Guide to Doing Business in Canada

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We have prepared this informative Guide for clients and potential clients who already do business in Canada or who are contemplating doing business in Canada.

A PDF version of this Guide is available on our website at:

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1. <u>INTRODUCTION</u>

This **Guide to Doing Business in Canada** was initially developed to assist our clients. We are pleased that it has also been very helpful for many others, including senior managers of non-Canadian business enterprises who are considering setting up a business in Canada, or who are already managing a business here.

In particular, it provides information for those enterprises that are considering:

- Carrying on business in Canada through a branch operation; or
- Incorporating a "subsidiary" corporation to carry on business in Canada.

This Guide describes some of the major aspects of Canadian law that must be considered when establishing, acquiring or operating a business in Canada. Each of the Canadian provinces and territories has its own laws governing the carrying on of business within that jurisdiction. For example, the Ontario *Business Corporations Act* (OBCA) is applicable to corporations incorporated in Ontario. In addition, the *Canada Business Corporations Act* (CBCA) governs federally incorporated businesses. Despite the potential for great variety between jurisdictions, the various provincial and territorial business corporation acts generally reflect the provisions of the CBCA. This Guide focuses on the applicable laws of Ontario and of Canada.

ABOUT OUR FIRM

Dickinson Wright LLP is a highly reputable and experienced business law firm. We serve our clients in the Greater Toronto Area, throughout Ontario, across Canada and around the World.

In the United States, we serve our clients through an affiliation with Dickinson Wright PLLC, which is headquartered in Detroit and has 10 other offices in Arizona, Michigan, Nevada, Tennessee and the District of Columbia.

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GET PROFESSIONAL ADVICE

As this **Guide to Doing Business in Canada** discusses a number of complex issues in a concise and general manner, we recommend that you first consult with a lawyer from Dickinson Wright LLP before acting upon, or refraining from acting upon, any of the information contained in this Guide.

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2. CANADA'S POLITICAL, LEGAL AND ECONOMIC ENVIRONMENT

GOVERNMENT

Canada operates under a British-style parliamentary system of government, with an elected House of Commons and an appointed Senate. Our representatives in the House of Commons, comprising 308 Members of Parliament, are elected to serve by direct popular vote. Our Senate consists of 105 Senators who are selected on the advice of the Prime Minister of Canada and appointed by the Governor General of Canada.

Canada has ten provinces (Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan) and three territories (the Northwest Territories, Nunavut and the Yukon). Each has its own legislature. Under the Canadian Constitution, power is divided between the federal and provincial governments.

LEGAL SYSTEM

The Canadian judiciary is independent from the government, and all statutory laws, rules and regulations are subject to the scrutiny of the courts. Superior Court judges are appointed by the Prime Minister of Canada through the Governor General of Canada. The courts are responsible for ensuring that all laws comply with the principles of Canada's Charter of Rights and Freedoms and that all governments conduct themselves in accordance with the Constitution.

Although statute law plays an important role in regulating the conduct of business in Canada, the English common law is the underlying foundation of Canada's legal system. The only exception to this is the Civil Code of the province of Quebec, which is modeled on the civil law system of France.

A BILINGUAL COUNTRY

The *Official Languages Act* (OLA) provides for two official languages in Canada: English and French. Generally, Canadians have the right to receive federal government services in either language. The OLA does not require that all Canadians be bilingual, but rather it respects the choices of both English-speaking and French-speaking Canadians. With the exception of Quebec, however, English is the predominant language.

The OLA affects businesses because it requires bilingual labeling of essential information on products, such as the generic name of the product, the manufacturer's address, the ingredients and any health or safety information.

ECONOMY

An affluent society, Canada is similar to the United States of America, offering a market-oriented economic system, skilled labour force, abundant natural resources and high living standards. Canada's major growth sectors include manufacturing, technology, mining and service industries. Canada's major exports include motor vehicles and parts, newsprint, wood pulp, timber, crude petroleum, machinery, natural gas, telecommunications equipment, aluminium and electricity.

VISIT CANADA VIA THE INTERNET

To find out more about Canada's history, political system, geography, economy and other attributes, visit the Government of Canada website at http://www.canada.gc.ca. To view maps and obtain other facts about Canada, visit the Natural Resources Canada website at http://atlas.nrcan.gc.ca. For business persons in other countries, visit http://www.international.gc.ca where you will find links to government services and other useful information and resources. Also see Chapter 13 – *Other Websites of Interest* in this Guide for a list websites with additional information concerning the following chapters.

3. FOREIGN INVESTMENT CONSIDERATIONS

INVESTMENT CANADA ACT

Investment in Canada by a non-Canadian can be subject to either the notification requirement or the review requirement under the *Investment Canada Act* (ICA). In addition, a national security review can be conducted under the ICA where an investment is not subject to a review. The ICA is operated by Industry Canada (and the Department of Canadian Heritage in the case of cultural businesses) and exists to ensure that investment by non-Canadians is beneficial to Canada and not injurious to Canadian national security. As discussed below, the value and type of transaction determine whether a transaction is subject to notification or review.

Notification

Subject to certain exceptions, a notification under the ICA is required where a non-Canadian establishes a new business in Canada or acquires control of an existing Canadian business. A Canadian business is defined as a business carried on in Canada that has:

- a place of business in Canada;
- an individual or individuals in Canada who are employed or self-employed in connection with the business; and
- assets in Canada used in carrying on the business.

Note that "business" includes "any undertaking or enterprise capable of generating revenue and carried on in anticipation of profit."

Control can be acquired by way of a direct or indirect acquisition of shares or the acquisition of substantially all of the assets used in carrying on the Canadian business. Generally, the ICA deems the acquisition of at least one-third of the voting shares of a corporation as an acquisition of control. For unincorporated entities, the ICA requires the acquisition of a majority of voting interests to constitute acquiring control.

Where a notification is required, the non-Canadian investor must submit the prescribed form and information to Industry Canada within thirty days of the implementation of the investment.

Review

Where the acquisition of a Canadian business meets certain asset value thresholds, an Application for Review rather than a notification must be submitted to Industry Canada. Generally, a reviewable transaction may not be implemented prior to a decision of the Minister of Industry. The application must be in the prescribed form and contain the prescribed information. The Minister of Industry must respond within forty-five days, however the response may extend the review period by an additional thirty days.

An investment is reviewable in any of the following situations:

- (1) Either the purchaser or the party controlling the Canadian business is a World Trade Organization (WTO) member, (2) the investment is a direct acquisition, and (3) the value of (a) the assets of the Canadian business acquired, or (b) the assets of the entity carrying on the Canadian business and of all the other entities in Canada acquired in the transaction, is at least $344,000,000 (2013). If the investment is an indirect acquisition, the transaction is not reviewable unless the business to be acquired is a cultural business. This is discussed below.

- (1) Neither party is a WTO member, (2) the investment is a direct acquisition, and (3) the value of (a) the assets of the Canadian business acquired, or (b) the assets of the entity carrying on the Canadian business and of all the other entities in Canada acquired in the transaction, is at least $5,000,000.

- (1) Neither party is a WTO member, (2) the investment is an indirect acquisition, (3) the value of the assets of the entity carrying on the Canadian business and of all the other entities in Canada acquired in the transaction amount to more than 50% of the value of the assets of all entities acquired in the transaction, and (4) the value of (a) the assets of the Canadian business acquired, or (b) the assets of the entity carrying on the Canadian business and of all the other entities in Canada acquired in the transaction, is at least $5,000,000.

- (1) Neither party is a WTO member, (2) the investment is an indirect acquisition, (3) the value of the assets of the entity carrying on the Canadian business and of all the other entities in Canada acquired in the transaction do not amount to more than 50% of the value of the assets of all entities acquired in the transaction, and (4) the value of the assets of the entity carrying on the Canadian business and of all the other entities in Canada acquired in the transaction, is at least $50,000,000.

Cultural Exceptions

The review thresholds for cultural businesses are the same as those for non-WTO acquisitions: $5,000,000 for a direct investment and $50,000,000 for an indirect investment. A cultural business is defined as a Canadian business carrying on:

- the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine readable form, other than the sole activity of printing or typesetting of books, magazines, periodicals or newspapers;

- the production, distribution, sale or exhibition of film or video recordings;

- the production, distribution, sale or exhibition of audio or video music recordings;

- the publication, distribution or sale of music in print or machine readable form;

- radio communication in which the transmissions are intended for direct reception by the general public, any radio, television and cable television broadcasting undertakings and any satellite programming and broadcast network services;

- radio communication in which the transmissions are intended for direct reception by the general public; or

- any radio, television and cable television broadcasting undertakings and any satellite programming and broadcast network services.

Additionally, an investment will be reviewable if it is a prescribed type of business activity related to Canada's cultural heritage or national identity. These include:

- Publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine readable form.

- Production, distribution, sale or exhibition of film or video products.

- Production, distribution, sale or exhibition of audio or video music recordings.

- Publication, distribution or sale of music in print or machine readable form.

Net Benefit Test

Where a review is required, Investment Canada considers each application on a case-by-case basis to determine whether the investment is of net benefit to Canada. In making this determination, the following factors are considered:

- "the effect of the investment on the level and nature of economic activity in Canada, including, without limiting the generality of the foregoing, the effect on employment, on resource processing, on the utilization of parts, components and services produced in Canada and on exports from Canada;

- the degree and significance of participation by Canadians in the Canadian business or new Canadian business and in any industry or industries in Canada of which the Canadian business or new Canadian business forms or would form a part;

- the effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada;

- the effect of the investment on competition within any industry or industries in Canada;

- the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment; and

- the contribution of the investment to Canada's ability to compete in world markets.

Often, undertakings by the investor will be required before approval is given. For state-owned enterprises, the government has put forth additional factors to consider in determining net benefit to Canada.

Written Opinions

The ICA provides the opportunity for an investor to apply to the Minister of Industry for an opinion concerning whether an individual or entity is Canadian, and whether a provision of the ICA applies to the person.

Where the Minister of Industry provides the applicant with a written opinion, it is binding so long as the material facts on which the opinion is based remain substantially unchanged.

National Security

Any new business or investment, even if not normally a reviewable transaction, can be subject to a national security review. This occurs where the Minister of Industry, "after consultation with the Minister of Public Safety and Emergency Preparedness, considers that the investment could be injurious to national security and the Governor in Council, on the recommendation of the Minister [of Industry], makes an order within the prescribed period for the review of the investment".

Other Federal and Provincial Foreign Investment Laws

In addition to the ICA, a number of federal and provincial laws exist to regulate foreign investment in specific industry and business sectors. This includes banking, communications, insurance and air travel. In effect, these laws reflect Canada's ad hoc policy of protecting key sectors of both national and various provincial economies.

Canada has a myriad of laws regarding competition and trade practices that must also be considered. In particular, the *Competition Act* (CA) contains several criminal offences such as conspiracy, bid rigging, price fixing and maintenance, refusal to supply goods and services, promotional allowances, predatory pricing, multi-level marketing and pyramid schemes, misleading advertising, abuse of dominant position, exclusive dealing, market restrictions, and tied selling. The CA is administered by the Competition Bureau, which is part of Industry Canada.

These various laws and regulations are beyond the scope of this Guide and are therefore not discussed in detail.

FOREIGN INVESTMENT IN CANADIAN REAL ESTATE

Non-Canadians hold a significant amount of Canadian real estate. Pursuant to the federal *Citizenship Act*, a non-resident can acquire, hold and dispose of real property in the same manner as a Canadian citizen or resident. In Ontario, the *Aliens' Real Property Act* gives non-citizens the same rights as Canadians with respect to real property. There are several vehicles through which a non-Canadian investor can hold Canadian real estate, including:

- Corporation – an association of persons created by provincial or federal statute as a legal entity;
- Partnership – a business created through an agreement by two or more persons that is not organized as a corporation;

- Limited Partnership – a partnership that includes one or more partners with limited liability in respect of the dealings of the partnership;
- Co-ownership or Joint Venture – two or more persons who own real or personal property or an association of persons or companies jointly undertaking some commercial enterprise respectively;
- Trust – a legal entity created by a deed made by a grantor, through which a trustee is appointed to administer the assets of the trust for the benefit of designated beneficiaries (careful consideration must be made as to the citizenship of the various parties to a Trust); and
- Personal Ownership – ownership in an individual's personal name and capacity.

Partnerships, joint ventures, and corporations are discussed in greater detail in Chapter 6 – *Forms of Business Organization*.

Property law is a responsibility of the individual provinces. Generally, Canadian property law has developed from English common law except in Quebec, where it is governed by the Civil Code.

As there is no constitutional protection for property rights in Canada, governments can expropriate property at any time, as long as appropriate compensation is paid. Generally, the power to expropriate is only used to allow construction of schools, parks, highways, and utilities. Expropriation is regulated by federal and provincial statutes.

Financing Real Estate Acquisitions

Financing for the acquisition of real estate is normally done through institutional lenders, which generally charge an interest rate based on Canada's prime rate. Institutional lenders normally do not finance more than 80% of the property's appraised value.

Tax Implications for Non-Residents

There are various income tax implications for non-residents holding Canadian real property, including a 25% withholding tax on rents and proceeds paid to non-residents.

In addition, Canada's federal *Income Tax Act* contains rules that allow certain non-residents to avoid withholding tax by electing to pay tax at normal rates on net rental income. There are also special withholding requirements in situations where a purchaser acquires Canadian real property from a non-Canadian.

On the disposition of Canadian real property, non-residents are generally subject to the capital gains tax. For dispositions of capital property, the inclusion rate is generally 50% and the maximum tax liability to a non-resident (based on current marginal tax rates) would be approximately 25%. The capital gain is computed as the difference between the proceeds of disposition and the adjusted cost base of the property.

On a disposition of a real property, in addition to realizing a capital gain on the land, there may be a recapture of tax depreciation (referred to as Capital Cost Allowance, or CCA) taken in previous years on buildings or other depreciable property situated on the land. Recaptured CCA is fully taxed at normal rates. It is also important to note that CCA cannot be claimed if a rental property is incurring losses. Consequently, CCA cannot be claimed to either create or increase a rental loss.

Most provinces impose a land transfer tax upon the transfer of real property. The tax rate differs from province to province. In Ontario, for example, the rates range from 0.5% to 2% of the consideration paid to effect the transfer of real property. Some provinces charge land transfer tax on certain long-term leases and financings as well.

Chapter 7 – *Tax Considerations* provides further discussion of personal and corporate income tax considerations for non-Canadians.

Leasing

In addition to owning property, a non-Canadian can acquire real property through leasing. While leases take a variety of forms, generally the lessor and lessee agree on exclusive possession of lands, space, property or a building for a specified period of time for specified rent or compensation. At the end of the lease period, the owner has the absolute right to retake, control and use the lands, space, property or building, as the case may be.

Environmental Law

Matters relating to the environment are regulated at the federal, provincial and local levels in Canada. Environmental laws are generally enforced against commercial and industrial operations through a general prohibition against the discharge of contaminants, and a system of permits or certificates required for activities that may impact the environment.

The *Environmental Protection Act* (EPA) prohibits unlawful discharges of contaminants into the natural environment and requires that parties responsible for such unlawful discharges must immediately notify regulators. The EPA further provides that, with limited exceptions, orders may be issued against anyone who owns or has control of a contaminated property, whether or not they are responsible for the said contamination.

On a municipal level, by-laws have been passed to regulate matters such as noise pollution and sewer discharges, and in the event that the laws are not complied with, substantial fines may apply.

Note that directors and officers of a corporation have personal liability arising from specific obligations under federal and provincial environmental laws to take reasonable care to ensure that the corporation complies with the necessary laws.

GET PROFESSIONAL ADVICE

The preceding discussion is a summary overview of foreign investment considerations. Given the complexity of Canadian foreign investment and competition law, professional advice is recommended.

4. COMPETITION LAW

Anyone considering operating or investing in a business in Canada must also be aware of the Canadian *Competition Act*. Regulation under the *Competition Act* can be divided into two categories: anti-competitive conduct subject to criminal punishment and civil remedies, and merger regulation. The Competition Bureau, which is headed by the Commissioner of Competition, oversees the *Competition Act*. The Commissioner conducts investigations and brings proceedings before the Competition Tribunal, which adjudicates competition matters.

Anti-competitive Conduct

The *Competition Act* prohibits a variety of conduct that lessens competition. This includes conspiracies and agreements between competitors, bid-rigging and misleading advertising, all of which are punishable by criminal sanctions. The *Competition Act* also regulates non-criminal matters as reviewable where the conduct adversely impacts competition. Such matters include misleading advertising, abuse of a dominant position, and price maintenance.

Merger Review

The *Competition Act* strictly regulates mergers and acquisitions. “Merger” is defined as “the acquisition or establishment, direct or indirect, by one or more persons, whether by purchase or lease of shares or assets, by amalgamation or by combination or otherwise, of control over or significant interest in the whole or a part of a business of a competitor, supplier, customer or other person”.

The Commissioner may apply to the Tribunal under section 92 of the *Competition Act* to review a transaction for a substantial lessening or prevention of competition. Where the Tribunal finds that a merger or proposed merger has substantially prevented, lessened, or is likely to substantially prevent or lessen competition, the Tribunal has sweeping remedial powers. In the case of a completed merger, the Tribunal may dissolve the merger, order that certain assets be disposed of, or take any other action with the consent of the person subject to the order. For proposed transactions, the Tribunal may order a party not to proceed with the merger or a part of the merger, prohibit the parties from doing certain acts that would prevent or lessen competition or take any other action with the consent of the person subject to the order.

In determining whether a merger or proposed merger substantially prevents, lessens or is likely to prevent or lessen competition, the Tribunal may consider:

1. the extent of effective foreign competition;
2. the likelihood of failure of the business, or a part of the business, of a party to the merger;
3. the availability of acceptable substitutes for products supplied by the parties to the merger;
4. any entry barriers to a market and the effect of the merger on those barriers. This includes tariff and non-tariff barriers to international trade, interprovincial barriers to trade, and regulatory control over entry;

5. the extent to which effective competition remains or would remain in a market that is or would be affected by the merger or proposed merger;

6. the likelihood that the merger will or would result in the removal of an effective competitor;

7. the nature and extent of change and innovation in a relevant market; and

8. any other factor relevant to competition in a market that is or would be affected by the merger or proposed merger.

There are limited exceptions to the ability of the Tribunal to review a merger, including the exceptions for certain joint ventures and where there are gains in efficiency. The gains in efficiency exception may only be utilized if (1) there are gains in efficiency that will be greater than, and will offset, the effects of any prevention or lessening of competition arising from the merger or proposed merger and (2) the gains in efficiency would not likely occur if an order by the Tribunal were made. Note that in deciding whether a merger has or will create gains in efficiency, the Tribunal must consider whether the gains will result in a significant increase in the real value of exports or a significant substitution of domestic products for imported products.

A review of a merger cannot be undertaken more than one year following substantial completion of the merger.

Pre-merger Notification

The parties to certain proposed transactions (including a corporation where its shares are being acquired) must, prior to completion, notify the Commissioner and provide the prescribed information. This is required where:

1. the parties to a transaction and their affiliates together have assets in Canada, or annual gross revenues from sales in, from or into Canada, that exceed $400 million; and

2. any one of the following transactions exists:

    a. with respect to an acquisition of the assets of an operating business, the value of the assets in Canada, or the annual gross revenues from sales in or from Canada generated by those assets, exceeds $80 million;

    b. with respect to a direct or indirect acquisition of the voting shares of a corporation carrying on an operating business, the value of the assets in Canada, or annual gross revenues from sales in or from Canada generated by those assets, exceeds $80 million, and the acquisition results in the acquiring party, together with any affiliates, holding more than 20% of the voting shares of the corporation, where it is a public corporation, or 35%, in the case of a private corporation. Note that where the thresholds have already been passed, notification is only required where the acquisition would result in the acquiring party, together with any affiliates, owning more than 50% of the voting shares of the corporation;

c. with respect to a corporate amalgamation where one of the involved corporations, directly or indirectly, carries on an operating business, each of at least two of the corporations involved in the amalgamation (together with their respective affiliates) and the amalgamated corporation have assets in Canada, or annual gross revenues from sales in or from Canada generated by those assets, that exceed $80 million in value;

d. with respect to the creation of an unincorporated combination where one of the involved corporations, directly or indirectly, carries on an operating business, the value of the assets in Canada of the combined business, or the annual gross revenues from sales in or from Canada generated by those assets, exceeds $80 million; or

e. with respect to an acquisition of an interest of an unincorporated combination carrying on an operating business, the value of the assets in Canada, or annual gross revenues from sales in or from Canada generated by those assets, exceeds $80 million, and the acquisition results in the acquiring party, together with any affiliates, holding an interest that entitles the acquiring party to more than 35% of the profits or assets of the combination. Note that where the thresholds have already been passed, notification is only required where the acquisition would result in the acquiring party, together with any affiliates, being entitled to more than 50% of the profits or assets of the combination.

For parts 2b and 2c, shares in the involved corporations are not included as assets. Note that an "operating business" is "a business undertaking in Canada to which employees employed in connection with the undertaking ordinarily report for work". Also note that the $80 million threshold is the amount set for 2013. This number is set annually by the Competition Bureau.

Where pre-notification is required, the transaction may not be closed for thirty days following the filing of the prescribed information and the $50,000 filing fee. This period can be extended by the Commissioner in order to obtain additional information. The extended period expires thirty days following the provision of the information.

Transactions for which notification is not required include:

1. an acquisition of real property or goods in the ordinary course of business provided that the acquisition does not result in the acquiring party holding all or substantially all of the assets of a business or operating segment of a business;

2. an acquisition of voting shares or of an interest in a combination solely for the purpose of underwriting the shares or the interest;

3. an acquisition of voting shares or an interest in a combination or assets that would result from a gift, intestate succession or testamentary disposition;

4. an acquisition of collateral or receivables, or an acquisition resulting from a foreclosure or default or forming part of a debt work-out, made by a creditor in or pursuant to a credit transaction entered into in good faith in the ordinary course of business;

5. certain acquisitions, directly or indirectly, of Canadian resource property;
6. certain joint ventures;
7. transactions involving only affiliated parties; and
8. transactions in which an Advance Ruling Certificate has been issued.

