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*1-1 Doing Business in Canada § 1.02*

## Doing Business in Canada

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PART I Government, Legal System, and Business Environment  
CHAPTER 1 Introduction to the Canadian Legal Business Environment

1-1 Doing Business in Canada § 1.02

### § 1.02 Establishing a Business

#### [1] Types of Business Organizations <sup>60</sup>

Several different vehicles are available in Canada for conducting a business. Foreign businesses can operate directly through a branch office or establish a separate Canadian vehicle. Corporations are the most common business entity, but sole proprietorships and partnerships can also be used to accomplish similar objectives. Joint ventures, franchises and cooperatives are less common, but appropriate for some types of enterprise. Tax considerations and liability are usually the most important issues when selecting the vehicle.

#### [a] Sole Proprietorships

A sole proprietorship is the simplest form of business organization. It is a business owned and operated by an individual who is responsible for all of the obligations and is entitled to all of the profits of the business. All of the proprietor's personal assets are at risk to satisfy any business obligations that may arise. Although the sole proprietorship is free from most government regulations that apply to business corporations, there are usually registration requirements that must be complied with in the jurisdiction in which the business is to be carried on. A sole proprietor who uses as his or her business style a name or designation other than his or her

own may also be required to register the name under applicable provincial legislation.<sup>61</sup>

A non-resident who establishes a business, whether as a sole proprietorship or otherwise, must notify the Canadian government pursuant to the *Investment Canada Act*, but need not submit to the review process.<sup>62</sup>

## **[b] Partnerships and Joint Ventures**

Partnership law in Canada is a matter of provincial jurisdiction. Each of the provinces has legislation that governs the nature, formation and dissolution of a partnership carrying on business in that province. While a partnership is formed under the laws of a particular province, partnerships carrying on business in more than one province will be required to comply with the law of, and may be required to register in, each of these provinces. In Quebec the Quebec Civil Code governs partnerships.<sup>63</sup> Quebec partnerships are similar, but not identical to, partnerships in the common law provinces. In the absence of an agreement to the contrary, the rights and obligations of partners are those found in the governing provincial legislation. Canadian jurisdictions generally recognize two forms of partnerships: general partnerships and limited partnerships. Limited partnerships are established by filing a declaration signed by all of the partners with the appropriate provincial Registrar. The declaration sets out the partnership name, the name and address of each partner, the general nature of the business, the value of money and other property contributed or to be contributed by each limited partner, the principal place of business of the partnership and other required information. The declaration generally expires a specified number of years after its filing, unless cancelled earlier by the filing of a declaration of dissolution or renewed by the filing of a new declaration. The only filing normally required for a general partnership is a registration of the business name if the partners are not using their own names.<sup>64</sup>

The term "joint venture" has no precise legal definition and there is no particular federal or provincial legislation regulating joint ventures. The essence of a joint venture is that it is a purely contractual arrangement between two or more independent contractors. A joint venture is not a distinct legal entity.<sup>65</sup>

## **[c] Corporations<sup>66</sup>**

A corporation is an entity with legal status independent of its shareholders.

Corporations utilized by foreign investors are usually created by incorporation under the *Canada Business Corporations Act* (the "CBCA")<sup>67</sup> or under similar provincial laws.<sup>68</sup> Some types of corporations can be formed under other federal legislation, such as the *Trust and Loans Companies Act*,<sup>69</sup> or under provincial equivalents. Both the federal parliament and provincial legislatures can also form corporations by special acts. A corporation can be incorporated by individuals or other corporations. Both federal and provincial corporations are created by filing articles of incorporation with the appropriate government authorities. The articles must include details of the rights, restrictions, privileges and conditions attached to each class of shares. Corporations may have any number of shares of one or more classes but at least one class must have full voting rights.

A federal corporation's articles must also name the first directors. While the directors generally exercise management authority on behalf of the shareholders, their power can be restricted through a unanimous shareholder agreement. The corporation, its shareholders or third parties can hold the directors personally liable for certain aspects of their decisions.

A business corporation incorporated under provincial law may carry on business as of right in the province of its incorporation and also has the capacity to carry on business beyond the limits of that province. A federal business corporation is subject to provincial laws of general application, although it has the basic right to carry on business in any province. Most provinces require corporations incorporated in other jurisdictions (called "extra-provincial corporations") to register or be licensed before commencing to do business and to file initial and annual returns and notices reporting certain basic corporate changes. Failure to comply with the rules governing extra-provincial corporations can prevent a corporation from holding land in the subject jurisdiction, from suing and, in certain cases, from enforcing an otherwise valid agreement.

Certain types of corporations such as banks, trust and loan companies, credit unions or associations and insurance companies are subject to specific legislation and are not governed by the general federal or provincial corporate statutes.

