

Doing Business in Canada

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OSLER

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When starting or expanding a business in Canada, there are many things that you need to know and do. Osler's *Doing Business in Canada* guide provides practical information, with links to useful resources, to help get you started.

Doing Business in Canada provides general information only and does not constitute legal or other professional advice. Specific advice should be sought in connection with your circumstances. For more information, please contact the corresponding practice group listed with each topic page.

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Osler is continually updating and expanding *Doing Business in Canada*. To be notified when new topics are added, please subscribe to our updates at osler.com/subscribe-dbic

Initial structuring and income tax considerations



Things to know

- An important distinction exists between doing business “in Canada” (generally considered to result in a Canadian tax presence) and doing business “with Canada” (which can often be accomplished without any Canadian tax presence).
- A business may be carried on in Canada directly by a non-Canadian (through what is known as a “branch office”) or indirectly through the establishment of a separate Canadian entity.
- A Canadian entity can be established in a number of ways: creating a corporation (incorporated under the federal laws of Canada or one of its provinces or territories) or a partnership (formed under one of the provinces or territories); acquiring an existing Canadian entity; or joint venture with a Canadian entity.
- Both operational and tax considerations are critical in determining what form of entity will carry on business in Canada.
- Sending foreign based employees to Canada or hiring Canadian employees to solicit business or sign agreements in Canada on behalf of the foreign entity could result in the foreign entity being considered to be carrying on business in Canada and subject to Canadian tax.

USEFUL RESOURCES

Government of Canada

- [Is incorporation right for you?](#)
- [Name a corporation](#)
- [Order a Nuans report](#)

Things to do

DETERMINE METHOD OF OPERATIONS

- Does the business require the presence of employees in Canada (sales and/or technical support) or can the business be operated through electronic means? Does the business require an ongoing physical presence in Canada (retail location or otherwise) or can it be operated without physical space?

DETERMINE TAX STRUCTURING

- If applicable, consider the Canadian business in the context of your overall organization. For example, is there a desire to consolidate the financial results of the Canadian operations with those of a foreign parent? Is the Canadian business expected to generate losses in the early years of its operations? Is the foreign parent willing to be a Canadian taxpayer? Other considerations will also apply. A Canadian tax advisor should be consulted.

RELATED TOPICS

- [Forming a Canadian subsidiary](#)
- [Choosing, registering and protecting your corporate name](#)
- [Financing and banking arrangements](#)
- [Filings and registrations](#)
- [Foreign investment notifications](#)
- [Commodity taxes](#)
- [Branch of a foreign corporation vs. Canadian subsidiary](#)
- [Canada's tax system](#)
- [Thin-capitalization rules](#)
- [Branch profits tax](#)



Need more info?

Osler's Tax Group can help. Find out more at osler.com/tax

Choosing, registering and protecting your corporate name



Things to know

- If you are incorporating a Canadian subsidiary, you may use a name that you choose or have a numbered name assigned to you.
- Whether you will be carrying on business through a Canadian subsidiary, or carrying on business in Canada as a foreign corporation, you will need to register in each province and territory in which you will carry on business. You will need to have your name approved in some provinces and territories.
- You can't assume that the name you use in another country is available for use in Canada – it may be that the name has been registered by another company or is being used by another business.
- Registering your corporation does not guarantee that you have a legal right to use the name – if your name is confusingly similar to an existing corporate name, business name or trademark, the owner of that name or mark may convince a court to order that you stop using your name and pay damages.
- A Nuans search can help compare your proposed name with a database of names that includes registered and applied-for trademarks, provincial and federal corporate names, and most provincially registered business names (except corporate and business names in Québec).
- Trademark searches can help assess whether your proposed name is the same as or similar to a registered or unregistered trademark.
- A corporation may carry on business using a name different from its registered corporate name or assigned numbered name but generally must register that business name.
- A corporation that carries on [business in the province of Québec](#) must have either a bilingual name or a name in French, unless the name is a trademark.

USEFUL RESOURCES

Government of Canada

- [Corporations Canada](#)
- [Naming a corporation](#)
- [A guide to trademarks](#)
- [Trademarks CIPO homepage](#)
- [Ordering a Nuans search](#)
- [Choosing a business name](#)

Things to do

- Select a name that is distinctive and does not cause confusion with any existing name or trademark.
- Ensure that your name does not include unacceptable terms (such as the word “Bank”) or words that are misleading or obscene, or that suggest that you provide obscene, scandalous or immoral services.
- Order a Nuans search – this can be done [online](#) or through a service provider known as a “search house”.
- Consider ordering one or more trademark searches – a search of registered and applied-for trademarks can be conducted online at a [government website](#), or through a law firm or other service provider (a search conducted by a service provider can also cover unregistered trademarks).
- If you intend to conduct business online through a [Canadian domain](#), conduct searches to determine whether the relevant domain is available.
- Consider whether to register a “business name”.
- Consider whether to apply for a [trademark registration](#) for your corporate or business name (and other distinctive words, symbols or designs) – registration can help prevent latecomers from using a confusingly similar name or trademark anywhere in Canada.

RELATED TOPICS

- [Registering a .CA domain name](#)
- [Registering your trademarks](#)
- [Filings and registrations](#)
- [Doing business in Québec](#)



Need more info?

Contact us at counsel@osler.com

Filings and registrations



Things to know

EXTRA-PROVINCIAL REGISTRATIONS

- If a Canadian subsidiary has been incorporated under the laws of a particular Canadian province or territory, the subsidiary will need to register in each additional Canadian jurisdiction where business will be carried on. If a subsidiary is a Canadian federal corporation, the subsidiary will need to register in each Canadian jurisdiction where business will be conducted. Canadian partnerships have similar filing requirements.
- Any foreign entity carrying on business in Canada will similarly need to register in each Canadian jurisdiction where business is conducted.

OTHER REGULATORY REQUIREMENTS

- Depending on the type of business that is being conducted, additional registrations/ licences may be required, such as tax registrations (GST/HST or employer tax ID numbers, as examples), operating licences (including municipal licences/permits), and workers' compensation accounts.

USEFUL RESOURCES

Government of Canada

- [Government of Canada online filing centre](#)
- [Registering your business with the government](#)
- [Provincial and territorial registrar websites](#)
- [Provincial permits and licences](#)
- [Permits and licences tool](#)

Government of Ontario

- [Central forms repository](#)

Municipal Pages

- [City of Toronto – Permits and licences](#)
- [City of Calgary – Permits and licences](#)
- [City of Vancouver – Permits and licences](#)
- [City of Montréal – Permits and by-laws](#)
- [City of Ottawa – Permits and licences](#)

Things to do

- Identify and make all extra-provincial filings and file annual returns.
- Prepare and maintain financial records and minute books.
- Research industry specific requirements as certain industries (including food and drug, telecom, travel and transportation, health, banking and securities and franchise systems) impose additional restrictions, filings and/or licensing and permitting requirements on businesses operating in that industry.
- Review municipal laws in Canadian cities where business will be conducted to ensure compliance with local licensing and permitting requirements.

RELATED TOPICS

- [Forming a Canadian subsidiary](#)
- [Choosing, registering and protecting your corporate name](#)
- [Commodity taxes](#)
- [Regulated products](#)
- [Franchising in Canada](#)
- [Foreign investment notifications](#)



Need more info?

Contact us at counsel@osler.com

Foreign investment notifications



Things to know

NOTIFICATIONS

- Investments by non-Canadians to establish a new Canadian business or acquire control over an existing Canadian business are either notifiable or reviewable under the [Investment Canada Act](#).
- There are detailed rules that define when an investor is a “Canadian” and when there is an acquisition of control, as well as guidelines on when a “new” business has been established.

REVIEWABLE INVESTMENTS

- Whether an investment is reviewable turns on the structure of the transaction as well as the value of the acquisition of the Canadian business.
- In general, only direct acquisitions of control of Canadian businesses can be subject to pre-closing review and approval, whereas indirect acquisitions (e.g., through acquisition of shares of a non-Canadian parent entity) are generally not reviewable but may be subject to post-closing notification.
- Different thresholds for review apply depending upon the type of transaction (i.e., private sector WTO investments, private sector trade agreement investments, state-owned enterprise WTO investments, non-WTO investments, and investments in a [cultural business](#) (e.g., relating to film, video, books, music, magazines, newspapers, video games)).
- If an investment is reviewable, an assessment is made by the government as to whether it is likely to be of “net benefit to Canada”. If an investment does not meet the review threshold, a notification must be filed (although exemptions exist for several types of transactions).
- The establishment of a new business in Canada is subject to notification, and generally not subject to review, though a discretionary review can be undertaken if the new business will carry on a [cultural business](#).
- All investments in Canada regardless of size or structure can be reviewed on a discretionary basis on national security grounds.