Advance Rulings and Written Opinions

The parties to a proposed transaction may apply to the Commissioner for an Advance Ruling Certificate. The certificate, if issued, prevents the Commissioner from applying to the Tribunal under section 92 of the *Competition Act* if the transaction is substantially completed within one year of the issuance of the certificate. Granting of a certificate is entirely discretionary and while there is no time limit for a decision to be made, the *Competition Act* requires that consideration of any request be done as judiciously as possible.

For other matters under the *Competition Act*, a person may apply to the Commissioner for a written opinion on the applicability of a provision to certain conduct or practice. This opinion is binding provided that the material facts are accurate and have not changed. The fees for a written opinion range in price from $1,000 to $15,000.

5. FREE TRADE

Canada is a member of the *North American Free Trade Agreement* (NAFTA), the World Trade Organization (WTO) and several other free trade agreements. Such agreements offer significant opportunities and benefits for companies planning to expand their operations into Canada.

NAFTA

NAFTA, which came into force on January 1, 1994, established a continental free trade area between Canada, the United States of America and Mexico. NAFTA built upon the Canada-U.S. Free Trade Agreement by eliminating most tariffs on eligible goods and services and eliminating non-tariff barriers. As such, companies of member countries are at a competitive advantage across North America. Note that Canada continues to apply federal and provincial sales and excise taxes to imports from NAFTA members.

NAFTA also aims to ensure a predictable commercial environment for business planning and investment. Each country is obliged to treat investors from the other countries in the same manner as its own investors. This obligation is applicable whether the investor is establishing a new business, acquiring an existing business, or dealing with the conduct, operation or sale of a business.

Generally, each of the three NAFTA countries is also prohibited from requiring minimum levels of equity in a business located in its territory to be held by its nationals, or from requiring an investor, by reason of nationality, to sell or dispose of an investment in its territory.

Qualifying Goods

The preferential tariff treatment under NAFTA only applies to goods and services that meet specific rules of origin. At a basic level, the rules generally provide that a good originates in a NAFTA member state if:

- the good is "wholly obtained or produced" in one or more NAFTA member states;
- the good is produced entirely from originating materials in one or more NAFTA member states;
- all non-originating materials used in the good are substantially transformed such that they undergo a tariff classification change; or
- where one or more non-originating goods are not transformed, the regional value content of the good meets either the transaction value threshold or the net cost threshold.

Settlement of Disputes

NAFTA also contains dispute-resolution mechanisms. With respect to anti-dumping and countervailing duty disputes, parties may turn to a binational panel that makes binding decisions. For all other matters, there is a non-binding consultative framework available.

Countries outside the NAFTA Free Trade Zone

Each country under NAFTA continues to impose its own tariffs for any goods that are imported from countries outside the NAFTA free trade zone, as well as for those from a party in one of the NAFTA partners where the goods fail to meet the rules of origin test.

WORLD TRADE ORGANIZATION (WTO)

The WTO came into existence on January 1, 1995, replacing the General Agreement on Tariffs and Trade (GATT). Based in Geneva, Switzerland, the WTO is the only international organization that deals with the rules of trade among member nations. The WTO membership is extensive. Including Canada, 159 countries were members as of March 2, 2013.

The WTO:

- Administers the WTO trade agreements;
- Provides a forum for trade negotiations;
- Handles trade disputes;
- Monitors national trade policies;
- Provides technical training and assistance to developing countries; and
- Coordinates cooperation among international organizations.

OTHER FREE TRADE AGREEMENTS

In addition to NAFTA, Canada has also entered into free trade agreements with various other countries. As of 2013, the treaties are with Chile, Columbia, Costa Rica, Israel, Peru, and the European Free Trade Association (Iceland, Norway, Switzerland and Liechtenstein). Agreements with Panama and Honduras have been concluded but are not yet in force.

GET PROFESSIONAL ADVICE

The preceding discussion is a summary overview of NAFTA and other free trade agreements that benefit companies that plan on doing business in Canada. Given the complexity of these agreements and the related regulations, professional advice is recommended.

6. FORMS OF BUSINESS ORGANIZATION

Carrying on Business in Canada

When establishing business operations in Canada, companies can consider several different types of organizations, each with its own advantages, business processes and tax considerations. The forms of business organization available in Canada are:

- Corporations (including unlimited liability companies and a co-operative corporations);
- Partnerships (including limited partnerships and general partnerships);
- Joint Ventures;
- Sole proprietorships; and
- Contractual arrangements such as licensing, distribution, agency or franchising.

BRANCH VS. SUBSIDIARY

Non-residents will sometimes use their existing non-resident business to establish "branch" operations in Canada. Alternatively, they may decide to create a new business corporation, called a "subsidiary," under the federal *Canada Business Corporations Act* (CBCA) or the relevant provincial or territorial Business Corporations Act. For example, the *Business Corporations Act* of Ontario (OBCA) is applicable to corporations that incorporate in the province of Ontario. Relevant considerations include taxes and liability.

While a branch operation must pay tax as a permanent establishment on its Canadian earnings, there may be an opportunity to use losses from the Canadian branch to reduce the earnings of the foreign parent. However, a branch operation will have to file a more complex tax return in Canada than that of a subsidiary corporation due to the earnings and expenses that have to be allocated between the branch and the non-resident entity.

Liability is another area in which a branch can be distinguished from a subsidiary. While the liability of a subsidiary is limited with respect to the foreign parent, a foreign parent is fully exposed to liabilities of its branch operations.

Filing Requirements

A non-resident must comply with provincial and territorial extra-provincial licensing regimes in the Canadian jurisdictions in which it carries on business. For example, in Ontario, a business entity created under the laws of a foreign country must obtain permission from the Companies and Personal Property Security Branch of the Ministry of Government Services, as well as an extra-provincial license, before it can carry on business or own real estate in Ontario. There are significant penalties for not obtaining an extra-provincial license and an unlicensed business entity cannot sue in an Ontario court.

The legislation dealing with such licensing requirements vary depending on the jurisdiction in which the business entity was established and whether the entity is a corporation, a partnership or a limited partnership. For instance, in Ontario, a foreign corporation that plans to establish a branch operation must file:

- a name search report from the automated name search system owned by Industry Canada, dated not more than ninety days prior to the submission of the application;
- a certificate of status, signed by an official of the governing jurisdiction who is authorized to so certify, setting out the name of the extra-provincial corporation, the date of its incorporation or amalgamation, the jurisdiction to which the corporation is subject, and that the corporation is a valid and subsisting corporation;
- the appointment of an agent for service (to handle legal proceedings in Ontario); and
- an initial return under the *Corporations Information Act* within sixty days after the date the corporation begins carrying on business in Ontario.

CORPORATIONS

A corporation is business organization that exists as a distinct entity, separate from its shareholders. It has legal personality and can thus own property and assets hold rights, and enter into contracts. This also means a corporation has the ability to exist in perpetuity as its existence is not tied to the lives of individuals. In addition, a corporation is an attractive business model as the extent to which shareholders can be held liable for obligations and debts of the corporation is minimal. They can only stand to lose their capital contribution. Note that corporations also provide great structural flexibility due to variety of attributes that can differ between share classes.

Though shareholders own the corporation, it is generally the directors and officers that exercise management functions. Shareholders primarily exert control by electing the directors, though they can retain power (and the corresponding liability) through a unanimous shareholder agreement.

A corporation can be public or private. The shares of a public corporation are traded between members of the public, generally on a stock exchange. A private corporation, however, has restrictions on the transfer of its shares. Note also that public corporations are treated differently under securities law, which is discussed below.

Federal vs. Provincial

A corporation, whether incorporated federally or in a province or territory of Canada, can carry on business in any province or territory of Canada. Note, however, that all of the provinces and territories require that federal and extra-provincial corporations register before engaging in business in the particular jurisdiction. This requirement can result in the inability of a corporation to operate under its name in a province due to the existence of a similarly named corporation. Federal corporations thus have a significant advantage as every province must permit a federal corporation to carry on business in the province under the federally registered corporate name. Note that while the name used by a federal corporation must be preapproved, there is no such limitation in provinces such as Ontario. This can minimize the chance of rejection.

Directors and Officers

Directors oversee and manage the corporation while officers, whose powers are delegated by the directors, run the daily operations. Under the CBCA and the OBCA there must be at least three directors for a public company while there may be only one for a private company. Directors and officers must act honestly and in good faith with a view to the best interests of the corporation. They must also exercise the care, diligence and skill that a reasonably prudent person would in comparable circumstances. Directors can be held personally liable in a variety of circumstances.

Though officers can be non-residents, and while director residency requirements are not present in all Canadian jurisdictions, under the OBCA and CBCA at least 25% of the directors of a corporation must be resident Canadians. Where there are less than four directors at least one must be a resident Canadian. An exception to this in the CBCA provides for higher minimums for certain prescribed sectors. Minimum director requirements also apply to director meetings under the CBCA. On the other hand, British Columbia has no residency requirements for directors or officers.

The Incorporation Process

Generally, to incorporate provincially or under the CBCA, an incorporator must file articles of incorporation, which require a variety of information such as a distinct corporate name (which must include a legal element, such as Ltd. or Inc.), share structure and directors.

The CBCA, the OBCA and many of the other provincial statutes permit the use of French and English versions of a corporate name.

While the CBCA and the OBCA permit federal and Ontario corporations to carry on any business without restriction, other federal and provincial legislation will have to be considered in view of the additional regulations for specific industry segments (for example, the regulations for financial services, including banking, insurance, trust companies and real estate brokerage).

Incorporation under either the CBCA or the OBCA is fast and efficient, and can be done electronically. Filing fees are currently $250 ($200 if done electronically) for a federal corporation and $360 ($300 if done electronically) for an Ontario corporation. There is also a fee of approximately $55 per name for the name-search report, which must be filed with the incorporating documents. While this name-search report indicates the availability of a name, it does not guarantee its distinctiveness.

Tax Considerations

A federal or provincial corporation in Canada is considered a resident of Canada for tax purposes and pays tax on its earnings in Canada. A corporation is taxed as a separate entity from its shareholders and related companies, and is taxed at a corporate rate. Income, losses and taxable benefits accrue to the corporation and do not flow through to the shareholders.

Profits are distributed through dividends to shareholders, which are then taxes at the individual level. Dividends paid to non-residents are subject to withholding tax.

Tax considerations associated with corporations are further discussed in Chapter 7 – *Tax Considerations*.

Unlimited Liability Companies (ULCs)

In an unlimited liability company (ULC), shareholders are personally liable for shortfall of the ULC. To minimize this, the shares of an ULC are generally held by an entity of the United States of America that has limited liability. Currently, there are three provinces in which an unlimited liability company can be incorporated Nova Scotia, Alberta and British Columbia. There are slight differences between the ULC of each province, most notably with respect to the extent of shareholder liability. In Alberta, for instance, liability arises as soon as a debt is incurred by the ULC, whereas in British Columbia and Nova Scotia liability only arises upon liquidation or dissolution, or wind-up of the ULC, respectively.

ULC Tax Benefits

The primary benefit of a ULC is the way in which it is treated for U.S. tax purposes. In addition to the availability of certain foreign tax credits and the ability to increase the current value of certain property for U.S. tax purposes, the primary advantage of a ULC is its treatment for U.S. tax purposes as a flow-through entity.

Note, however, that the Fifth Protocol to the *Canada-U.S. Income Tax Convention*, which took effect January 1, 2010, may negatively impact U.S. investors who have a ULC in Canada as Canadian withholding tax will now apply at a rate of 25% on the payment of dividends and interest by the ULC to U.S. residents.

In addition to the complex tax issues, there are a number of significant differences between the ULCs, as noted above. If you are considering incorporating under an ULC, professional advice is recommended in order for you to be fully informed of these differences and decide which jurisdiction better suits your business requirements.

Co-Operative Corporations

A co-operative corporation is one that is organized and operated on co-operative principles, as set out in the legislation that governs this form of organization.

Both the Ontario and federal governments permit the incorporation of corporations that are organized on co-operative principles. The earnings may be distributed as a patronage return to customers and suppliers (who are members) based on their patronage with the co-operative.

PARTNERSHIPS

A partnership is a form of business organization involving two or more natural persons or corporations combining to carry on a business in common with a view to profit. Partnerships are either governed by an agreement between the partners or provincial legislation such as the *Partnerships Act* in Ontario. There are two primary types of partnerships open to non-Canadian residents, general partnerships and limited partnerships.

In a general partnership all partners are personally liable for an unlimited amount of the debts and obligations that the partnership incurs. Unless altered by agreement, all partners also have equal management rights. In a limited partnership there is at least one general partner (often a corporation) and one or more limited partners. While the general partners have unlimited liability and management abilities, the liability of the limited partners is limited to the amount of their contribution to the partnership.

Note that a non-resident can hold the partnership interest through a Canadian subsidiary. If a foreign corporation holds the partnership interest directly, this constitutes a branch operation in Canada for the non-resident corporation and the all of the non-resident's operations will exposed to potential liability from the partnership.

Just as with a corporation, a foreign partnership must meet the appropriate filing and licensing requirements to carry on business in Ontario or another province.

Tax Considerations

One important benefit of a partnership is the way in which it is treated for tax purposes. Unlike corporations, partnerships are not separate entities and thus the profit or losses of the partnership flow through to the partners and become the responsibility of the partners to claim on their personal income tax return.

Filing Requirements

In Ontario, the name of a general partnership must be registered if the partners intend to use a name other than their own names. For a limited partnership, the general partners must file a declaration in the required form, which must be renewed every five years.

Joint Ventures

A joint venture is an association of two or more individuals, partnerships or corporations jointly undertaking a commercial enterprise. These are usually structured to exist only for a limited period of time as, typically, after the activity is completed, the joint venture is disbanded. As joint ventures are not regulated by statute, the relationship between the parties is governed by contract.

Joint ventures are not separate entities. As such, though revenues and expenses are shared, profits or losses are determined at an individual level. It is therefore the responsibility of the joint venture participants to report the allocated income or loss on their own income tax returns.

SOLE PROPRIETORSHIPS

A sole proprietorship is a form of business in which a single individual is the owner of a company. The primary advantage is the simplicity of this model, which entails fewer initial and operating costs. One disadvantage is the unlimited personal exposure to liabilities of the company. Note also that all income and losses are assessed against the individual and the individual's tax rate.

LICENSING, DISTRIBUTION AND FRANCHISING

Non-residents of Canada can use licensing, distribution and franchising arrangements to enter the Canadian marketplace and derive income from the use of their property in Canada. These are typically contractual arrangements between the non-resident and a Canadian entity. The Canadian entity may be owned by a third party or the non-resident may have an ownership interest in it.

Under a license agreement, the non-resident exploits its intellectual property by granting the Canadian entity the right to use the said property. This can include, for instance, patents, copyrights, industrial designs, trade-marks, and confidential information. A similar arrangement occurs where the Canadian entity is made an agent of the non-resident or a distribution agreement is entered into. Such agreements allow the non-resident to sell its goods or services through the Canadian entity and thereby avoid doing business in Canada.

Franchises

Another way of conducting business in Canada is to establish a franchise operation. In a franchise relationship, the owner of the franchise (franchisor) issues a license to the person (franchisee) to sell products and/or services under the trade-mark of the franchisor. A franchisee usually must comply with operational standards as well as pay an initial fee and royalties from its continuing operations. Many businesses in the retail and hospitality areas operate as franchises.

Setting up a franchise is one of the most successful ways of starting a new business as franchising provides an excellent opportunity for rapid expansion without a significant outlay of capital. This fast market penetration makes it a very attractive proposition to many entrepreneurs. Franchising is also beneficial to the franchisee, as it minimizes the risk that is inherent in opening a new business due to the established goodwill.

In Canada, all franchises must comply with federal competition and trade-mark legislation as well as the applicable federal and provincial legislation and regulations for carrying on a business.

Franchising in Ontario

While several provinces have enacted specific franchise laws, many still govern frachises under general contractual law. In Ontario, the *Arthur Wishart Act 2000* (AWA) deals specifically with the franchise sector and applies generally to franchise agreements entered into on or after July 1, 2000.

The AWA sets out that every franchise agreement imposes on each party a duty of "fair dealing" in its enforcement and performance. Under the AWA, fair dealing includes "duty to act in good faith and in accordance with reasonable commercial standards". Franchisees also have the right to associate with each other and form an organization of franchisees.

Disclosure Document

The franchisor must provide a disclosure document at least fourteen days before the agreement is signed or the initial payment is made, and must also provide a statement of material up to the signing or payment. The disclosure document must contain:

- all material facts (as defined in the AWA);
- financial statements;
- copies of the proposed franchise agreement and related agreements to be signed by the franchisee; and
- certain prescribed statements and information.

Recourse

The AWA provides for rescission of the franchise agreement by the franchisee if:

- the franchisor fails to provide the disclosure document;
- the disclosure document or a statement of material change is not provided within the required time; or
- the contents of the disclosure document do not meet the requirements of the AWA.

The AWA also provides that a franchisee is entitled to damages for a breach of the duty of fair dealing, interference with the freedom of franchisees to associate, a misrepresentation in a disclosure document or statement of material change, and for failing to adhere to section five of the AWA. Subject to certain exceptions, liability for misrepresentation in a disclosure document or statement of material change is imposed not only on the franchisor, but also on any associate, agent, or broker of that franchisor, and on every person who signed the disclosure document or statement of material change.

Government Assistance

There are a number of federal and provincial agencies in Canada that encourage business development and expansion. Support is provided in a variety of ways, including feasibility analyses and financial participation.

One example is Industry Canada, which provides information of their website (www.ic.gc.ca) to assist in locating traditional or alternative sources of private sector and government financing for a small business such as the Canada Small Business Financing Program.

GET PROFESSIONAL ADVICE

Determining the most appropriate legal organization for a Canadian venture is a critical decision for every non-Canadian enterprise considering doing business in Canada. This is dependent upon both the factors mentioned above and the tax consequences in the foreign jurisdiction where the non-Canadian originates.

Before going forward, we recommend that you get legal advice on the various legal and tax implications of the form of business you are considering.

7. TAX CONSIDERATIONS

This chapter provides a general overview of the tax implications of corporate and personal income for individuals and businesses that are considering doing business in Canada. As federal and provincial tax statutes are complex and their provisions frequently change, professional advice is recommended.

FEDERAL AND PROVINCIAL TAXATION

In Canada, both the federal and provincial governments impose corporate and personal taxes on income, including taxing capital gains. Generally speaking, the inclusion rate for capital gains is 50%. There are also various deductions and tax credits available to individuals and corporations as prescribed in the *Income Tax Act* (ITA) and the Provincial and Territorial Acts.

In addition to the capital tax that the federal government imposes on financial institutions and large corporations, the governments of the provinces and territories also impose capital taxes on corporations that carry on business within their jurisdictions.

The federal government enforces and collects income taxes, customs duties and tariffs. It also administers the federal income tax system through the *Canada Revenue Agency* (the CRA – formerly called Canada Customs and Revenue Agency), a division of the federal Ministry of National Revenue.

Across Canada, the income tax rate is substantially uniform for both corporate and personal income. In most instances, the CRA collects corporate and personal income taxes on behalf of the provinces, with some exceptions. The province of Quebec, for example, collects its personal and corporate taxes separately, while the provinces of Alberta and Ontario collect only their corporate taxes separately.

Theoretically, the Canadian income tax system is integrated, so that the total tax applying on income should be similar, whether it is earned directly by an individual or through a corporation. However, the concept of integration does not apply in certain circumstances, such as income earned by a corporation on which the high level of corporate tax applies.

INCOME TAX

Canada bases its taxation system on the concept of residence. Individuals are considered to be residents if they “ordinarily reside” in Canada or are present in Canada for 183 days or more in a taxation year.

Under the ITA, Canadian federal income tax is levied on the worldwide income of individuals and corporations resident in Canada, but only on certain Canadian-source income of non-residents.

As of the year 2004, all provinces (with the exception of Quebec and the Territories) calculate their provincial tax on federal taxable income, rather than as a percentage of the federal tax (the former tax-on-tax method). Provincial personal income tax is calculated by applying the provincial tax rate(s) to the taxable income amount. This Tax-on-Income method, called TONI, provides greater flexibility in tailoring provincial tax systems to meet the provinces' needs and priorities.

Quebec administers its own provincial personal income taxes. The Territories continue to use the tax-on-tax method to calculate their territorial taxes.

For tax purposes, a corporation is viewed as a "person" and is therefore a taxpayer. All corporations formed in Canada after April 26, 1965 are considered to be residents of Canada. Any corporation formed on or before this date is taxed in Canada if it has actually been resident in Canada or has carried on business in Canada after that time. A foreign incorporated entity will be considered to be a resident of Canada if the company exercises its central management and control in Canada (the taxation of corporations is discussed later in this chapter.).

Non-Residents – Taxation of Personal Income in Canada

Unlike Canadian residents who are taxed on their worldwide income, non-residents are subject to Canadian income tax on income that is derived from:

- Employment in Canada;
- Carrying on business in Canada; and
- Dispositions of certain types of properties that are located in Canada.

In addition, Canada imposes non-resident withholding taxes on certain Canadian-source income paid to non-residents, such as interest, dividends, rents and royalties.

Canada has income tax treaties with other countries that alleviate double taxation of personal income. The taxation of non-residents in Canada is subject to the overriding provisions of any applicable Income Tax Treaty between Canada and the country of residence of the non-resident. Generally speaking, these income tax treaties reduce the statutory withholding tax rate of 25% and specify the circumstances under which Canada will retain the right to impose income tax on the non-resident on various categories of income.

Canada's tax treaties typically exempt from domestic income taxation any profits from a business carried on in Canada, unless it is carried on through a "permanent establishment" located here. Each treaty defines this term for purposes of this exemption. The Canada-U.S. Tax Convention defines "permanent establishment" as a fixed place of business through which the business of a resident of a Contracting State (i.e. Canada or the U.S.) is wholly or partly carried on. "Permanent establishment" includes a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

In the absence of a tax treaty, a non-resident is generally considered to be carrying on business in Canada if that non-resident:

- produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves or constructs, in whole or in part, anything in Canada;
- solicits orders or offers anything for sale in Canada; or
- disposes of property (other than capital property) that is Canadian real estate, timber resource property or, in certain circumstances, Canadian resource property.

