

The Canadian legal system explained: What global companies need to know

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This article is part of a practical series written for international companies looking to establish, launch, operate or invest in a business Canada. Each article covers a major area of law in Canada – everything from employment laws to taxes. Access all the articles on the [“Doing business in Canada: A practical guide from ‘Eh’ to ‘Zed’”](#) page.

Canada’s legal system is based on English common law, applied in nine provinces and three territories; and French civil law, applied in the province of Québec. Both legal systems are subject to the Constitution of Canada.

The governments

Constitutionally, Canada is a federal state, with some powers assigned to the federal government and others to the provincial and territorial governments.

In Canada, the separation of federal and provincial powers is more clearly articulated than the separation of federal and state powers in the United States. For most businesses, provincial laws have a greater impact than federal laws. This is because provincial governments have authority over “property and civil rights”, including contract law, labour relations, occupational health and safety, consumer protection, real estate transactions, land use, municipal law, securities law and regulation of professionals. Municipalities are established by and derive their power from provincial statutes.

So far as businesses are concerned, federal jurisdiction is more narrowly focused on particular kinds of business (for example, banks and most other financial institutions, airlines, railways, broadcasters and telecommunications companies), certain kinds of property (for example, patents, trademarks and other intellectual property), particular kinds of behaviour (such as crime and anti-competitive practices), and matters of national significance (such as immigration, customs and monetary policy).

In some cases, an aspect of a business may be subject to either federal or provincial regulation, or to both. Provincial labour and employment laws generally govern an employer’s relations with employees, but if the business is a bank, a railway, an airline or another “federal” business, those relations are governed by a federal labour code. In other cases, different aspects of the business may be regulated at different levels. For

example, all major insurance companies are federally chartered and their governance and prudential practices are subject to the oversight of the federal Superintendent of Financial Institutions, but their marketing, policies and relations with policyholders are subject to provincial insurance laws. In a few instances, both federal and provincial laws will apply, such as in the case of environmental regulations.

The “division of powers” is further complicated by a number of arrangements which allow a province to “opt out” of a federal program. For example, Québec administers its own provincial pension plan, separate from the Canada Pension Plan. Further, the federal government may recognize a provincial regime as being an acceptable substitute for the federal regime in the same area. For example, in Québec, Alberta and British Columbia, businesses which operate entirely within those provinces need only comply with provincial privacy law.

Federal, provincial and territorial levels of government all impose personal and corporate income taxes and transaction taxes, though in many cases there are administrative arrangements under which the federal government administers both taxes. For example, except in Québec, where there is a provincial equivalent of employment insurance (QPIP) and government pensions (QPP), payroll deductions for employment insurance, government pensions and income tax are paid only to the federal government, but are credited to the employee’s tax obligations at both levels. Similarly, in all provinces except Alberta and Québec, the federal government collects provincial corporate tax under a single tax return.

The judiciary

The Canadian court system consists of three divisions:

- The Federal Court (with both trial and appellate levels), which has jurisdiction over subject matter with generally limited relevance in the commercial context. This includes admiralty, air and rail transport, copyright, Aboriginal and tax law.
- Provincial superior courts, which are administered by the provincial governments but with judges appointed by the federal government. These courts generally handle commercial disputes.
- Provincial courts, which have jurisdiction over child welfare, small claims and criminal matters of a minor nature. Provincial court judges are appointed by the provincial governments.

Each province has a court of appeal to which final decisions of the superior courts can be appealed as of right. The Supreme Court of Canada is the highest court in Canada and the court of last resort for both federal and provincial court systems. Appeals to the Supreme Court of Canada are generally only permitted with leave of that court.

World perspective

Canada is receptive to foreign ideas and capital, and its courts often look to foreign judicial decisions for guidance. Both the federal and provincial legislatures frequently adopt foreign legislative models: for example, the *Personal Property Security Act* in force in the common law provinces is essentially the same as Article 9 of the U.S. *Uniform Commercial Code*. Because of this openness to and respect of international

legal developments, many of Canada's laws and governmental policies reflect internationally accepted norms. For example, unlike the U.S., Canada has adopted the International Financial Reporting Standards for public companies and other "publicly accountable entities".

Nevertheless, there are legal considerations unique to doing business in Canada for both domestic and foreign companies.

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