Although the requirements, formalities and restrictions of the federal and provincial business corporations statutes are similar, the decision of whether to incorporate federally or provincially will depend upon such factors as the ease and timeliness of incorporation, the flexibility in carrying out corporate proceedings, licensing

requirements, fees and taxes, the extent of continuous disclosure requirements, the ease and timeliness of obtaining a desired corporate name and any requirement as to the residence of directors. Often a non-resident wishing to incorporate in Canada will prefer to incorporate federally given that, as a matter of practice although not as a matter of law, CBCA corporations are more readily recognized and accepted outside of Canada than are provincially incorporated companies. In addition, a few corporate statutes, including the CBCA, require a minimum number or percentage of resident Canadian directors.

## **[2] Franchising and Licensing**<sup>70</sup>

A franchise may be considered a common enterprise by means of which a person (the "franchisee") is entitled to manufacture, sell and distribute a service or product, often within a prescribed territory, and is entitled to use methods technical knowledge, trade names and other distinctions that particularly identify the products or services of the franchisor. Licensing is a similar arrangement in which a licensee is entitled to use property of another (the "licensor"). Franchising and licensing arrangements may be considered as alternatives to the types of business organizations discussed above. Franchising and licensing are both governed generally by contract law. However, three provinces, Alberta, Ontario and Prince Edward Island have legislation that regulates franchising.<sup>71</sup> Other provinces have consumer protection legislation that may also affect franchise arrangements.

Federally, the *Competition Act* prohibits certain practices with particular relevance to franchises and licence arrangements that relate to promotional allowances, resale price maintenance, pyramid selling, referral selling and advertising. In addition, the *Competition Act* subjects certain trade practices to review including refusals to deal, consignment selling, exclusive dealing, tied selling and market restriction. Other relevant federal legislation may include the *Trade Marks Act*<sup>72</sup> and the *Patent Act*.<sup>73</sup>

## **[3] Competition Act**<sup>74</sup>

### **[a] General**

Competition and antitrust is principally regulated in Canada by the federal government under the *Competition Act*,<sup>75</sup> Mergers, conspiracies, cartels (agreements between competitors), trade and marketing practices and monopolies or abuse of dominant position in a market are all subject to the rules of the *Competition Act*.

The Commissioner is responsible for the administration and enforcement of the *Competition Act*. The Competition Bureau, a division of the Department of Industry, assists the Commissioner in carrying out his duties.<sup>76</sup> The Competition Tribunal is an independent and specialized judicial body composed of judges of the Federal Court of Canada and non-lawyer experts, including economists.<sup>77</sup> The Tribunal has wide-ranging powers regarding the nature of orders it may make to remedy non-criminal anti-competitive conduct. Until recently, only the Commissioner could make applications to the Tribunal. However, recent amendments to the Act also allow individuals, with leave of the Tribunal, to bring certain reviewable matters before the Tribunal (namely, refusal to deal, exclusive dealing, tied selling and market restriction--each discussed below).

## **[b] Mergers**

A merger is defined broadly under the *Competition Act* and includes the acquisition of control over, or of a significant interest in, the whole or a part of a business. Because of this broad definition, transactions outside Canada can raise issues when the parties own, or have a significant interest in, a business in Canada. Similarly, the mandatory pre-notification rules applicable to certain transactions (discussed below) cover both direct and indirect acquisitions. The rules are the same, irrespective of whether the acquiror is Canadian or foreign.

Generally speaking, all mergers, whether they are pre-notifiable or not, are subject to review by the Tribunal on application of the Commissioner, unless an advance ruling certificate has been provided by the Commissioner. In certain circumstances, on the application by the parties to a proposed merger, the Commissioner may issue an Advanced Ruling Certificate if satisfied that there are insufficient grounds to challenge the merger. If the merger is substantially completed within one year after the issuance of the certificate, the Commissioner may not subsequently challenge the merger, nor is it subject to mandatory pre-notification.

The principal test for approving mergers is whether the transaction "would or would be likely to prevent or lessen competition substantially" in a market. This test applies both to the administrative decision of the Director to initiate an application to the Tribunal and the Tribunal's adjudication of the application. In making a determination, the Director and the Tribunal will consider the extent and effectiveness of foreign competition, whether the business of a party to the merger has failed or is likely to fail, the extent and availability of acceptable substitutes for

products supplied by the parties, current barriers to entry into the market, whether the transaction would result in the removal of a vigorous and effective competitor, the extent to which effective competition would remain following the transaction and the nature and extent of change and innovation in the relevant market. The analytical framework that has been adopted employs legal and economic criteria similar to those found in American anti-trust jurisprudence. The Competition Bureau has released Merger Enforcement Guidelines to provide general guidance concerning on its analytical approach to merger review.<sup>78</sup>

Some mergers may also raise issues under the criminal conspiracy and civil abuse of dominance provisions of the *Competition Act*. Mergers between competitors may be subject to scrutiny under the conspiracy provisions of the Act if the effect of the merger would be to prevent or lessen competition unduly. Enforcement officials must elect, however, to proceed under only one of the merger, conspiracy or abuse of dominance rules.