A non-resident carrying on business in Canada must pay income tax in Canada on income realized from that business activity.

Estate, Succession and Gift Taxes

In Canada, there are no estate, succession and gift taxes, and Canadian municipalities generally impose only property taxes on real estate. However, all provinces, except Quebec, impose a will probate fee or estate administration tax.

Probate is a process by which the court of the governing province or territory confirms the validity of a will and the appointment of the executor or, where there is no will, the court appoints an administrator. The executor of the will or the administrator is then able to provide a third party with evidence that authority is held to deal with the assets of the deceased. Probate fees/taxes vary by province and are based on the value of the assets subject to probate. In addition to these fees, the deceased's assets that are subject to probate become a matter of public record. As taxpayers can use other methods to pass assets after death, it is important to get professional advice on your estate planning strategies.

The tax implications for non-residents holding Canadian real estate are discussed in Chapter 3 – *Foreign Investment Considerations*.

Non-Residents – Taxation of Business and Other Commercial Operations in Canada

As discussed in Chapter 1 – *Introduction*, most non-residents who wish to carry on business in Canada will choose to do so either through opening a branch office of their foreign enterprise or through a Canadian subsidiary corporation. The appropriate form of operation for any particular business will vary from case to case, depending not only on Canadian tax implications but also on general business concerns and tax consequences in the foreign jurisdiction where the investment originates.

From a Canadian tax perspective, however, it is often preferable to carry on business in Canada through a subsidiary corporation rather than through a branch.

If a branch is used, each year the business must allocate the income of the entire operation between Canada and the other countries in which business is carried on. This allocation frequently causes practical problems and double taxation concerns, because Canadian taxation rules relating to allocation of income will not necessarily be consistent with those applied in other taxing jurisdictions. Practical problems also arise when the parent company attempts to allocate head office expenses to the Canadian branch.

Canada levies a “branch tax” on the profits of a branch operation at a branch tax rate to the extent that the profits are not reinvested in the business in Canada. The tax is generally equal to the rate of withholding tax on dividends paid to non-residents (generally 10% or 15% to 25%, depending on the parent company’s country of residence and the existence of an Income Tax Treaty with that country). Under certain tax treaties (such as the treaty between Canada and the U.S.), there is a lifetime exemption from branch tax of up to $500,000 (Canadian Dollars) of branch profits.

CORPORATE TAX

Federal and provincial tax rates for corporations vary. Manufacturing and small Canadian-controlled business corporations enjoy preferential tax rates on their profits. A corporation must file a corporate tax return with the CRA within 6 months of its fiscal year-end.

A *Canadian Controlled Private Corporation* (CCPC) is a private Canadian corporation that is not controlled by non-residents, by a public corporation, or by any combination of non-residents and public corporations. For tax purposes, a private corporation that is owned 50% by non-residents and 50% by residents qualifies as a CCPC. As indicated in the following table, a CCPC enjoys preferential lower tax rates on the first $500,000 (Canadian Dollars) of its taxable income from active business.

Combined Federal and Provincial Income Tax Rates – Corporations

The following table shows the combined federal and provincial income tax rates for active business income. An active business is any business carried on by the taxpayer other than a specified investment business or a personal service business. For some purposes, an active business includes an adventure or concern in the nature of trade.

Combined Federal and Provincial/Territorial Income Tax Rates for Income Earned by a Non-Canadian Controlled Private Corporation (Non-CCPC)

Effective January 1, 2010.

	General M&P Income	General Active Business Income	Investment Income
British Columbia	28.5%	28.5%	28.5%
Alberta	26.0	28.0	28.0
Saskatchewan	28.0	30.0	30.0
Manitoba (1) to Nov. 30, 2010 (2) effective Dec. 1, 2010	30.0 30.0	30.0 30.0	30.0 30.0
Ontario (1) to June 30, 2010 (2) effective July 1, 2010	30.0 28.0	32.0 30.0	32.0 30.0
Quebec	29.9	29.9	29.9
New Brunswick (1) to June 30, 2010 (2) effective July 1, 2010	30.0 29.0	30.0 29.0	30.0 29.0
Nova Scotia	34.0	34.0	34.0
Prince Edward Island (1) to March 31, 2010 (2) effective April 1, 2010	34.0 34.0	34.0 34.0	34.0 34.0
Newfoundland and Labrador	23.0	32.0	32.0
Yukon	20.5	33.0	33.0
Northwest Territories	29.5	29.5	29.5
Nunavut	30.0	30.0	30.0

Combined Federal and Provincial/Territorial Income Tax Rates for Income Earned by a Canadian Controlled Private Corporation (CCPC)

Effective January 1, 2010.

	Small Business **Income up to $500,000***	**General Active Business Income**	**Investment Income**
British Columbia	13.5%	28.5%	45.17%
Alberta	14.0	28.0	44.67
Saskatchewan	15.5	30.0	46.67
Manitoba (1) to Nov. 30, 2010 (2) effective Dec. 1, 2010	23.0 (12.0 income to $400K) 23.0 (11.0 income to $400K)	30 30	48.67 46.67
Ontario (1) to June 30, 2010 (2) effective July 1, 2010	16.5 15.5	32.0 30.0	48.67 46.67
Quebec	19.0	29.9	46.57
New Brunswick (1) to June 30, 2010 (2) effective July 1, 2010	16.0 16.0	30.0 29.0	46.67 45.67
Nova Scotia	27.0 16.0 (income to $400K)	34.0	50.67
Prince Edward Island (1) to March 31, 2010 (2) effective April 1, 2010	13.1 12.0	34.0 34.0	50.67 50.67
Newfoundland and Labrador	16.0 (income to $400K) 25.0	32.0	48.67
Yukon	26.0 15.0 (income to $400K)	33.0	49.67
Northwest Territories	15.0	29.5	46.17
Nunavut	15.0	30.0	46.67

Other Income

Other taxable corporate income includes dividends, royalties, property income and capital gains. This income is taxed in Ontario at the following rates (combined federal and provincial rates):

	Interest/Rents/Royalties	Capital Gains
Canadian Controlled Private Corporations	48.67%	17.9%
Other Corporations	33%	14.1%

Transfer Pricing

The issue of transfer pricing relating to non-arm's length transactions is important because there have been several substantial amendments to the rules in the *Income Tax Act*.

Canada's transfer pricing system is based on a model put forth by the *Organization for Economic Cooperation and Development* (OECD). The OECD Model recommends the arm's length principle. The primary objective of the transfer pricing rules is to ensure that non-arm's length parties transact with each other as if they were dealing with each other at arm's length. Therefore, inter-company pricing and other charges for these transactions should be no higher or lower than those prices charged by parties that deal with each other at arm's length.

Inter-company transactions include charges for:

- Purchase and sale of inventory and services;
- Management fees;
- Royalties on know-how (intellectual property) and technology;
- Interest on inter-company loans; and
- Inter-company administrative fees.

To determine transfer prices, taxpayers can put forward *Advanced Pricing Agreements* (APAs) for review by CRA. This allows taxpayers to prospectively confirm an appropriate transfer-pricing methodology and its application for specific cross-border transactions between related parties. CRA considers an APA to be a binding agreement.

Thin Capitalization Rules

The thin capitalization rules disallow the deduction of interest (for tax purposes) on debts that are owed by a corporation resident in Canada to specified non-residents. Thin capitalization rules are in place to prevent non-residents of Canada owning shares in resident corporations, from withdrawing profits in the form of interest payments that will be subject to a low rate of withholding tax.

The interest expense is disallowed where the debt to equity ratio held by specified non-residents exceeds a ratio of 2:1. Specified non-residents include any non-resident persons who, either alone or in combination with persons with whom the person does not deal at arm's length, own 25% or more of the voting shares, or own shares that represent 25% of more of the fair market value of all issued shares of the corporation.

Debt includes only debt which is interest-bearing, held by specified non-residents. Not included in debts are amounts owed to residents of Canada, or owed to non-residents of Canada who are neither shareholders nor related to shareholders. Equity includes the paid-up capital of a corporation as well as the retained earnings and other additional accounts.

Federal Goods and Services Tax and Harmonized Sales Tax

On January 1, 1991, the federal government introduced a 7% Goods and Services Tax (GST). This tax replaced the former Federal Sales Tax, which was generally imposed on the price of goods at the manufacturers' level or on the duty-paid value of imported goods. In 2008, the Federal Government reduced the GST to 5%.

The GST is a multi-level tax similar in structure to the Value Added Tax of other countries. Most businesses and organizations carrying on commercial activities in Canada have to register for and collect the GST on the taxable supplies of goods and services that they provide and that are consumed in Canada. However, persons and organizations whose revenues from taxable supplies do not exceed $30,000 (Canadian Dollars) in the previous 4 calendar quarters are viewed as "small suppliers" and are not required to register or collect GST.

The GST is generally collected by vendors or, in the case of imports, by the CRA. Taxable supplies include most services and virtually all goods – excluding food products, exports and medical devices. Financial intermediation services are also exempt from the GST. Businesses can claim *Input Tax Credits* (ITCs) on the GST for capital outlays and purchases of supplies and services as prescribed in the Act.

On April 1, 1998, the provinces of Nova Scotia, New Brunswick, and Newfoundland introduced the Harmonized Sales Tax (HST) of 8%. The HST extended the GST to a provincial level at a combined tax rate of 13%. On July 1, 2010, the HST was also introduced in Ontario resulting in an HST rate of 13%. Also as of July 1, 2010, Nova Scotia increased its HST rate from 13% to 15%. The province of Quebec has a form of harmonized value-added tax called the Quebec Sales Tax at a rate of 7.5%.

Most other provinces impose retail sales taxes, which range from 5% to 10%. The only exception to this is the province of Alberta, which has no retail sales tax.

Customs and Excise

The Canadian government has several statutes which regulate customs and excise. The CRA applies the Harmonized Commodity Description and Coding System to properly classify imported goods. The United States of America and several European and Asian countries also use this system.

Individuals and companies are required to report all goods that they are bringing into, or having shipped to Canada. The CRA reviews the goods that are being imported to ensure that they abide with Canadian trade law and that the appropriate customs duties and tariffs are levied.

For companies doing business in Canada, relief from custom duties is available in certain circumstances relating to:

- Abatement and refund;
- Export drawbacks;
- Duty reduction and removal;
- Remission on importation of machinery;
- Inward processing;
- Production sharing;
- Specific product and producer remission orders;
- Defense production and development sharing remission orders;
- Discretionary duty relief;
- Temporary importation; and
- Relief based on end use.

Export drawbacks, in particular, help Canadian companies compete in export markets by allowing them, under special circumstances, to recover duties that they paid on importing goods (however, they cannot recover GST). Importers, manufacturers and exporters may be eligible.

Canada also has import and export controls for specific products under prescribed circumstances. Canada's Import Control List (ICL) is principally designed to protect the integrity of Canada's agricultural products, enforce international embargoes on trade in goods made from endangered species, and generally protect Canadian markets. These controls take the form of embargoes, quotas, format specifications, packaging, labelling, testing or degree of processing, anti-dumping and anti-subsidy import controls. For example, anti-dumping import controls are mechanisms that Canada may use to prevent foreign producers from selling their products in Canada at lower prices than they would in their home market.

Canada's Export Control List (ECL) restricts the export of specified products for security reasons. The List is divided into 7 groups: dual-use, munitions, nuclear non-proliferation, nuclear-related dual-use, miscellaneous goods and technology, missile technology control regime, and chemical and biological weapons non-proliferation lists.

Scientific Research and Experimental Development (SR&ED) Tax Incentive Program

The SR&ED program is a federal tax incentive program administered by the CRA aimed at encouraging businesses to conduct research and development (R&D) in Canada.

Tax credits provided by the SR&ED program significantly reduce the cost of conducting R&D in Canada. The SR&ED program gives claimants cash refunds and/or tax credits for expenditures made in Canada, including, but not limited to, wages, materials, machinery, equipment, overhead, and contracts.

All companies based in Canada that invest in R&D have access to tax incentives, provided that they perform qualified R&D. To qualify for the SR&ED program, work must advance the understanding of scientific relations or technologies, address scientific or technological uncertainty, and incorporate a systematic investigation by qualified personnel. This includes:

- experimental development to achieve technological advancement to create new materials, devices, products, or processes, or improve existing ones;
- basic and applied research to advance scientific knowledge; and
- support work in engineering, design, operations research, mathematical analysis, computer programming, data collection, testing, or psychological research.

The following activities are not eligible for benefits under the program:

- social science and humanities research;
- commercial production of a new or improved material, device, or product, or the commercial use of a new or improved process;
- style changes;
- market research or sales promotion;
- quality control or routine testing of materials, devices, products, or processes;
- routine data collection;
- prospecting, exploring, or drilling for or producing minerals, petroleum, or natural gas; and
- development based solely on design or routine engineering practice.

Generally, qualifying businesses can earn an investment tax credit (ITC) of 20% of qualified expenditures. Qualifying CCPCs (discussed in more detail earlier in this Chapter) can earn an ITC of 35% up to the first $3 million (Canadian Dollars) of qualified expenditures, and an ITC of 20% on any excess amount.

Unlike some other countries, companies in Canada have the option of deferring their R&D tax deduction or tax credit. This flexibility is designed to benefit companies that invest heavily in R&D in their start-up years and wish to defer the tax benefits to later years in which they make a profit.

Tax Incentives in Ontario

There are various tax incentives for taxpayers conducting R&D in Ontario, including the *Ontario Research and Development Tax Credit*, the *Ontario Innovation Tax Credit*, and the *Ontario Business-Research Institute Tax Credit*.

Ontario Research and Development Tax Credit (ORDTC)

The ORDTC is a 4.5% non-refundable tax credit for corporations carrying on eligible SR&ED in Ontario. This deduction is targeted at large, new and/or strategic advanced technology initiatives. It allows corporations to exclude from Ontario taxable income the portion of the federal

investment tax credit that relates to qualifying SR&ED expenditures. The ORDTC replaced the Ontario SR&ED tax deduction tax for years ending after December 31, 2008.

Ontario *Innovation Tax Credit*

The Ontario Innovation Tax Credit (OITC) is a 10% refundable tax credit on annual SR&ED expenditures of up to $3 million (Canadian Dollars) annually for qualifying public and private corporations. It is aimed at encouraging qualifying businesses to undertake SR&ED in Ontario. Qualifying expenditures are 100% of current expenses such as salaries and wages, and 40% of capital expenditures. Corporations with taxable income equal to or greater than $500,000 (Canadian Dollars) are not eligible for the OITC.

Ontario *Business-Research Institute Tax Credit*

The Ontario Business Research Institute Tax Credit (OBRITC) provides a 20% refundable tax credit for SR&ED expenditures incurred in Ontario under an eligible contract with an eligible research institute (ERI). An ERI is a public, non-profit research facility such as:

- an Ontario university or Ontario college of applied arts and technology;
- an Ontario Centre of Excellence or a Network of Centres of Excellence; and
- a non-profit organization that is an affiliated or federated college or university of an Ontario university.

Corporations that enter into approved contracts with eligible Ontario research institutes can claim up to $4 million (Canadian Dollars) per year. Small businesses may claim the 20% OBRITC in addition to the 10% OITC for a combined tax credit of 30% of qualifying expenditures.

FOREIGN REPORTING REQUIREMENTS

As Canada's tax system is a self-assessment system, the government relies on individuals, corporations, and trusts to properly report all of their worldwide income and properly claim only those expenses and tax credits as allowed in the ITA.

Individuals and corporations must file a federal income tax return. In the case of individuals, the filing date is generally April 30 of the following taxation year. For example, the personal income tax return for 2008 is filed by April 30, 2009. For corporations, the filing date is within 6 months of the end of the fiscal year.

The CRA ensures that the self-assessment system operates effectively and efficiently by conducting regular audits of its taxpayers, including individuals and entities. To assist the CRA in identifying cases of non-compliance, the federal government has introduced various projects that target businesses operating in the underground economy and impose various reporting requirements.

The Canadian federal government also recently introduced new reporting requirements to require Canadian taxpayers to report various foreign investments and foreign sources of income. The new foreign reporting requirements require taxpayers to file information returns to report the following:

- Foreign property with an aggregate cost exceeding $100,000 (Canadian Dollars), excluding shares of foreign affiliates, property used exclusively in an active business of the taxpayer, and personal use property;
- Transfers or loans of property by the taxpayer, or the taxpayer's controlled foreign affiliate, to a non-resident trust;
- Distributions from or indebtedness to a non-resident trust in which the taxpayer has a beneficial interest; and
- Listing of controlled and non-controlled foreign affiliates (corporations and trusts).

Taxpayers must file various forms and returns with the CRA to report payments made to non-residents and taxes withheld from these payments. For example, if a taxpayer makes payments to non-residents of Canada for income such as interest, dividends, rents, royalties and pensions, then Form NR4 must be completed to report these payments. If a taxpayer makes payments to non-residents for services performed in Canada, other than in employment situations, then Form T4A-NR Return must be completed to report these payments.

GET PROFESSIONAL ADVICE

The preceding discussion is a summary overview of the Canadian tax system. Given the complexity of Canadian tax law and various tax planning strategies that individuals and corporations can consider, professional advice is recommended to ensure strategies employed are appropriate to the particular circumstances.

8. BUSINESS IMMIGRATION

Business persons who seek to enter Canada for an activity anywhere in the business cycle – from visiting a client for one day to establishing a brick-and-mortar subsidiary for their employer – may apply either for temporary admission or for status as a permanent resident.

Typically, individuals coming to Canada will initially make an application for temporary admission and may or may not follow this process with an application for permanent residence.

TEMPORARY ADMISSION

The general rules for temporary admission are that, unless expressly exempted from any of the following requirements, foreign workers must:

- Possess the academic and vocational experience required to perform the work they seek admission to do;
- Be admissible to Canada on criminal and medical grounds; and
- Be in possession of a valid work permit issued by *Citizenship and Immigration Canada* (CIC).

The usual route for obtaining a work permit from CIC is for the individual's employer to apply to *Human Resources and Skills Development Canada* (HRSDC) for a Labour Market Opinion

confirmation letter (an "LMO"), confirming that issuing the work permit to the foreign national will have either a positive or a neutral effect on the Canadian labour market. Thus, a foreign worker generally requires the approval of two different government agencies applying two different sets of criteria before a foreign national may work in Canada. Processing for an LMO can take anywhere from four to sixteen weeks, depending on circumstances.

What is Work?

Many employers and employees mistakenly believe that if no hands-on work is to be undertaken, then no "work" is being performed and therefore no work permit is required.

However, "work" is very broadly defined under Canadian immigration law as "any activity for which wages are paid or commission is earned or that competes directly with the activities of Canadian citizens or permanent residents in the Canadian labour market."

Therefore, while this definition of work includes manual labour such as laying telecommunications cable and hands-on work such as accounting, it also includes soft work activities such as "consulting, supervising and managing" in a non-industrial environment. As long as the individual performing these tasks is within Canadian territory, he or she may be subject to the requirement to obtain a work permit.

If a foreign worker were a "manager" or "executive," work would include normal daily managing activities such as budgeting and strategic planning.

In considering whether a person seeks to enter into the Canadian labour market, CIC officers will ask:

- If the person will be doing an activity that a Canadian should have the opportunity to do.
- If the person will be engaging in a business activity that is competitive in the marketplace.

Generally, self-employment is considered to be work since the individual will be engaging in a business activity that competes with other Canadians for business. Even unpaid employment undertaken for the purpose of obtaining work experience (such as an unpaid internship or practicum) is considered work since the individual will be performing an activity that a Canadian could have the opportunity to do.

What is Not Work?

Although it is clear that work includes almost every productive activity for which an individual is paid, some activities are not covered by this broad definition. Examples of activities not considered to be work include:

- Volunteer work for which a person would not normally be remunerated. Normally this activity would be part-time and incidental to the main reason the person is in Canada;
- Self-employment, where the work to be done would have no real impact on the Canadian labour market. This would include, for example, farmers from the United States of America crossing the border to work on land that they own; and

- Long-distance work conducted over the Internet or telephone by a visitor whose employer is outside of Canada and who is remunerated from outside of Canada.

Work Without a Work Permit

There are limited, specific exceptions to the general rule requiring HRSDC confirmation and/or a work permit.

Some examples include:

- Business visitors whose primary source of remuneration for the business activity is outside of Canada and the principal place of accrual of profits remains predominantly outside of Canada;

- Foreign nationals purchasing Canadian goods or services for a foreign business or government, or receiving training or familiarization concerning these goods or services;

- Foreign nationals receiving or giving training within a Canadian parent or subsidiary of the corporation that employs them outside of Canada, so long as any production of goods or services that result from the training is incidental;

- Foreign nationals representing a foreign business or government for the purpose of selling goods for that business or government, if the foreign national is not engaged in making sales to the general public;

- Foreign nationals providing after-sales services, provided that the services are being provided as part of an original or extended sales agreement, lease agreement, warranty or service contract. Hands-on building and construction work are not covered by this provision;

- Certain foreign nationals who are engaged in the performing arts and/or their crew, film producers and guest speakers, including commercial speakers or seminar leaders seeking admission for less than five days; and

- Foreign nationals who are crew in the transportation industry in limited circumstances.

Non-work Activity or Work Activity not requiring a Work Permit

There are two types of procedures whereby foreign nationals who seek to enter Canada to perform an activity that is not considered work, or who seek admission to perform work that does not require a work permit, may apply for entry to Canada:

- If the foreign national is from a country whose citizens or residents do not require a temporary resident visa (formerly known as a visitor's visa) to enter Canada, the foreign national may appear at any port of entry with only personal identification, proof of citizenship and other supporting documents, and seek admission from CIC.

- If the foreign national is from a country whose citizens are required to be in possession of a temporary resident visa, the foreign national must apply for the temporary resident visa from a Canadian Consulate or High Commission by making a formal application,

providing supporting documentation, and paying a fee before appearing at a Port of Entry to seek admission.