USEFUL RESOURCES

Government of Canada

- [Investment Canada Act](#)
- [Overview of the Investment Canada Act](#)
- [Notification form](#) (You must have the latest version of Adobe Acrobat plugin to use this form)

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- [Frequently asked questions concerning the Investment Canada Act](#)
- [Guide to Canada's Merger Notification Rules](#)
- [Federal government issues updated guidelines on national security review of foreign investments](#)

Things to do

NOTIFICATION THRESHOLDS

- Refer to [Osler's *Investment Canada Act* and *Competition Act* quick reference guide](#) for further information regarding the thresholds for review and approval under the *Investment Canada Act*.

PROVIDING NOTICE

- If required, ensure that a notice of investment is filed not later than 30 days after closing of the acquisition or establishment of the new Canadian business.
- Due to complexity, consider engaging Canadian counsel to assist in assessing your filing obligations and the preparation of any applicable filing.

RELATED TOPICS

- [Forming a Canadian subsidiary](#)
- [Filings and registrations](#)
- [Doing business in Québec](#)
- [Hiring employees](#)



Need more info?

Osler's Competition Group can help. Find out more at osler.com/competition

Acquiring a Canadian business



Things to know

- The two most common structures used to acquire a business is a share purchase or asset purchase. In a share purchase, the entity carrying on the existing business is purchased; all assets and liabilities will be acquired. In an asset purchase, a buyer can pick and choose what assets it would like to acquire, and which liabilities to assume. Other more complex structures are also sometimes used.
- Governmental approvals may be needed under the [Investment Canada Act](#) and/or the [Competition Act](#), depending on the purchase price and size of the business being acquired. Also, companies operating in certain regulated industries (such as telecommunications) may be subject to foreign ownership restrictions or require governmental approval.

USEFUL RESOURCES

Government of Canada

- [Publications for foreign investors](#)
- [Foreign investment review requirements](#)
- [Cultural sector investment review](#)
- [Cultural sector investment application and notification forms](#)

Things to do

STRUCTURING

Determine the optimal structure for acquiring the business. In addition to deciding between a share purchase and asset purchase, consider whether a new Canadian subsidiary should be established to complete the acquisition. Tax considerations are an important component of the analysis, and a tax advisor should be consulted.

DUE DILIGENCE

Investigate the business to be acquired. This will normally include a review of all important contracts, confirming ownership of key assets, assessing the liabilities of the business, and obtaining lien search results.

ASSESS REGULATORY IMPLICATIONS

Determine if the transaction will give rise to a requirement for approvals under the *Investment Canada Act* and/or the *Competition Act*. Determine whether the business being acquired is in a regulated industry that restricts foreign ownership.

DOCUMENT THE PURCHASE

Engage counsel to assist in negotiating a legally binding purchase agreement.

RELATED TOPICS

- [Foreign investment notifications](#)
- [Insolvency and restructuring in Canada](#)



Need more info?

Contact us at counsel@osler.com

Financing and banking arrangements



Things to know

- A Canadian subsidiary can be funded either internally (e.g., by its shareholders or partners) or externally (e.g., financial institutions, banks, private investors or venture capital firms).
- Unlike the United States, Canada does not have a single federal securities regulator. Each of the Canadian provinces and territories has enacted laws that govern securities transactions, and each has established a securities commission or similar securities regulatory authority.
- There is no minimum capitalization requirement in Canada, which means that there is no minimum amount of equity that needs to be contributed to a corporate subsidiary upon formation.
- Canadian banks will require extensive documentation in order to set up the bank account including identification, proof of ownership and incorporation documents. Assembling these documents can be cumbersome so be sure to provide enough lead time for completing this step.

Things to do

DETERMINE THE METHOD OF FINANCING

- Consider whether to raise funds by issuing equity or debt or arranging for a loan or line of credit – where necessary, engage local counsel to advise on the chosen transaction and prepare the required documentation.

TAX PLANNING

- Consult with your Canadian tax advisor at the outset to ensure all financial arrangements are made on a tax-efficient basis.

FIND A BANK IN CANADA

- Consider leveraging the business' relationship with its current foreign bank (if it has relationships with banks located in Canada), or consult local advisors for recommendations.

USEFUL RESOURCES

Government of Canada

- [List of domestic and foreign banks regulated in Canada](#) (click on “Banks”)
- [Financing your new business](#)
- [Innovation funding and support](#)

RELATED TOPICS

- [Forming a Canadian subsidiary](#)
- [Filings and registrations](#)



Need more info?

Contact us at counsel@osler.com

Regulated industries



Things to know

- Companies operating in certain industries must comply with specific laws applicable to that industry. This could also involve a requirement to obtain a licence or permit, or to make additional filings. Examples of these industries are: [financial services](#), [fisheries](#) and [forestry](#), [food](#) and [drug](#), [energy](#), [health](#), franchising, [mining](#), [oil and gas](#), securities, [telecommunications](#), travel and [transportation](#).
- Certain activities may also require [additional regulatory compliance](#), such as environmental laws. Depending on the industry, these laws may be federal laws or provincial/territorial laws. These industry-specific laws are in addition to the legislation that applies generally to all companies operating in Canada, or in a particular province or territory of Canada.
- There are also restrictions on ownership for companies in certain industries. Examples are aviation, banking, insurance and telecommunications.

Things to do

- Research industry-specific requirements. Consult legal counsel as necessary.
- Apply for any required permits or licences.
- Implement processes to ensure timely and correct ongoing regulatory filings.
- Conduct periodic reviews to ensure continuing compliance.
- Pursue appropriate risk-management strategies and be prepared to respond quickly and effectively in the event of an unforeseen crisis.

USEFUL RESOURCES

Government of Canada

- [Federal Permits, Licences and Regulations](#)
- [List of Federally Regulated Industry Sectors](#)
- [List of Acts and Regulations](#)

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- [Health law in Canada](#)
- [Regulatory Approval for Energy Projects](#)
- [Regulatory Environment and Risk Management](#)

RELATED TOPICS

- [Regulated products](#)
- [Investing in a Canadian business](#)
- [Franchising in Canada](#)



Need more info?

Contact us at counsel@osler.com

Doing business in Québec



Things to know

CIVIL CODE

- Québec has a hybrid legal system — private law is subject to the [Civil Code of Québec](#), while public law is interpreted pursuant to the common law.

CONSUMER PROTECTION

- Québec has strong consumer protection laws, including rules that make it unlawful to include certain clauses in contracts with consumers and strong consumer warranties.

LANGUAGE AS A CONDITION OF EMPLOYMENT

- Employers are prohibited from dismissing, laying off, demoting or transferring an employee for the sole reason that he or she is exclusively French-speaking.

FRANCIZATION PROGRAMS

- An enterprise in Québec which employs more than 50 employees must register with the provincial language authority and, at the option of the authority, implement a “francization” program.

OTHER LANGUAGE RULES

- The Charter of the French Language sets out detailed rules regarding the language of commerce and business (see [French language rules](#) for more information).

USEFUL RESOURCES

Government of Québec

- [Civil Code of Québec](#)
- [Charter of the French language](#)

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- [Guide to doing business in Québec](#)
- [Understanding proposed changes to Quebec's French language law](#)

Things to do

- Ensure that your agreements, warranties and policies (including policies applicable to consumer warranties) are localized, taking into account the Civil Code of Québec, Québec consumer protection laws, and the Charter of the French Language.
- Do not make knowledge of the English language a condition of obtaining employment unless required by the nature of the position.
- Register promotional contests open to residents of Québec.
- Ensure that you comply with the rules in the Charter of the French Language that govern the language of commerce and business.

RELATED TOPICS

- [French language rules](#)

Need more info?



Osler's French Language Laws team can help. Find out more at osler.com/frenchlanguagelaws

Canadianizing commercial agreements



Things to know

- Certain provisions in a commercial agreement drafted for use in other jurisdictions will not be enforceable, or will be interpreted differently, in Canada.
 - In the business-to-business context, examples include non-competition provisions, copyright and trade-mark licensing and assignment provisions, and third-party beneficiary clauses.
 - In the business-to-consumer context, provincial statutes and case law will impact what can and cannot be included in the agreement.
- Certain provisions and waivers should be added to address requirements or restrictions in legislation and case law.
- The [Civil Code of Québec](#) imposes unique obligations and restrictions not found in common-law jurisdictions.
- Certain types of consumer agreement require pre-contract disclosure to be provided to the consumer, and require that the disclosure form part of the consumer agreement.

Things to do

- Be aware of the differences between the Canadian and foreign legislative landscape and applicable case law that would impact the interpretation or enforcement of a commercial agreement.
- Revise the agreement to replace foreign legislative references with Canadian-specific legislation, if available, and amend potentially problematic provisions to increase the likelihood of enforcement.
- Consider if the manner of sale of products or services to consumers (e.g., door-to-door, online, telephone), or the nature of the products or services themselves (e.g., gym memberships, water heaters, matchmaking services) trigger additional restrictions or requirements for the drafting of the consumer agreement.