### **[c] Advance Notification of Large Transactions**

While mergers do not require advance approval under the *Competition Act*, some mergers (asset acquisitions, share purchases, amalgamations, combinations and acquisitions of interests in combinations) are subject to mandatory pre-notification and a waiting period before completion of the transaction. Whether the pre-notification provisions apply depends on the size of the parties and the size of the transaction. A merger is pre-notifiable if all of the following criteria are met:

- taken as a whole, the merging parties and their affiliates have assets in Canada with an aggregate book value that exceeds, or have gross annual revenues from sales in, from, or into Canada that exceed, \$400 million;
- the aggregate book value of the assets of the business being acquired exceeds, or the gross annual revenues from sales in or from Canada generated from those assets exceed, \$50 million (\$70 million in the case of an amalgamation);
- in the case of a purchase of the shares of (a) a public company, the acquiror together with its affiliates would hold more than 20% of the voting shares, (b) a private company, the acquiror together with its affiliates would hold more than 35% of the voting shares, or (c) in either case there will be an increase in ownership to more than 50% of the voting

shares of the company; and

- in the case of an acquisition of an interest in a combination, the person or persons acquiring the interest, together with their affiliates, would hold an aggregate interest in the combination that entitles the person or persons to receive more than 35% of the profits of the combination, or more than 35% of its assets on dissolution or, where the person or persons acquiring the interest are already so entitled, to receive more than 50% of such profits or assets.

Pre-notification is effected by submitting to the Commissioner either a short form or long form information filing on a prescribed form together with the fee of \$50,000 (plus applicable tax). A long form is generally used only if significant competition issues exist. Exemptions from pre-notification exist for some transactions. As well, there is a provision in the *Competition Act* that allows the Commissioner to waive the obligation to notify because substantially similar information was previously supplied in relation to a request for an Advanced Ruling Certificate.

#### **[d] Advance Ruling Certificates**

As mentioned, the *Competition Act* also establishes an advance ruling process through which parties to a proposed merger transaction may seek an advance ruling certificate from the Director confirming that, on the basis of a review of the represented facts, the Director will not challenge the proposed merger. If obtained, a certificate has two positive implications. First, it exempts the parties from the requirement to pre-notify the transaction. Second, it prevents the Director from challenging the transaction following its completion.

Requests for an ARC are subject to a filing fee of \$50,000, plus applicable taxes. However, if a request for a certificate is made for a transaction that is pre-notifiable, the pre-notification fee is waived and the filing fee is still \$50,000.

#### **[e] Other Powers of the Director**

In addition to the administration of the merger review process under the *Competition Act* the Director has the power to:

- (1) inquire into reviewable trade practices including refusals to deal, refusal to sell, consignment selling, exclusive dealing, tied selling, market restrictions and delivered pricing;
- (2) prosecute some criminal offenses including bid rigging, conspiracy in restraint of trade, price discrimination, predatory pricing, promotional allowances, misleading advertising, pyramid and referral selling, resale price maintenance, deceptive telemarketing and "bait and switch selling"; and
- (3) initiate civil proceedings in relation to matters reviewable by the Competition Tribunal.

#### **[4] Employment Legislation** <sup>79</sup>

In Canada jurisdiction over labour and employment is divided between the federal and provincial governments. About 10% of the workforce (including both the public and private sectors) is under federal jurisdiction, while the remainder is under provincial or territorial jurisdiction. As a result, there are 14 different sets of labour laws covering a multitude of workplace-related issues, and 14 independent administrative structures (such as industrial relations, employment standards, occupational safety and health, workers compensation).

#### **[a] Minimum Standards Legislation**

Each Canadian jurisdiction sets the minimum employment standards applicable to all employees within the jurisdiction. These employment standards include the minimum wage for hours worked, the number of hours worked in a day and week, time required off work and severance required in the event of termination of the employment relationship. Employment standards legislation prescribes a minimum standard that employees cannot waive by contract. Higher standards are often the custom in many industries in Canada.

In Ontario, the *Employment Standards Act, 2000* <sup>80</sup> also provides that when a sale of a business or part of a business has taken place and the purchaser hires the vendor's employees, the employees' length of service with the vendor is treated as service with the purchaser in calculating entitlement to public holidays, vacation with pay,

pregnancy and parental leave and termination of employment. Other provinces also have similar provisions within their employment standards legislation.