Work with a Work Permit and no LMO Requirement

Foreign workers who seek admission to perform work that falls into certain specified categories will require a work permit, but not HRSDC confirmation, including:

- Intra-company transfers of executives, managers or specialized knowledge employees who have worked for the foreign employer in qualified positions for at least one year immediately prior to the work permit application being made, and who wish to work in the Canadian subsidiary, affiliate or branch office (U.S. and Mexican nationals qualify if they worked in the qualified positions for at least one year in the three years immediately prior to the work permit application being made);
- Certain professionals under the *North American Free Trade Agreement* (NAFTA), the *General Agreement on Trade in Services* (GATS), the *Canada-Chile Free Trade Agreement* (CCFTA), the *Canada-Peru Free Trade Agreement* (CPFTA) or the *Canada-Columbia Free Trade Agreement*;
- "Traders" or "investors" under NAFTA, CCFTA, CPFTA or the *Canada-Columbia Free Trade Agreement*;
- Entrepreneurs / self-employed candidates;
- Emergency Repair Personnel;
- Employees whose admission to Canada will provide "significant benefit" to Canada;
- Charitable or religious work;
- Employees whose admission to Canada reflects a reciprocal benefit conferred on Canadian workers abroad;
- The spouses or partners of most work permit holders; and
- Participants in qualifying international agreements.

The admission process is as follows:

- If a temporary resident permit is not required, foreign workers must apply for a work permit at a Canadian Consulate or High Commission by submitting proper application forms, supporting documentation and the required fee. If a temporary resident permit is required, foreign workers must apply for a temporary resident visa and work permit at a Canadian Consulate or High Commission with application forms, supporting documentation and proper processing fees.

- Foreign workers must seek admission at a Port of Entry in possession of temporary resident visa, if required, and a work permit.

Note that processing an application for a temporary resident permit and/or a work permit can take from one day to twelve weeks depending on a number of factors.

COMMON MISCONCEPTIONS ABOUT TEMPORARY ADMISSIONS

Some of the common misconceptions about work permits and the application process for temporary admission are discussed as follows:

- **I will not be doing work so I do not need authorization.**

Almost every activity for which a person is paid constitutes work and requires authorization.

- **I will only be working in the country for a few days so I do not need authorization.**

The length of time that you will spend in Canada is irrelevant. If a person seeks admission to Canada to work for even 1 day, authorization is required.

- **My predecessor did not need any authorization so neither do I.**

Every application by an individual for admission to Canada will be adjudicated on the merits. Decisions on applications by other individuals or even previous decisions on applications by the same person do not in any way govern subsequent applications.

- **I will not be paid from within Canada so I do not need any authorization.**

The source of remuneration is irrelevant and does not determine what constitutes work.

Penalties for Non-Compliance

The *Immigration and Refugee Protection Act* (IRPA) applies laws and regulations governing work permits. See discussion below under “Penalties for Non-compliance.”

Note that penalties for non-compliance with the admission requirements may be charged against an individual or a corporation. These penalties range from fines to criminal charges.

Planning Considerations for Foreign Workers Seeking Temporary Admission

Generally, you should identify those employees who may potentially be required to enter Canada as foreign workers and organize their travel and supporting documents well in advance. Similarly, you should make advance preparations if you are an individual who may seek temporary admission to Canada.

At least twelve weeks before the employee needs to enter Canada, contact a qualified Canadian immigration lawyer to determine:

- Whether a temporary work permit is required;
- Whether the applicant is eligible for admission to perform the required activity; and
- What procedures must be followed to obtain the work permit, and the likely time frame involved.

ADMISSION AS A PERMANENT RESIDENT

Canada is the destination of choice for many business persons who are attracted to our market-oriented economic system, skilled labour force, abundant natural resources and high living standards and who want to become permanent residents. In particular, Canada's safety, security, and stable economic, financial and governmental institutions are important factors in an increasingly complex world.

The *Immigration and Refugee Protection Act* (the "IRPA") sets out statutory changes and new regulations for business immigration. Overall, the goal of the IRPA is to develop a strong and prosperous Canadian economy through business immigration.

Section 12 of the IRPA provides that foreign nationals may be selected for admission as permanent residents based on their ability to become economically established in Canada. This "economic class" is comprised of business immigrants and skilled workers. Business immigrants (including investors, entrepreneurs and the self-employed) are selected to support the development of a strong and prosperous Canadian economy, one in which the benefits of immigration are shared across all regions in Canada.

The intent of the business immigration regulations is to:

- Provide an objective, legally sanctioned basis for assessing the ability of business applicants to become economically established in Canada;

- Establish a selection scheme that maximizes the economic benefits of the program across all regions;

- Provide a clear and transparent statement of program requirements for both prospective business immigrants and officials involved in assessing applications;

- Simplify the assessment of business experience in order to arrive at selection decisions that are both consistent and objective;

- Facilitate the ease and efficiency of program administration; and

- Establish mechanisms that will protect the investments made by investor applicants and optimize compliance with program requirements.

In general terms, the regulations:

- Set out, in the form of definitions, the core requirements that must be met by business immigrants;
- Establish a selection grid that delineates additional criteria to be applied in assessing business immigrant applications and assigns the weight to be given to those criteria;
- Establish procedures to be followed in evaluating applications;
- Establish processes for the handling and disbursement by CIC officials of investments made by those accepted under the investor program; and
- Set forth the conditions that will be imposed in the Entrepreneur Program.

Some of the business immigration regulations that are advantageous for investors, entrepreneurs and self-employed persons who are seeking permanent admission to Canada are discussed as follows.

FOR INVESTORS

- As of July 1, 2012, Citizenship and Immigration Canada has temporarily stopped accepting applications for the federal Investor program to focus on processing the applications already received while the program is reviewed. This pause on new applications does not apply to the Quebec Immigrant Investor Program;
- The Immigrant Investor Program (IIP) seeks to attract experienced business persons and capital to Canada. Investors must demonstrate qualifying business experience, a minimum net worth of $1,600,000 (Canadian Dollars), such net worth having been obtained legally, and must make a (passive) investment of $800,000 (Canadian Dollars) in an approved investment;
- An objective standard for business experience, parallel to that for the entrepreneur program, is established;
- Spousal/Common-law partner assets are included when assessing net worth; and
- The selection grid has been altered to provide the flexibility to adjust the weight of the various criteria.

FOR ENTREPRENEURS

- CIC has temporarily stopped accepting applications for the federal Entrepreneur Program. Until further notice, only applications received before July 1, 2011, are being processed.
- The Entrepreneur Program seeks to attract experienced business persons who will own and actively manage businesses in Canada that will contribute to the economy and create jobs.
- Entrepreneurs and their dependants are admitted to Canada under specific conditions that are subsequently monitored by CIC after landing.

- Entrepreneurs must demonstrate adequate business experience, a minimum net worth of $300,000 (Canadian Dollars) and respect the conditions for entrepreneurs after they arrive in Canada.

- The regulations recognize the concept of "entrepreneur selected by a province". An entrepreneur selected by a province must meet the federal definition of an entrepreneur. In Quebec, the entrepreneur is subject to that province's determination as to what constitutes business experience.

FOR SELF-EMPLOYED PERSONS

- Self-employed persons must have the intention and ability to create their own employment and make a significant contribution to the cultural and athletic life of Canada. Self-employed persons also include those who are able to create their own employment by purchasing and managing a farm in Canada.

PROGRAMS FOR INVESTORS, ENTREPRENEURS AND SELF-EMPLOYED

Quebec's Business Programs

Quebec operates its own *Investor Immigrant Program* (IIP) under the authority of the *Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens*. In this Accord, Quebec undertakes to administer its investor program in a manner consistent with the spirit and objectives of the federal program.

A similar construct of "entrepreneur selected by a province" is available whereby an entrepreneur selected by Quebec is an "entrepreneur" subject to that province's determination of what constitutes business experience. Contact a lawyer for further explanation.

Business Experience

To be eligible for the Immigrant Investor Program, you must have:

- managed a qualifying business and controlled a percentage of equity of the qualifying business for at least two years in the period beginning five years before the date of the application;

- managed the equivalent of at least five full-time employees per year in a business for at least two years in the period beginning five years before the date of the application; or

- a combination of one year of experience described in the first point above and one year of experience described in the second point above.

OWNERSHIP

The plain language definition of an entrepreneur is one who assumes the financial risk of an enterprise and undertakes its management.

Investors and entrepreneurs are required to provide documentation proving that, within any two of the last five years, they owned and managed a foreign "Qualifying Business" that meets any two of the defined requirements for jobs, sales, net income and equity.

Qualifying Business

"Qualifying business" means a business – other than a business operated primarily for the purpose of deriving investment income such as interest, dividends or capital gains – for which, during the year under consideration, there is documentary evidence of any two of the following:

(a) the percentage of equity multiplied by the number of full-time job equivalents is equal to or greater than 2 full-time job equivalents per year;

(b) the percentage of equity multiplied by the total annual sales is equal to or greater than $500,000 (Canadian Dollars);

(c) the percentage of equity multiplied by the net income in the year is equal to or greater than $50,000 (Canadian Dollars); and

(d) the percentage of equity multiplied by the net assets at the end of the year is equal to or greater than $125,000 (Canadian Dollars).

The following chart sets out the minimum requirements for a Qualifying Business at various percentages of ownership.

QUALIFYING FOREIGN BUSINESS OWNERSHIP

	OWNERSHIP		
ATTRIBUTE	100%	50%	20%
Employment	2	4	10
Sales (CAD$)	500,000	1,000,000	2,500,000
Net Income (CAD$)	50,000	100,000	250,000
Equity (CAD$)	125,000	250,000	650,000

Management Experience

As an alternative to actual ownership, investors and entrepreneurs may qualify by providing documentary proof that, over any two of the last five years, they have managed at least fifty employees in a business. Broadening the definition to include individuals who have exercised significant senior managerial control over businesses of a substantial size allows for the selection of senior management in relatively larger organizations, notwithstanding that such managers may not have an ownership interest or have assumed entrepreneurial risk directly.

However, because these standards reflect successful business experience in a first world context, they may prove problematic for even the most successful business persons in less developed economies.

CONDITIONS

The same four business attributes of employment, sales, net income and equity are used to define the Qualifying Canadian Business necessary for the removal of conditions imposed upon granting permanent resident status.

Entrepreneurs are required to document that, for a period of at least one year within a period of not more than three years after landing, they owned and managed a Qualifying Canadian Business that meets any two of the defined requirements for jobs, sales, net income and equity.

The following chart sets out the minimum requirements for a Qualifying Canadian Business at various percentages of ownership.

QUALIFYING CANADIAN BUSINESS OWNERSHIP

	OWNERSHIP		
ATTRIBUTE	100%	50%	33.33%
Employment	2	4	6
Sales (CAD$)	250,000	500,000	750,000
Net Income (CAD$)	25,000	50,000	75,000
Equity (CAD$)	125,000	250,000	375,000

At least one incremental, full-time equivalent job must be created for someone other than the entrepreneur and the entrepreneur's dependants. In addition, the entrepreneur must have provided active and ongoing participation in the management of the business for at least one year. A minimum of 1/3 ownership is required.

The Selection Grid

Investors and entrepreneurs are assessed against the following selection grid:

FEDERAL SKILLED WORKER SELECTION GRID

EDUCATION	**Maximum 25**
University Degrees	
Ph.D., or Masters *AND* at least 17 years of completed full-time or full-time equivalent study	**25**
2 or more university degrees at the Bachelor's level *AND* at least 15 years of completed full-time or full-time equivalent study	**22**
A 2 year university degree at the Bachelor's level *AND* at least 14 years of completed full-time or full-time equivalent study	**20**
A one year university degree at the Bachelor's level *AND* at least 13 years of completed full-time or full-time equivalent study	**15**

Trade or non-university certificate or diploma		
A 3-year diploma, trade certificate or apprenticeship[1] *AND* at least 15 years of completed full-time or full-time equivalent study		**22**
A 2-year diploma, trade certificate or apprenticeship *AND* at least 14 years of completed full-time or full-time equivalent study		**20**
A one-year diploma, trade certificate or apprenticeship *AND* at least 13 years of completed full-time or full-time equivalent study		**15**
A one-year diploma, trade certificate or apprenticeship *AND* at least 12 years of completed full-time or full-time equivalent study		**12**
High School Diploma		
Secondary School educational credential		**5**
Non-Completion of secondary school		**0**
OFFICIAL LANGUAGES		**Maximum 24**
1st Official language	High proficiency (per ability)[2]	**4**
	Moderate proficiency (per ability)	**2**
	Basic proficiency (per ability)	**1 to maximum of 2**
	No proficiency	**0**
	Possible maximum (all 4 abilities)	**16**
2nd Official language	High proficiency (per ability)	**2**
	Moderate proficiency (per ability)	**2**
	Basic proficiency (per ability)	**1 to maximum of 2**
	No proficiency	**0**
	Possible maximum (all 4 abilities)	**8**
BUSINESS EXPERIENCE		**Maximum 35**
2 years		**20**
3 years		**25**
4 years		**30**
5 years		**35**
AGE		**Maximum 10**
21-49 years at time of application		**10**
Less 2 points for each year over 49 or under 21		

ARRANGED EMPLOYMENT IN CANADA	Maximum 10
HRSD confirmed permanent offer of employment	10
Applicants from within Canada and holding a temporary work permit that is:	
HRSD opinion obtained, including sectoral confirmations	10
HRSD opinion exempt under NAFTA, GATS, CCFTA, or significant economic benefit (i.e., intra-company transferee)	10
ADAPTABILITY	**Maximum 6**
A maximum of 6 points for adaptability can be earned by any combination of the following elements:	
• Have made an business exploration trip to Canada in the period beginning 5 years before the date of application.	6
• Have participated in Joint federal-provincial business immigration initiatives.	6
TOTAL **PASS MARK (minimum)**	**Maximum 100** **35**

(1) "Diploma, trade certificate or apprenticeship" refers to a post-secondary educational credential other than a university educational credential.
(2) Applicants are rated on the ability to speak, listen, read or write Canada's two official languages.

Self-employed persons are evaluated against a similar grid modified to reflect selection criteria applicable to their circumstances.

Investors

Investors in the federal IIP will continue to deposit their $800,000 (Canadian Dollars) investments with *Citizenship and Immigration Canada* (CIC) for subsequent distribution to the provincial funds for investment. After five years, the funds will repay CIC for subsequent payment to the investors. The participating provinces will continue to be responsible for guaranteeing the payment of their respective shares.

Entrepreneurs

CIC staff in Canada are trained to both counsel entrepreneurs and apply the new conditions in a fair and transparent manner.

Reasonably soon after landing, entrepreneurs will be required to report to officers in Canada, who will reiterate what is expected in terms of establishing a qualifying Canadian business and, if applicable, refer them to participating provincial agencies for direction and technical support.

Individuals who fail to comply with their conditions will be reported under subsection 44(1) of the IRPA and may be removed from Canada. The Act also provides enforcement powers and penalties to ensure compliance with this legislation.

Immigration Trusts

The changes to immigration law will not affect immigration trusts, which will continue to be permissible under the *Income Tax Act*. The trust, which is offshore, may be created for new immigrants in order to gain up to a five-year tax holiday on income generated by trust assets. Very significant tax savings can be accomplished through proper use of this instrument.

Maintenance of Status

Recognizing that business persons often have international interests to attend to, the regulations under the IRPA impose the requirement that business immigrants reside in Canada for two out of every five years. Some absences are deemed not to be "absences" for the purpose of calculating residency.

Citizenship

However, despite these liberalized residency requirements for maintenance of permanent resident status, the residency requirements for citizenship remain restrictive. Under the *Citizenship Act*, applicants for citizenship are required to demonstrate three full years (1,095 days) of physical presence in the four years immediately preceding their application for citizenship.

GET PROFESSIONAL ADVICE

The preceding discussion is a summary overview of the admission requirements for non-residents who wish to work and/or reside permanently in Canada. Given the complexity of Canadian law, professional advice is recommended.

9. EMPLOYMENT

Businesses operating in Canada must comply with rigorous employment standards and other regulations, as set out in the legislation of each province. While this section of the Guide focuses on employee-related matters that apply to businesses in Ontario, the other provinces of Canada as well as the federal government have similar legislation in the areas discussed here. The federal legislation applies to businesses that are federally regulated, such as banking, or that fall within federal jurisdiction, such as inter-provincial transportation including airlines, trucking and railways.

Employers are also responsible for remitting payments to the *Canada Pension Plan* (CPP) (in Quebec, the *Quebec Pension Plan*) and the *Employment Insurance* (EI) program, which are federally regulated and applicable throughout the provinces and territories.

EMPLOYMENT STANDARDS

The *Employment Standards Act* (ESA) in Ontario sets out certain minimum employment standards with which employers must comply. The ESA applies to most employees who are working in the province, including managerial employees and employees performing work both within and outside Ontario (if the employees' work that is performed outside Ontario is a continuation of work in Ontario).

The ESA prescribes minimum requirements in such areas as:

- Payment of Wages
- Keeping and Providing of Records
- Hours of Work and Eating Periods
- Overtime Pay
- Minimum Wage
- Public Holidays
- Vacation with Pay
- Equal Pay for Equal Work
- Benefit Plans
- Leaves of Absence (pregnancy, parental, family, medical, personal emergency, etc.)
- Termination and Severance of Employment
- Reprisal
- Complaints and Enforcement

Certain types of employees are exempt from all or part of the ESA. For example, certain salespeople or persons whose only work is supervisory or managerial in character are exempted from the hours of work and overtime pay provisions of the ESA.

In setting out these and other minimum requirements, the ESA does not limit an employee's civil remedies against an employer. In addition to these statutory requirements, there are general rules of common law, not found in any statute, which also significantly affect employment standards. For instance, the employment standards pertaining to the termination of employment are greatly affected by the common law, which may require the Employer to provide the departing employee with additional compensation for the loss of employment. The amount of this additional payment is normally calculated by reference to length of service, seniority, expenses and other factors used to determine that the departing an implied period of notice. The period of notice may be stipulated by the contract of employment (or collective agreement) or by employment standards legislation or by a common law standard of reasonableness.

The ESA also sets out special rules that apply to group terminations. A group termination refers to instances in which the employment of 50 or more employees is terminated in any period of 4 weeks or less. Among other things, these special rules affect the amount of pay in lieu of notice to be received by employees subject to group terminations.

Labour Relations

In Ontario as well as in other provinces, most public sector and many private sector employees are represented by trade unions. Under the Ontario *Labour Relations Act* (LRA), each person is free to join a trade union of his or her own choice and to participate in its lawful activities. The Ontario Labour Relations Board administers the LRA. This Board issues collective-bargaining certificates to trade unions, considers unfair labour practice complaints, and administers and enforces the LRA.

Impact on the Purchase of a Business

In deciding whether to purchase all or even part of an established business, the purchaser should fully investigate the potential impact of the applicable employment and labour relations legislation. For example, if the vendor's employees are represented by a trade union, then the purchaser will generally be bound by any collective agreement in existence between the vendor

and the trade union insofar as employees of the vendor continuing with the purchaser are concerned.

Moreover, the ESA stipulates that, when the purchaser of a business hires employees of the vendor, then those employees' length of service with the vendor is treated as service with the purchaser. This requirement applies to entitlements such as vacation with pay, paid public holidays, pregnancy leave, notice of termination and statutory severance pay.

OTHER EMPLOYEE-RELATED LEGISLATION

In addition to employee standards and labour relations, an employer must also comply with other legislation and regulations relating to:

- Equity in the Workplace;
- Human Rights;
- Occupational Health and Safety;
- Workplace Safety and Insurance; and
- Hospital Insurance.

Some employee benefits, such as Canada Pension Plan and Employment Insurance, require the employer to withhold premiums from the employee's earnings and submit them, along with the employer's contribution, to the applicable government agency.

Equity in the Workplace

An ever-increasing amount of legislation exists at both the provincial and federal levels of government on matters relating to equity in the workplace. In Ontario, this legislation includes:

- The federal *Employment Equity Act*, which applies to federally regulated employers who have 100 or more employees;

- The *Federal Contractors' Program*, which applies to employers across Canada with 100 or more permanent full-time and/or part-time employees, and who wish to bid on federal government contracts for goods or services that are each worth $200,000 (Canadian Dollars) or more; and

- The *Pay Equity Act* (Ontario), which is one of the most far-reaching acts of this nature in any Canadian jurisdiction. It strives to eliminate gender-based pay discrimination in both the private and public sectors. Ontario employers with more than 10 employees are required to have a pay equity program. Basically, the thrust of this legislation is to create workplaces with no employment barriers for certain groups – such as women, aboriginal peoples, persons with disabilities and members of visible minorities. The ultimate goal is to create workplaces where the representation of these groups across various positions is proportionate to their representation in the general workforce or the employer's recruiting area.

Overall, the legislation for equity in the workplace seeks to remove systemic barriers, encourage positive steps, and provide for the making of reasonable accommodation for members of the target groups. For example, under the Federal Contractors' Program, the Canadian government

sets out specific criteria to implement employment equity. Should an employer fail to file a certificate of compliance, the government will not consider its bid on any federal contracts.

Human Rights

The Ontario *Human Rights Code* (the Code) prohibits discrimination in employment. This includes discrimination or harassment on the basis of race, creed, colour, ethnic origin, age, sex, marital status, citizenship, ancestry, place of origin, family status, record of offences, sexual orientation or disability. In addition, the Code provides for the right to equal treatment without discrimination where a woman is or may become pregnant, or where an employee has applied for Workplace Safety and Insurance benefits.

Most other provinces of Canada have similar codes, as does the federal government for federally regulated industries.

Occupational Health and Safety (Ontario)

The *Occupational Health and Safety Act* (OHSA) places a number of statutory duties on employers in the area of health and safety. For example, the OHSA:

- Requires certain employers to establish health and safety committees and outlines minimum requirements regarding their composition and functioning. Employers that are required to establish health and safety committees include: any workplace that regularly employs twenty or more workers; construction projects where twenty or more workers are regularly employed and are expected to be regularly employed for three months or more; and any workplace (other than a construction project) to which a regulation concerning a designated substance applies, even if fewer than twenty workers are regularly employed;

- Imposes duties (many of a strict liability nature) on employers, supervisors, owners of a workplace and its suppliers; and

- Permits employees to refuse to work where they have reason to believe that the work is unsafe.

