment) for that tariff treatment.

5. Importation and the Canada Border Services Agency

All goods entering into Canada must be declared with the CBSA which verifies compliance of the imported goods with Canadian laws and collects customs duties and applicable excise taxes.

The federal government also controls the import, export and transfer of certain goods and technology. The *Export and Import Permits Act* provides for the control of certain goods imported or exported, and requires the importer or exporter, as the case may be, to obtain applicable permits prior to the importation or exportation of the listed goods. For example, an import permit must be obtained for importing goods such as steel products, weapons and munitions, and certain agricultural and food products.

Pursuant to the *Defence Production Act*, an entity that possesses, examines or transports “controlled goods” within Canada must be registered under the Controlled Goods Program, which is administered by the Department of Public Works and Government Services. Controlled goods are listed in the Export Control List and include “Group 2” goods, being certain munitions.

There are also significant legislative requirements relating to the importation of foods, agricultural commodities, aquatic commodities and agricultural inputs. They are all subject to the inspection procedures of the Canadian Food Inspection Agency.

Imported goods may need to comply with bilingual (English and French) labelling requirements if the goods are sold in Canada.

6. Export Limitations

Canadian exporters may be restricted from exporting certain goods to any country. For example, if an exporter is exporting certain restricted goods listed in the Export Control List, export permits or other authorizations may be required. Canadian exporters may also be restricted from exporting any goods to certain countries.

The Area Control List is a list of countries to which the export of any and all goods is restricted. Further, the *Special Economic Measures Act* (“**SEMA**”) restricts

dealings with subject countries (e.g., Russia), including limitations on travel and the imposition of trade prohibitions.

Canadian sanctions are imposed under the *United Nations Act*, SEMA or the *Justice for Victims of Corrupt Foreign Officials Act*. For information corresponding to the specific sanctions regime imposed on countries or individuals the relevant regulations should be consulted. The link to view current Canadian sanctions is as follows: https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/current-actuelles.aspx?lang=eng

7. Anti-dumping & Countervailing

The Canada Border Services Agency supports Canadian producers who face unfair foreign competition in the domestic marketplace. The CBSA administers the *Special Import Measures Act* (**SIMA**), to protect Canadian industry from injury caused by the dumping and subsidizing of imported goods. SIMA provides the framework with respect to establishing whether Canadian producers have been injured and the applicable antidumping and countervailing duty.

Current measures in force to which countervailing and antidumping duties are applicable can be found at the following link: https://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/menu-eng.html

8. Free Trade Agreements

In recent years, Canada has been a full participant in the effort to reduce global trade barriers. Free trade agreements have been negotiated with the United States and several other countries. Canada is a member of the World Trade Organization (the "**WTO**") and has 15 FTAs with 51 different countries. The most notable FTAs are the Canada-U.S.-Mexico FTA (CUSMA), the Canada-EU Comprehensive Economic and Trade Agreement (CETA), and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which is a FTA between Canada and ten other countries mostly from the Asia Pacific region.

Preferential tariff treatment (duty-free) is provided for goods originating from FTA countries.

9. Modern Slavery Legislation

Canada's new modern slavery legislation, *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, commonly referred to as the *Modern Slavery Act* (the "**MSA**"), came into force on January 1, 2024. The MSA implements Canada's

international commitment to reduce the use of forced labour and child labour in foreign and domestic supply chains by increasing the transparency of various organizations' supply chains.

To increase transparency, the MSA imposes a reporting obligation on a broad range of entities, including: government institutions, Canadian listed companies, domestic companies and certain foreign companies that do business or own assets in Canada.

This reporting obligation requires the annual filing of a statement on measures taken by covered entities to identify, address, and prevent both forced labour and child labour in their supply chains and operations. Affected companies must their statement by May 31st of each year.

H. FOREIGN INVESTMENT REVIEW

Foreign investments in Canada are regulated under the federal *Investment Canada Act* ("**ICA**"). Its purpose is to encourage foreign investment in Canada by non-Canadians on terms beneficial to Canada. The ICA is primarily administered by Innovation, Science and Economic Development Canada Industry Canada, except for investments in cultural businesses which are administered by the Department of Canadian Heritage.

Under the ICA, the establishment of a new Canadian business by a foreign investor is subject to notification, and the acquisition of control of an existing Canadian business by a foreign investor is either "notifiable", which requires the filing of a notice of investment, or reviewable, which requires the filing of an Application for Review.

In addition, pursuant to the ICA's national security provisions, the Government can order the review and ultimately challenge any foreign investment in a business in Canada that is deemed injurious to national security.

I. COMPETITION LAW

The *Competition Act* governs a variety of business conducts, including misleading and deceptive advertising, deceptive telemarketing, contests and competition issues such as price discrimination.

The Competition Bureau enforces Canada's competition laws. If a proposed merger transaction is both a "large transaction" and involves parties to the transaction that are themselves, individually or collectively, "large", then there is a legal obligation to pre-notify the Competition Bureau.

J. SECURITIES LAW

1. Canadian Securities Regulatory Regime

The regulation of the sale and distribution of securities in Canada is a matter of provincial and territorial jurisdiction. In Canada (unlike in the U.S.), there is no national or federal securities statute, although there is a push towards a federal system. Each of the 10 provinces and three territories is responsible for and has its own system of securities regulation, and its own securities regulatory authority (e.g., the Ontario Securities Commission).

Despite the fact that securities regulation in Canada is not centrally governed, the Canadian Securities Administrators (CSA), an umbrella organization of Canada's provincial and territorial securities regulators whose objective is to improve, coordinate and harmonize regulation of the Canadian capital markets and protect Canadian investors from unfair, improper or fraudulent practices has developed a number of initiatives to harmonize the different rules and policies in effect in the various jurisdictions relating to publicly-traded companies. Such uniform national mandates include mutual reliance procedures for filing and clearing prospectuses, timely disclosure, electronic filings under SEDAR+ (the Canadian equivalent to EDGAR), shareholder communication, and continuous disclosure.

Both the securities which are distributed and the persons and companies, such as dealers, who participate in the distribution, are governed by securities legislation. For example, any person who is in the business of trading in securities or provides securities advice, or acts as an investment fund manager in Canada must meet certain registration requirements, unless there is an available registration exemption. Further, certain prospectus requirements must be met for distributions of securities. There are certain exemptions from these requirements. The most commonly utilized prospectus exemptions are: (1) the accredited investor exemption, whereby an investor who qualifies as an "Accredited Investor" pursuant to certain asset or income thresholds may purchase securities on a prospectus-exempt basis; (2) the friends, family and business associates exemption, whereby certain investors may purchase securities on a prospectus-exempt basis based on their relationship with the issuer or its directors and officers; and (3) the minimum amount investment exemption, whereby a person that is not an individual (and is not created for the sole purpose of making the investment) may purchase securities on a prospectus-exempt basis if they are investing a minimum of $150,000 in cash at the time of distribution.