USEFUL RESOURCES

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- [Guide to Doing Business in Québec](#)
- [Specific consumer issues when doing business in Québec](#)

RELATED TOPICS

- [Doing business in Québec](#)
- [Online sales](#)
- [Regulated products](#)



Need more info?

Contact us at counsel@osler.com

Mining



Things to know

- Under Canada's constitution, responsibility for mining in Canada is shared between the Canadian federal government and the provincial and territorial governments.
- In general, provincial and territorial governments have exclusive jurisdiction over mineral exploration, development, conservation and management within its territory.
 - Mineral titles vary both by province and stage of project, from exploration through development, mining and remediation.
 - Mineral title interests do not necessarily equate an interest in surface rights, which are acquired separately (if required).
- The Canadian federal government has exclusive jurisdiction over uranium development, foreign investment, extractive sector transparency disclosure and corruption.
- The federal and provincial/territorial governments share jurisdiction over a limited number of areas, including the environment and taxation.
- The Canadian constitution recognises Indigenous and treaty rights and Canadian courts have imposed a general duty to consult on the federal and provincial governments with any Indigenous group whose Indigenous and treaty rights may be affected by a governmental decision, including the grant of permits or licences relating to mining activity. The duty has generally been delegated to mining project proponents.
- Disclosure about a mineral project *made available to the public* in Canada (including oral or written disclosure, whether in presentations to prospective investors or disclosure on a company website) is governed by applicable Canadian securities laws under National Instrument 43-101 — *Standards of Disclosure in Mineral Projects* — this applies to both reporting issuers (public companies) and private companies making disclosure to the public.

USEFUL RESOURCES

Government Resources

- [Canada – Natural Resources Canada](#)
- [Ministry of Northern Development, Mines, Natural Resources and Forestry](#)
- [Invest in Ontario – Mining](#)
- [Quebec Ministry of Energy and Natural Resources](#)
- [Alberta Energy – Minerals](#)
- [BC Mineral Exploration and Mining](#)
- [OSC – NI 43-101](#)

Third Party Resources

- [Mining Association of Canada](#)
- [Prospectors & Developers Association of Canada](#)
- [BC Association for Mineral Exploration](#)
- [TSX/TSX-V – Mining](#)

Things to do

- Search applicable mineral title registries to conduct a due diligence review on a prospective mineral property, but beware that mineral title registries are notice-based registries and encumbrances on title may be valid even if unregistered.
- Access publicly available geoscience studies and databases that are sponsored by government bodies to promote mining activity in Canada.
- Review corporate registration in the jurisdiction in which the mineral property is located, as registration is required to hold mineral tenure.

RELATED TOPICS

- [Canada's tax system](#)



Need more info?

Osler's Mining Group can help. Find out more at osler.com/mining

Real Estate Investment Trusts (REITs)



Things to know

- REITs are trusts that passively hold interests in real property.
- REIT is governed by and established pursuant to a declaration of trust. Trustees of the REIT hold legal title to and manage the trust property on behalf of the unitholders of the REIT.
- Trustees of the REIT are generally subject to fiduciary duties similar to those applicable to directors of a corporation.
- There is no legislation governing the organizational structure of a REIT. Principles of contract law and trust law govern.
- Benefit from preferential tax treatment — trust income is permitted to flow through the trust into the hands of the unitholders and, consequently, income is not taxed at the trust level.
- To qualify as a REIT, a trust needs to be a publicly traded unit trust that is resident in Canada and must meet tests set out in the [Income Tax Act](#) (Canada) (the “ITA”) based on, among other factors, the nature and quantity of real estate assets owned and the sources of trust revenue.

USEFUL RESOURCES

Capital Markets

- [SEDAR](#)

Industry Associations

- [REALPAC](#)
- [NAIOP Toronto](#)
- [NAIOP Vancouver](#)

News Services

- [Real Estate News Exchange](#)

osler.com

- [Investment limited partnerships: Federal Budget 2018](#)

Things to do

STRUCTURING

- Structuring of subsidiaries needs to be done in way that minimizes risk of failing to meet any of the REIT tests set out in the ITA.

DRAFTING

- Declaration of trust needs to set out, among other things, the duties of trustees, the process for electing trustees, procedures governing conflicts of interest, the terms applicable to amendments to the declaration of trust and the process for calling unitholder meetings.

M&A

- In addition to securities laws, the declaration of trust governs the terms applicable to an acquisition of, or merger with, a REIT.

RELATED TOPICS

- [Acquiring real estate](#)
- [Capital markets regulatory framework and enforcement](#)



Need more info?

Osler's REITs team can help. Find out more at osler.com/reits

Banking



Things to know

- The *Bank Act* (the Act) is the primary law governing the banking industry in Canada. It recognizes the following three categories of banks: 1) Canadian-incorporated domestic banks (listed in Schedule I to the Act); 2) Canadian-incorporated foreign bank subsidiaries (listed in Schedule II to the Act); and 3) authorized Canadian branches of foreign banks (listed in Schedule III to the Act). Schedule I and Schedule II banks are subject to the same requirements under the Act; however, while there are some similarities between the bank and the foreign bank branch regimes under the Act, there are also some differences. Notably, foreign bank branches are not permitted to accept retail deposits.
- The primary banking regulators in Canada are the Office of the Superintendent of Financial Institutions (OSFI), an independent agency that reports to the Minister of Finance (the Minister), and the Financial Consumer Agency of Canada (FCAC). Both regulators have ongoing, day-to-day supervisory duties. OSFI's mandate is focused on prudential matters in the financial services sector, while the FCAC focuses on market conduct with regard to financial services, products, and payments.
- In order to carry on business in Canada, a bank or a foreign bank branch must obtain approvals from each of the Superintendent of Financial Institutions (the Superintendent) and the Minister. The activities of banks and foreign bank branches are limited by the Act, which sets out the types of business that a bank or foreign bank branch may carry on, the types of investments that may be made, and, for banks, the types of transactions that the bank may enter with related parties. Notably, banks and foreign bank branches are limited in their capacity to deal in securities, act as a fiduciary, and distribute insurance products.
- Foreign banks may establish a presence in Canada by, with the approval of the Superintendent, establishing a representative office. However, these offices are extremely restricted in the types of activities that they can carry on in Canada. They are prohibited from carrying on a banking business in Canada, and instead can only act as a marketing office and referral conduit for Canadians who wish to carry on business with the foreign bank on a cross-border basis.

USEFUL RESOURCES

Government Resources

- [List of domestic and foreign banks regulated in Canada \(click on "Banks"\)](#)
- [Financial Consumer Agency of Canada](#)
- [Office of the Superintendent of Financial Institutions](#)

Third Party Resources

- [Canadian Bankers Association](#)

Things to do

LICENSURE PROCESS

- The licensure process for banks is extensive and requires the provision of substantial information related to the bank's ownership and financial strength, organizational structure, senior officers and composition of the board, among other things. Prospective applicants must also provide a minimum five-year business plan for the proposed bank, detailing its credit products and underwriting criteria, trading and investment strategy, information technology environment, and exit strategy if it is unable to execute its business plan, among other information. The licensure process for foreign bank branches is also extensive.

BUSINESS IN CANADA VERSUS CROSS-BORDER BUSINESS

- Foreign banks and entities associated with foreign banks must either obtain authorization from the Minister to conduct business in Canada, or conduct business on a cross-border basis. Entities must be careful to note the distinction between carrying on business in Canada (not permitted without authorization) and carrying on business on a cross-border basis with residents in Canada from outside of Canada (permitted).

REPRESENTATIVE OFFICES

- Foreign banks operating representative offices in Canada should ensure compliance with the requirements of the Foreign Bank Representatives Office Regulations. Representative offices must identify a chief representative who will be responsible for the operations of the office in Canada, and ensure that its activities do not entail carrying on the business of banking.

RELATED TOPICS

- [Financing and banking arrangements](#)
- [Regulated industries](#)
- [Payment processing](#)

Need more info?



Osler's Financial Services Group can help. Find out more at osler.com/financial-services

Investing in a Canadian business



Things to know

- Investments generally take the form of equity ownership or loans. Other more complex structures for investments are also sometimes used.
- Governmental approvals may be needed under the [Investment Canada Act](#) and/or the [Competition Act](#), depending on the type of investment and percentage ownership being acquired. Also, companies operating in certain regulated industries (such as telecommunications) may be subject to foreign ownership restrictions.
- Certain investment types may require compliance with Canadian securities laws.

