Doing Business in Canada

Introduction, Government and Legal System

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I. Introduction

This Guide provides non-Canadians with an introduction to the laws and regulations that affect the conduct of business in Canada and, in particular, in the province of Ontario. In some cases, this Guide also identifies issues in the provinces of Alberta and British Columbia. Because of Canada's federal structure, the authority to make laws and regulations is divided between the federal and provincial governments by the Canadian Constitution although, in some areas of shared jurisdiction, both federal and provincial laws may apply.

For reasons rooted in history, Canada has two legal traditions, the civil law tradition of codified law in the province of Quebec, and the common law tradition of judge-made law in the other provinces of Canada. The province of Quebec, as Canada's only province whose majority population is French speaking, has also adopted *a Charter of the French Language* making French the official language of Quebec. Quebec also collects its own income taxes and has shared jurisdiction over immigration to Quebec with the federal government. A more detailed discussion of the laws of the province of Quebec is contained in the Blakes guide, *Doing Business in Quebec*.

The discussion under each heading in this Guide is intended to provide only general guidance and is not an exhaustive description of all provisions of federal, provincial and local law with which a business might be required to comply. Particular businesses or industries may also be subject to specific legal requirements not referred to in this Guide. For this reason, the reader should not rely solely upon this Guide in planning any specific transaction or undertaking, but should seek the advice of qualified counsel.

The law is stated as of October 23, 2020.

II. Government and Legal System

With a population of approximately 37 million people and second only to Russia in area, Canada is a land rich in natural resources and nations. Home to some of the globe's most innovative and largest businesses, Canada has a highly skilled workforce and is a world leader in a variety of sectors, including manufacturing, technology, energy, and natural resources. While closely aligned in both commerce and culture to its southern neighbour, the United States, Canada has also enjoyed great success in forging strong trade ties with many countries in Asia, Europe, the Middle East, South America and other regions.

1. Brief Canadian History

Canada is a relatively young country that gained independence from Britain in stages over the course of a century. It started on its path as a self-governing nation in 1867, when the British Parliament passed the *British North America Act*. This legislation formed Canada's written constitution until 1982, when Britain formally relinquished its authority over the Canadian Constitution.

As its roots might suggest, Canada is a parliamentary democracy based closely on the British form of government. It has established two levels of government — a federal authority that governs matters of national interest, and the 10 provinces that govern matters of a more local interest. The Canadian Constitution also sets out the specific powers and jurisdictional limits for each level, with the intended result that each should have exclusive domain over certain aspects of government.

For example, the federal government has been allotted authority over the regulation of trade and commerce, banking, patents, copyright, and taxation. The provinces have authority over property and civil rights and the administration of justice on a provincial level. As would be expected, there are areas of overlap. Indeed, the division of powers between the federal and provincial governments has been a long-standing source of contention among those who govern Canada. The evolution of Canada's history has been greatly influenced by three world powers — Britain, France, and the U.S. That said, while Canada's two official languages are English and French, the country is decidedly and increasingly multicultural, attracting talented new immigrants from all corners of the world.

2. Federal Government

Canada's federal government is based in Ottawa, Ontario. Similar to the U.S. federal government, the Parliament of Canada has two legislative bodies through which proposed bills must pass before becoming law: the House of Commons, which has elected representatives, and the Senate, which is comprised of appointees.

The members of Parliament (MPs) are elected representatives from over 300 "ridings" or electoral districts across Canada who sit in the House of Commons. The federal government itself is headed by a prime minister, who is usually the leader of the ruling political party in the House of

Commons. The prime minister chooses members of the federal cabinet from the elected parliamentarians and these “ministers” are responsible for overseeing individual federal departments.
Canada has three principal political parties — Liberal Party of Canada, Conservative Party of Canada, and New Democratic Party of Canada. The political party that controls the most seats in the House forms the ruling government of the day. The official opposition is the party that holds the second highest number of seats.