2. Canadian Stock Exchanges

The Toronto Stock Exchange (the "**TSX**") and the TSX Venture Exchange (the "**TSXV**") are two of the largest stock exchanges in Canada. The TSX is intended to be used by senior issuers and the TSXV is primarily used by more junior issuers that have not met certain requirements for listing on the TSX. A third Canadian exchange is the Canadian Securities Exchange (the "**CSE**") which offers an opportunity for micro-cap and emerging growth companies to list their shares with a reduced barrier to listing and reduced ongoing listing requirements as compared against both the TSX and TSXV. All companies listed on the TSX, TSXV and CSE are required to complete a listing application to the respective exchange which allows the exchange to assess whether the applicant company meets its specific listing criteria. In addition, any company seeking to go public in Canada must file audited consolidated financial statements for two to three years preceding the listing date, which generally must be prepared in accordance with Canadian IFRS.

While the TSX, TSXV and CSE each have differing threshold requirements for accepting an application to list on the respective exchange, certain factors considered by the exchanges include, a record of successful operations, sufficient experience and expertise of the management of the applicant company, whether the company has or has access to capital sufficient to operate the company and its business plan for the subsequent 12 months, and whether there are sufficient outstanding securities in order for there to be a viable market in the trading of the company's listed securities. There are typically additional listing requirements and levels of scrutiny for companies whose principal business operations or operating assets are primarily located in or conducted from a jurisdiction outside Canada, the United States, Australia, New Zealand or Western Europe.

Once a company is listed, each exchange will have ongoing listing requirements related to corporate governance, ongoing disclosure (in addition to corporate and securities laws requirements) and approvals for certain share issuances or amendments to certain organizational and other key corporate documents. Failure to meet such ongoing listing requirements may lead to, among other things, the issuer being delisted from the exchange.

3. Multijurisdictional Disclosure System

The multijurisdictional disclosure system (the "**MJDS**") is a cooperative effort between the U.S. Securities and Exchange Commission (the "**SEC**") and Canadian provincial securities regulators. It was established to facilitate cross-border securities offerings between the two countries.

Under the MJDS, there are two directions of offerings: northbound and southbound. The northbound MJDS enables U.S. issuers to offer securities in Canada following SEC regulations. It encompasses various activities such as rights offerings, takeover and issuer bids, business combinations, approved debt and preferred share offerings, as well as securities offerings by specific large issuers. Similarly, qualified Canadian issuers can access U.S. capital markets through the southbound MJDS rules. With the southbound MJDS, Canadian issuers can offer securities in the United States using a prospectus prepared in accordance with Canadian securities rules, while also incorporating specific additional disclosures. To qualify for the southbound MJDS, a Canadian "foreign private issuer" (excluding "investment companies" as defined by U.S. legislation) must have complied with the continuous disclosure requirements of any provincial securities regulator for a period of 12 calendar months and the issuer's aggregate market value of equity shares must be at least US$75 million.

4. Public Company Mergers and Acquisitions

In general, mergers and acquisitions of public companies are regulated under Canadian securities law, general corporate law, and precedent set by courts of competent jurisdiction. Procedural and substantive fairness requirements must be satisfied for many transactions. There are additional requirements for certain transactions involving publicly-traded companies, namely related-party transactions, that include requirements for formal valuations and/or approval of majority of the minority shareholders, subject to certain exemptions.

5. Insider Trading

In Canada, securities laws prohibit insiders of a publicly-traded company and other individuals with privileged access to undisclosed material facts or material changes from engaging in trading securities of that issuer while possessing such knowledge.

To the extent any reporting insider of a public company trades the securities of the issuer of which they are an insider during a period where no material non-public information is in their possession, they are required to file an insider report within five days of the change in their beneficial holdings. A "reporting insider" encompasses various persons such as significant shareholders (including those who have beneficial ownership of, or control or direction over, whether direct or indirect, more than 10% of the voting rights associated with the issuer's outstanding voting securities on a post-conversion basis for any convertible securities), the CEO, CFO, COO, directors of the issuer, or significant shareholders of the reporting issuer or its majority subsidiary.

K. IMMIGRATION

1. Temporary Entry

Subject to certain exemptions discussed below, individuals cannot work in Canada without a valid work permit.

The standard process for an employer to bring a foreign worker into Canada is to obtain a positive Labour Market Impact Assessment (LMIA) from Employment and Social Development Canada (ESDC)/Service Canada. The employer in Canada would most likely need to advertise for the position to Canadians and permanent residents before submitting the LMIA application. The LMIA is primarily based on the following factors:

i. whether the work is likely to result in direct job creation/retention for Canadians;

ii. whether the work is likely to result in the creation or transfer of skills;

iii. whether the work is likely to fill a labour shortage;

iv. whether the wages are sufficient to attract Canadians and retain them in that work;

v. whether reasonable efforts have been made to hire Canadians; and

vi. whether employment of the foreign national is likely to adversely affect the settlement of any labour dispute.

If the Canada United States and Mexico Agreement (CUSMA) or the General Agreement on Trade in Services (GATS) applies, there may be an exemption from a LMIA and a more streamlined process may be available. For example, under CUSMA, business visitors, professionals, traders and investors, and intra-company transferees qualify for preferential treatment. The GATS provides similar preferential treatment, with slightly more restrictive categories, for qualified workers from a WTO member country.

The intra-company transferee category under CUSMA is available where the non-resident will be employed by his or her foreign employer or a subsidiary or affiliate of the foreign employer. The non-resident must be working as an executive or manager or as a worker with specialized knowledge. An intra-company transferee category is also available under the GATS.

Citizens of certain countries can enter Canada on a temporary basis without a visa or a work permit. This includes employees of a non-resident corporation that carries on business in Canada. These individuals cannot enter the labour market and the activities the individual can undertake in Canada are restricted (e.g., the individual can only meet with other employees of the non-resident corporation or its subsidiary and cannot sell goods to the public). The temporary stay is generally limited to 182 days maximum.

2. Permanent Residence

A permanent resident can apply to work for any employer in Canada and their spouse or dependent children may also accept employment or attend school in Canada without any prior authorization. As the application for permanent residence takes longer than a work permit, those who have applied for

permanent residence can apply for a work permit during the time that they are waiting for their permanent residence application to be approved.