Significant amendments to this statute are currently being considered, which will mandate substantially greater responsibilities for employers than previously existed. Other provinces of Canada have enacted similar pieces of legislation.

Workplace Safety and Insurance (Ontario)

Many Ontario employers are subject to the provisions of Ontario's *Workplace Safety and Insurance Act* (WSIA), formerly the Workers' Compensation Act. Administered by the *Workplace Safety and Insurance Board* (WSIB), the WSIA seeks to replace the right of employees, or their families, to sue their employers for personal injury or accidents that may occur at their workplaces. The traditional concept of fault does not apply.

Employees who suffer a personal injury or have an accident in the workplace are entitled to WSIB benefits for the replacement of earnings that they lose while disabled by workplace illness or injury (benefit for loss of earnings). A number of other WSIB benefits are available, such as:

- Benefits for non-economic loss (if an employee suffers permanent impairment from a work-related injury or illness, the WSIB provides a non-economic loss benefit to compensate the employee for the physical, functional or psychological loss the impairment causes);

- Loss of retirement income benefit;

- Health care benefits (health care, prescription drugs, special clothing and footwear, transportation costs associated with a work-related injury);

- Benefits for seriously injured workers; and

- Occupational disease and survivor benefits program.

Hospital Insurance (Ontario)

Ontario imposes a tax for health insurance in the province under a system called the Employer Health Tax (EHT). This tax applies to the total amount of an employer's payroll, including wages, salaries and any other remuneration paid or credited to employees in Ontario during 1 year.

The amount of the tax varies from 0.98% to 1.95%, depending on the amount of the employer's annual payroll. These rates are currently:

- From $0 to 200,000 (Canadian Dollars) – 0.98%;
- From $200,001 to 400,000 (Canadian Dollars) – at graduated rates; and
- Over $400,000 (Canadian Dollars) – 1.95%.

Canada Pension Plan

The federally regulated *Canada Pension Plan* (CPP) provides financial assistance to Canadians when they retire. Under the CPP, employers are required to contribute to the plan on behalf of their employees who have pensionable employment. The employer withholds and submits a percentage of the employee's earnings. The employer is also required to contribute an equal amount. The total contribution is remitted to the Receiver General of Canada.

Employment Insurance

The *Employment Insurance* (EI) program provides financial assistance to people who are unemployed. Employers are required to deduct and remit EI premiums on behalf of employees who work in insurable employment, as defined under the federal *Employment Insurance Act*. Employers are also required to remit a premium on behalf of their employees. While the rate may vary from year to year, the current employer's rate is 1.4 times the employee's premium.

Other Employment Benefits

In addition to the above legislated employee rights and benefits, certain sectors of Canadian employers provide other benefits to their employees, such as employee health benefit plans, group life and disability insurance, and contributions to savings and retirement plans.

GET PROFESSIONAL ADVICE

The preceding discussion is a summary overview of employment matters and legislative considerations. Given the complexity of Canadian labour and employment law, professional advice is recommended.

10. PRIVACY LEGISLATION

Given the global nature of the current economy, companies of all sizes are reliant on electronic communication of information. This raises issues about privacy and underlines the necessity of uniform guidelines and protective safeguards for both individuals and companies. The *Personal Information Protection and Electronic Document Act* ("PIPEDA") was enacted to protect individuals from the inappropriate collection, use and disclosure of personal information. In general, personal information is collected by private companies in order to provide products and services to their customers. They can also use such information for secondary purposes such as improving relationships with customers and developing more effective marketing strategies. PIPEDA protects customers from privacy-invasive practices used by businesses to carry out these secondary purposes.

PIPEDA applies in every jurisdiction in Canada unless a province has enacted legislation that is found to be substantially similar to PIPEDA. British Columbia, Alberta and Quebec currently have legislation substantially similar to PIPEDA. In these provinces, PIPEDA only applies to federally regulated businesses, and businesses carrying out cross-border transactions.

Since January 1, 2004, in the jurisdictions in which PIPEDA governs, it applies to every organization that collects, uses or discloses personal information in the course of commercial activities. For federal organizations, PIPEDA also applies to personal information about an employee of the organization where the organization collects, uses or discloses the information in connection with the operation of a federal work, undertaking or business.

PIPEDA pertains to traditional, paper-based businesses as well as on-line businesses and electronic commerce (e-commerce) transactions. PIPEDA supports and promotes e-commerce by providing guidelines for the use of electronic means to communicate or record information and rules to govern the collection, use and disclosure of personal information in the course of commercial activity.

WHAT IS PERSONAL INFORMATION?

Under PIPEDA, personal information means information about an identifiable individual. This includes information whether it is recorded or not, but does not included a person's name, title, business address or business telephone number.

Personal information thus includes an individual's residential address, residential telephone number, email, medical information, age, marital status, ethnic origin, colour, religion, education, criminal, employment or financial history, numerical identifiers such as the Social Insurance Number, fingerprints, blood type, and views or personal opinions. Any such information cannot be collected, used or disclosed in the course of commercial activity without that person's knowledge or informed consent.

PIPEDA Principles

In setting out the rules, PIPEDA incorporates the Canadian Standards Association's *Model Code for the Protection of Personal Information* (the "CSA Code"). The following ten principles in PIPEDA from the CSA Code must be complied with in collecting, using and disclosing personal information:

1. **Accountability**: An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization's compliance with the following principles;

2. **Identifying Purposes**: The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected;

3. **Consent**: The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except when inappropriate;

4. **Limiting Collection**: The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means;

5. **Limiting Use, Disclosure, and Retention**: Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by the law. Personal information shall be retained only as long as necessary for fulfillment of those purposes;

6. **Accuracy**: Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used;

7. **Safeguards**: Personal information shall be protected by security safeguards appropriate to the sensitivity of the information;

8. **Openness**: An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information;

9. **Individual Access**: Upon request, an individual shall be informed of the existence, use and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate; and

10. **Challenging Compliance**: An individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals accountable for the organization's compliance.

CONSEQUENCES OF VIOLATING PIPEDA

PIPEDA created the office of the Privacy Commissioner of Canada (the "Commissioner") to act as ombudsman. Individuals whose rights may have been violated may complain either to the

culpable company or to the Commissioner, or the Commissioner may initiate a complaint where a suspected violation of PIPEDA has or is taking place. An investigation by the Commissioner may then conducted, which can be followed by a court application. If a violation of PIPEDA has occurred the organization may face:

- An order an organization to correct certain practices;
- An order that the organization publish notice of actions taken to correct its practices;
- An award of damages;

Under PIPEDA it is an offence to:

- destroy personal information that an individual has requested;
- retaliate against an individual who has complained to the Commissioner of a contravention under the PIPEDA or who refuses to participate in a violation of the PIPEDA; or
- obstruct or otherwise refuse to co-operate with the Commissioner in the investigating a complaint or conducting an audit.

For any of the three offences, an organization may be fined up to $10,000 for a summary conviction or up to $100,000 for an indictable offence.

The Commissioner can also conduct an audit of the personal information management practices of an organization. The Commissioner may publicize the information relating to the practices of the organization if it is in the public interest to do so.

Alberta Privacy Law

The *Alberta Personal Information Protection Act* (APIPA) has been deemed to be "substantially similar" to PIPEDA, and as such, it applies to all provincially-regulated organizations in Alberta other than public bodies. This includes corporations, unincorporated associations, trade unions, partnerships and individuals acting in a commercial capacity. APIPA applies to: "personal information," defined as information about an identifiable individual; and "personal employee information," defined as personal information about an employee or prospective employee that is reasonably required by an organization, and which is collected, used or disclosed solely for the purposes of establishing, managing or terminating an employment relationship. Generally, personal information and personal employee information about an individual cannot be collected, used or disclosed without that individual's consent. There are a number of exceptions under APIPA to the requirement of consent.

Under APIPA, individuals have the right to request access to their own personal information contained in a record that is in the custody or under the control of an organization. Organizations are required to inform individuals of the names of the persons to whom their information was disclosed and the purposes for which it was disclosed. APIPA permits organizations to refuse a request for access to personal information under certain circumstances. Some refusals are at the discretion of the organization, while some are mandatory.

Organizations that collect or disclose personal information have a duty to make reasonable efforts to ensure that the information provided is accurate and complete. Where an individual or employee believes that an error or omission has occurred in respect of his or her personal information as contained in the records of an organization, he or she may make a request to the organization for a correction. If the organization decides that a correction is warranted, it must correct the information as soon as reasonably possible and must also, where reasonable, send a notification containing the correction to any other entity to which the information was disclosed. Organizations are also required to respond to requests for access or for correction within a specified period.

If an individual feels that their privacy rights under APIPA are being violated, the Information and Privacy Commissioner of Alberta can be asked to review the matter. The Commissioner has the power to investigate a complaint and authorize mediation and negotiation to settle the dispute. The Commissioner can also initiate a review of how an organization handles personal information. Failure to comply with an order of the Commissioner can result in a fine of up to $10,000 for an individual and up to $100,000 for any other entity. The decision of the Commissioner cannot be appealed, but one can make an application for judicial review.

The Privacy Commissioner of Alberta has issued Guidelines for Social Media Background checks. The Guidelines “provide practical advice to organizations on how much information can or should be collected through social media when performing an employee background check and highlight that it may be challenging for organizations to meet the ‘reasonable’ requirement in PIPA when collecting personal information through social media.”

Alberta law also requires organizations to notify its Privacy Commissioner should individuals' personal information be lost or improperly accessed, and a reasonable person would view the incident as presenting “a real risk of significant harm” to an individual. The Privacy Commissioner may then force the organization to notify those impacted by the breach.

Another key requirement for organizations using a service provider outside Canada, is the need to include details of that relationship in policies and practices. The requirement applies to parents, subsidiaries, and other affiliates.

British Columbia Privacy Law

The *Personal Information and Protection Act* (BCPIPA) applies to provincially-regulated private sector organizations in British Columbia and describes how such organizations must manage the personal information of customers, employees and others. On October 12, 2004 the federal government declared that PIPA is “substantially similar” to PIPEDA. Under BCPIPA, individuals have a right to access personal information that is held by an organization and a right to ask for a correction to that information. The purpose of BCPIPA is to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of individuals to protect their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

Individuals can ask for a review or complain to the B.C. Privacy Commissioner if they think an organization has not complied with BCPIPA. The Privacy Commissioner investigates complaints commenced by individuals, and it can also initiate its own investigation if there are reasonable grounds to believe an organization is not complying with PIPA. It should be noted that the enforcement powers of the B.C. Privacy Commissioner under BCPIPA are broader than those of the federal Privacy Commissioner under PIPEDA, as the B.C. Privacy Commissioner has the ability to make legally binding orders.

Quebec Privacy Law

Quebec was the first Canadian province to enact a law on privacy in the workplace that businesses in the Province were obliged to follow: The Act respecting the Protection of Personal Information in the Private Sector (the "PQ Act"). Later, the federal government adopted PIPEDA. Quebec's Act provides privacy protection that is similar to PIPEDA meaning that Quebec businesses will not be subject to the federal private sector privacy law and will continue to be subject to the provisions of Quebec's privacy law.

The foundations and principles of the PQ Act are very similar to those incorporated in PIPEDA.

The requirement for consent is also key to Quebec's privacy laws. Employers must not communicate the personal information that they hold regarding an individual to a third party, nor must they use it for purposes that are irrelevant to the purpose of the file, unless the employee concerned consents thereto or such communication or use is provided for by the Act. Consenting to the collection, communication, or use of personal information must be done manifestly, freely, and in an enlightened fashion, and for specific purposes. Such consent is valid only for the length of time needed to achieve the purposes for which it was requested. The PQ Act creates a few exceptions to the requirement of consent.

Transactional Privacy Issues

Transactions that give rise to privacy issues range from due diligence and disclosure of personal information over the sale of business to international transfers of personal information.

There are statutory exemptions for business transactions in the British Columbia and Alberta privacy legislation. Note that Alberta and British Columbia have "rules for the road" to provide assistance, but their respective rules are not identical.

Transactional Privacy Issues—International Transfers of Personal Information

Some businesses consider sending employment, customer or other records containing Canadian personal information to the United States or other countries for storage and administrative purposes. Transferring these records across the border brings the records within PIPEDA's jurisdiction.

The Privacy Commissioner has raised concerns about the possibility that U.S. government authorities, using their powers under the Patriot Act, might be able to source information with respect to Canadians if that information is located in the United States. The issue, simply put, is that information which is supposed to remain private under Canadian law might, if it is located in

the United States, be accessible by American authorities. Although this concern of the Privacy Commissioner exists, at present there is no specific statutory bar to keeping information in the United States.

Principle 4.8 under PIPEDA provides that an organization shall make readily available to individuals specific information about its policies and procedures relating to the management of personal information. In the context of outsourcing, the federal Privacy Commission has stated:

- At the very least, a company in Canada that outsources information processing in this way should notify its customers that the information may be available to the US government or its agencies under a lawful order made in that country.

Organizations wishing to transfer data across the border should also be aware of any other data storage requirements to which they are subject. For example, in Ontario, employers must retain employment records for a certain amount of time, and sometimes are required to keep the records in Ontario. For Canadian businesses that are part of multinational organizations, care is needed to ensure that privacy policies required for their corporate family in other jurisdictions are coordinated to the policies for the Canadian entity. For example, a business with a European Union head office should co-ordinate the Canadian privacy information for employees and customers to that which likely already exists in the head office.

BILL C-12

Bill C-12, though not yet in force, is in the process of becoming legislation. Relevant amendments include the ability to disclose personal information in a prospective or completed business transaction and in relation to employment, as well as a requirement that an organization report any material breach of security safeguards.

Privacy Laws in the Canadian Workplace

The Canadian regime of work-related privacy laws takes into account various factors, such as whether a workplace is in the public or the private sector, and whether it is federally regulated, as well as how provincial laws apply.

Privacy Laws and Federally-Regulated Private Sector Workplaces

PIPEDA applies to federally-regulated private-sector organizations and to their workplaces. Examples of federal workplaces include workplaces engaged in telecommunications, broadcasting, aviation, banking, nuclear energy and interprovincial or international trucking, shipping, railways, or other transportation.

PIPEDA also applies to local businesses in Yukon, Nunavut and the Northwest Territories because private sector activity in these jurisdictions is federally-regulated. Federal works, undertakings or businesses must comply with PIPEDA when collecting employee personal information.

Privacy Laws in Ontario Private Sector Workplaces

Ontario does not have its own legislation governing freedom of information or the protection of privacy in relation to private sector organizations. As such, the federal legislation, PIPEDA, applies to these organizations in connection with their commercial activities. Given the constitutional division of powers, PIPEDA does not apply to employee information in Ontario private sector organizations, unless those organizations are involved in the operation of a federal work, undertaking or business.

That said, employers in Ontario do have privacy obligations within the employment relationship. There is specific legislation, discussed in more detail below, that implicitly or explicitly imposes privacy obligations on employers. Legislation includes the *Occupational Health and Safety Act*, *Workplace Safety and Insurance Act*, *Ontario Human Rights Code, Personal Health Information Protection Act*, and the *Employment Standards Act.*

Additionally, employees may have common law protections against certain forms of privacy infringement. Unionized employers may be subject to further privacy obligations arising from specific collective agreement language, or from trends in arbitral jurisprudence. These protections and obligations are discussed further below.

Privacy Laws in Alberta Private Sector Workplaces

Alberta's Personal Information Protection Act (APIPA), applies to all provincially-regulated organizations in Alberta other than public bodies, including corporations, unincorporated associations, trade unions, partnerships, and individuals acting in a commercial capacity. PIPA applies to:

- "personal information," defined as information about an identifiable individual; and "personal employee information," defined as personal information about an employee or prospective employee, reasonably required by an organization, and which is collected, used or disclosed solely for the purposes of establishing, managing or terminating an employment relationship.

There are some exceptions to the requirement under APIPA that individuals must consent to collection of their personal information. Notably, an employer may collect personal employee information about an individual without consent for the purpose of recruiting a potential employee. The information collected must be reasonable for the purposes for which it is collected and must relate to the employment relationship. Similarly, an organization can disclose personal employee information without the consent of the individual if the information is being disclosed to an organization that is collecting the information for the purpose of employee recruitment.

Privacy Laws in British Columbia Private Sector Workplaces

British Columbia's Personal Information and Protection Act ("BCPIPA") applies to provincially-regulated private sector organizations in British Columbia and describes how such organizations must manage the personal information of customers, employees and others.

BCPIPA defines the terms “employee,” “employee personal information,” “contact information” and “work product information.”

These definitions are key to understanding the requirements relating to employees under PIPA.

Under BCPIPA, “employee personal information” is treated as a distinct category of personal information. It is defined as personal information about an individual that is collected, used or disclosed solely for purposes reasonably required to establish, manage or terminate an employment relationship, but does not include personal information that is not about an individual's employment. “Employee personal information” does not include an employee's business “contact information,” which includes information such as an employee's name, position, and business telephone number. Nor does “employee personal information” include “work product information,” which includes information prepared by employees in the context of their work, but that does not include personal information about other individuals.

An organization may collect, use or disclose employee personal information without an employee's consent where:

(i) BCPIPA allows collection, use or disclosure without consent or deems consent to be given; or

(ii) the collection, use or disclosure would be reasonable for the purposes of establishing, managing or terminating the employment relationship between the organization and the employee.

If the organization can collect, use or disclose employee personal information without an employee's consent, they must notify the employee in advance and advise the employee of the purpose of the collection, use or disclosure.

Privacy Laws in Quebec Private Sector Workplaces

Quebec's Act respecting the protection of personal information in the private sector (the “PQ Act”) applies to persons that collect, hold, use or communicate to third persons in the course of carrying on an enterprise (within the meaning of article 1525 of the Civil Code) personal information relating to other persons. It does not apply to a public body or to information held on behalf of a public body by a person other than a public body. The PQ Act applies to such information whatever the nature of its medium and whatever the form in which it is accessible, whether written, graphic, taped, filmed, computerized, or other.

Personal information is any information which relates to a natural person and allows that person to be identified.

The object of this PQ Act is to establish, for the exercise of the rights conferred by articles 35 to 40 of the Civil Code of Quebec concerning the protection of personal information, particular rules with respect to personal information relating to other persons. In Quebec, the Civil Code of Quebec must also be followed. The Civil Code of Quebec contains general provisions with regard to privacy protection and access to personal information. Although employers are already subject to the Act, they must also abide by the Civil Code of Quebec. Indeed, the purpose of the

Act is to establish rules for the exercise of general rights conferred by the Civil Code of Quebec where private business is concerned.

Other Privacy-Related Workplace Statutes

As mentioned above, there are other employment-related statutes that impose privacy obligations on employers. Employers should be cognizant of these when dealing with their employees. For example, under *Ontario's Workplace Safety and Insurance Act*, employers may not disclose information contained in an employee's functional abilities form, except in limited circumstances. Pursuant to *Ontario's Occupational Health and Safety Act*, employers may not access an employee's health record without the worker's written consent, or an order of a court or other tribunal. Under *Ontario's Employment Standards Act* of 2000, potential building service providers may not disclose information regarding the employees of the current building service provider, except for certain purposes. Performing police, credit or background checks may also engage the Ontario Human Rights Code, as employers may, in the course of conducting these checks, learn certain information about an individual. If this check discloses information about a prohibited ground of discrimination under the Code, the employer may become subject to discrimination claims. The above illustrates some of the privacy obligations imposed upon employers by various Ontario statutes. Similar parallel statutes are present in all jurisdictions in Canada, and employers should be aware of these.

Common Law Privacy in the Workplace

Historically, the tort of invasion of privacy was not specifically recognized in Canada. Where a right to privacy was claimed by a litigant, the courts preferred to resort to established torts such as trespass or nuisance. However, the Ontario Court of Appeal established the new tort of “intrusion upon seclusion” clearing the way for invasion of privacy claims.

The Ontario Court of Appeal set out the key elements of the new tort:

1. The defendant's conduct must be intentional (or reckless);
2. The defendant must have invaded, without lawful justification, the plaintiff's private affairs or concerns; and
3. A reasonable person would regard the invasion as highly offensive causing distress, humiliation or anguish.

In addition to the establishment of this new tort in Ontario, four Canadian provinces (British Columbia, Saskatchewan, Manitoba, and Newfoundland and Labrador) have enacted legislation dealing with privacy rights and creating a statutory tort of invasion of privacy. The Manitoba legislation requires that the privacy violation be “substantial,” but otherwise the legislation is silent on the requirement of proof of damages.

Other Workplace Specific Privacy Issues

Employers are subject to different privacy laws depending upon their jurisdiction and as such, it is difficult to articulate one “test” or standard that applies to the various employment-related

privacy issues that arise in connection with recruiting, dealing with medical notes and records, use of computers, email and social media.

Health-Specific Privacy Issues in Canada

The Federal privacy legislation—the Personal Information Protection and Electronic Documents Act, S.C. 2000 c.5 (PIPEDA)—applies to personal information in the private sector. Currently, seven provinces have legislation pertaining to the security and privacy of personal health information. In addition, most provincial jurisdictions have public sector privacy legislation that applies to personal health information held by public bodies. Of these, British Columbia, New Brunswick, Nova Scotia, Prince Edward Island and Northwest Territories have dealt with personal health information in their public sector legislation, with privacy and access provisions being extended to hospitals, certain publicly funded clinics and health services boards. Finally, Quebec's privacy legislation, which comprises two acts covering public and private sector interests, deals with personal health information in each of these sectors.

PIPEDA is premised upon the principle that personal information should not be collected, used or disclosed without the prior knowledge and consent of the individual concerned; however, it was drafted in the context of supporting and promoting electronic commerce. There was great concern about its applicability to the health sector and the potential implications for the provision of care. For example, the consent provisions under PIPEDA provide that the form of consent sought by an organization will depend upon the type of information and, "an organization should generally seek express consent when the information is likely to be considered sensitive."