USEFUL RESOURCES

Government of Canada

- [Publications for foreign investors](#)
- [Foreign investment review requirements](#)
- [Cultural sector investment review](#)
- [Cultural sector investment application and notification forms](#)

Municipal pages

- [Calgary Economic Development](#)

Things to do

STRUCTURING

- Determine the optimal structure for making the investment. Consider whether a new Canadian subsidiary should be established to complete the investment. Tax considerations are an important component of the analysis, and a tax advisor should be consulted.

DUE DILIGENCE

- Investigate the business to be invested in. This will normally include a review of all important contracts, confirming ownership of key assets, assessing the liabilities of the business, and obtaining lien search results.

ASSESS REGULATORY IMPLICATIONS

- Determine if the transaction will give rise to a requirement for approvals under the *Investment Canada Act* and/or the *Competition Act*. Determine whether the business being invested in is in a regulated industry that restricts foreign ownership or requires governmental approval.

DOCUMENT THE INVESTMENT

- Engage counsel to assist in negotiating a legally binding investment agreement.
- Consider need for shareholder agreement (for equity investments).
- Special considerations apply if you are taking security for loans.

RELATED TOPICS

- [Foreign investment notifications](#)



Need more info?

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PIPE Transactions in Canada

Things to know

- PIPE transactions afford domestic and foreign investors a means of making investments in Canadian public companies through the private purchase of equity securities directly from public companies.
- There is no single blueprint for PIPE transactions. Each is negotiated on a case-by-case basis and is a product of deal-specific objectives and dynamics.
- PIPE transactions often involve the issuance of common equity, but may also be structured as issuances of preferred equity, convertible debt securities, warrants or a combination of securities, depending on the objectives of the investor and the issuer.
- Depending on the relative size of a PIPE transaction, the investment may be accompanied by a negotiated package of investor rights, including a combination of information rights, registration rights, pre-emptive rights, board nomination rights, redemption rights and approval rights.

USEFUL RESOURCES

osler.com

- [Pipe Transactions in Canada](#)
- [Canadian Public Company Mergers & Acquisitions](#)

Things to do

- Consider the extent and depth of necessary legal due diligence. Canadian public companies are subject to continuous disclosure obligations and, as such, investors will have ready access to financial and other information about public companies, as well as copies of organizational documents and material contracts. If more extensive diligence is desirable, companies will expect prospective investors to enter into non-disclosure and standstill arrangements.
- Depending on which Canadian stock exchange the public company's securities are listed, PIPE transactions may be subject to pricing restrictions that limit the amount of any discount to market prices at which the securities may be issued.
- If the number and type of securities issued as part of a PIPE transaction would materially affect control of the public company, stock exchanges may require the public company to obtain the approval of its shareholders prior to closing the investment.
- An investor that acquires 10% or more of the outstanding voting or equity securities of a Canadian public company will become subject to insider reporting and "early warning" requirements under Canadian provincial securities laws. These requirements include issuing a news release and filing a public report, a moratorium on further acquisitions until one business-day following the filing of the public report, and further reporting upon certain subsequent changes in ownership. Eligible institutional investors may be able to avail themselves of a more lenient alternative monthly reporting regime.

RELATED TOPICS

- [Acquiring a Canadian Business](#)
- [Investing in a Canadian Business](#)
- [Foreign Investment Notifications](#)



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Capital markets regulatory framework and enforcement



Things to know

- Securities law is primarily a matter of provincial/territorial jurisdiction whereby each province/territory has
 - (i) enacted legislation that governs securities transactions, as well as supporting rules, instruments and policies; and
 - (ii) established a securities commission or similar securities regulatory agency; and
- Canada does not currently have a national securities regulator. While there is an umbrella organization – the Canadian Securities Administrators (CSA), whose objective is to “improve, coordinate and harmonize” securities regulation in Canada – ultimate jurisdiction for the regulation of securities laws remains with the provinces and territories.
- Criminal prosecution of securities violations is a matter of federal jurisdiction, with the RCMP and local law enforcement agencies responsible for the enforcement of the securities-related provisions of the [Criminal Code](#) of Canada. Provincial and territorial securities regulators do not have authority to investigate criminal matters or to pursue criminal prosecutions relating to securities law violations; rather these regulators are responsible for both the administrative and (to varying extents) quasi-criminal enforcement of securities laws in Canada.
- Since 2013/2014, the provinces of British Columbia, Ontario, Saskatchewan, New Brunswick, Prince Edward Island, Yukon and the Government of Canada have been jointly engaged in the establishment and implementation of a single operationally independent cooperative securities regulator - the Cooperative Capital Markets Regulatory (CCMR). The CCMR will administer as-yet enacted federal capital markets legislation and a common provincial legislative regime. The provinces of Alberta and Québec are currently opposed to this initiative.
- Due in part to the multilateral nature of the Canadian securities landscape, Canada has historically not been seen as a fierce pursuer of white collar criminal convictions. However, Canada is coming under increasing international pressure to strengthen and expand its enforcement efforts.

USEFUL RESOURCES

- [Cooperative Capital Markets Regulatory \(CCMR\)](#)
- [OSC Office of the Whistleblower](#)
- [Bill C-74](#) (amendments to Criminal Code of Canada)

osler.com

- [Risk Management Blog](#)
- [Developments in white-collar & capital markets regulatory enforcement](#)

- There is extensive information sharing between the various provincial securities regulators in Canada and with international regulators - including the SEC - pursuant to various Memoranda of Understanding.
- Over the past several years, a number of non-traditional enforcement tools have been introduced at both the federal and provincial levels to help combat white collar crime, including
 - the implementation of a no-contest regime as part of the Credit for Cooperation Program, seeking to enhance self-reporting, self-policing and self-correcting of conduct that runs afoul of securities laws (Ontario);
 - the implementation of legislation for the automatic reciprocation of other securities regulatory authorities' decisions (Alberta, New Brunswick, Nova Scotia and Québec);
 - the implementation of whistleblower initiatives to encourage individuals to come forward with tips on possible violations of securities laws in exchange for anti-reprisal protections (Ontario and Québec); and
 - a series of amendments have been proposed to Canada's *Criminal Code* including the introduction of a deferred prosecution agreement (DPA) regime.

RELATED TOPICS

- [Filings and registrations](#)
- [Foreign investment notifications](#)

Need more info?



Osler's Capital Markets Regulatory Enforcement and Broker-Dealer Disputes team can help. Find out more at osler.com/enforcement

Things to do

- The dynamic relationship between business conduct, regulated activity and criminal law consequences must be fully understood when doing business in Canada.
- Businesses should watch for trends in the area of securities regulation in Canada. For example, securities regulators in Canada appear to be increasingly focused on protecting retail investors (including seniors), actively monitoring and assessing the impact of their recently implemented regulatory initiatives (such as whistleblower initiatives and no-contest settlements), promoting cybersecurity resilience, and evaluating the use of embedded compensation structures.
- Businesses should pursue appropriate risk management strategies which reflect the complex interdependencies of the legal and regulatory environment in which their business is conducted, including engaging outside subject matter expertise in the areas of risk management and regulatory matters. See: [Proactive crisis management: Expecting the unexpected](#)
- Businesses need to have access to trusted advisors that will enable them to stay on side of continually changing regulations and legal requirements.

Forming a Canadian subsidiary



Things to know

- A corporate entity can be formed in Canada either under the federal laws of Canada or the laws of one of Canada's provinces or territories. The laws applicable to corporate entities in each of these jurisdictions are generally consistent, but there are some important distinctions (some of which are set out in greater detail below).
- Generally, corporate entities are formed as limited liability corporations, but certain provinces (British Columbia, Alberta and Nova Scotia) provide an alternative form of corporate entity: the unlimited liability company.
- Unlimited liability companies are mainly chosen to facilitate favourable tax outcomes.
- You can also carry on business through a subsidiary formed as a partnership, trust or other type of entity, but special considerations may apply.
- Corporate law in certain Canadian jurisdictions require that the records of a corporation be kept in the jurisdiction of formation.

USEFUL RESOURCES

Government of Canada

- [Steps to incorporating under the federal laws of Canada](#)
- [Is incorporation right for you?](#)
- [Federal corporation forms and instructions](#)

osler.com

- [Where should I incorporate my startup?](#)

Things to do

DETERMINE THE JURISDICTION OF FORMATION

- The subsidiary will be governed by the laws of the jurisdiction in which it is formed and the following factors should be considered when making this threshold decision:

DIRECTOR RESIDENCY REQUIREMENTS

- For corporations formed in Manitoba, Saskatchewan, Newfoundland and Labrador or under the federal laws of Canada, at least 25% of the directors must be resident Canadians.