L. EMPLOYMENT

Canada is generally a more employee-friendly jurisdiction than the U.S. Practices that are common in the U.S. (such as random drug testing) are generally not allowed in Canada. Moreover, unlike the U.S., the concept of "at-will" employment does not exist in Canada: employees are entitled to minimum statutory notice in the event of termination by the employer without just cause.

Employment relationships in Canada are affected by various sources, including:

- **Legislation:** Provincial and federal statutes regulate all aspects of employment, including minimum employment standards, human rights and accessibility, occupational health and safety, workers' compensation, and benefits/pensions. Labour law legislation in each jurisdiction also regulates workplace relations and collective bargaining between employers and unions.
- **Contracts:** Employers and employees are free to negotiate the contractual terms and conditions of the employment relationship, as long as these terms do not fall below the minimum standards established by employment-related legislation.
- **Common Law:** In all Canadian jurisdictions except Quebec (where employment is governed by the rules set out in the Code), the common law (i.e., judge-made law) incorporates implied rights and obligations into employment relationships, such as the obligation to provide employees with "reasonable notice" of termination of employment absent a limiting provision in their employment contract, unless there is just cause for summary dismissal. A similar right to reasonable notice is required in Quebec, as set out in the Code.

1. Jurisdiction of Employment

The default rule is that provincial governments have exclusive authority to regulate labour and employment law within their borders. However, due to the way in which Canada's constitution divides powers between the provincial and federal governments, employment in certain industries (such as banking, interprovincial transportation, and telecommunications) is regulated solely by the federal government. Employers who are provincially regulated for employment law purposes will be subject to provincial employment standards, health and safety, labour relations, and human rights legislation, while federally regulated employers will be subject to federal legislation, such as the *Canada Labour Code*.

2. Employment Standards Legislation

Legislation in each jurisdiction (i.e., each province and territory, and the federal sector) establishes the minimum employment standards that apply to work performed in that jurisdiction. These statutes cover subjects such as minimum wage, overtime pay, hours of work, holidays, vacation and various paid and unpaid leaves of absence (e.g., sick leave, parental leave, bereavement leave, compassionate care leave, organ donor leave, etc.). The parties cannot contract out of these minimum entitlements.

The manner in which an employee is paid (i.e., whether on a salaried or hourly basis) does not affect an employee's entitlement to statutory overtime pay in Canada. Rather, exemptions from statutory overtime pay are generally tied to the employee's job functions; for example, many jurisdictions exempt professionals (lawyers, information technology professionals, etc.) and managerial and supervisory employees from entitlement to statutory overtime pay.

As discussed further below, employment standards legislation also sets out the minimum notice and severance entitlements owed to an employee upon the termination of their employment by the employer.

3. Human Rights and Accessibility

The *Canadian Charter of Rights and Freedoms* establishes equality rights which constrain the actions that the government may take. It does not apply to private businesses.

Each jurisdiction has human rights legislation which prohibits employers from discriminating against an individual in employment on the basis of protected grounds. Protected grounds differ between jurisdictions, but include characteristics such as race, ancestry, place of origin, colour, ethnic origin, citizenship, creed/religion, sex, gender expression, gender identity, sexual orientation, age, record of offences, marital status, family status, and disability (which includes mental health disorders, addiction, etc.). The law prohibits direct discrimination of individuals on these grounds, as well as “constructive” or adverse effect discrimination, where a seemingly neutral rule has the effect of subjecting a group to unequal treatment.

Employers have a duty to accommodate employees’ needs in relation to their protected personal characteristics, up to the point of undue hardship. Accommodations most commonly relate to the protected grounds of disability, sex (pregnancy), family status, and creed/religion. Examples of workplace accommodations include changing an employee’s work schedule, modifying their job duties, and/or permitting a leave of absence.

Each province, and the federal government, has established human rights commissions or tribunals to process human rights complaints. Individuals who believe that they have experienced unlawful discrimination may file a complaint with the applicable body. Alternatively, individuals may sometimes be able to allege contraventions of human rights legislation in court proceedings (for example, as part of a wrongful dismissal lawsuit).

Several Canadian jurisdictions have implemented, or are in the process of implementing, accessibility standards with the goal of making it easier for individuals with disabilities to access goods, services, and employment. Currently, accessibility legislation in Ontario, Manitoba and Canada requires employers to, among other things, provide employees with training on the accessibility standards (e.g., on providing accessible customer service) and to share employment-related information in accessible formats. Larger employers must also submit accessibility compliance reports to the provincial government at regular intervals.

4. Termination of Employment

Generally, non-union employee may be terminated by the employer "for cause" or without cause providing they are provided with proper advance notice. Employees in Quebec and federally-regulated businesses have certain just cause protections, similar to unionized employees.

a. Termination Without Cause

When employment is terminated without cause, employees will be entitled to, at minimum, (i) any contracted-for entitlements set out in their employment agreement, and (ii) statutory notice of termination or payment in lieu thereof, along with other entitlements such as statutory severance pay, benefits continuation, etc., as may be required by the applicable employment standards legislation.

In large group terminations, the minimum statutory notice entitlements are higher. In addition, notice of large group terminations must be provided to the government.

In Canada, the common law (i.e., judge-made law) implies an obligation for an employer to provide employees with "reasonable notice" of the termination of employment, absent an express term in an employment agreement that limits an employee's entitlement to same. The calculation of reasonable notice depends on such factors as the employee's age, position, salary, years of service, likelihood of securing alternative employment. Reasonable notice is inclusive of the minimums, and generally maxes out at two years' notice for long service management employees. If less notice is provided, courts on a wrongful dismissal action will generally award damages to put the employee in the same position they would have been in if actively working during that time, minus any amounts the employee earned from new employment during that period.

An employee's entitlement to reasonable notice of termination at common law can be limited via a termination provision in their employment agreement. Care is needed when drafting such provisions, as Canadian courts subject termination provisions in employment agreements to heavy scrutiny. If any part of a termination provision contravenes applicable employment standards legislation, even inadvertently, the entire provision will be declared void and unenforceable and the employee will be entitled to reasonable notice of termination at common law.

In Quebec and unlike the common law jurisdictions, employees cannot contract out of their right to reasonable notice under the *Civil Code of Quebec* upon signing the employment agreement. In Quebec and Nova Scotia, employees who believe that their employments have been unlawfully terminated may file a claim and seek reinstatement as a remedy under employment standards legislation. Reinstatement is also an available remedy under the *Canada Labour Code*.

b. Termination for Cause

Alternatively, an employee who has engaged in severe misconduct (i.e., conduct that fundamentally breaches the essential terms of the employment relationship, or otherwise renders continued employment impossible) may be terminated on a summary basis for "just cause". Just cause for termination is a high threshold. In most jurisdictions, the employment standards legislation contains a similar exemption for conduct amounting to "just cause", "willful misconduct" or "serious reason" for termination.