Canada’s House of Commons is the only constitutionally authorized body to introduce legislation to raise or spend funds. Once a new law (a bill) or amendments to existing laws are voted on and approved by the House of Commons, the proposed legislation must then be debated and voted upon by the Senate.

This upper house of Parliament is made up of up to 105 senators appointed by the Governor General, on the advice of the prime minister. There are currently 95 senators and 10 vacancies. Senators, theoretically, provide a check against potential excesses of the governing party. If the Senate approves a law or its amendments, the bill is ready for royal assent. The timing of the royal assent ceremony is chosen by the ruling government and, unless the bill fixes a date on which it is to come into force, it comes into force on the date of royal assent. This time period can be mere days or many months, depending on the political timetable.

3. Provincial and Territorial Governments

Similar to the U.S. system of states, each Canadian province has its own elected premier (similar to a U.S. governor), provincial cabinet of ministers, legislative assembly (i.e., lawmakers), political parties and court system.

Municipalities and their governments are considered “creatures” of the provinces and derive their authority from provincial laws. Canada also has territories, which can be created by the Parliament of Canada under its constitutional authority. While not full-fledged provinces, territorial governments are often delegated powers within the federal domain and have government structures similar to provinces.

Some of the laws that provinces are responsible for include family law, health law, labour standards, education, social services, and housing. Similar to federal elections, voters in provinces elect members to sit in the provincial legislature based on ridings.

These elected officials are members of the legislative assembly (MLAs) or members of provincial parliament (MPPs). The ruling government is the party that controls the most seats in the legislature. Today, Canada has 10 provinces and three territories.

Canada’s 10 Provinces	**Capital**
Alberta	Edmonton
British Columbia	Victoria
Manitoba	Winnipeg
New Brunswick	Fredericton
Newfoundland and Labrador	St. John’s
Nova Scotia	Halifax
Ontario	Toronto

Prince Edward Island	Charlottetown
Quebec	Québec City
Saskatchewan	Regina

Canada's Territories	**Capital**
Northwest Territories	Yellowknife
Nunavut	Iqaluit
Yukon	Whitehorse

4. Canada's Legal System

Canadian courts are considered independent of the government. Elected politicians and bureaucrats cannot influence or dictate how the courts administer and enforce the law. In theory, federal and provincial governments make the laws, and courts interpret and enforce them. Increasingly, however, the line between who makes laws is blurring. In some cases, Canada's courts end up making new laws by virtue of the way legislation is interpreted.

A significant driving force for legislative and judicial change in recent years has been Canada's *Charter of Rights and Freedoms* (Charter) that took effect in 1982, and which imposes limits on government activity relating to Canadians' fundamental rights and liberties. These include the right to liberty, equality, freedom of religion, freedom of expression, freedom to associate with a group, and to be presumed innocent until proven guilty by an independent and impartial tribunal. The Charter, however, does not generally govern interactions between private citizens or businesses.

Canada's legal system is unique from many others in that the *Quebec Act* of 1774 created two systems of law — the "civil law" governing those in Quebec and a common law system in all other provinces. The common law system of justice, similar to that in the U.S., relies on the historical record of court interpretations of laws over the years. The civil law system in Quebec uses court decisions to interpret the intentions and allowable authority of lawmakers, but also relies on a written Civil Code that sets out standards of acceptable behaviour or conduct in private legal relationships.

Canada's court system itself is shaped like a pyramid. At the top, the Supreme Court of Canada is the ultimate court of appeal and has the final word on the interpretation of the law of the country. The Supreme Court of Canada can declare all or part of a law invalid. All lower courts in the land are required to follow its interpretations when dealing with similar matters. Only an act of Parliament or a legislature, acting within their respective areas of authority, can change the effect of the top court's interpretation.

Next are the courts of appeal of each province. Decisions of a province's appellate court are binding on the lower courts in that province. In other provinces, some courts will seriously consider decisions of another province's court of appeal, but there is no requirement to follow them until their own provincial appeal court agrees.

Below each province's appeal courts are trial and specialty courts, where most civil and criminal matters are decided.

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