Personal health information is almost always considered to be sensitive in nature, which suggested the need to obtain express consent. At face value, such a requirement was viewed as an insurmountable barrier to the provision of care. Industry Canada, in consultation with health care associations and the Office of the Privacy Commissioner, released its PIPEDA Awareness Raising Tools (PARTs) Initiative for the Health Sector to provide guidance about the scope and application of this legislation (Industry Canada 2004). Although implied consent was not specifically addressed under PIPEDA, Industry Canada embraced its use in the health care sector relative to the exchange of personal health information for health care purposes within defined parameters. Generally speaking, it covers the health care providers who deliver care and services for the primary therapeutic benefit of the patient and it covers related activities such as laboratory work and professional or case consultations with other health care providers.

The security of health information is dealt with through industry and professional standards. In addition, PIPEDA requires that health facilities, organizations and agencies, subject to the legislation, have adequate security measures in place to protect personal information against loss or theft, as well as unauthorized access, disclosure, copying, use or modification.

In 1987, Manitoba was the first province to adopt provincial health information privacy legislation in Canada. Saskatchewan, Alberta, New Brunswick, Newfoundland and Labrador, Nova Scotia and Ontario also have enacted health information privacy legislation that applies to "trustees" or "custodians"; these terms relate to certain health care facilities and professionals that collect, use or disclose personal health information. Only Ontario's Personal Health Information Protection Act, 2004, which came into force on November 1, 2004, has been found to be substantially similar to PIPEDA. Each piece of legislation is otherwise essentially unique.

Transborder Flow of Personal Information and Personal Health Information

There are no provisions under PIPEDA prohibiting businesses from transferring or storing personal information to an organization in another jurisdiction, including the United States. PIPEDA recognizes the business necessity of transferring personal information for various reasons, and places responsibility upon the organization to protect personal information under its control.

Principle 4.1.3 of the CSA Model Code for the Protection of Personal Information, which forms Schedule 1 to PIPEDA provides:

- An organization is responsible for personal information in its possession or custody, including information that has been transferred to a third party for processing. The organization shall use contractual or other means to provide a comparable level of protection while the information is being processed by a third party.

The Office of the Privacy Commissioner of Canada has published Guidelines on "Processing Personal Data Across Borders" which confirm that the cross border transfer of personal information does not violate PIPEDA. Where the outsourcing or transfer is directly related to the primary purpose for which the individual provided the information, consent will be implied and, so long as the organization is transparent and takes reasonable steps to safeguard the information, the outsourcing will be viewed as permissible under PIPEDA. In order to ensure a "comparable level of protection," you can expect that customer organizations will want to be satisfied through contract that there are adequate policies and processes in place, and there are reasonable safeguards in place to protect personal information, including when it is in the hands of a US affiliate or subcontractor. This should include the right to audit and inspect how the organization handles and safeguards personal information, both in Canada and abroad. In addition to contractual protections, the federal Privacy Commissioner has confirmed that organizations must be transparent about their personal information handling practices. In the context of outsourcing, the federal Privacy Commission has suggested that a company in Canada that transfers personal information for processing should notify its customers of the transfer and the fact that it may be subject to a lawful order made in that country.

Generally, all jurisdictions require contractual provisions or other protections to ensure that there is an equivalent level of protection while the personal information is in the hands of the processor. There may be a need for transparency about these processes. From a risk management perspective and for consistency, we suggest that businesses ought to be transparent in their privacy practices regardless of whether this is required.

GET PROFESSIONAL ADVICE

The preceding discussion is a summary overview of the laws regulating the privacy of personal information in the Canadian business environment. Given the complexity of Canadian law, professional advice is recommended.

Due to the complex nature of PIPEDA and privacy law in Canada, we recommend that you obtain legal advice to ensure that your company's policies and procedures are compliant.

11. PUBLIC SECURITIES LEGISLATION

Securities legislation is primarily dealt with under provincial law. Each of Canada's Provinces and territories has its own securities commission or similar regulatory authority and its own securities legislation and regulations, local rules and policies, staff notices and administrative and court decisions.

Despite this, the securities administrators across Canada try to work as closely together as possible to ensure uniformity of legislation. Although there is no "Uniform Securities Act" or national body similar to the Securities and Exchange Commission in the United States of America, the general principles underlying all of the provincial securities' regulatory regimes and legislation are essentially the same. Provincial regulators, through the *Canadian Securities Administrators* (CSA), have attempted to harmonize securities law regulation across Canada. Though harmonization has been successful to a point, it is far from complete.

Protecting Securities Investors

Canadian securities laws are designed to protect securities investors and to ensure that they receive sufficient disclosure to make informed investment decisions. The laws apply to any trade of a security, which is defined to include a sale or disposition if a security or any act, advertisement, solicitation, conduct or negotiation in furtherance of a trade.

If the trade in securities also constitutes a distribution, this triggers the requirement to file and clear a prospectus document with the applicable provincial securities regulators to qualify the securities for distribution to the public.

Note that there are also specific types of trades or activities that do not require regulation for policy reasons, and are therefore exempted from securities law requirements. Exemptions exist for certain types of securities purchasers and certain types of the securities. Discretionary exemption orders may also be given in appropriate circumstances based on the submission of an application to the applicable provincial securities regulator.

Registration of Market Participants

The securities legislation of each province requires that certain market participants be registered. This includes investment dealers, advisers, investment fund managers and underwriters. To be registered, the market participant must be in compliance with strict requirements, including capital level, proficiency, insurance, and financial reporting and record keeping.

The Prospectus

Where a trade is considered a distribution, a prospectus must be filed or the distribution must be completed under an exemption. A prospectus filed with the applicable provincial securities regulator in connection with a distribution must provide "full, true and plain" disclosure of pertinent information about the issuer of the securities and about the securities offering itself. Upon filing a prospectus and receiving a receipt, an issuer obtains the status of "reporting issuer".

Once the reporting issuer has completed its distribution, it must then provide continuous disclosure as required by the securities legislation of the province in which the distribution takes place. This requirement, which includes regular disclosure of financial statements and prompt disclosure of material changes, ensures that investors have equal and timely access to information that may affect the market price of any securities of the reporting issuer. In addition, a reporting issuer must follow certain regulations regarding the timing and distribution of materials for shareholder meetings.

As noted above, a prospectus is not required where the distribution is completed pursuant to an exemption. Common exemptions include:

- Accredited investor exemption – this includes, *inter alia*:
    - an individual who, alone or with a spouse, beneficially owns, before taxes, net financial assets in aggregate of $1,000,000;
    - an individual whose net income before taxes exceeded $200,000 in each of the previous two years, or whose income, combined with the individual's spouse, exceeded $300,000 in each of the previous two years, and who in either case reasonably expects the level of income to continue in the current year;
    - an individual who, alone or with a spouse, owns net assets of $5,000,000; or
    - a person other than an individual with net assets of $5,000,000;
- Private issuer exemption – a non-reporting issuer that meets specific requirements issues securities to persons not considered to be members of the public;
- Minimum amount investment exemption – total investment cost for acquisition from a single issuer of at least $150,000 in paid in cash and acquired by the investor as principal; and
- Employee, executive officer, director, and consultant exemptions.

Any resale of exempt securities must either be completed under another exemption, by issuing a prospectus, or in accordance with resale restrictions.

Securities law also regulates take-over bids (where an investor attempts to acquire more than twenty percent of outstanding securities of an issuer) and issuer bids. In both cases, subject to certain exemptions, there are specific procedural requirements that must be adhered to, including an offer to purchase all outstanding securities of the issuer.

Special reporting requirements are also imposed on certain persons connected with the corporation and on investors that acquire at least ten percent of the outstanding securities of an issuer.

Canadian Public Securities Filings

Reporting issuers file their continuous disclosure documents electronically in a public Internet access system that is similar to the American EDGAR system. Known as SEDAR (System for Electronic Document Analysis and Retrieval), the Canadian Public Securities Filings system is located at www.sedar.com.

The Ontario Securities Commission

The *Ontario Securities Commission* (OSC) administers and enforces securities legislation in the province of Ontario and regulates the largest capital market and stock exchange in Canada, the *Toronto Stock Exchange* (the "TSX"). The OSC's mandate is to:

- Protect investors from unfair, improper and fraudulent practices; and
- Foster fair and efficient capital markets and confidence in capital markets.

Self-Regulatory Organizations

Securities regulators rely on self-regulatory organizations such as the *Investment Industry Regulatory Organization of Canada* and the TSX to carry out regulatory duties that would otherwise be the responsibility of the securities commissions or provincial government. In regulating the securities in its industry, a *Self-Regulatory Organization* (SRO) can tap its own expertise.

In Ontario, an SRO is defined as "a person or company that is organized for the purpose of regulating the operations and the standards of practice and business conduct, in capital markets, of its members and their representatives with a view to promoting the protection of investors and the public interest". Recognized SROs are subject to the OSC's oversight, including the right of the OSC to review their bylaws, regulations and policies, and decisions.

The Toronto Stock Exchange

The TSX and the TSX Venture Exchange (the "TSX Venture") are owned by the TMX Group. The TSX is the senior equities market in Canada and is one of the most active stock exchanges in North America. In 2011 the TSX was the eighth largest equity exchange in the world by market capitalization, and together with the TSX Venture, facilitated the trading of more than 168 billion shares worth $1.5 trillion dollars. In November 2002, the TSX became the first exchange in North America and the eighth stock exchange in the world to become a public company.

The TSX maintains certain minimum listing requirements. For an industrial issuer, these include, *inter alia*, minimum net tangible assets and earnings, minimum pre-tax cash flow and adequate working capital, qualified management, as well as having a specified number of freely tradable shares and shareholders to ensure a market for the listed securities.

The TSX Venture Exchange

The TSX Venture is the junior equity stock exchange in Canada, serving the public venture capital market. It was formed in November 1999 through the merger of the Vancouver and

Alberta stock exchanges. TSX Venture provides a marketplace for companies too small for the TSX or NASDAQ. With offices in Vancouver, Calgary and Toronto, its listed companies are active in the technology, resources and manufacturing sectors. TSX Venture provides emerging companies with access to capital and serves as a stepping-stone to senior markets.

The Montreal Exchange Inc.

Following the restructuring of the stock markets in Canada, the Montreal Exchange became the sole financial-derivatives exchange in Canada. The Montreal Exchange demutualized in September 2000 and is now known as The Montreal Exchange Inc. or Bourse de Montréal Inc.

GET PROFESSIONAL ADVICE

The preceding discussion is a summary overview of public securities legislation. Given the complexity of Canadian securities legislation, professional advice is recommended.

12. INTELLECTUAL PROPERTY

Protection of Intellectual Property

Canada has modern federal legislation protecting trade-marks, copyrights, patents, industrial designs, integrated circuit topographies, and plant breeders' rights. Registration in Canada extends intellectual property protection to all of Canada. Intellectual property is registered with the *Canadian Intellectual Property Office* (CIPO), which is a special operating agency associated with Industry Canada. CIPO is responsible for the administration and processing of the greater part of intellectual property.

Canada is a signatory to the *Paris Convention for the Protection of Industrial Property* and the *Berne, Universal Copyright and Rome Conventions*.

Patents

Patents cover new inventions or any new and useful improvement to an existing invention. The process for obtaining a patent in Canada is detailed in the federal *Patent Act*. The basic principle of the *Patent Act* is that a patent is only granted to an original inventor or to his or her legal representatives. Canada does not require that a product be patented, however it is an offence to mark an article as "patented" if it is not so. The registration process for a patent involves many steps that are highly technical in nature.

Trade-Marks

The registration of a trademark is advisable because an applicant who registers a mark under the *Trade-marks Act* is granted the exclusive right to use the mark throughout Canada. Trade-mark registration usually involves a preliminary search (performed by a trade-mark agent) of existing trade-marks, an application, an examination of the application by the Trade-marks Office, the publishing of the application in the Trade-marks Journal, time for opposition (challenges) to the application, allowance and registration (if there is no opposition). Once a trade-mark application has been approved, the trade-mark is registered for a term of 15 years with the possibility for renewal. Registration can be refused for a number of reasons, for example if the trade-mark is the name or surname of an individual, is misleading, is too general, is merely descriptive or if it can be deemed to be confusing with an already registered trade-mark.

Copyright

The federal *Copyright Act* gives exclusive right to the copyright holder of any original literary, dramatic, musical or artistic work, to control the copying and other commercial exploitation of that work. The copyright holder has the exclusive right to publish, produce, reproduce, translate, broadcast, adapt, perform or cause to be performed, or produce the copyrighted works. Registration is not necessary to create copyright in a particular work, but it does serve as evidence of ownership should copyright infringement arise. Anyone using, renting, selling, distributing or importing a work without the owner's consent infringes the copyright and may be subject to criminal penalties. Copyright can exist by virtue only of creation of the work, but can, for greater certainty, also be registered. To register a copyright, you must file an application with the Copyright Office of CIPO and pay a prescribed fee.

Domain Names

The *Canadian Internet Registration Authority* (CIRA) is responsible for the ".ca" system, which is governed by Canadian law. In order for a company to register a ".ca" name, certain requirements must be met in order to ensure that the ".ca" names remain a public resource for Canadian's social and economic development. The person who wishes to register a ".ca" domain must firstly contact a certified registrar to submit a registration request to CIRA. Domain names are granted on a first-come first-served basis. The applicant must also conduct a WHOIS search in order to ensure that the desired domain name is available, and to ensure that they are not infringing on any third-party intellectual property or other rights.

13. REGULATORY REQUIREMENTS FOR SELLING PRODUCTS IN CANADA

Introduction

Canada has a complex legal framework at both the federal and provincial levels that impacts the sale of products in Canada. There are a countless regulations that govern the packaging, labelling, formulation, testing, safety, licensing, registration and promotion of products that are uniquely Canadian and that need be taken into consideration when doing business in Canada.

Advertising and Marketing Products to Canadians

The promotion of goods and services is a constantly evolving area of law. Due to the pervasive nature of advertising and its impact on the general public, these activities are heavily regulated in Canada under federal and provincial legislation in addition to industry guidelines and standards. The regulatory framework is constantly undergoing change and review as new products and services are introduced to the Canadian marketplace. There is a significant amount of legislation pending in this area, and participants in this field must continually be on guard for new developments. It is therefore advisable to consult with legal advisors specializing in this area of law prior to launching a product or service in Canada.

There are two main principles behind the regulation of advertising and marketing activities: safety and economics. Some of the regulations are in place to protect the public by placing health and safety standards on consumer products and services. Other regulations maintain competition between industry members to promote innovation and increase economic growth. While there are overarching provisions that apply to the promotion of all products and services, there are also rules specific to certain sectors, such as the food and drug industries. Manufacturers and

distributors should be aware that various packaging and labelling requirements may be applicable to their products. Furthermore, print or other media advertisements, contests, coupons, and other promotional activities must abide by strict rules. The key regulations are discussed in more detail below.

The Competition Act

The federal *Competition Act* governs business conduct in Canada. Generally speaking, it contains both civil and criminal provisions targeted at preventing anticompetitive practices in the marketplace. While there are many references to the *Competition Act* in this section, there are additional provisions such as the antitrust provisions of the *Competition Act* that may also need to be taken into consideration.

Canada Consumer Product Safety Act

On June 20, 2011, the *Canadian Consumer Product Safety Act* (CCPSA) came into force and introduced sweeping changes to Canada's approach to dealing with consumer product safety and recalls.

Consumer Products: The CCPSA prohibits the manufacture, import, advertisement or sale of a consumer product that is a danger to human health or safety or is the subject of a recall order or voluntary recall in Canada. “Danger to human health or safety” includes any existing or potential unreasonable hazard that is posed by the consumer product during its normal or foreseeable use that may reasonably be expected to cause death, injury or adversely affect an individual's health, including any chronic adverse effect on human health.

Inspection and Recalls: The CCPSA broadens the scope of powers granted to Health Canada inspectors to conduct spot inspections, to seize articles, and to order remedial measures if inspectors have “reasonable grounds” to believe that a product is a danger to human health or safety. The Minister of Health is also granted the ability to order product recalls under the CCPSA, whereas previously, product recalls were conducted on a voluntary basis.

Incident Reporting: In addition, the CCPSA imposes a mandatory reporting obligation on manufacturers, importers and sellers must also report to Health Canada any product incident, such as an accident, product defect or a product recall made by health officials in another jurisdiction, where such incidents resulted in or could reasonably be expected to have serious adverse health effects or result in serious injury. This notification must be made in two days with a more detailed report due in 10 days. The CCPSA will also give Health Canada the ability to disclose confidential business information related to a consumer product to a person or government working in the area of human health and safety or the environment where there is a serious and imminent danger to human health or safety if this disclosure is essential to address the danger.

Record Keeping: Manufacturers, importers, advertisers and anyone who sells or tests a consumer product must prepare and maintain certain documents for six years or any other prescribed period. For retailers, this covers the name and address of the person from whom they acquire a product, and the period during which they sold the product. For all other individuals, the documents must cover the name and address of the person from whom they obtained the product or to whom they sold it.

The penalties under the CCPSA are significant. Offences under CCPSA can result in a fine of up to $5 million for individuals or imprisonment for a term not longer than two years, or both. In addition, the fine for an offence will accrue on a daily basis where an offence is continued for more than one day. Directors and officers are directly liable where they directed, authorized or assented to the commission of the offence. Administrative penalties can also be applied under the CCPSA to a maximum amount of $25,000.

The CCPSA excludes from its purview consumer products that are already regulated under certain other legislation, such as food, drugs, cosmetic products and pest control products. It remains to be seen whether other consumer products may be excluded from CCPSA coverage, such as products that are regulated under provincial legislation. Electrical products, for example, that are manufactured, advertised, sold or used in the province of Ontario are regulated under the CCPSA as well as the provincial electrical product safety regulation, which has existing mandatory incident reporting requirements.

Federal Anti-Spam Legislation

The Canadian federal government is expected to put in force its anti-spam legislation shortly. It is commonly referred to as Canada's Anti-Spam Legislation or CASL for short.

In addition to addressing spam (unsolicited mass e-mail), the new legislation covers just about any form of "commercial electronic message" where the sender has not received the recipient's express or implied consent. Since the anti-spam provisions apply to any commercial electronic message that is sent or received by a computer in Canada, foreign companies may attract liability under the new law.

Unsolicited Electronic Messages: The main purpose of CASL is to prohibit transmitting a commercial electronic message unless the receiver consents to receiving it. A "commercial electronic message" is very broadly defined to include any electronic message the content of which "encourages participation in commercial activity," including an electronic message that: offers to purchase a good or a service; offers to provide a business, investment or gaming opportunity; advertises or promotes any of the foregoing; or promotes a person who does any of the foregoing. This will encompass Facebook postings, tweets and other forms of social media communication.

Exceptions: There are several exceptions to this prohibition, much of which are similar to the definition of "transactional and relationship messages" under the United States' CAN SPAM law.

Exceptions to CASL's general prohibition against any unsolicited commercial electronic include for example:

- an electronic message sent for purposes of law enforcement or public safety;
- messages between individuals who have personal or family relationships;
- an inquiry message to a business person is exempted, so long as the message pertains to the recipient's commercial activity;
- messages that provide quotes for products requested by the recipient;

- the provision of warranty information to a recipient who has purchased goods or services;
- provision of factual information about a product or service offered under a subscription or similar basis;
- messages pertaining to an employment relationship;
- messages pertaining to product updates/upgrades to a recipient entitled to receive them;
- messages that constitute interactive, two-way voice communication;
- messages consisting of fax transmissions to a telephone account; and
- a voice recording sent to a telephone account.

Get Express Consent: When requesting express consent to send a commercial electronic message, an organization must "clearly and simply" set out the purpose(s) for which consent is being sought and identify the organization seeking the consent.

Implied Consent: Consent to receive messages can also be implied, most notably where:

- the sender and the recipient have an existing business relationship or non-business relationship, where the relationship arose within the past two years or is pursuant to a contract in effect in the past two years;
- the recipient has "conspicuously published" its electronic address and has not indicated a desire to not receive unsolicited commercial electronic messages, and the message is relevant to the recipient's business role; or
- the recipient has provided its electronic address to the sender without indicating a wish not to receive unsolicited commercial electronic messages, and the message is relevant to the recipient's business role.

Unsubscribe: The Act also requires that all commercial electronic messages provide an "unsubscribe" mechanism so that recipient can opt out of receiving future communications. In addition, the message must contain contact information for the sender.

There are a number of noteworthy Anti-Spyware provisions found in CASL as well.

Consequences of Contravention: The consequences of noncompliance with CASL are serious - the statute provides for a wide range of remedies, including a fine for non-compliance of $1 million for individuals and $10 million for corporations. Corporate officers and directors can be held personally liable for corporate violations, and employers can be held liable for violations committed by their employees or agents acting within the scope of their employment or authority. Finally, there is a private right of action created by CASL. The Act allows any business or consumer to initiate a lawsuit or class action against anyone who violates the Act.

Provincial legislation - Sales of Goods

The provinces have legislative authority over sale of goods issues, warranty, and general consumer protection. All provinces have similar laws based on the common-law system except the Province of Quebec, which is based on the Quebec Civil Code.

Advertising Standards Canada

Advertising Standards Canada (ASC) is Canada's national body for self-regulation of the advertising industry. Most leading advertisers, advertising agencies, media organizations, and suppliers belong to ASC. ASC administers the Canadian Code of Advertising Standards ("CCAS") in accordance with its goal of maintaining public confidence in advertising in Canada. "Advertising," as defined by the CCAS includes all forms of messages to Canadians designed to influence choice, opinion, or behaviour. In addition, the CCAS specifically captures: advertising regarding publicly recognized controversial issues; local, provincial, and federal government advertising; advertising regarding political figures or political parties; advertising during an election; and advertising for special interest groups.

The CCAS applies to all advertisers promoting the use of goods or services, corporations attempting to improve their public image, institutions attempting to promote a point of view, governments, and Crown corporations. When assessing whether an advertisement conforms to the CCAS, all relevant factors are taken into account. These factors include: the intended audience, the medium used to deliver the message, the context, and the content of the advertisement. ASC responds to both consumer and trade complaints. Consumer complaints are reviewed by a group of senior industry figures and public representatives known as the Consumer Response Council. These representatives are coordinated by, but are independent from, the ASC. Trade complaints based on the CCAS are administered by ASC's Trade Dispute Procedure. The trade dispute process is a relatively quick and in most cases a confidential process. Complaints by special interest groups are administered separately under ASC's Special Interest Group Complaint Procedure. ASC along with the Broadcast Clearance Agency are the only two advertising preclearance agencies recognized by Health Canada.