In Quebec, employees with two or more years of service may challenge their termination for performance related reasons under a government tribunal which provides a free lawyer, and may have a right to reinstatement. Federally-regulated non-management employees with more than one year of service have a similar right.

Due to the nuances in this area, employers should obtain legal advice before proceeding with a termination for cause.

5. Occupational Health and Safety

Each jurisdiction has established occupational health and safety legislation to keep workers and the public safe. This legislation imposes rights and duties upon employers, supervisors, owners, and employees, including:

- an obligation to take every precaution reasonable in the circumstances to protect the health and safety of workers;
- the right for workers to refuse unsafe work;
- the requirement to establish workplace health and safety committees;
- prohibitions on reprisal against an employee for raising a workplace health and safety complaint;
- the requirement to provide adequate training to workers and supervisors;
- the requirement to report workplace accidents to the appropriate government body; and
- the requirement to establish policies and procedures to prevent and investigate incidents of workplace violence and harassment.

An employer's breach of workplace safety requirements can result in substantial fines and/or imprisonment (including, in some jurisdictions, against directors and officers personally).

6. Workers' Compensation Legislation

Each jurisdiction has established a no-fault worker's compensation system to compensate employees who are injured in the course of their employment. These programs are funded by employer-paid premiums, with applicable rates generally being determined on the basis of factors like the employer's payroll, industry sector, and the employer's history of injuries or accidents in their workplace.

7. Unionization

Each province, and the federal jurisdiction, has its own labour relations legislation regulating workplace relations and collective bargaining between employers and unions.

Typically, the process by which a workplace becomes unionized begins with a union conducting an organizing campaign in which it attempts to obtain sufficient support among workers in a proposed group of employees in a workplace (a "bargaining unit"). Support for the union is evidenced by the signing of union membership cards. If sufficient support is obtained, the union will

file a certification application before the applicable labour relations board or tribunal. The labour relations board will determine which employees fall within the bargaining unit. At that point, depending on the jurisdiction, the union may become certified immediately if it submits union membership cards from a majority of employees in the bargaining unit (card-based certification) or, if the union has sufficient membership evidence, a secret ballot will be conducted to determine whether the union is to be certified.

When a certification application is successful, the union becomes the sole bargaining agent of the employees in the bargaining unit, with authority to negotiate the terms and conditions of employment on their behalf.

The timelines in which employers must respond to a certification application before a labour relations board or tribunal is generally very short. Moreover, employer conduct during the certification process will be scrutinized heavily, as labour relations legislation prohibits employers from interfering with the formation of a trade union. Employers who are alerted to a union organizing campaign or a certification application should consult legal counsel immediately.

8. Privacy

Privacy-related rights and obligations in the employment context do not apply uniformly across Canada but instead are subject to the specific jurisdiction of the employment relationship.

The federal government, and the provinces of British Columbia, Alberta, and Quebec, have passed legislation regulating how employers handle employees' personal information. In these jurisdictions, consent is typically required to collect, use, or disclose personal information. These statutes also create obligations as to how employers store and retain employees' personal information.

9. Employment Benefits

Canada Pension Plan (CPP) and Employment Insurance (EI): Employers in Canada are required to pay Canada Pension Plan contributions and Employment Insurance premiums to the Canada Revenue Agency (CRA), calculated as a percentage of payroll, subject to yearly maximums. Employees are also required to pay Canada Pension Plan contributions and Employment Insurance premiums; employers must withhold these employee contributions from the employee's salary and remit these to the CRA together with the employer contributions/premiums.

Health Care. Government-funded medical care is available to all citizens in Canada. However, government health insurance does not cover everything (e.g., vision and dental care), and so many employers provide group extended health insurance, intended to pick up where the government plan ends. In order to be competitive, an employer might wish to provide such extended coverage.

Other Private Insurance. Many employers also choose to provide employees with long term disability insurance and life insurance as an additional employment benefit, in addition to other types of non-mandatory coverage. Short term disability coverage is less common, particularly for smaller employers. Although some government-funded disability benefits are available (currently for up to 17 weeks), and some minimal life insurance is available through the Canada Pension Plan, most employers offer some type of additional coverage to their employees.

Retirement Savings Benefits. Canada has government provided pension benefits, but many employers will supplement these by offering a Group Registered Retirement Savings Plan (RRSP), similar to a 401K Plan in the U.S. This allows employees the opportunity to establish personal savings accounts for tax-deferred retirement savings. Under this system, employees can establish individual, personal accounts on their own with a bank or other provider, and an employer can optionally choose to make its own contributions to the employee's individual account in whatever amount it elects. Larger employers may have a Registered Pension Plan, although they are becoming less common due to high administrative costs and potential funding deficits for defined benefits plans.

10. Language Requirements in the Workplace (Quebec only)

The province of Quebec's sole official language is French. On May 24, 2022, the Québec National Assembly passed Bill 96, An *Act respecting French, the official and common language of Québec*, amending the *Charter of the French Language* in order to introduce new measures to ensure the predominance of French in the workplace.

Most of the amendments made by Bill 96 came into force on June 1, 2022.

Accordingly, workers have a right to carry on all activities in the workplace in French. As a corollary to this right, an employer must use French in all written communication to its employees or exclusively in a language other than French, if so expressly requested by the employee.

Under the *Charter of the French Language*, employers must also:

- use French in any employment contract the employer enters into (or in a language other than French at the express wish of the parties);
- draft employment-related documents in French and, if available in another language, ensure that the French documents are available on equally or more favourable terms;
- if a job posting is posted by the employer or a recruiter in a language other than French, the employer must ensure the postings in English and French are posted simultaneously, using transmission means of the same nature and that reach a target audience of a comparable size; and,
- not require the knowledge of a language other than French to obtain or maintain a position, unless the nature of the duties require such knowledge and the employer first took reasonable means to avoid imposing such a requirement.

As of June 1, 2025, all businesses employing more than 25 persons in Quebec for at least 6 months must register with the OQLF and comply with various francization obligations (as previously discussed in Section B above).

Businesses with 100 or more employees in Quebec must form a francization committee. This committee must analyze the linguistic situation and develop, implement and supervise the francization program. This measure does not have to be met from day one. It can be implemented gradually, over a certain period of time.

Bill 96 has doubled the minimum fine for any misrepresentation to the *Office québecois de la langue française* or any contravention of an order of the *Office québecois de la langue française*, as well as when an offence is committed by a director or officer of a legal person. It also provides that, unless they have exercised due diligence, directors of a legal person will be presumed to have committed an offence by that legal person.