## **[b] Workers' Compensation**

All jurisdictions have workers' compensation programs to provide benefits for workers suffering from job-related injuries and diseases. These legislated regimes provide a "no fault" compensation system, whereby injured workers receive benefits from the program but cannot take legal action against the employer. Employers pay premiums to provincial workers' compensation boards at rates determined primarily on the basis of the type of industry and the employer's claim record.

Most employers are required to contribute to the fund, and the contributions are based on the employer's payroll, the type and nature of business carried on, and the employer's "experience rating" based on the employer's particular accident record. Compensation and medical expenses for injured workers are awarded by an administrative tribunal and paid out of the fund. No contribution to the fund by employees, either directly or indirectly, is permitted. In Ontario the *Workplace Safety and Insurance Act, 1997* provides for the mandatory reinstatement of injured workers in many circumstances.<sup>81</sup>

## **[c] Human Rights Legislation**

All jurisdictions in Canada, federal, provincial and territorial have passed human rights legislation prohibiting discrimination in employment on specifically identified grounds that usually include race, sex, age, religion, colour, disability, marital or family status, ancestry or place of origin and sexual orientation. Human rights legislation affects all aspects of the employment relationship including hiring and firing and any terms or condition of employment.

The key defence available to a complaint of discrimination is that the discriminatory practice or rule is a bona fide occupational requirement or qualification. In order to demonstrate that a discriminatory practice or rule is a bona fide occupational requirement, the employer must establish that it could not have accommodated the individual discriminated against without incurring undue hardship.

Discrimination based on a prohibited ground includes harassment based on that ground.

The Supreme Court of Canada has defined sexual harassment as "unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment." The definition can be applied to harassment based on any of the prohibited grounds of discrimination.

Some jurisdictions in Canada also provide employment equity legislation, the purpose of which is to provide employment and promotion opportunities to members of four protected groups: women; aboriginal people; the disabled and visible minorities. In addition to federal and provincial Human Rights statutes, the *Canadian Charter of Rights and Freedoms*,<sup>82</sup> which applies to both federal and provincial legislation, has had a major effect on labour relations and will continue to do so in the future.

### **[d] Labour Relations Legislation**

Canada's system of collective bargaining is embodied in federal and provincial labour relations acts and labour codes. Canadian workers have the right to join trade unions, which bargain collectively with their employer on their behalf. Roughly 30% of Canadian private sector workers are members of unions.

In general, the system seeks to minimize disruption by certifying trade unions as the bargaining agents for specific groups of workers, often all of the non-managerial employees in a company. Exclusions from the bargaining unit are also provided in certain jurisdictions for non-managerial employees who have access to confidential information relating to labour matters. Each jurisdiction has its own rules respecting the certification process.

Once a labour relations board has certified a union as an agent for a specific "bargaining unit", the union has the exclusive right to bargain with the employer on behalf of the bargaining unit. Normally, this right of representation covers all workers in the unit, whether or not they are members of the union. In return, the union is obliged to represent all workers fairly, whether or not they are members of the union. Specific rules also regulate when a union can be decertified or replaced with another union.

Strikes and lock-outs during the term of a collective agreement are normally prohibited in all jurisdictions. In some jurisdictions, for first collective agreements there is a system of binding arbitration available to resolve disputes in a cost-

effective and timely manner. Both the federal and provincial governments provide mediation and conciliation services, which are generally mandatory before employees may strike or employers may lock out employees in furtherance of their bargaining aims.

Both the Quebec and British Columbia legislation provide for certain restrictions on the use of replacement workers during a strike or lockout.

When there is a sale of a business and the vendor's employees are represented by a trade union, the bargaining rights held by that trade union will generally be preserved and extended to a corresponding unit of the purchaser's employees and the purchaser will be bound by the vendor's collective agreement.

Currently, the most heavily unionized provinces are Ontario, Quebec and British Columbia; the most heavily unionized industries are manufacturing, public administration, transportation and communications.

## **[e] Employment Equity and Pay Equity**

In addition to human rights legislation, some jurisdictions in Canada also provide employment equity legislation, the purpose of which is to provide employment and promotion opportunities to members of four protected groups: women; aboriginal people; the disabled and visible minorities.

The primary statute is the federal *Employment Equity Act*.<sup>83</sup> Generally the Act applies to the federal public sector and to private sector employers who employ more than 100 employees in connection with a federal work, undertaking or business. The Act requires these employers to identify and eliminate employment barriers against the four protected groups. Employers must also institute positive policies and practices and make reasonable accommodations to ensure that persons in the protected groups achieve a degree of representation in each occupational group in the employer's workforce that reflects their representation in the Canadian workforce.