14. WHAT IS MISLEADING ADVERTISING?

False or misleading advertising issues and deceptive marketing practices are regulated in Canada under several levels of legislative schemes. The federal *Competition Act* is in place to maintain a level playing field for marketplace competitors across Canada and does so through criminal and civil sanctions.

Advertising Standards Canada (ASC) administers the *Canadian Code of Advertising Standards* ("CCAS") which applies to advertising done by business or non-business organizations, such as institutions, governments, or Crown corporations. Provincial legislation, such as the *Consumer Protection Act* in Ontario, also contains provisions dealing with advertising standards and consumer protection. There are also product- and industry-specific advertising provisions, such as the *Food and Drugs Act* jointly administered by Health Canada and the Canadian Food Inspection Agency.

General Impressions

The Supreme Court of Canada has held that commercial advertising must be assessed from the perspective of a "credulous and inexperienced" consumer, rather than from that of a consumer with an "average level of intelligence, skepticism and curiosity." The Court has stated that these credulous and inexperienced consumers are "hurried" when viewing advertising, and "take no more than ordinary care to observe that which is staring them in the face upon their first contact with an advertisement. The courts must not conduct their analysis from the perspective of a careful and diligent consumer." In short, the "courts must not approach a written advertisement as if it were a commercial contract by reading it several times, going over every detail to make sure they understand all its subtleties." The Court went on to say that, "reading over the entire text once should be sufficient to assess the general impression conveyed by a written advertisement."

Material Misrepresentations

Under the legislative schemes, advertising is scrutinized for inaccurate or deceptive claims and statements with respect to a product or service. Any misrepresentation, either implied or direct, can be the source of consumer complaint or legal action. Some advertising falsehoods are accepted by convention, such as depictions of happy product users in television commercials. The primary concern is any material misrepresentation relating to a product or its performance. "Material" means a misrepresentation that is likely to influence a consumer's behaviour or purchasing decisions, such as a statement that motivates the consumer to avoid a competitor's product.

Whether a claim is false or misleading depends on the literal meaning or the general impression imparted by the advertisement as a whole, such as the text together with the photos and illustrations. Consideration of the overall impression includes any implied meaning or innuendo. Material misrepresentations also include contradictions between the large print or body copy of an advertisement and the fine print. All disclaimers and asterisked or footnoted information should be clearly visible or audible and must not contradict the more prominent aspects of the message.

While a false factual statement is clearly a misrepresentation, the line is less clear with opinion statements that may be perceived as factual statements. A rule of thumb is that all representations in advertising should be substantiated. However, no substantiation is required where a statement is an exaggeration to the point that a consumer cannot reasonably be expected to believe that it is misleading. These statements are of such a general nature that there is no basis for finding the claims to be false. For example, a claim that a product is the best product in the whole universe would probably be considered "puffery." The courts have found that such nonspecific self-congratulatory statements are "the staple of the advertising industry and of marketers everywhere."

Omissions may also lead to material misrepresentations. An example would be neglecting to indicate that a sale is restricted only to certain items in a newspaper advertisement. Another common example is the omission by product performance claims of the specific conditions necessary to produce the advertised results.

Performance Claims

A common component of advertising is the performance claim. This involves extolling the attributes of a product, such as its technical specifications, performance, or efficacy qualities. Popular examples are claims as to product content (e.g., 100% cotton) or durability of a product (e.g., battery life). Performance claims must be truthful and accurate. The language of the claim must be clear, and where the claim can be misinterpreted by the consumer, it should be accompanied by an explanatory statement. Claims must also be substantiated by factual data and scientific evidence, such as the results of laboratory testing. Unsubstantiated, unsupported, or speculative representations, even where the claim is accurate, is a breach of the *Competition Act* as a form of "deceptive advertising"; this is different from false advertising, where the claim itself is false. Similarly, where a guarantee or warranty is made to the consumer, the guarantee must be supported. In addition, any accompanying conditions or limits must be provided within the advertisement or at least be referenced as to where this information can be obtained.

Performance Claims—Comparative

While consumer complaints about misleading advertising do occur, it is competitors' complaints about comparative advertising which occur most frequently. These trade disputes can be brought through several avenues, including the Competition Bureau, ASC, Health Canada, Industry Canada, and of course, the courts.

In addition, the timing of a comparative advertisement should not conflict with a competitor's product launch or be done in such a way that inflicts unreasonable damage.

Misleading Price Advertising

The *Competition Act* expressly prohibits misrepresentation as to the price of a product. False or misleading price advertising carries a high penalty, including costs incurred by the Competition Bureau for its investigation as well as fines that may reach over a million dollars. Where an advertisement claims that an item is "free" or "bonus" or at "no extra charge," the item must be provided without cost to the consumer. Where the "free" item is associated with the purchase of another item at an indicated cost, this is not a "free" item. Similarly, if there are any fees or charges added at the cash register, the item is not free. If the item and the bonus are introduced into the market at the same time as the annual price increase, this may be considered a false claim of "free" or "bonus." If there are any cost or purchase requirements and conditions associated with the item, these must be clearly disclosed to the public. Retailers must also be careful about the "sale" price of an item in comparison with its "regular" price. Under section 74.01(2) of the Competition Act, retailers can refer to the "regular" selling price if they can satisfy the ordinary price comparison test on a volume or time basis, as determined by the nature of the product and the relevant geographic market. A "regular" price is determined where a substantial volume of the product has been sold at or above that reference price within a reasonable period of time, i.e., if more than 50% of sales in the 12 months before or after the making of the representation occurred at or above the referenced price. Alternatively, the "regular" price is determined if the product was ordered at or above the reference price in good faith for a substantial period of time recently before (or immediately after) the representation, i.e., at least 50% of the time in the six months before or after the making of the representation.

In sale advertising it is generally a good idea to include a disclaimer that clarifies the price at which the goods are ordinarily sold.

Claim Substantiation

Claims that are clearly "puffery," or are so exaggerated that no reasonable customer would rely on them to make a purchase decision, do not require substantiation. However, any claims that could objectively be interpreted to be factual statements, such as efficacy or performance claims or testimonials need to be supported by scientific evidence in the form of laboratory testing or consumer research surveys.

The *Competition Act* requires all performance, efficacy, or "length of life of a product" claims to be supported by "adequate and proper" testing.

Enforcement

Consumers and competitors have several avenues to deal with false or misleading advertising. Complaints can be directed to the various advertising regulators: the federal Competition Bureau, Fair Business Practices Branch; provincial consumer protection branches; or the ASC's Consumer Response Councils. Competitors faced with false or misleading comparative advertising can utilize the trade dispute mechanism established by the ASC or through the legal action in the courts. Product- or industry specific advertisement issues may be addressed to Health Canada, Competition Bureau, the Canadian Food Inspection Agency, and other regulatory bodies. The various government agencies also monitor misleading advertising in the marketplace and may conduct inspections of their own accord. The penalties for issuing false or misleading advertising can be quite high and include both civil and criminal sanctions. Under recent amendments to the Competition Act, the administrative monetary penalties for misleading advertising offences have been increased significantly.

Promotional Contests

Promotional contests in Canada are subject to the *Competition Act* and the Criminal Code. In Canada, "sweepstakes" are more commonly referred to as "contests." Section 74.06 of the *Competition Act* requires that "adequate and fair disclosure" be made to consumers in respect of promotional contests. It prohibits any promotional contest which does not disclose certain information including (i) the number and approximate value of the prizes, (ii) the jurisdictional area or areas to which they relate, and (iii) any important information relating to the chances of winning (e.g., the odds of winning). It also provides that the distribution of prizes cannot be unduly delayed and that participants be selected or prizes distributed on the basis of skill or on a random basis. A person or company engaged in conduct contrary to this section may be ordered not to engage in such conduct, to publish a corrective notice, and/or to pay an administrative monetary penalty. The requirement for adequate and fair disclosure maintains that disclosure to the consumer should be made in a reasonably conspicuous manner at a time before the potential entrant is inconvenienced in some way, or committed to the advertiser's product or to the contest. The requirement is measured against the target audience of the contest. It is not considered fair and adequate disclosure to put the onus on consumers to obtain further details which are required by law to be disclosed by the advertiser. A contest advertised in the media should not require that a consumer visit or patronize any particular retail outlet of the advertiser or a dealer handling only its products in order to become adequately and fairly informed of the required information.

The goal of the adequate and fair disclosure requirement is to ensure that the consumer is sufficiently and accurately informed at the time the consumer makes a purchasing decision or commits himself or herself to the contest. Contest information is usually communicated to the consumer in one or more of the following ways: (i) in advertisements relating to the contest, (ii) in point-of-purchase materials, (iii) on product packaging, and (iv) in actual contest rules.

A contest must also comply with the Criminal Code. In relation to lotteries and games of chance, the Criminal Code provides that "everyone is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years who disposes of any goods, wares or merchandise by any game of chance or any game of mixed chance and skill in which the contestant or competitor pays money or other valuable consideration." This section essentially prohibits the requirement that a product or service be purchased as a condition of participating in a contest. The purchase requirement can be removed by providing other means of contest entry, such as giving a consumer the opportunity to obtain an entry form by means other than a purchase. Despite the fact that the *Competition Act* does not directly prohibit participants from paying money or other valuable consideration in order to participate in a contest, contests must be in compliance with the Criminal Code. Contests of pure chance or those of a combination of skill and chance are prohibited from requiring a consumer to make a purchase in order to participate. To avoid an "illegal lottery" under the Criminal Code (e.g., giving away a prize based on chance alone), participants are often required to answer a skill-testing question prior to receiving a prize. Giving away a prize based on chance alone is considered a form of lottery, and it is illegal to hold a lottery in Canada without a licence. However, where a purchase is necessary in order to participate, for example, in a contest of pure skill such as a slogan writing competition, this fact should be prominently disclosed in order to avoid giving the Commissioner of Competition reason to initiate an inquiry. If no purchase is required, this fact should also be displayed to the consumer to avoid situations where a consumer may purchase a product on the mistaken belief that a purchase is required to participate in the contest. Online contests must adhere to consumer protection legislation, privacy laws and other requirements based on the jurisdictions in which the contest is being offered.

Promotional Contests—Quebec

Quebec is the only jurisdiction in Canada to have enacted its own statute regulating promotional contests. This statute and its rules and regulations must be complied with, in addition to the Competition Act, the Criminal Code, and the consumer protection statutes for the relevant provinces, for contests in which Quebec residents are intended to be potential participants. The *Quebec Act* respecting lotteries, publicity contests, and amusement machines are administered by the Régie des alcools, des courses et des jeux. The Act is intended, among other things, to regulate contests, lottery schemes, games, plans, and operations, the outcome of which is the awarding of a prize, for the purpose of promoting the commercial interests of the person for whom it is carried on.

Under the Act, contest promoters must file notification of almost all contests run for promotional purposes as well as pay the required fees based on the value of the contest prize(s) and in some cases post security. Once the winning participants have been notified, the contest sponsor is required to file a report with the Régie using the prescribed form, in which it must declare that all prizes have been awarded and providing details on all prize winners who won a prize having a value of at least CDN $100.

Gift Cards

The most important recent development in this area relates to expiry dates. Most provinces have pending or existing legislation which bans expiry dates on gift cards. Other legislative provisions such as fees and terms of gift card agreements vary from province to province.

Endorsements and Testimonials

Endorsements and testimonials are used as an attempt to add credibility when promoting a product or service. However, like any other representation made in an advertisement, there are potential dangers in using such a statement. The Competition Bureau scrutinizes endorsements and testimonials very carefully, the rationale being that the general consumer public will rely more on the statements of someone they perceive as an expert in the field or a fellow consumer. The *Competition Act* requires that testimonials be accurate and used within the proper context. Advertisers should refrain from paraphrasing and ensure that statements are free of ambiguity. The *Competition Act* also requires that written permission be given by the person who gave the testimonial. In addition, under ASC's Canadian Code of Advertising Standards, a testimonial or endorsement must reflect the true and current opinion of the person giving it.

This is relevant where an upgrade was made to the product this year, but the testimonial was made several years ago based on the product available at the time; that testimonial is not current and not applicable to the product at hand.

Rebates

Rebates or mail-in offers are promotions that allow customers to receive a rebate cheque or merchandise in exchange for having made a purchase. In September 2009, the Competition Bureau issued Enforcement Guidelines for Consumer Rebate Promotions setting out its concerns with respect to the issue of misleading advertising in the form of inadequate disclosure of rebate program information, rebates that are disguised as the sale price or regular price, mail-in rebates disguised as instant rebates, discounts on future purchases being disguised as rebates, and mail-in rebates that are not fulfilled due to a delay in response or for other reasons.

15. PACKAGING AND LABELLING

General

Packaging and labelling of consumer and other goods are governed by various pieces of Canadian legislation and include both federal and provincial requirements.

The Consumer Packaging and Labelling Act

All pre-packed consumer goods, with few exceptions, are subject to the federal *Consumer Packaging and Labelling Act* and its Regulations.

Basic Label Information

All label information must be clearly and prominently displayed on the label and readily discernible to the purchaser or consumer under the customary conditions of purchase and use.

Common Name of the Product

The common name of the product must appear on the principal display panel of the label (e.g., "band-aids"). The common name of some food products are prescribed by the *Food and Drugs Act* (e.g., orange juice from concentrate, meal replacement, mayonnaise, etc.). The common name cannot be misleading, (i.e.: it should not incorporate words not justified by the composition of the food).

Net Quantity Declaration

The *Consumer Packaging and Labelling Act* and its Regulations require a net quantity declaration in metric for prepackaged consumer products. The net quantity should be rounded off to three figures unless the net quantity is below 100, in which case it may be rounded off to two figures. The numeral should be shown in boldface type. The minimum type height is governed by section 14 of the Regulations to the *Consumer Packaging and Labelling Act*. The metric symbols are considered bilingual (e.g., "g" for grams, "ml" for millilitres).

Name and Address of Responsible Party

The name and address of the responsible party by or for whom a prepackaged product is manufactured or produced must be shown on any panel except the bottom. The address must be complete enough for postal purposes. This information may appear in English or French unless the product is being sold in Quebec, in which case all label text must be translated into French and the French text must be equally prominent as the English text. When the product has been wholly manufactured outside of Canada and the label carries the name and address of a Canadian dealer, the terms "imported by" or "imported for" must precede this address unless the geographic origin of the product is placed immediately next to the Canadian name and address.

Textile Labelling Act

There are both federal and provincial requirements for the labelling of textile products.

The federal *Textile Labelling Act* regulates the labelling, sale, importation, or advertising of "consumer textile articles."

The term "consumer textile article" means any textile fibre, yarn, or fabric, or any product made in whole or in part from a textile fibre, yarn, or fabric that is in the form in which it is to be sold to a consumer. The generic name of each fibre present in an amount of 5% or more must be stated as a percentage of the total fibre mass of the article. Generally speaking, the fibres must be shown in order of predominance. The generic name of each fibre present in an amount of 5% or more must be stated as a percentage of the total fibre mass.

Textile Labelling Act—Place of Manufacture

The dealer name and address must appear on the label or, alternatively, a registration number, referred to as a "CA number." The "dealer" is the manufacturer, processor, finisher, or retailer of a textile fibre product or a person who is engaged in the business of importing or selling any textile fibre product.

Textile Labelling Act—Bilingual Labels

Products sold in Quebec must bear labels that are in both English and French. In other Canadian jurisdictions, the required fibre content information, the generic name, as well as any information directly relating to the fibre content, must be bilingual.

Textile Labelling Act—Label Format

Textile labels must be securely affixed to a conspicuous part of the main body of the article. Certain types of products must have permanent labels affixed to them, while other items are exempt from permanent label requirement.

Textile Labelling Act—Provincial Requirements for Stuffed and Upholstered Articles

In the provinces of Quebec, Ontario, and Manitoba, all fillings or stuffings are regulated. All manufacturers of upholstered or stuffed articles, whose goods are destined for sale in these provinces, must ensure that the manufacturer of the item is registered and is in compliance with the provincial requirements for upholstered and stuffed articles. In the provinces of Quebec, Ontario, and Manitoba, this means that the manufacturer must meet the annual registration requirements and will have a registration number which must appear on the label. Consumer textile articles such as bedding which are sold in Canada must meet a basic minimum flammability standard.

The Charter of the French Language

The Quebec Charter of the French Language regulates the linguistic environment in the Province of Quebec and imposes a number of conditions and restrictions on advertising and marketing. Exceptions and additional details are provided in the regulation entitled Regulation respecting the language of commerce and business. Subject to certain exceptions, all product labels, packaging, wrapping, containers, menus, wine lists, and inserts must be labelled in French. They may also be in another language as long as no language is more prominent than French.

In addition, catalogues, brochures, folders, commercial directories, and similar publications (including Internet advertising) must be in French. The rules for public signs and posters and commercial advertising (to the extent that commercial advertising is not encompassed within the aforementioned forms of advertising) are somewhat different. They must be in French, and may, in addition, be in another language, but in this case, French must be markedly predominant.

Metric

Although Canada started to convert to the metric system in the 1970s, the mandatory implementation of the metric system raised the possibility that freedom of choice for Canadians would be unduly restricted. For this reason, a moratorium on the enforcement of these regulations was declared in 1983 by the then Minister of Consumer and Corporate Affairs. Since then, the policy has been, with a few notable exceptions, to let the marketplace set the pace of conversion to metric units rather than force its use by regulation.

16. PRODUCT-SPECIFIC LAWS AND REGULATIONS

General

Aside from the product-specific statutes and regulations described below, other product regulatory measures are also applicable and should be taken into consideration when promoting products, such as those included under the Consumer Packaging and Labelling Act.

Drugs and Natural Health Products

The *Food and Drugs Act* regulates foods, drugs, cosmetics, medical devices, and natural health products.

Drugs and Natural Health Products—Drugs

The *Food and Drugs Act* defines a drug as any substance or mixture of substances manufactured, sold, or represented for use in:

(a) the diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal physical state, or its symptoms, in human beings or animals;

(b) restoring, correcting, or modifying organic functions in human beings or animals; or

(c) disinfection in premises in which food is manufactured, prepared or kept.

Satisfactory evidence of the safety and efficacy as prescribed by the Food and Drug Regulations must be provided to Health Canada as part of the premarket review before drug products may be sold in Canada. A drug manufacturer may seek authorization to sell a new drug in Canada by filing a *New Drug Submission* (NDS). An abbreviated NDS is typically used for generic products. A supplemental NDS is necessary where the manufacturer makes changes to already authorized products. A *Drug Identification Number* (DIN) application must be filed for products that do not meet the definition of a new drug. This applies to products that contain substances that have been sold in Canada for a sufficient time to establish the safety and efficacy of that substance.

The Patented Medicine Prices Review Board is an independent administrative agency created under the *Patent Act* that is responsible for regulating the price charged by patentees for prescription and non-prescription patented drugs sold to wholesalers, hospitals, or pharmacies.

All drug products must be labelled in accordance with the requirements specified by the *Food and Drugs Act* and Food and Drug Regulations.

Once approved for sale, Section 9 of the *Food and Drugs Act* prohibits the labelling, packaging, and advertising of any drug in a manner that is “false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.” Drug advertisements should clearly indicate that the product is a drug and not a food or cosmetic and should not promote any unnecessary use of a drug.

Comparison claims between drugs should be done with extreme care, as a member of the general public may not have the expertise necessary to evaluate these claims. Health Canada's Therapeutic Products Directorate has published a guidance document to assist industry with comparative drug advertising. Advertising claims for prescription drugs are limited to the name, price, and quantity of the drug. Advertising to the general public of drugs used in the treatment of certain diseases listed in Schedule A of the *Food and Drugs Act*, including asthma, cancer, and diabetes, is prohibited.

All establishments engaged in the fabrication, packaging, labelling, importation, distribution, wholesale, or operation of a testing laboratory are required to obtain an establishment licence to ensure that they comply with the Good Manufacturing Practices or equivalent standards for drugs and natural health products.

Drugs and Natural Health Products—Natural Health Products

Natural Health Products ("NHP") are regulated under the Natural Health Product Regulations of the *Food and Drugs Act*. In the U.S., most NHP-type products are treated as foods or dietary supplements, while in Canada, they are considered to be drug products. This is an important distinction as it impacts the way that NHP can be marketed in Canada.

The definition of an NHP has two components, a "substance component" and a "function component." In terms of the substance component, this means that ingredients such as plant material, alga, fungus, vitamins, minerals, amino acids, essential fatty acids, and probiotics are eligible for NHP status. The function component pertains to the claims that are made for the products. Like other drugs, NHP are expected to be represented for maintaining or promoting health or the relief or the treatment of symptoms of most illnesses.

A licence must be obtained in order to sell NHP in Canada. The Natural Health Products Directorate of Health Canada is responsible for issuing these licences. Once the licences have been issued, the products will be assigned a natural product number, an eight-digit numerical code that must appear on the product label.

In general, all advertising and label claims must be consistent with the claims approved in conjunction with the issuance of the product's licence. Information required on NHP labels include the name and quantity of medicinal ingredients, recommended use of the product, the recommended dose, duration of use, and any risk information, such as cautions, warnings, and known adverse reactions. This information must be clearly and prominently displayed and readily discernible by the purchaser.

Drugs and Natural Health Products—Provincial Legislation

While the Canadian federal government is primarily responsible for the regulation of drugs, the provincial and territorial governments are also indirectly involved by virtue of their role with respect to the regulation of health professionals and facilities. The provincial pharmacy statutes also regulate how and where drugs can be distributed and sold. In recent years, the National Association of Pharmacy Regulatory Authorities ("NAPRA") has attempted to harmonize the various provincial drug schedules with the pharmacy acts. How a drug is sold in Canada is determined based on a combination of the federal and provincial requirements as well as the National Model Drug Schedules.