M. REAL ESTATE INVESTMENT

1. Registration Systems

There are two registration systems in Canada, one is the older registry system and the other is a land titles or "Torrens" system. Registration under the registry system provides notice to third parties and can establish priorities among competing interests, though it does not establish whether there is a valid interest in the land.

In order to determine the interest held in the land under the registry system, it may be necessary to review all documents affecting land back to the initial Crown grant. Title searches must be undertaken and prospective buyers receive legal opinions regarding the title and interests attached to the land.

The current land titles system provides an up-to-date statement as to the ownership and other interests in the land without having to examine all the documents dating back to the Crown grant. Most registry systems have been converted to land titles systems.

2. Title Insurance

Title insurance is used to provide protection against fraud or forgery in real estate transactions as well as indemnification against specified losses. A title insurance policy will protect the insured to the extent of the policy and provides for a duty to defend in the event of a claim. This differs from a legal opinion. For example, while title insurance provides an indemnity against specified losses, a solicitor who furnishes a legal opinion can only be held responsible if there is negligence on his or her part.

3. Ownership Restrictions for Non-residents

Non-residents can generally own real property in Canada without restriction. However, as each province regulates property ownership, each province is able to restrict the acquisition of land by individuals who are not citizens or permanent residents or corporations controlled by citizens or permanent residents. For example, in Alberta, there is a limit to the types of land that can be held by non-residents. For corporations that are not incorporated in the subject province, the corporation will generally need to acquire an extra-provincial license to purchase property in the province in which the land is located. Also, both British Columbia and Ontario have introduced a "foreign buyers tax" in respect of certain acquisitions of real property by non-Canadian residents. The "foreign buyers tax" is twenty percent (20%) in British Columbia, and fifteen percent (15%) in Ontario (if applicable). Quebec has specific legislation that regulates the ability of non-residents to purchase more than four (4) hectares of agricultural land. The Federal government has recently passed legislation entitled the Prohibition on the Purchase of Residential Property by Non-Canadians (the "Act"), which Act came into effect on January 1, 2023. Pursuant to the Act, non-Canadians are prohibited, for a two year period commencing January 1, 2023, from purchasing certain types of residential property in various specified areas across the country.

When a non-resident disposes of real property situated in Canada, the non-resident is subject to the withholding tax obligations discussed above, which are applicable to taxable Canadian property.

4. Land Transfer Taxes

All provinces impose a tax on the transfer of real property. Rates vary widely and in some cases affect different portions of the purchase price of the land. Certain cities like Toronto impose an additional municipal land transfer tax. There are some differences between commercial and residential land transfer tax rates in certain provinces.

N. PRIVACY, DATA PROTECTION, AND CYBERSECURITY

1. Private Sector Privacy Legislation

The *Personal Information Protection and Electronic Documents Act* governs the collection, use and disclosure of personal information by private sector entities in Canada. Further, given Canada's federalist system, some provinces have their own private sector privacy legislation which has been deemed "substantially similar" to PIPEDA, including British Columbia's *Personal Information Protection Act* (BC PIPA), Alberta's *Personal Information Protection Act* (AB PIPA) and Quebec's *An Act Respecting the Protection of Personal Information in the Private Sector* (QC Act). More than one law can apply to a single processing activity and organizations may need to deal with more than one privacy commissioner's office. Notably, PIPEDA does not apply to personal employee information unless it is held by a federal work, undertaking, or business.

PIPEDA requires the reporting to the Office of the Privacy Commissioner (the "**OPC**") of all breaches of security safeguards that could lead to a "real risk of significant harm" for affected individuals. All impacted individuals must also be notified. Indirect notification is possible but only under certain circumstances. Alberta has a similar notification requirement but the primary obligation is to notify the Commissioner, who may then order individual notification. However, Quebec's recently enacted Bill 64 (now Law 25) has amended Quebec's private sector privacy legislation to include mandatory breach notification to the Commission d'accès à l'information for breaches of security safeguards that could lead to a "risk of serious injury". Currently, notification in British Columbia is encouraged but not legally required.

The general process for enforcing PIPEDA tracks the following stages: (1) a complaint is made or an issue is identified by a regulator; (2) the OPC conducts an investigation; (3) enforcement steps are taken either through obtaining a court order, disclosing information to the public, auditing the personal information management practices of an organization, entering into a compliance agreement, or reporting offences to relevant authorities. The OPC is also able to pursue fines for non-compliance with data breach notification requirements but not for other violations of PIPEDA. At this stage, the OPC does not have order-making authority. However, all the other regulators with substantially similar legislation are empowered to make orders with respect to breaches of the legislation.

PIPEDA has been undergoing reform efforts since 2020. PIPEDA is currently under review and Bill C-27 is before Parliament, passing on second reading in April 2023. Bill C-27 enacts the *Consumer Privacy Protection Act* (the "**CPPA**"), which

would replace PIPEDA's personal information protection aspects, the *Personal Information and Data Protection Tribunal Act*, and the *Artificial Intelligence and Data Act*. Once and if enacted, the CPPA will provide for more prescriptive data protection obligations and greater enforcement powers, among other things.