Provincial pay equity legislation can be found in Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Quebec and the Yukon. With the exceptions of Ontario and Quebec, the legislation generally only applies to federally regulated industries and public sector employers. Pay equity legislation essentially provides for affirmative action obligations to address gender discrimination in the payment of

female employees.

## **[f] Miscellaneous**

Under the *Employment Insurance Act*, Employment Insurance provides temporary financial assistance for unemployed Canadians while they look for work or upgrade their skills. Canadians who are sick, pregnant or caring for a newborn or adopted child, as well as those who must care for a family member who is seriously ill with a significant risk of death, may also be assisted by Employment Insurance. Employees who lose their jobs through no fault of their own, for example, due to a shortage of work, seasonal or mass lay-offs, and who are available for and able to work, may obtain benefits under the legislation. The program is funded by insurance premiums paid by employers and employees based on the "insurable earnings" of each employee. Employers are required to deduct employment insurance premiums from amounts paid to their employees; they are also required to pay a premium for each employee that is a multiple of the employee's premium.

Under the *Canada Pension Plan Act*,<sup>84</sup> employers are required to contribute to the Canada Pension Plan, or to the comparable plan in Quebec.<sup>85</sup> These plans provide workers and their families with a basic level of income protection in the event of retirement, disability or death. These plans are financed by contributions from employers and employees, deducted at source each time the employee is paid. The employer and employee each contribute a certain percentage of salary, up to a yearly maximum. Employees become eligible for benefits at age 65, even if they are still working. Contributions cannot be made after age 70.

Several jurisdictions in Canada, including Ontario and Quebec, have also established a system of employer health tax whereby employers who have a permanent establishment in the province generally are required to pay an annual tax at a graduated rate depending on the total annual remuneration paid to employees.

## **[5] Environmental Legislation<sup>86</sup>**

Environmental legislation is predominantly provincial, as is most environmental enforcement. There are two major branches of environmental legislation. Legislation that regulates new development and legislation that attempts to protect the environment. There are both federal and provincial laws dealing with all aspects of

environmental assessment and protection.

Particular environmental conditions applicable to certain lands may well affect or limit the permissible development of those lands. Typically, any major new development will require some sort of environmental assessment under applicable environmental assessment legislation. Federally, this is the *Canadian Environmental Assessment Act*.<sup>87</sup> The provinces have enacted similar legislation.

In most jurisdictions the environmental assessment legislation requires that the initiator of a development project produce an environmental impact statement for the proposed activity. Small projects with no substantial or significant impacts are screened out and are allowed to proceed. Projects that could have significant adverse environmental impacts are usually submitted to an administrative agency for a structured review that may lead to the issuance of guidelines or general or specific directions. Major projects are also generally subject to public review by an independent board or panel, which may produce a recommendation or a final decision.

The prescribed content and form of the environmental impact statement are similar in most jurisdictions. The statement will ordinarily contain a description of the project, a statement of the need for the project, an analysis and prediction of how the project will impact on the environment, a presentation of proposed mitigating measures and a statement of residual adverse effects.

The second branch of environmental protection legislation typically regulates air and water pollution, the transportation and storage of dangerous goods and hazardous wastes, underground storage tanks, pesticides, the migration of contaminants and radiation. The statutes dealing with these matters are generally enforced by criminal sanctions and give courts the power to strip profits, order licence suspensions and issue restoration, restraining and abatement orders.

Canadian businesses are also likely to encounter environmental regulations when they create, store and dispose of hazardous products, including industrial waste. The *Canadian Environmental Protection Act, 1999* ("CEPA")<sup>88</sup> and the *Hazardous Products Act*<sup>89</sup> are the principal laws governing these activities. Provincial environmental statutes also exist and are the predominant schemes for environmental regulation and enforcement. In addition, most provinces require a permit for hazardous waste disposal and transport. The directors and officers of a

company can be held personally liable for any contravention of environmental protection legislation.

CEPA is the principal federal law governing the discharge of toxic substances into the ecosystem. The focus of this statute is prevention. Environment Canada, which administers the CEPA, is responsible for environmental guidelines, regulations, codes of conduct and enforcement mechanisms. It also works with industry to develop pollution measurement and control technologies.

The *Hazardous Products Act* regulates the advertising, sale and import of hazardous products and substances. It regulates some products, prohibits the importation and sale of others, and outlines labelling requirements for hazardous products.

There are also significant issues about the potential liability of directors, officers and lenders for environmental problems. Directors and officers may be held personally liable for the environmental consequences of a corporation's activities, particularly if the director is an inside director, that is, an officer, employee or major shareholder of the corporation. However, secured lenders who take no action to control or realize on security are not personally liable for environmental problems on the secured property.