WHERE THE SUBSIDIARY WILL CARRY ON BUSINESS IN CANADA

- If the subsidiary has been formed under the federal laws of Canada, the subsidiary will need to register in each Canadian jurisdiction where business will be conducted.
- If the subsidiary has been formed under the laws of a specific Canadian province or territory, the subsidiary will need to register in each Canadian jurisdiction where business will be conducted, other than its jurisdiction of formation.

ARTICLES OF INCORPORATION

- You will need to file articles of incorporation to legally form a corporation, as well as have corporate by-laws.

RELATED TOPICS

- [Branch of a foreign corporation vs. Canadian subsidiary](#)
- [Financing and banking arrangements](#)
- [Choosing, registering and protecting your corporate name](#)
- [Filings and registrations](#)
- [Hiring employees](#)
- [Leasing a place of business](#)
- [Acquiring real estate](#)



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Canada's tax system



Things to know

Canada's tax system is largely governed by the federal *Income Tax Act* and its regulations, as well by the sales tax, corporate tax and other laws of the provinces and territories. Residents of Canada are subject to tax on their worldwide income, while non-residents of Canada are generally subject to tax only on their income from Canadian sources.

A non-resident who, in a particular taxation year, was employed in Canada or carried on a business in Canada, is liable to pay income tax on the non-resident's taxable income earned in Canada. Also, the disposition of "taxable Canadian property" may result in a non-resident being subject to tax in Canada. Provincial taxes are also payable by a non-resident on taxable income earned in a province where the non-resident carries on business through a permanent establishment located in that province.

A corporation will generally be resident in Canada if its "central management and control" is located in Canada (e.g., if the corporation's board of directors meets in Canada). In addition, generally a corporation that was incorporated in Canada after April 26, 1965 is deemed to be resident in Canada for the purposes of the *Income Tax Act*.

Income earned by a non-resident that is not subject to ordinary income tax may still be subject to a withholding tax at a rate of 25% (unless reduced or eliminated by an applicable tax treaty) on certain Canadian source income. This includes management fees, interest, dividends, rent royalties and some distributions from trusts. An amendment to the *Income Tax Act* eliminates withholding tax on most interest payments paid to persons dealing at arm's length with the payer.

Canada has entered into over 85 income tax treaties with other jurisdictions. These tax treaties generally provide that the business profits of a non-resident of Canada that is a resident of the other jurisdiction are not subject to tax under the *Income Tax Act*, except to the extent that such profits are attributable to a permanent establishment (i.e., a fixed place of business) of the non-resident in Canada. These tax treaties also usually reduce both the withholding tax rate imposed under the *Income Tax Act* and the branch-profits tax rate.

USEFUL RESOURCES

Government of Canada

- [Canada Revenue Agency](#)
- [Department of Finance](#)
- [Income Tax Act](#)

Amendments to the Canada-U.S. Tax Convention eliminate withholding tax on almost all interest, including interest paid between related persons. In addition, these amendments address “treaty shopping” by ensuring that treaty benefits are only available to residents of Canada or the U.S. that satisfy certain tests. The provinces generally adhere to (although they are not bound by) the provisions of the treaties.

The Income Tax Act deems related persons to not deal with each other at arm's length; whether unrelated persons deal with each other at arm's length is a question of fact. Under the transfer pricing rules, a Canadian taxpayer and a non-arm's length non-resident must conduct their transactions in a manner similar to that which would have applied had the parties been dealing at arm's length. If the terms and conditions of the non-arm's length transaction differ from those that would have prevailed between arm's length persons, the rules provide that the terms and conditions may be adjusted to reflect those that would have existed had the parties been dealing at arm's length.

The Income Tax Act's general anti-avoidance rule allows the re-characterization of transactions and amounts in certain circumstances where taxpayers have entered into tax-motivated transactions that result in a misuse or abuse of the provisions of the *Income Tax Act*.

RELATED TOPICS

- [Initial structuring and income tax considerations](#)
- [Branch of a foreign corporation vs. Canadian subsidiary](#)
- [Commodity taxes](#)
- [Thin-capitalization rules](#)
- [Branch profits tax](#)

Need more info?



Osler's Tax Group team can help. Find out more at osler.com/tax

Branch profits tax

Things to know

- The branch profits tax applies to foreign corporations carrying on business in Canada through a “branch”, and is intended to replicate the withholding tax that would have been due had a Canadian subsidiary paid its profits to its non-resident parent in the form of a dividend.
- A 25% tax is imposed on the after-tax income that non-resident corporations earn in Canada, to the extent that such earnings are not reinvested in the Canadian business. The 25% rate may be reduced under a tax treaty between Canada and the country of residence of the foreign corporation. For example, under the Canada-US tax treaty, the rate of branch profits tax is reduced to 5%.
- Some of Canada’s tax treaties, such as the Canada-US tax treaty, exempt the first \$500,000 of a non-resident corporation’s income from the branch profits tax.
- The amount reinvested in Canada is generally determined with reference to the non-resident corporation’s cost amount of property used in its Canadian business.
- The branch profits tax does not apply to a corporation whose principal business was transportation, communication, or mining iron ore in Canada, and special rules apply to non-resident insurers.
- Using a Canadian subsidiary may be preferable if the Canadian business is expected to generate profits in the near term.
- Using a Canadian branch may be preferable if the Canadian business is expected to incur losses in the near term, although this may depend on the tax laws of the parent jurisdiction.

Things to do

- When establishing a business in Canada, determine whether using a Canadian branch or a Canadian subsidiary is preferred. Consult a tax advisor, if necessary.
- If a non-resident corporation has a Canadian branch, any surplus funds of the branch that are not needed in the home country can be reinvested in the Canadian business in order to reduce the branch profits tax.



USEFUL RESOURCES

Government of Canada

- [IT-137R3: Additional tax on certain corporations carrying on business in Canada \(Archived\)](#)

RELATED TOPICS

- [Initial structuring and income tax considerations](#)
- [Thin-capitalization rules](#)
- [Branch of a foreign corporation vs. Canadian subsidiary](#)
- [Forming a Canadian subsidiary](#)
- [Canada’s tax system](#)

Need more info?



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Thin-capitalization rules



Things to know

- Thin-capitalization rules restrict the ability of Canadian corporations and trusts to deduct interest expense on debt owing to certain related non-residents. The thin-capitalization rules also apply to Canadian branches of foreign corporations.
- Generally, thin-capitalization restrictions apply if the non-resident owns 25% or more of the shares of the debtor corporation (by vote or value) or 25% or more of the interests in the debtor trust (by value).
- Interest deduction will be limited proportionally if a debtor's outstanding debts to related non-residents exceed 1.5 times the debtor's equity.
- Any non-deductible "excess" interest is treated as a dividend for withholding tax purposes, and would trigger withholding tax at a rate of 25% subject to reductions under an applicable tax treaty.
- Specific rules exist to address, among other things, back-to-back loan arrangements and borrowings by partnerships.

Things to do

- Keep the thin-capitalization rules in mind when planning how to finance your Canadian subsidiary and determining how much equity and how much debt to contribute.
- The intra-group debt-to-equity ratio of Canadian members of a corporate group should be monitored periodically to ensure compliance with the thin-capitalization rules.

USEFUL RESOURCES

Government of Canada

- [IT-59R3: Interest on debts owing to specified non-residents \(thin-capitalization\) \(Archived\)](#)

RELATED TOPICS

- [Initial structuring and income tax considerations](#)
- [Forming a Canadian subsidiary](#)
- [Branch profits tax](#)
- [Branch of a foreign corporation vs. Canadian subsidiary](#)

Need more info?



Our Tax Group can help. Find out more at osler.com/tax

Branch of a foreign corporation vs. Canadian subsidiary



Things to know

One of the most important considerations for a non-resident is whether to incorporate a Canadian subsidiary or to establish a branch operation.

A Canadian subsidiary of a non-resident corporation will be considered a resident of Canada for the purposes of the *Income Tax Act* and will be subject to Canadian income tax on its worldwide income. Under Canada's domestic rules, there is no withholding tax on non-participating interest paid to arm's length persons, and under the Canada-U.S. Income Tax Convention, withholding tax on arm's length or non-arm's length on-participating interest paid to U.S. persons is generally nil.

Since a Canadian subsidiary is a Canadian corporation, it is not subject to branch profits tax; however, upon the repatriation of funds by the Canadian subsidiary to the non-resident corporation by way of dividend, a 25% withholding tax is payable, subject to reduction by an applicable tax treaty.

The thin-capitalization rules can disallow a deduction for interest payable by a Canadian subsidiary on debts owing to "specified non-resident persons" when such debts exceed the subsidiary's equity by a ratio of 1.5:1. In addition, proposed legislation designed to ensure Canada's compliance with Action 4 of the OECD's BEPS project generally limits the Canadian subsidiary's ability to deduct net interest and financing expenses in excess of 30% of EBITDA (for taxation years starting after October 1, 2023).