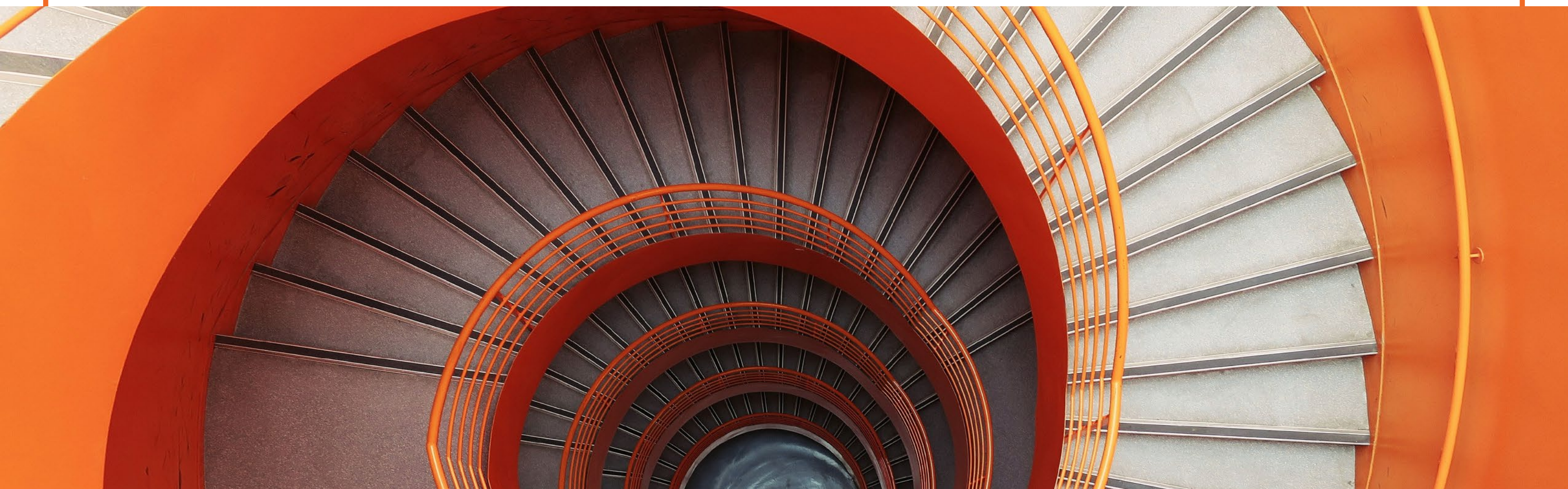
The Office of the Superintendent of Financial Institutions of Canada ("**OSFI**") also establishes rules and responsibilities with respect to privacy that apply to federally regulated financial institutions, including banks, federal credit unions, and loan and trust companies. Notably, in 2019 OSFI issued an Advisory with requires the obligation to report technology and cyber incidents within 72 hours. The threshold for reporting is a "high" or "critical" severity level. The assessment is to be made by the institution itself. It is important to note that reportable cyber incidents under this OSFI Advisory go beyond those breaches that involve personal information.

2. Artificial Intelligence

As mentioned above, Bill C-27, if passed, would enact the *Artificial Intelligence and Data Act* (the "**AIDA**"). This is Canada's first attempt in regulating AI, in particular "high impact AI systems." However, it is the AIDA Regulations that would define what these systems are as well as specific requirements. It is unclear what this would entail at this point. The AIDA was written with reference to the proposed *EU AI Act*, the Organization of Economic Co-operation and Development (OECD) AI Principles, and the US National Institute of Standards and Technology (NIST) Risk Management Framework (RMF).

3. Bill C-26

Canada's Minister of Public Safety introduced Bill C-26 (alongside Bill C-27) on June 14, 2022. Bill C-26 would amend Canada's *Telecommunications Act* and introduces the *Critical Cyber Systems Protection Act* (the "**CCSPA**") in an effort to bolster cyber security across federally regulated essential infrastructure (telecommunications, finance, energy and transportation sectors). These cyber security programs must implement reasonable steps in detecting and minimizing cyber security incidents, in addition to managing organizational risks, such as risks associated with the supply chain and the use of third-party products and services. While not directly applicable to other sectors, implementation of such programs is important for almost any organization. The CCSPA would also introduce mandatory breach notification requirements whenever there was a cyber-security incident, regardless of whether any personal information is involved and the risk of harm to individuals.



4. Canada Anti-Spam Legislation

Canada's anti-spam law ("**CASL**") regulates, among other things, the transmission of "commercial electronic messages" ("*CEMs*") by any person to a recipient in Canada. CASL is enforced by the Competition Bureau, the Canadian Radio-television and Telecommunications Commission, and the OPC. CASL applies to all CEMs, with some exceptions. If CASL is found to apply, the legislation contains three major obligations: (i) consent has been obtained by the recipient; (ii) the sender has been identified; and (iii) there is an unsubscribe feature included in the electronic message that is prominent and can be readily performed. There are significant fines for violations of CASL, which is arguably one of the strictest and most complicated anti-spam laws of its kind.

O. INTELLECTUAL PROPERTY

Intellectual property rights are considered indispensable to businesses today. These rights are economic drivers in global and Canadian markets. "Intellectual property used to be the tail that failed to wag the dog in commercial transactions. Now it is the dog itself."[1] Currently intellectual property represents a significant portion of the value of many corporations. Moreover, intellectual property is an integral aspect of a variety of transactions as intellectual assets represent corporate capital and are a key factor in corporate transactions. There is consequently a need to understand the variety of rights which fit under the umbrella of intellectual property rights in Canada. This chapter introduces three key types intellectual property rights that are of particular importance to doing business in Canada, namely copyright, trademarks, and patents.

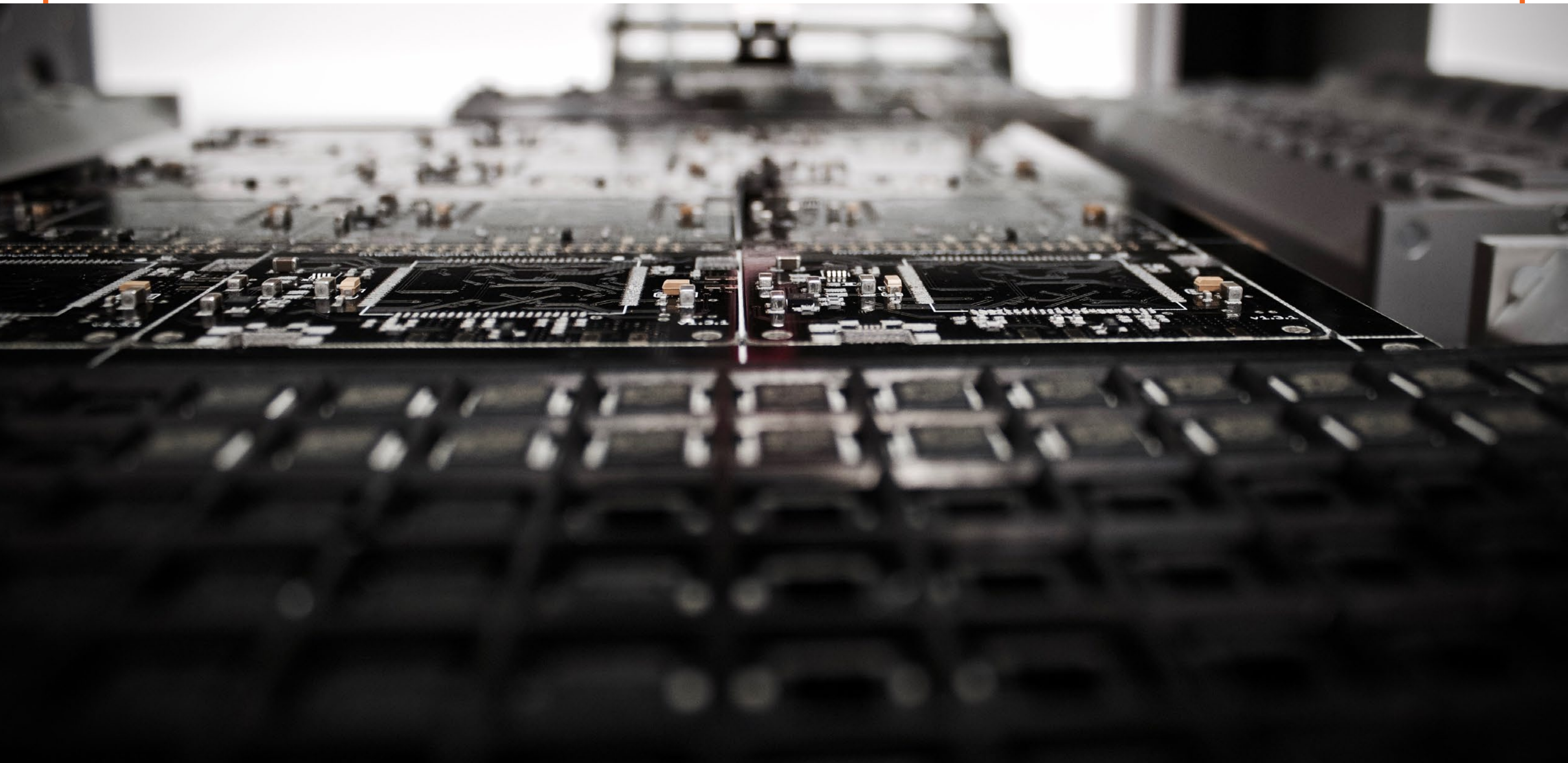
1 Melvin Simensky, 'The New Role of Intellectual Property in Commercial Transactions' (1992-1993)10 *Ent. & Sports Law*. 5.