Potential risks of personal liability for receivers and trustees have been addressed both in the federal *Bankruptcy and Insolvency Act*<sup>90</sup> and in a variety of provincial initiatives, including "hold harmless" agreements with provincial ministries of environment.

Human health issues are addressed through occupational health and safety legislation including asbestos control or removal requirements, in addition to the more familiar facilities safe workplace matters.

## **[6] Consumer Protection Legislation**<sup>91</sup>

### **[a] General**

Canada has a number of laws to ensure that ethical businesses do not suffer from unfair competition from companies seeking to mislead consumers or engage in harmful waste management practices. In addition to competition laws, other laws are designed to protect consumers from product misrepresentation and misleading packaging and labelling. These measures are similar to those in other advanced

industrialized countries. They specify information that must be disclosed on product labels, and prohibit the dissemination of false or misleading product information. Legislation also exists in the provinces and territories to regulate business practices and provide disclosure in the interest of protecting consumers.

## **[b] Cost of Credit Disclosure**

Fundamental to consumer protection law as it has developed in Canada is the requirement that the cost of credit in consumer transactions be fully disclosed. The Canadian provinces have agreed to enact uniform cost of credit disclosure legislation. In addition, a consumer's right to be protected from negligent or erroneous credit reporting and to avoid liability for unsolicited credit cards or goods have been firmly established.

## **[c] Packaging and Labelling**

The *Consumer Packaging and Labelling Act*<sup>92</sup> protects against misrepresentation in packaging and labelling, and helps to distinguish products. The statute applies to importers, retailers, manufacturers, processors and producers. It prohibits dealers from selling, advertising or importing into Canada prepackaged goods unless the affixed label complies with applicable labelling standards.

With certain exceptions, prepackaged goods sold in Canada must be labelled in both the English and French languages. All products distributed in Quebec must have French labels, although they do not necessarily have to be affixed to the item. Labels must include the common name of the product, the quantity in metric units and the principal place of business or manufacture. The *Consumer Packaging and Labelling Act* also regulates standard container sizes and shapes. For 60 categories of goods, the Customs Act<sup>93</sup> requires that the country of origin be clearly marked. Most of these categories are goods for personal and household use, hardware, novelty and sporting goods, paper and printed products, and apparel. If the goods are not properly labelled when they enter Canada, amended labels must be affixed.

The Textile Labelling Act<sup>94</sup> regulates labels affixed to garments and upholstered house-hold furnishings. The provinces of Ontario, Manitoba and Quebec also have their own labelling requirements for all upholstered and stuffed articles.

## **[d] Food and Drugs**

Labels on food products must indicate the common name of the product, the net quantity, and the name and address of the producer. Most prepackaged food products must contain a list of ingredients, a "best before" date, storage instructions, and identification of any artificial flavouring. If the number of servings is indicated, the size of each serving must be shown. Nutritional labelling may or may not be mandatory, but it is recommended both because of consumer preferences and the possibility of future government regulation. The importation and sale of food products is also regulated under the *Food and Drugs Act*.<sup>95</sup> That statute prescribes standards for specific food products to ensure that they meet established standards of purity and quality. The objective of these regulations is to ensure that no other products are mistaken for food that meets the standards. The Act also limits certain food additives.

The *Food and Drugs Act* also classifies drugs into categories and regulates the sale of each type. Prescription drugs identified by a drug identification number and licensed for human use are dispensed by pharmacists or administered in hospitals on a physician's orders. Nonprescription drugs may be sold off the shelf in pharmacies, but not in other stores. General public drugs can be sold in grocery, department or variety stores. Only veterinarians, pharmacists and certain retailers may sell veterinary medicines.

## **[e] Weights and Measures**

The *Weights and Measures Act*<sup>96</sup> sets out standards for the measurement of mass, weight, volume, capacity, length, area, temperature and time. Since the adoption of the metric system of measurement in Canada, this statute has also set the standards for converting imperial measurements into their metric equivalents. A government agency called Measurement Canada administers these regulations.<sup>97</sup> This agency is also responsible for regulating the accuracy of measuring devices used for the sale of goods.