Subject to treaty relief, a Canadian subsidiary must withhold tax on several types of payments to non-residents, including dividends, interest paid to non-arm's length parties, participating interest, certain management or administration fees and rentals, royalties and similar payments.

A non-resident corporation carrying on business in Canada through a Canadian branch is liable for income tax on its Canadian-source business income at the same rates that apply to Canadian residents.

In addition to federal and provincial income taxes, a non-resident corporation (NRC) carrying on business in Canada will be subject to the so-called "branch profits tax" which is intended to approximate the withholding tax that would have been paid on taxable dividends from a Canadian resident subsidiary if the non-resident corporation had incorporated a Canadian subsidiary to carry on business

USEFUL RESOURCES

Government of Canada

- [Is incorporation right for you?](#)
- [Name a corporation](#)
- [Order a Nuans report](#)

in Canada, rather than using a branch. Under the *Income Tax Act*, the branch profits tax is generally levied at a rate of 25% (which may be reduced under certain tax treaties) on the profits of the branch, after Canadian taxes and an allowance for investment in Canada.

The *Income Tax Act* requires a non-resident taxpayer that carries on business in Canada to calculate income or loss from its Canadian business. Expenses incurred exclusively and directly for the Canadian branch should be deductible in computing the income of the branch.

The “thin-capitalization” rules have been extended to apply to non-resident corporations carrying on business in Canada.

Canadian non-resident withholding tax generally only applies to payments made by residents of Canada to non-residents of Canada. However, a non-resident of Canada who carries on a business through a branch in Canada may be deemed, for purposes of the withholding tax rules, to be resident in Canada; this means that certain payments made by the non-resident to another non-resident may be subject to Canadian withholding tax, unless such tax is reduced by an applicable tax treaty.

Under the ITA, a branch generally may be incorporated without incurring immediate significant income tax or branch tax liability.

RELATED DBIC TOPICS

- [Initial structuring and income tax considerations](#)
- [Canada's tax system](#)
- [Forming a Canadian subsidiary](#)



Need more info?

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Franchising in Canada



Things to know

- If you plan to establish a franchise system in Canada, you'll need to comply with provincial franchise legislation in six provinces (Alberta, British Columbia, Manitoba, New Brunswick, Ontario, and PEI).
- Key points to consider include the following:
 - You'll need to provide prospective franchisees (including renewing or resale franchisees) with a franchise disclosure document (FDD) 14 days before they sign your franchise agreement or pay any money to you.
 - You can't use your FDD from another country.
 - Your FDD must be customized for each franchisee.
- Not complying with franchise laws exposes you to significant financial risk – non-compliance gives franchisees civil remedies and rights of action.
- Depending on how you structure the relationship, you may need to register your business in Canada or pay Canadian taxes.

USEFUL RESOURCES

osler.com

- [Chavdarova v. The Staffing Exchange: The accidental franchise](#)
- [Distinguishing License Agreements from Franchise Arrangements](#)
- [Did I just give my franchisee an earnings projection?](#)
- [1688782 Ontario Inc. v. Maple Leaf Foods Inc.: Implications for product liability and franchise law \(Webinar\)](#)

Things to do

- Revise your franchise agreement so that it works in Canada.
- Draft a national franchise disclosure document (FDD) for Canada, and structure it so that it is easy to customize.
- Consider using a master franchise or area developer model instead of direct franchising.
- Apply to register your trademarks and secure your “.ca” domain names.
- Avoid providing any information (particularly financial information) to prospective franchisees that you don't intend to include in the disclosure document.
- Consider whether to incorporate a new entity to be the franchisor in Canada.

RELATED TOPICS

- [Registering your trademarks](#)
- [Registering a .CA domain name](#)
- [Forming a Canadian subsidiary](#)
- [Choosing, registering and protecting your corporate name](#)



Need more info?

Osler's Franchise Group can help. Find out more at osler.com/franchise

Packaging and labelling



Things to know

- Pre-packaged consumer products must comply with labelling requirements, such as generic product descriptions, metric measurement/quantity declarations and manufacturer's or distributor's identity and address.
- All labelling on product packaging in Québec (and accompanying materials) must be in French and have at least equal prominence to any other language.
- Products sold elsewhere must have some bilingual labelling (e.g., product description and measurement/quantity declarations) – limited exceptions exist.
- Country of origin marking requirements (applicable to some products, including toys and batteries) are set out in the [Customs Tariff](#).
- Examples of other products that are or may be subject to additional labelling requirements include: electronics, radiocommunications devices, articles made of precious metals, textiles and apparel, stuffed articles, food and drugs, natural health products, cosmetics, medical devices, jewellery and candles.

Things to do

- Ensure prepackaged consumer products comply with all applicable labelling requirements, including rules as to placement and font size of mandatory declarations.
- Identify and comply with any applicable country of origin marking requirements.
- Avoid making false or misleading representations on product packaging or materials accompanying a product.

USEFUL RESOURCES

- [Consumer Packaging and Labelling Act](#)
- [Customs Tariff](#)

RELATED TOPICS

- [French language rules](#)
- [Online sales](#)
- [Selling through resellers, distributors or sales representatives](#)
- [Consumer product safety](#)
- [Advertising to Canadians](#)
- [Doing business in Québec](#)
- [Regulated products](#)

Need more info?



Osler's Marketing and Distribution team can help. Find out more at osler.com/marketing

French language rules

Things to know

- Québec's *Charter of the French Language* sets out detailed rules that regulate (among other things) the language of:
 - computer software, including game software and operating systems, whether installed or being offered for sale
 - toys and games
 - product packaging
 - contracts
 - public signs, posters and commercial advertising
 - websites
 - catalogues, brochures and similar documents
 - customer service
- All businesses that do business in Québec, namely by selling products or services to clients located in Québec, are subject to the statute's requirements in respect of these sales, irrespective of whether or not one has a physical place of business in Québec.
- Significant changes to the *Charter* were adopted in May 2022, many of which are now in force. [Our resource page](#) on these proposed changes summarizes them in greater detail.
- On January 10, 2024, the Government of Québec published the draft *Regulation respecting the language of commerce and business*. [Our Update](#) provides further analysis of these proposed changes. While these changes are not yet final, and there is no specific timeline for when they will be finalized and come into effect, the following guide outlines the requirements for compliance assuming those changes are adopted as proposed.
- Federal laws impose limited [bilingual packaging and labelling requirements](#).

USEFUL RESOURCES

Province of Québec

- [Québec's Charter of the French Language](#)
- #### osler.com
- [Guide to Doing Business in Québec](#)
 - [Government of Québec proposes stricter French language law](#)
 - [Québec Court of Appeal confirms application of French language requirements for websites](#)
 - [Superior Court suspends the upcoming obligation for legal persons to produce French certified translations, introduced by Bill 96, pending final adjudication of a constitutional challenge](#)
 - [Québec adopts changes to the Charter of the French Language](#)
 - [Understanding changes to Quebec's French language law](#)
 - [Québec further tightens language rules for commerce and business: what you need to know](#)

Things to do

- If a French version of computer software exists, make it available in Québec and offer it on terms that are no less favourable than the non-French version (except price where it reflects higher production or distribution costs) and ensure that it has technical characteristics that are at least equivalent.
- If software is available exclusively in a language other than French, the software packaging and accompanying documentation must nonetheless be in French or multilingual.
- Ensure the availability of French versions of toys and games which require the use of a non-French vocabulary for their operation in the Québec market on no less favourable terms.
- Ensure that every inscription on a product, including the information displayed on digital interfaces of products, its container or wrapping, or on materials supplied with it, including the directions for use and warranty certificate, is drafted in French if the product is sold in Québec (with the exception of trademarks for which a Canadian registration has been secured or for which an application to obtain a Canadian registration is pending); limited exceptions apply including for some cultural or educational products and for inscriptions that are not merely printed onto product packaging, except for inscriptions pertaining to safety or to information necessary for the use of the product.
- When a non-French trademark appears on a product, its packaging or documentation supplied with a product must include a generic or descriptive term (one or more words describing the nature or characteristics of a product), such terms must appear in French on the product or on a medium permanently attached to the product at least as prominently as the term in a language other than French.
- Ensure that contracts and related documents are drawn up in French; they may be drawn up in another language as well at the express wish of the parties. For non-negotiable contracts, ensure that a French version is systematically provided to Québec clients, irrespective of their language preference.
- Ensure that public signs, posters and commercial advertising in Québec are at least in French (with the exception of trademarks that are registered in Canada) and that the French version is twice as large than the text in the other language.
- Ensure that, on exterior public signs (including signs that are inside common areas of buildings, like shopping malls), trademarks that contain text in a language other than French are accompanied by French text within the same visual field, and that the French text is at least twice as large as the text in another language and that its legibility and permanent visibility is at least equivalent to that text in another language.
- Ensure that the version of your website and any social media accounts directed at the Canadian market has equivalent French and English versions, at least in respect of products marketed in Québec.
- Ensure that any French language version of a catalogue, brochure or similar publication distributed in Québec is available and on no less favourable conditions of accessibility and quality than any non-French versions.
- Give consumers in Québec customer service in French (e.g., by in-store staff and call centre personnel).