Other types of intellectual property rights under statute or jurisprudence in Canada include industrial designs, plant breeders' rights, trade secrets, and integrated topography rights. The Supreme Court of Canada has held that each type of intellectual property right has a distinct purpose. No type of intellectual property right is to be used to try to extend the term of rights in any other type of intellectual property right after it has expired.

1. Copyright

Rights and obligations with respect to copyright in Canada are articulated in the Canadian *Copyright Act* (the "**Copyright Act**") and its related regulations. Copyright is granted to protect the expression of ideas but not the ideas themselves. Copyright protection is defined in the *Copyright Act* to include rights in several categories of expressions, including works, performer's performances, sound recordings, and communication signals. These categories include works such as literary works, artistic works, cinematographic work, dramatic works, computer programs, compilations, etc.

Copyright Test: The Canadian test for copyright requires that copyright only subsists in a work that is original. Although not defined in the *Copyright Act*, the term "original work" has been defined by the Supreme Court of Canada to be more than a mere copy of another work, and the expression of an idea is an



exercise of skill and judgment involving intellectual effort. Notably, the Supreme Court of Canada through its decisions have rejected the "sweat of the brow" or "industriousness" standards of originality that are applied in some other countries.

Scope of Copyright: In Canada, copyright vests upon the creation of a work or other copyright protectable subject matter. Although there are several procedural benefits to registering copyright, one does not need to register the work or other subject matter in order to obtain copyright protection. Generally, copyright lasts during the life of the author of the copyright and for 70 years after the death of the author or performer. There are some variations to that term for certain types of copyright, including a copyright fixed in a sound recording or a communication signal.

Copyright Owner: The first owner of copyright will be the author or performer, except if the copyright is created by an employee in the course of their employment, in which case the copyright will be owned by the employer. Canada does not have a work-for-hire doctrine as is applicable in some other countries. When copyright is granted, the owner thereof holds the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever; to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof. A person who utilizes any of the copyright owner's rights without authorization to do so (e.g., a person who copies copyright without authorization) infringes the copyright. However, the *Copyright Act* sets out several exceptions to infringement, including fair dealing exceptions (e.g., research, private study, education, parody or satire, criticism or review, and news reporting, and other exemptions (e.g., non-commercial user-generated content, activities by educational institutions, reproduction for private use, etc.).

Copyright Registration: The process to seek copyright registration in Canada can be completed entirely online. The only information required to register most copyright is: the title, the category, the names of owner(s) and author(s), and a statement as to whether the work or other subject matter has been published or not. A declaration of the person registering the copyright must accompany this information along with payment of the required fee. It should be noted that copyright registration only serves as prima facie evidence that copyright subsists in the work and of ownership and/or authorship of the work.

Moral Rights: Canadian copyright law specifically provides an author of a work and a performer of a performance with "moral rights" therein. A moral right is a right of integrity in the copyright, and includes the rights to be associated

with a copyright or to remain anonymous. A moral right is independent from any economic rights associated with copyright. Whereas economic rights rest with the owner of the copyright, moral rights reside solely with the author of the work or the performer of the performance, irrespective of any agreement or arrangement between the creator and any third party. Unlike economic rights, moral rights cannot be assigned but can be waived either in whole or in part. Thus, a mere assignment of a copyright does not constitute a waiver of moral rights.

Collective Societies: There are a number of collective bodies in Canada which act in a similar manner to the Licensing Division of the U.S. Copyright Office which administers the compulsory and statutory licenses mandated by the United States *Copyright Act*. Participation in Canadian Collective Societies is at the discretion of the owner of the copyright. These societies often have associations with the societies of other countries and will collect and share royalties where necessary.

2. Trademarks

In Canada trademarks are governed by the Canadian *Trademarks Act* (the "**Trademarks Act**") which defines the term trademark to mean: "a mark that is used by a person for the purpose of distinguishing or so as to distinguish goods or services manufactured, sold, leased, hired or performed by him from those manufactured, sold, leased hired or performed by others." A trademark creates a connection in the mind of the public between the mark and the provider of the goods and services, which are provided in association with the mark. The inherent value associated with a trademark itself lies in the goodwill that is generated by the trademark owner through use of the trademark over time.

Types of Trademarks: A traditional trademark may include numbers, a word or words, a design, a symbol or any combination thereof, and is used to associate particular goods and services with a specific source. Trademarks can further include: three dimensional shape of any goods or of an integral part of the packaging of any goods; a mode of packaging goods; a sound; a scent; a taste; or a texture. Trademarks can further comprise certification marks, which define a standard for a good or service.

Canadian laws further strictly prohibit the general registration and use of certain arms, crests, flags and designs in addition to any word or symbol that may lead to the belief that particular goods or services are attributable to the Crown. These marks are deemed official marks, prohibited marks or "s.9 marks," and are generally reserved for use by the Crown, government bodies, and public authorities such as hospitals and universities. The grant of an official mark

provides for use of the subject trademark with any goods or services in all possible classes of goods and services.