## **[f] Product Standards and Codes**

Canada's federal and provincial governments set mandatory standards for the performance or safety of many products and services. Electrical wiring, equipment and appliances is an example of a category that is relatively rigorously regulated. Numerous business associations also set voluntary standards for their industries or

for certain aspects of their businesses. Efforts are made to avoid duplication between federal and provincial governments in setting standards. In the case of the rules governing electrical safety standards, for example, each province has adopted the Canadian Standards Association's guidelines in its regulations as well as its certification services. Nonetheless, investors should be aware of the two levels of regulation involved and consult the relevant government departments or experts in the applicable field. The Standards Council of Canada<sup>98</sup> is an independent agency responsible for the promotion of voluntary standardization in Canada. The Council coordinates the National Standards System, a federation of organizations providing standardization of services. Members of the National Standards System write standards, test and certify products and register the quality systems of companies. The Council operates accreditation programs for members of the system. It is also Canada's voice in the International Standards Organization and the International Electrotechnical Commission. Companies producing goods in Canada can benefit from having their products certified by one of the accredited certification organizations. This allows the manufacturer to use certification marks subject to regular checks to ensure that the item continues to meet the standard involved. Canadian companies also have the opportunity to provide input into the development of international standards through the Council.

## **[g] Miscellaneous**

Many types of businesses must be registered or licensed under provincial consumer protection legislation, including collection agencies, real estate agents, motor vehicle dealers, direct sellers, consumer reporting agencies and private investigators, mortgage brokers, lenders, pyramid franchisers, dealers and sellers of farm machinery, travel agents, suppliers of pre-arranged funeral services, mobile home dealers, income tax discounters, hearing aid dealers, employment agents, conditional sellers, operators of physical fitness studios and paperback book dealers.

All of the provinces, with the exception of Quebec, have Sale of Goods legislation which defines the terms of contractual relations where there is a sale of personal property and where the agreement between the parties is silent. This legislation is not directed specifically at consumer transactions but rather covers all sales transactions involving "goods".

## **[7] Language Legislation<sup>99</sup>**

Canada is an officially bilingual country. The Constitution provides that Canada has

two official languages, English and French, and that both languages have equal status, rights and privileges as to their use in federal institutions.<sup>100</sup> In addition any member of the public has the right to communicate with, and to receive available services from, federal institutions (provided there is a "significant demand").<sup>101</sup> Finally Canadians have the right to educate their children in English or in French when number warrant.<sup>102</sup> These constitutional provisions are supplemented by the *Official Language Act*,<sup>103</sup> which provides when French and English must be available to be used in dealings with the federal government.<sup>104</sup> The Commissioner of Official Languages ensures that federal institutions comply with the intent and spirit of the Act. It investigates complains and suggests corrective measures.<sup>105</sup>

While the federal government is clearly bilingual, the same is not necessarily true of provincial governments. New Brunswick Manitoba and Quebec offer institutional bilingualism, i.e. legislation appears in both English and French and both languages may be used in the courts.

### **[a] Packaging**

The most important effect of bilingualism on businesses may be seen in the packaging and labelling of consumer products. The *Consumer Packaging and Labelling Act*<sup>106</sup> and specifically the Consumer Packaging and Labelling Regulations<sup>107</sup> require that certain information be presented in both official languages on all products imported into Canada.<sup>108</sup> Thus it is generally not possible for sellers of merchandise merely to ship it to Canada in the same containers it is sold in the originating countries. Bilingual labels must instead be shown on the packaging.

### **[b] Quebec's Charter of the French Language**

When doing business in Quebec, it is necessary to consider the requirements of the *Quebec Charter of the French Language*<sup>109</sup> which is designed to make French the everyday language of work, instruction, communication, commerce and business in Quebec. The QCFL makes French the only official language of Quebec. The QCFL also establishes the "Office quebecois de la langue francaise" (the "Office") to implement and enforce the QCFL's provisions.<sup>110</sup>

The QCFL requires, for example that all business signage, and other communications with the public, be in French (or English and French). If the

signage is in English and French the French must have equal predominance with the English. Advertisements for employment that appear in English newspapers must also appear in French newspapers with an equivalent display. Collective agreements must be in French.

Another important provision of the QCFL from a business prospective is the concept of "francization" for businesses that have 50 or more employees.<sup>111</sup> The aim of francization is to generalize use of French at all levels of the business until French becomes the working language. Francization requires the following nine steps:<sup>112</sup>

- 1) the knowledge of the official language on the part of management, the members of the professional orders and the other members of the personnel;
- 2) an increase, where necessary, at all levels of the business, including the board of directors, in the number of persons having a good knowledge of;
- 3) the use of French as the language of work and as the language of internal communication;
- 4) the use of French in the working documents of the business, especially in manuals and catalogues;
- 5) the use of French in communications with the civil administration, clients, suppliers, the public and shareholders;
- 6) the use of French terminology;
- 7) the use of French in public signs and posters and commercial advertising;
- 8) appropriate policies for hiring, promotion and transfer;
- 9) the use of French in information technologies.