RELATED TOPICS

- [Doing business in Québec](#)
- [Packaging and labelling](#)
- [Selling through resellers, distributors or sales representatives](#)
- [Consumer product safety](#)

Need more info?



Osler's French Language Laws team can help. Find out more at osler.com/frenchlanguagelaws

Consumer product safety



Things to know

- A consumer product that is a “danger to human health or safety”, subject to recall or corrective measures, or [listed in Schedule 2](#) to the *Canada Consumer Product Safety Act* (CPSA) may not be manufactured, imported, advertised or sold in Canada.
- Documentation must be retained by manufacturers, importers, advertisers, sellers and testers of consumer products to allow for the tracing of consumer products through the supply chain.
- An “incident” involving a consumer product (including health and safety issues and foreign recalls) must be reported to the Minister of Health.

USEFUL RESOURCES

Government of Canada

- [Canada Consumer Product Safety Act: Quick Reference Guide](#)
- [Canada Consumer Product Safety Act: Information for Direct Sellers](#)
- [Canada Consumer Product Safety Act: Information for Retailers](#)
- [Canada Consumer Product Safety Act: Preparing and Maintaining Documents](#)
- [Canada Consumer Product Safety Act: Frequently Asked Questions](#)

Things to do

- Develop and maintain a document retention protocol that complies with CPSA requirements.
- Develop and maintain an incident response plan and a recall plan.
- For certain products, including toys, children's sleepwear, children's jewellery, obtain and maintain safety information, including tests and studies, to demonstrate that the product complies with CPSA requirements. (e.g., third party testing certifications).

RELATED TOPICS

- [Packaging and labelling](#)
- [French language rules](#)
- [Regulated products](#)

Need more info?



Osler's Marketing and Distribution team can help. Find out more at osler.com/marketing

Regulated products



Things to know

Numerous products are covered by product-specific regulations in Canada, including regulations covering product composition, performance, testing, packaging and labelling. Examples of regulated products include:

- [Electronic devices](#) – regulated provincially
- [Wireless devices](#)
- [Food](#)
- [Pharmaceuticals](#)
- [Biologics](#)
- [Natural health products](#)
- [Medical devices](#)
- [Cosmetics](#)
- [Medical cannabis](#)
- [Motor vehicles](#)
- [Child car seats](#)
- [Cribs, cradles, bassinets](#)
- [Tobacco](#)
- Electronic cigarettes/Vaping products – legislation not in force yet
- Liquor – [labelling requirements](#), provincial rules and regulations (such as [manufacturing](#))
- [Firearms](#)
- [Pest control products](#)
- [Consumer chemicals](#)
- [Children’s jewellery](#)
- [Toys](#)
- [Clothing](#)
- Upholstered or stuffed articles – Regulated provincially in [Ontario](#) (under review), Manitoba and Québec

Additional items (not a full list): carriages and strollers, tents, pacifiers, corded window coverings, glass ceramics and glassware, kettles, lighters, matches, mattresses, playpens, smoke detectors, paints and coverings.

USEFUL RESOURCES

- [Food and Drugs Act](#)
- [Cannabis \(Bill C-45\)](#)
- [Tobacco Act](#)
- [Motor vehicle safety](#)
- [Health Canada’s safety requirements for children’s toys and related products](#)
- [Broadcasting and telecommunications regulation](#)

Things to do

- Identify if Canada has product-specific regulations that apply to your products or services (if necessary by retaining subject matter experts).
- Ensure that your products are designed, manufactured, labelled and distributed in compliance with any applicable regulations.

RELATED TOPICS

- [Packaging and labelling](#)
- [French language rules](#)
- [Consumer product safety](#)
- [Commodity taxes](#)
- [Online sales](#)
- [Advertising to Canadians](#)
- [Regulated industries](#)



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Selling through resellers, distributors or sales representatives



Things to know

- Resellers, distributors and sales representatives in Canada will insist that your products or services comply with local laws, including French language rules and packaging and labelling requirements.
- Relationships with resellers, distributors and sales representatives need to identify who will be responsible for importing commercial products into Canada and who will be responsible for related fees and taxes.
- An “accidental franchise” relationship with resellers, distributors or sales representatives can be created under provincial franchise legislation – laws in six provinces broadly define a “franchise” and can “catch” commercial relationships not typically thought of as a franchise, exposing you to potentially significant liability.
- The structure of your relationship with a reseller, distributor or sales representative may impact your obligation to pay taxes or register your business in Canada.

Things to do

- Ensure that your products or services comply with local laws, including French language rules and packaging and labelling requirements.
- Ensure that your relationship with a reseller, distributor and sales representative does not create an “accidental franchise”, create a permanent establishment in Canada for tax purposes or otherwise result in unexpected obligations to pay taxes or register your business in Canada.
- Identify who will be the importer of record (e.g., the distributors, resellers or sales representative, or a licensed customs broker) and who will be responsible for related fees and taxes.

USEFUL RESOURCES

- [Importing Commercial Goods into Canada](#)

osler.com

- [Chavdarova v. The Staffing Exchange: The accidental franchise](#)
- [Distinguishing License Agreements from Franchise Arrangements](#)

RELATED TOPICS

- [Franchising in Canada](#)
- [French language rules](#)
- [Packaging and labelling](#)
- [Commodity taxes](#)

Need more info?



Osler’s Marketing and Distribution team can help. Find out more at osler.com/marketing

Online sales



Things to know

- When you sell online to consumers in Canada, you need to comply with provincial internet sales laws – this means that you’ll need to provide certain information to consumers before they make a purchase, and then deliver a copy of your terms of sale or other agreement to them.
- If you don’t comply with internet sales laws, a consumer may have remedies, including the right to cancel the contract, and you could face regulatory enforcement.
- In some provinces, you can’t include certain provisions, such as class action waivers, mandatory arbitration requirements and choice of law or venue provisions, in your consumer agreements.
- Selling certain products and services, such as water heaters, gym memberships, and matchmaking services, can subject you to additional obligations or restrictions.
- You may have to comply with accessibility requirements for the design of your website.

USEFUL RESOURCES

Government of Ontario

- [Ontario’s website accessibility requirements](#)

osler.com

- [Ontario website accessibility checklist](#)
- [Consumer protection and online advertising](#)

Things to do

- Have your website and sales process reviewed to ensure you've made all required disclosures.
- Have your consumer agreements localized to ensure that they do not include any restricted or prohibited provisions, and that they comply with Canadian laws and contracting practices.
- Assess what local laws apply to your products or services and ensure that you are in compliance with them.
- Assess whether Québec's language laws apply to your operations, including your website, consumer agreements and customer support and, if they do, ensure that you comply with them.
- Ensure that your website satisfies any applicable accessibility requirements.

RELATED TOPICS

- [Advertising to Canadians](#)
- [Packaging and labelling](#)
- [French language rules](#)
- [Commodity taxes](#)
- [Consumer product safety](#)
- [Payment processing](#)
- [Consumer privacy](#)
- [Online behavioural / targeted advertising](#)

Need more info?



Osler's Marketing and Distribution team can help. Find out more at osler.com/marketing

Commodity taxes



Things to know

GST

- The Goods and Services Tax (GST) is a 5% federal value added tax that applies to most goods and services supplied in Canada.
- The GST is imposed at each stage of production or distribution, and not only on the final supply to the consumer.

HST

- Five provinces have harmonized their provincial sales taxes with the GST to form a single Harmonized Sales Tax (HST). The HST combines the 5% GST with a provincial component to create a single combined rate of 13% (in Ontario) or 15% (in Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland).
- The HST is essentially the GST levied at a higher rate as it is imposed under the same legislation as the GST, follows the same general rules as the GST, uses the same registration number as for GST, and is reported on the same GST/HST return.

INPUT TAX CREDITS

- Most companies that are registered for GST/HST and make taxable supplies of goods and/or services must charge and collect GST/HST on their taxable supplies, but are able to claim an input tax credit (in effect a refund) for any GST/HST which they pay on goods and services they acquire to make their taxable supplies.

QST

- The Province of Québec imposes the Québec Sales Tax (QST) at a rate of 9.975%.
- The QST is a value added tax, and generally applies in the same manner as the GST/HST and has its own QST numbers and QST returns.