Medical Devices

Pursuant to the Food and Drugs Act, a device is defined as "any article, instrument, apparatus or contrivance, including any component, part or accessory thereof, manufactured, sold or represented for use in diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal physical state, or its symptoms; restoring, correcting or modifying a body function or the body structure; and includes pregnancy test kits and contraceptive devices but does not include drugs." Medical devices are classified into one of four classes based on risk. The four risk classes, numbered I, II, III, and IV, represent varying degrees of risk, I being the lowest and IV the highest. Determination of risk class is based on a set of rules contained within the Regulations. Each rule defines how a device is classified based on how it is used, whether it is invasive, what system of the body it primarily affects, and whether energy, either electrical or other, may be transferred.

Manufacturers of a Class II, III, or IV medical device must obtain a device licence before the product may be sold in Canada. The requirements for obtaining a device licence vary according to the risk classification of the device. Class I devices do not require a licence but are subject to all of the safety and effectiveness requirements of the Medical Device Regulations and must be imported by a party holding the requisite establishment licence.

Food

Most food products sold in Canada are not subject to premarket approval. *The Food and Drugs Act* defines food as: any article manufactured, sold or represented for use as food or drink for human beings, chewing gum, and any ingredient that may be mixed with food for any purpose whatever.

Food—Organic Certification

The Organic Products Regulations came into force on June 30, 2009. Under the Organic Products Regulations, agricultural products are certified as organic if they meet National Organic Standards.

The Organic Products Regulations permit the use of the "Biologique Canada Organic" certification designation and logo on labels and advertisements of certified food products. In addition, only multi-ingredient products which contain at least 95% organic products, and organic products other than multi-ingredient products, may bear this logo. A multi-ingredient product that contains one or more organic products but is not certified as an organic product cannot be labelled or advertised as an organic product. However, any organic product contained in it may be identified as an organic product in the list of ingredients.

Under section 15 of the Organic Products Regulations, the label or advertisement for an organic product must contain specified information. The Canada Food Inspection Agency enforces the "organic" designation. Labelling requirements under the *Food and Drugs Act*, the *Consumer Packaging and Labelling Act*, and their regulations also apply. The provinces of Quebec and Manitoba also have their own laws governing the use of organic labelling.

Food—Nutrition Facts

A nutrition facts box is mandatory for all prepackaged foods, unless the food is a listed exemption. Nutrition facts refer to the amounts of serving size, caloric value, fat (saturated and trans fats), cholesterol, sodium, carbohydrates, sugar, protein, vitamins, and minerals. The size of the nutrition facts box depends on the available display surface (ADS). The ADS is the total surface area of the container, including the bottom, that is available for labelling. The minimum size is the largest version of the selected format which does not exceed 15% of the available display surface. The format of the nutrition facts box is fairly specific and is also dependent on the packaging surface. The Canadian dealer/distributor is responsible for the accuracy of the information in the nutrition facts box. The Canadian version of the nutrition facts box has a number of significant differences from its U.S. counterpart. Use of the U.S. nutrition facts on a Canadian food label is regarded as misleading advertising by the Canadian regulatory authorities.

Cosmetics

Health Canada and Advertising Standards Canada have developed a Guideline for Cosmetic Advertising and Labelling Claims which offers a comprehensive roadmap for the cosmetics industry. However, manufacturers and advertisers should still look closely at the *Food and Drugs Act* for cosmetic-specific provisions. The *Food and Drugs Act* defines a cosmetic as: any substance or mixture of substances manufactured, sold or represented for use in cleansing, improving or altering the complexion, skin, hair or teeth, and includes deodorants and perfumes. Cosmetics are differentiated from drugs mainly by the purpose of their use. However, one must be particularly careful of medical or active ingredients in the product. Where the product contains functional ingredients that have therapeutic benefits, the claim attached to that product should only refer to the ingredient's effect on appearance.

Cosmetic claims must be related to cosmetic benefits and cannot be drug-like claims; for instance, there is a prohibition on claims respecting the ability of the cosmetic or any of its ingredients to influence the chemistry of skin, hair, or teeth. Similarly, a manufacturer cannot make an unsubstantiated claim that implies that the user will not suffer injury or health given the formula or performance of the cosmetic. Each claim must be true and verifiable.

The requirements for labelling cosmetics are set out in the Cosmetic Regulations.

Pest Control Products

Most products designed to manage, destroy, attract, or repel pests that are used, sold, or imported into Canada are subject to premarket approval requirements administered by Health Canada's Pest Management Regulatory Agency (PMRA) pursuant to the *Pest Control Products Act*. The PMRA requires that incidents of potential adverse effects be reported by the registrant to Health Canada.

Jewellery

The *Precious Metals Marking Act* and its regulations ensure that the information provided to consumers on the quality of a precious metal article is not misleading or deceptive and provides for the uniform description and quality marking of precious metal articles in the Canadian

marketplace. The *Precious Metals Marking Act* affects, among other things, jewellery, hollow ware, watches, spectacle frames, and flatware.

Section 1 of the *Precious Metals Marking Act* prohibits the selling, importing, or advertising of any precious metal article in a manner which is false or misleading as to the precious metal content. A dealer in precious metals must ensure that an article is quality-marked. A “mark” includes any mark, sign, device, imprint, stamp, brand, label, ticket, letter, word, or figure; whereas a “quality mark” means a mark indicating or purporting to indicate the quality, quantity, fineness, weight, thickness, proportion, or kind of precious metal in an article. Where a quality mark is applied to a precious metal article, it must also bear a trademark that has either been applied for or registered with the Registrar of Trade-marks in Canada. The dealer should be able to provide proof that his trademark is registered if requested by an inspector. Precious metal or plating metal markings are not required, but where made, must be factual and in the manner prescribed. Where an article that is wholly made in Canada is composed of a precious metal of a quality prescribed in the regulations and has a quality mark applied to it, a national mark consisting of a representation of a maple leaf surrounded by the letter “C” may be applied to the article.

The Gem Guide was created in 2003 by a special committee in consultation with industry members, the Competition Bureau, and with reference to other international standards. The Gem Guide is not the law, nor is it meant to be an interpretation of the law. In general, the Gem Guide applies to anyone promoting, directly or indirectly, the supply, use, description, identification, sale of, or trading in any gem, jewel, item of jewellery, or work of art containing diamonds, coloured gemstones, or pearls.

Jewellery—Precious Metals

If a company intends to market precious metals such as gold, silver, and platinum, the markings on a piece must adhere to the requirements set out in the Precious Metals Marking Act.

Children's Products—Lead and Phthalates

The Canadian government has enacted regulations in response to concerns about the adverse health effects of phthalates and lead, particularly in children's products. The Phthalates Regulations apply to products “intended for use by a child of any age in learning or play”, and will limit the amount of phthalates permitted in the vinyl of all children's toys and childcare articles.

The Children's Jewellery Regulations set lead content limits for children's jewellery items imported or sold in Canada. Children's jewellery is defined as “jewellery which is designed, sized, decorated, packaged, and/or otherwise produced, advertised or sold in such a manner as to make it reasonably apparent that the item is intended to attract, appeal to, or be worn primarily by a child under the age of 15 years”.

As part of Health Canada's efforts to modernize Canada's safety legislation for children products, it has put forward proposals for new safety requirements for toys and toy labelling for age use and for specific choking hazard warnings. A relatively recent amendment to the Toy Regulations makes it an offence to advertise, sell or import in Canada any toys, equipment and other products for use by a child in learning or play that contain any type of plant seed as stuffing material.

Electrical

Most provincial and territorial electrical safety legislation is based on the Canadian Standards Association's Canadian Electrical Code. It is the responsibility of each provincial government to enforce the Canadian Electrical Code according to the applicable standards outlined within the Canadian Electrical Code itself. In Ontario, the Electrical Safety Authority is the designated public body responsible for enforcing the provincial *Electricity Act* and its regulations. These regulations include Regulation 438/07 on Product Safety and the Ontario Electrical Safety Code, which is an adaptation of the Canadian Electrical Code.

The provincial safety regulations provide that no person shall use, advertise, display, or sell electrical equipment for use in a province unless it has been certified by a certification organization accredited by the Standards Council of Canada and has met the requirements of the Canadian Electrical Code. Accredited certification bodies include the Canadian Standards Association and InterTek Testing Services. An electrical product that has been certified and approved for sale must bear the certification body's mark or the label of the inspection body. The labels are product-specific; an approval label that was not issued for that electrical product or device cannot be affixed to that product or device.

Under the *Federal Energy Efficiency Act*, there are additional labelling requirements for the manufacturer, importer, and distributor of an energy-using product listed under the Energy Efficiency Regulations. Products such as clothes dryers, dishwashers, freezers, and air-conditioners[8] must comply with the energy efficiency standard and labelling requirements prior to sale or lease. These products must be visibly labelled with a verification mark; the verification mark is issued when the energy performance of the product has been tested and verified by a certification body that has been accredited by the Standards Council of Canada.

Automotive

The federal Competition Bureau, Advertising Standards Canada, provincial consumer protection entities, and automotive industry associations all work together in regulating automotive advertising. The Ontario Motor Vehicle Industry Council has a Code of Ethics and Standards of Business Practice that helps guide advertisers in this area.

As with advertisements for other products, automotive ads must be contextually and technically correct, such that the overall impression given by the ad is truthful. This means that the visual image and the text must not be contradictory. All performance and product claims must be substantiated, and any comparisons should be between vehicles in the same class and with the same features and pricing or financing information. Price and savings claims must adhere to *Competition Act* provisions regarding the setting of regular and sales prices (i.e., the substantial volume and time tests). Under the *Ontario Consumer Protection Act* and the corresponding O. Reg. 17/05, an automobile ad with respect to a lease or credit financing offer must disclose specified information.

All disclaimers must be clear and legible regardless of the advertising medium. This is of particular concern in the automotive arena where financing for vehicles is a promotion tactic and contains a great deal of detailed information.

Fuel efficiency claims must be based on the EnerGuide testing figures issued by Transport Canada and should specify the publication year of the EnerGuide figures. There has also been public concern about automotive advertisements which depict unsafe or aggressive driving situations, particularly in television advertisements, such as demonstrations or discussions of acceleration, speeding and sudden stops, as well as the use of driver disclaimers. Canada's automobile manufacturers and distributors are in the process of adopting new national voluntary advertising guidelines for the safe portrayal of automotive products and for bringing greater public awareness of the potential negative consequences resulting from unsafe or aggressive driving.

Pet Food

The labelling and advertising of pet products sold in Canada are subject to the *Consumer Packaging and Labelling Act* and Regulations and the *Competition Act*. The formulation and manufacturing of pet food is not directly regulated by the Canadian Food Inspection Agency. This is primarily because animal pets are not considered livestock pursuant to the *Health of Animals Act* and Regulations, which define livestock as bovine, caprine, equine, and porcine. That being said, pet food products imported from the United States are subject to the Certain Ruminants and Their Products Importation Prohibition Regulation, No. 2. NHPD and Health Canada's Veterinary Drugs Directorate have also been considering extending the application of the NHP Regulations to animals. There are some voluntary quality assurance policies and programs. The Competition Bureau has also issued a pet food labelling and advertising guide for dog and cat food.

17. PRODUCT RECALLS

Product Recalls in General

Health Canada primarily governs product recalls in accordance with the *Canada Consumer Product Safety Act*, The *Food and Drugs Act* and the Natural Health Product Regulations. The Canadian Food Inspection Agency governs food recalls. The Ontario Electrical Safety Authority ("OESA") is mandated to enforce the *Electricity Act*, including the Ontario Electrical Safety Code, which essentially translates into its governance of recalls relating to electrical products and equipment. The OESA, in turn, coordinates efforts with its counterparts across the country including offices of the Fire Marshall, if necessary. The Technical Standards and Safety Authority (Ontario) and its provincial counterparts may become involved with recalls relating to items such as fuels, elevators, boilers, and ski lifts. Depending on the type of product, there are may be several levels of government and government departments that regulate product recalls. Because of this overlap in the regulatory scheme, the manufacturer or retailer may need to notify several regulatory bodies of product incidents and recalls within short timelines. There are many factors that must be taken into account when affecting a product recall. Of paramount importance to importers, manufacturers, and distributors is corporate reputation, consumer trust, and the potential for product liability claims. In that respect, it is strongly recommended that experienced Canadian counsel be consulted in advance of initiating a recall to either guide or run the process or to coordinate efforts with U.S. counsel, as necessary.

18. MISCELLANEOUS NOTES

Coupons (aka trading stamps)

Over a century ago the trading stamp provisions became part of the Canadian *Criminal Code*. A "trading stamp" is broadly defined as "any form of cash receipt . . . coupon, premium ticket or other device" which represents a discount on the price of goods or a 'premium' to the buyer."

There have been very few recent prosecutions. Penalties include a fine of not more than $2,000 or imprisonment for six months or both. Of course, a private prosecution by a competitor or disgruntled consumer is also theoretically possible. Most advertisers use time-honoured practices to take their proposed coupons outside the scope of the definition of a trading stamp, by for example, having the coupon display on its face the station where it was printed (the place where it was delivered) and its merchantable value; or ensure that the coupon indicates that it is redeemable on demand.

Do-Not-Call List

Under the Unsolicited Telecommunication Rules administered by the CRTC, Canadian consumers who do not wish to be contacted by telemarketers can sign up to a *National Do Not Call List* (DNCL). Consumers can add their telephone and fax numbers to the centralized list free of charge. Businesses that qualify as telemarketers will be required to subscribe to and download the list on a regular basis. Telemarketers cannot place calls to people who have elected to list their phone number on the DNCL. The Unsolicited Telecommunication Rules and the DNCL cover any communications falling under the definition of "telemarketing" and "solicitation" that are made by phone, fax, or automatic calling devices. "Telemarketing" is defined as the use of telecommunications facilities to make unsolicited telephone calls or to send unsolicited faxes to consumers for the purposes of solicitation. "Solicitation" means the selling or promoting of a product or service, or the soliciting of money or money's worth, whether directly or indirectly and whether on behalf of another party. However, the use of written communications (for example, e-mail, brochures "dropping," mail-in promotions) or voice mail broadcast do not fall under the DNCL provisions. Similarly, any calls made for purposes other than solicitation (for example, to follow-up on an order or for account collection) are not subject to the DNCL prohibition. The CRTC may impose penalties for each violation of up to CDN $1,500 for individuals and up to CDN $15,000 for corporations. Consumers who have registered their phone number on the DNCL and still receive unwanted calls will be able to file a complaint with the CRTC within 14 days of receiving such call.

Green Advertising

In recent years marketers have proceeded to highlight the environmental benefits of their products in response to rising consumer concerns regarding the environment. To provide guidance, the Canadian Standards Association ("CSA") adopted ISO- 14201, the international standard for environmental labelling, for its members in 2000. In 2008, the Competition Bureau and the CSA partnered together to publish "Environmental claims: A guide for industry and advertisers (Guide). While this release does not purport to be the law, it should be considered as an important document for any company making environmental claims regarding their product. Companies that make such claims would be prudent to govern themselves by the clauses found in the Guide".

Internet Advertising

The basic rules and regulations that apply to traditional advertising also apply to Internet advertising. However, due to the innovation of the Internet, various issues were not readily contemplated by legislation at the time of enactment. The Competition Bureau has released an Information Bulletin on the Application of the *Competition Act* to Representations on the Internet in order to provide details of the Bureau's approach to Internet advertising practices. The Information Bulletin on the Application of the *Competition Act* to Representations provided information to assist Internet advertisers on how to avoid misleading representations and deceptive marketing practices.

Intellectual Property

When making comparative advertising claims, one should be aware of the implications of using a competitor's trademark. It can be used only if what is being advertised is “goods” (e.g., any packaged good trademark) but not “services” (e.g., Purolator, as it is used in connection with courier services). Use of a competitor's trademark in connection with services may trigger an infringement claim. In addition, depicting a competitor's packaging, logo, or mascot may constitute copyright infringement.

Section 22 of the *Trade-marks Act* prohibits the use of a registered trademark owned by a competitor in a manner that is likely to have the effect of depreciating the value of the goodwill attached to it. At present, the case law suggests that the use of a competitor's trademark in comparative advertising is prohibited at the point of sale of the products but not in advertisements appearing elsewhere.

Provincial Stewardship Programs

Many provinces have initiated or are in the process of developing waste-related stewardship programs. These stewardship programs are environmental initiatives established to minimize waste and pollution through the effective management of waste disposal. Under this type of program, manufacturers/distributors/producers are viewed as “stewards” or custodians of the environment and have a continuing involvement with commercial goods at all stages of products' life cycles. Stewardship programs have been developed in numerous jurisdictions around the world, and for various products, such as electronic waste (e-waste), tires, milk containers, paint containers, etc. Chief among them are programs devoted to the proper disposal and recycling of beverage cans and pharmaceutical packaging.

CONCLUSION

The vast amount of both federal and provincial legislation combined with the unique multi-cultural climate has a significant impact on advertising and marketing efforts in Canada. Given the complex nature of the requirements and expectations that organizations must comply with when reaching across the border, it is strongly recommended that expert legal advice be sought in advance of undertaking any such activity.

19. OTHER WEBSITES OF INTEREST

To help you find more information about the topics that we have discussed, this section lists some key websites under the headings of each chapter of this Guide. Many of these websites also provide links to other useful resources.

1. INTRODUCTION

Dickinson Wright
www.dickinsonwright.com

Canadian Tourism Commission
http://www.canada.travel

City of Toronto
http://www.toronto.ca

2. CANADA'S POLITICAL, LEGAL AND ECONOMIC ENVIRONMENT

Federal

Federal statutes and regulations (Department of Justice Canada)
http://laws.justice.gc.ca

Government of Canada
http://www.canada.gc.ca

Natural Resources Canada
http://atlas.nrcan.gc.ca

Federal Publications on Business in Canada
http://www.fedpubs.com

Diplomatic Gateway to Canada (includes a list of Canadian Embassies and Consulates in foreign countries and foreign representatives in Canada)
http://www.international.gc.ca

Provincial and Territorial

Ontario statutes and regulations (Ontario government)
http://www.e-laws.gov.on.ca

Alberta statutes and regulations (Alberta government)
http://www.qp.alberta.ca

British Columbia statutes and regulations (British Columbia government)
http://www.bclaws.ca/

Manitoba statutes and regulations (Manitoba government)
http://www.gov.mb.ca/queensprinter

New Brunswick statutes and regulations (New Brunswick government)
http://www.gnb.ca/0062/acts/index-e.asp

Newfoundland statutes and regulations (Newfoundland and Labrador government)
http://www.assembly.nl.ca/legislation

Northwest Territories statutes and regulations (NWT government)
http://www.assembly.gov.nt.ca

Nova Scotia statutes and regulations (Nova Scotia government)
http://www.gov.ns.ca/legislature

Nunavut statutes and regulations (Nunavut government)
http://www.assembly.nu.ca

Prince Edward Island statutes and regulations (PEI government)
http://www.gov.pe.ca/law/statutes

Quebec's Civil Code (Canadian Legal Information Institute)
http://www.canlii.org/en/qc/laws

Saskatchewan statutes and regulations (Saskatchewan government)
http://www.qp.gov.sk.ca

Yukon statutes and regulations (Yukon government)
http://www.gov.yk.ca/legislation

3. FOREIGN INVESTMENT CONSIDERATIONS

Canada International (includes links to government services and resources for citizens of other countries)
www.canadainternational.gc.ca

Department of Foreign Affairs and International Trade
http://www.international.gc.ca

Industry Canada (Canadian government)
http://www.ic.gc.ca

Invest in Canada (Canadian government)
http://www.investincanada.gc.ca

Investment Canada Act
http://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/Home

4. FREE TRADE

Department of Foreign Affairs and International Trade (including NAFTA and other free trade agreements)
www.international.gc.ca/trade-agreements-accords-commerciaux

World Trade Organization
http://www.wto.org

5. FORMS OF BUSINESS ORGANIZATION

Canada's Business Support and Financing site is accessed through Industry Canada provides links to Support Services, Financing Information, Tools, Guides and related sites)
http://www.ic.gc.ca

6. CUSTOMS AND TAXATION

Canada Revenue Agency (CRA)
http://www.cra-arc.gc.ca

Organization for Economic Co-operation and Development
http://www.oecd.org

7. BUSINESS IMMIGRATION

Citizenship and Immigration Canada
http://www.cic.gc.ca

8. EMPLOYEE-RELATED MATTERS

Federal

Canada Pension Plan (Information is available on the Human Resources and Social Development)
http://www.hrsdc.gc.ca

Environmental and Workplace Health (A division of Health Canada)
http://hc-sc.gc.ca/ewh-semt/index_e.html

Province of Ontario

Ontario Human Rights Commission
http://www.ohrc.on.ca

Ontario Ministry of Labour
http://www.labour.gov.on.ca

Workplace Safety and Insurance Board (Ontario)
http://www.wsib.on.ca

Pay Equity Commission
http://www.payequity.gov.on.ca

9. PRIVACY LEGISLATION

Federal

Privacy Commissioner of Canada
http://www.priv.gc.ca

Province of Ontario

Information and Privacy Commissioner of Ontario
http://www.ipc.on.ca

Province of Quebec

Commission d'accès à l'information du Quebec
http://www.cai.gouv.qc.ca

10. PUBLIC SECURITIES

Ontario Securities Commission
http://www.osc.gov.on.ca

The Toronto Stock Exchange and TSX Venture Exchange
http://www.tmx.com

Canadian Public Securities Filings – SEDAR (System for Electronic Document Analysis and Retrieval)
http://www.sedar.com

GET PROFESSIONAL ADVICE

Given the complexity of Canadian law, professional advice is recommended. Visit our website at www.dickinsonwright.com for further information about our firm, our lawyers, and their specific areas of practice.

20. MOVING FORWARD

Dickinson Wright LLP has provided this **Guide to Doing Business in Canada** to highlight some of the key issues that need to be considered by any business in deciding whether to expand or establish a business in Canada and in the operation of a business. These activities require the advice of legal professionals who understand the Canadian business environment and legal system. Lawyers at Dickinson Wright LLP can assist you in acquiring, establishing or operating your business.

Contacting Dickinson Wright LLP

Visit our website at www.dickinsonwright.com for further information about our firm, our lawyers, and their specific areas of practice.

If you wish to contact one of our lawyers to discuss your plans for doing business in Canada, please contact the person directly by letter, telephone or email.

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