In order to prove francization, a company employing 50 or more people in Quebec must obtain a francization certificate from the Office showing that it has complied with the above nine requirements. A company has six months, after establishing its Quebec division, to register with the Office, then another six-months period to conduct an analysis of its language situation with the assistance of the Office and then, if necessary, submit a plan in order to ensure the use of French in

communications and working documents. Once this step has been taken the company is normally given two to three years to achieve the francization program goals, and that period could be extended if there are particular constraints. Once francization is achieved, the company receives a certificate of compliance.

## FOOTNOTES:

↗Footnote 60. For more information, *see* Chapter 14, "Establishing a Business Enterprise in Canada".

↗Footnote 61. *See* § 14.03, below.

↗Footnote 62. *See* R.S.C. 1985, c. c. 28 (1st Supp.), s. 11.

↗Footnote 63. L.Q., 1991, c. 64.

↗Footnote 64. *See* §§ 14.05, 14.06 and 14.07, below.

↗Footnote 65. *See* § 14.04, below.

↗Footnote 66. For more information, *see* Chapter 15, "Business Corporations".

↗Footnote 67. R.S.C. 1985, c. C-44.

↗Footnote 68. A table of the various corporate statutes appears as [Appendix 15-1, below](#).

↗Footnote 69. S.C. 1991, c. 45.

↗Footnote 70. For more information, *see* Chapter 17, "Franchising".

↗Footnote 71. The Franchises Act, S.A., 1995, c. F-17; the Arthur Wishart Act (Franchise Disclosure, 2000, S.O. 2000, c. 3; R.S.P.E.I. 1988, c. F-14.1.

↗Footnote 72. R.S.C. 1985, c. T-13.

↗Footnote 73. R.S.C. 1985, c. P-4.

↗Footnote 74. For more information, *see* Chapter 20, "Competition Law".

Footnote 75. R.S.C. 1985, c. C-34.

Footnote 76. Its web site is at <[www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca)> accessed February 26, 2007.

Footnote 77. Its web site is at <[www.ct-tc.gc.ca/index.asp](http://www.ct-tc.gc.ca/index.asp)> accessed February 26, 2007.

Footnote 78. These Guidelines are available at <<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01245.html>>, accessed August 21, 2009.

Footnote 79. For more information, see Chapter 22, "Employment and Labour Law".

Footnote 80. S.O. 2000, c. 41.

Footnote 81. See S.O. 1997, c. 16, Sched. A, s. 41.

Footnote 82. *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

Footnote 83. S.C. 1995, c. 44.

Footnote 84. R.S.C. 1985, c. C-8.

Footnote 85. See An Act respecting the Quebec Pension Plan, R.S.Q. c. R-9.

Footnote 86. For more information, see Chapter 24, "Environmental Law".

Footnote 87. S.C. 1992, c. 37.

Footnote 88. S.C. 1999, c. 33.

Footnote 89. R.S.C. 1985, c. H-3.

Footnote 90. R.S.C. 1985, c. B-3., s. 14.06.

Footnote 91. For more information, please see Chapter 25, "Consumer Protection

and Product Liability".

↗Footnote 92. R.S.C. 1985, c. C-38.

↗Footnote 93. R.S.C., 1985, c. C-53.

↗Footnote 94. R.S.C., 1985, c. T-10.

↗Footnote 95. R.S.C., 1985, c. F-27.

↗Footnote 96. R.S.C., 1985, c. W-6.

↗Footnote 97. Its web site is at <http://strategis.ic.gc.ca/epic/site/mc-mc.nsf/en/Home>, accessed June 4, 2007.

↗Footnote 98. Its web site is at <http://www.scc.ca/en/index.shtml> accessed June 4, 2007.

↗Footnote 99. For more information, *please see* Chapter 28, "Language Legislation".

↗Footnote 100. The Charter of Rights and Freedoms, Schedule B to the Canada Act, 1982, 1982, c. 11 (U.K.) in R.S.C. 1985, c App. II No. 44. s. 16(1).

↗Footnote 101. *Id.*, s. 20.

↗Footnote 102. *Id.*, s. 23.

↗Footnote 103. R.S.C. 1985, c. 31 (4th Supp.).

↗Footnote 104. For example regulation SOR/92-48 under the Act defines what is meant by the term "significant demand".

↗Footnote 105. The web site of the Office of the Commissioner of Official Languages is at [www.ocol-clo.gc.ca](http://www.ocol-clo.gc.ca) accessed February 1, 2007.

↗Footnote 106. R.S.C., 1985, c. C-38.

↗Footnote 107. C.R.C., c. 417.

↗Footnote 108. There are some exemptions.

↗Footnote 109. R.S.Q. c. C-11.

↗Footnote 110. Its web site is at <[www.olf.gouv.qc.ca](http://www.olf.gouv.qc.ca)> accessed February 1, 2007.

↗Footnote 111. QCFL, ss. 135-153.

↗Footnote 112. QCFL. s. 141.