Registered Trademarks: Owners of trademarks that are registered with the Canadian Trademark Office are granted the exclusive right to use the trademark throughout Canada in association with the goods or services identified in the registration. Rights in registered trademarks extend for ten years from the date of registration and are renewable for subsequent ten years period, for, at least theoretically, an infinite duration. Trademarks that are confusingly similar to pre-existing marks, that lack distinctiveness, that are surnames (of a person who is living or has died within the preceding 30 years), that are geographic indicators, or that merely describes or is misdescriptive of the goods or services with which the mark is utilized, will not be registrable in Canada.

Common Law Trademarks: In Canada, registration of a trademark is not absolutely necessary in order to enjoy a form of trademark protection. Canadian laws recognize a level of protection for unregistered marks in Canada. However, it should be noted that the protection granted to an unregistered mark is less-extensive than that granted to a registered mark. In the case of a challenge to an unregistered mark, the burden of demonstrating the validity of the mark rests with the owner of the unregistered mark. To achieve common law rights for an unregistered trademark, the mark must be used in association with the goods or services for a length of time whereby traditional trademark features such as distinctiveness and exclusivity can be established. The rights attaching to unregistered trademarks will be read narrowly and in direct geographic

proportion to the distinctiveness and recognizability of the mark. Generally, courts have not permitted unregistered marks to receive rights in geographic regions beyond their region of notoriety.

Trademark Infringement & Passing-Off: Infringement of a trademark is defined in *Trademarks Act* to occur if the trademark owner's exclusive rights of use are utilized by another person without the owner's authorization. Passing-off is another violation of trademark rights identified in the *Trademarks Act*. Passing-off occurs if a person sells their goods/services under the pretense that such goods/ services are the goods/services of another. As the Supreme Court of Canada has stated, the three criteria needed to demonstrate a valid action on the basis of passing-off are: (i) the existence of goodwill; (ii) deception or misrepresentation to the public with respect to goods/services; and (iii) actual or realizable damage to the trademark owner.

3. Patents

Patents in Canada are governed by the Canadian *Patent Act* (the "**Patent Act**"). A patent grant generally provides an exclusive right of control over an invention for a specified time period (20 years from the date of filing the application). Inventions are defined in section 2 of the *Patent Act* as "any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter."

Patentability Test: Generally, to be deemed patentable, an invention needs to: (i) be novel; (ii) have utility; (iii) be non-obvious; and (iv) deemed to be patentable subject matter. Where one of these elements is missing, the grant of a patent will not occur, or a granted patent may be revoked at a later date.

Patent Rights: A grant of a patent offers the patent owner the exclusive right, privilege and liberty of making, constructing and using the invention and selling it to others to be used. Some exceptions to this right are defined in the *Patent Act*. For example, section 23 sets out that patent rights cannot be used to prevent the use of an invention in a ship, vessel, aircraft or land vehicle of any country that enters Canada temporarily and is employed exclusively for the use of those aboard the craft. Moreover, patent rights may be overridden in the instance that an abuse of rights occurs. Canada applies a "first to file" system to patent grants, and the *Patent Act* grants a term of 20 years from the filing date to patents filed on or after October 1, 1989.

An issued patent enjoys a presumption of validity. However, a number of challenges may be raised to invalidate the whole or part of a patent. These include: anticipation, wherein the challenging party alleges that the invention was not novel prior to the claim date; obviousness; ambiguity, wherein the Court examines the patent for language that when fairly read is avoidably obscure or ambiguous, regardless of whether the defect is due to design or carelessness or want of skill; inventorship, wherein the Court verifies that those listed as the inventors are the true inventors; deemed abandoned or failure to reinstate; and material allegation, which could include a failure to name an inventor willfully for the purpose of misleading, but the misrepresentation must be material.4

Patentable Subject Matter: Patent rights in Canada are not isolated to physical inventions (e.g., tools or devices), but can also be extended to processes and methods. There are however certain inventions for which patent rights cannot be granted in accordance with Canadian statute and case law. For example, the *Patent Act* explicitly identifies scientific principles and abstract theorems as subject matter that is non-patentable. Other subject matters that are deemed non-patentable by case law include games, medical treatments and higher life forms.

Patent Infringement: A first step upon the launch of a patent infringement challenge is construction of the claims of the patent at issue. In Canada the purposive construction test is applied to claims construction for the purpose of both patent validity and patent infringement. Claims construction is to be undertaken outside of any considerations relevant to a particular allegation of

infringement or invalidity. The actual test that the Supreme Court of Canada articulated has two distinct steps. First, adopting the knowledge of a fictional skilled reader—being the common knowledge of a worker skilled in the art to which the patent relates—the court must isolate descriptive words and phrases which identify the elements of the invention within the claims. Second, the court is to decide whether a skilled reader would consider the isolated element to be clearly intended to be essential or whether, that skilled reader would, as of the publication date of the patent, appreciate that a particular element could be substituted without affecting the working of the invention. The test is to be applied on a claim-by-claim basis in order to identify all of the essential elements as of the date of publication of the patent application. Purposive construction should only involve tools of interpretation found within the "four corners of the specification," which includes a written description of the invention, at least one claim and may include drawings. This approach denies the application of prosecution history (or file wrapper) or any other external device to claims interpretation.

Infringement will not be held to have occurred if an essential element is substituted or omitted in the allegedly infringing device. However, if only non-essential elements are substituted or omitted it is possible that infringement has occurred. In Canada damages may be sought for infringement occurring during a period after the patent is granted, as well as for any period of infringement between the publication of a patent application and the grant of the patent. Additionally it should be noted that selling an invention disassembled, as a kit, may still be deemed to be infringe patent rights in Canada.

Patent Licenses & Assignments: A patent owner may voluntarily license a patent right in whole or in part. Moreover, a patent may be licensed by way of a compulsory licence for abuse of the patent right, or for reasons related to public health. An order for the grant of a license proscribed under the *Patent Act* operates as if it were embodied in a deed granting a licence executed by the patentee and all other necessary parties. The content of a voluntary patent licence is not proscribed by Canadian law, and thus the scope and context of such an agreement is left to the discretion of the contracting parties.

A patent may be assigned to a third party or entity, in whole or in part, by way of a written assignment by a patent holder, or inventor, or may alternatively be bequeathed in a patent holder's will. Such an assignment is to be registered with the Canadian Intellectual Property Office along with an affidavit of a subscribing witness, or other proof, showing that the assignment has been signed and executed by the assignor.

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