USEFUL RESOURCES

- [Goods and Services Tax and Harmonized Sales Tax](#)
- [Québec Sales Tax](#)
- [British Columbia Provincial Sales Tax](#)
- [Manitoba Provincial Sales Tax](#)
- [Saskatchewan Provincial Sales Tax](#)

osler.com

- [Québec Budget 2018 — QST registration for Non-Resident Suppliers](#)
- [Québec government introduces amendments to An Act respecting the Québec Sales Tax dealing with the digital economy and e-commerce previously announced in the 2018 Budget](#)

PST

- The provinces of British Columbia (7%), Manitoba (8%) and Saskatchewan (6%) impose their own provincial sales taxes which generally apply in a similar manner to most U.S. state taxes.
- These taxes are not value added taxes, and generally only apply to supplies of tangible personal property and certain limited taxable services (they are not typically recoverable).

LIABILITY

- While tax is levied against the purchaser, the obligation to collect and remit generally falls with the vendor. Starting in 2019, some digital platforms that allow non-resident vendors to supply services and incorporeal movable properties to specified Québec consumers will be required to collect QST in respect of those supplies made through the digital platform.
- There can be director liability for unremitted GST/HST/PST.

DELIVERY OUTSIDE OF CANADA

- If delivery is deemed to be made outside of Canada, GST/HST may not be required to be charged to the consumer and the consumer may be separately responsible to pay the tax on import (this assessment depends on a number of factors).

Things to do

REGISTRATIONS REQUIREMENTS

- Talk to your advisor or refer to the relevant government's guide to determine your registration requirements.
- Tax registrations can affect how a company does business in Canada, when it has to charge tax, and when it can claim a credit for certain taxes.
- Care should be taken that all required registrations are made, and that you are not registering for taxes that you would not otherwise be required to collect.
- In completing the registration forms, the answers to some of the questions may impact the acceptance of your application and how long the registration process may take.
- Consider consulting a Canadian commodity tax advisor to determine the best way to complete your registration.

RELATED TOPICS

- [Initial structuring and income tax considerations](#)
- [Filings and registrations](#)
- [Online sales](#)



Need more info?

Osler's Tax Group can help. Find out more at osler.com/tax

- Starting in 2019, some non-resident suppliers and digital platforms will be required to be registered and to collect QST in respect of certain supplies of services and incorporeal movable properties to specified Québec consumers.

FILING REQUIREMENTS

- Once registered, you will be required to file statements on a monthly, quarterly or annual basis, depending upon the volume of sales.

Advertising to Canadians



Things to know

- Federal and provincial laws prohibit representations for the purpose of promoting a product or service that are false or misleading.
- Advertising to children in the Province of Québec is prohibited; children are defined as being under the age of 13.
- Advertising to children elsewhere should comply with the [Broadcast Code for Advertising to Children](#) and the [Canadian Code of Advertising Standards](#), as well as general false/misleading advertising laws.
- Sweepstakes and Contests are often impacted by illegal lottery and advertising laws.
- Complaints made under the [Canadian Code of Advertising Standards](#) are handled by an industry self-regulatory body, Advertising Standards Canada.

Things to do

- Confirm that express or implied savings claims can be substantiated against the “ordinary” or “regular” price” based on time or volume tests set out in the [Competition Act](#).
- Obtain adequate and proper testing before making comparative claims.
- Document that testimonials represent a customer’s honest belief based on experience with the product or service.
- Ensure promotional contests are structured to avoid gaming offences in the Criminal Code and to comply with applicable contest disclosure, registration, duty and security rules.
- Ensure advertising directed to children is not available in Québec
- Ensure that header and sender information in your electronic messages, and the content of your messages, are not misleading.

USEFUL RESOURCES

- [Competition Bureau summary](#)
- [Canadian Code of Advertising Standards](#)
- [Competition Bureau’s online marketing compliance guidance](#)
- [Broadcast Code for Advertising to Children](#)

RELATED TOPICS

- [Electronic messaging](#)
- [Telemarketing](#)
- [Online behavioural / targeted advertising](#)
- [Packaging and labelling](#)
- [French language rules](#)
- [Consumer privacy](#)
- [Contests and sweepstakes](#)

Need more info?



Osler’s Marketing and Distribution team can help. Find out more at osler.com/marketing

Contests and sweepstakes

Things to know

- Contests are primarily governed by the federal [Competition Act](#) and [Criminal Code](#). The misleading advertising provisions in provincial consumer protection legislation also apply to contest advertising.
- Contests must have a set of written rules, disclosing at least the minimum disclosure requirements set out in the [Competition Act](#).
- The [Criminal Code](#) prohibits awarding prizes solely on the basis of chance or requiring a participant to pay money or other valuable consideration in order to participate in the contest or draw if the prize is goods, wares or merchandise.
 - Most contests include a no-purchase form of entry and require the winner to answer a skill-testing question to avoid these issues.
- Companies running contests wholly or partly in Quebec must register the contest with the government, unless the contest is international in scope and not solely directed to participants in Québec or in Canada generally. This includes paying duties, posting security, and reporting the list of winners.
- Employee contests may raise tax reporting implications.
- The collection and use of contestants' personal information for marketing purposes requires informed consent under privacy laws.

USEFUL RESOURCES

Government of Canada

- [Promotional Contests – Enforcement Guidelines](#)

Government of Québec

- [Régie des alcools, des courses et des jeux](#)

Things to do

- Ensure your contest rules set out the minimum disclosures required by the *Competition Act*.
- Include a no-purchase entry option and a skill-testing question, if necessary.
- Register promotional contests that are open to residents of Quebec.
- Ensure the contest rules are readily available to contest participants. Ensure that, at a minimum, “mini rules”, including a web site link to the full rules, are included in all contest advertising.
- Obtain appropriate consent for any subsequent marketing activities to the contestants.

RELATED TOPICS

- [Advertising to Canadians](#)
- [Doing business in Québec](#)



Need more info?

Our Retail team can help. Find out more at osler.com/retail

Gift cards and loyalty programs



Things to know

- With limited exceptions, gift cards cannot have an expiration date, and consumers cannot be charged usage, dormancy or other fees.
 - Key exceptions to the prohibition on expiration dates include gift cards issued for promotional purposes (e.g., the consumer did not pay for the gift card), or issued for a specific good or service.
- Any restrictions, limitations and conditions must be printed on the card.
- Some provinces require the issuer to provide a cash refund of an unused balance on the gift card in certain circumstances.
- The term “gift card” is defined broadly in provincial consumer-protection legislation, and includes physical and electronic gift cards, certificates, vouchers, and other devices.
- Certain provinces also regulate points earned pursuant to loyalty programs, and also impose limitations on the ability of the issuer to expire the reward points.
 - The term “points” is defined broadly to prevent circumvention of the legislation.
 - Similar to the gift card legislation, there are certain exceptions from the prohibition on the expiration of points, including points issued for a specific good or service.

USEFUL RESOURCES

Government of Ontario

- [Rules for loyalty reward points](#)

osler.com

- [Not so happy New Year: Ontario Rewards Points Legislation coming into force January 1, 2018](#)

Things to do

- Ensure that you fully disclose any permissible usage limitations and fees to the consumer prior to purchase.
- Ensure that your gift card provides all disclosure required by the gift-card legislation.
- Refrain from having your gift card expire unless an exemption applies.

RELATED TOPICS

- [Advertising to Canadians](#)
- [Online sales](#)
- [Contests and sweepstakes](#)



Need more info?

Our Retail team can help. Find out more at osler.com/retail

Payment processing



Things to know

- In Canada, various methods of payments are recognized (cash, debit cards, credit cards, gift cards, Apple Pay, PayPal, mobile payments, etc.). Debit card payments are processed through Interac. Credit card payments, as is the case in most other western countries, are processed through the credit card networks (e.g., Visa, Mastercard and Amex).
- Payments Canada operates the clearing and settlement system in Canada. Financial institutions, as direct or indirect clearers, are required to have arrangements in place to exchange and transfer funds through this clearing and settlement system and are governed by the rules of Payments Canada. Payments Canada has detailed rules relating to clearing and settlement of funds. Merchants may also be required to comply with certain elements of the payment network requirements pursuant to their agreements with network participants.
- The Code of Conduct for the Credit and Debit Card Industry in Canada applies to credit and debit card networks as well their participants (e.g., card issuers and payment processors).
- There has been increasing pressure on the Canadian government from merchants in Canada to regulate and reduce interchange rates that apply to credit card transactions. Material reductions in interchange rates could significantly impact credit card programs and payment habits of consumers.

USEFUL RESOURCES

- [Code of Conduct for the Credit and Debit Card Industry in Canada](#)
- [Payments Canada rules](#)

Things to do

- Review your business activities and confirm whether you are subject to the rules of Payments Canada either directly or indirectly through your participation in the Canada's clearing and settlement system.
- Review the Code of Conduct for the Credit and Debit Card Industry in Canada to confirm compliance. Although this code of conduct is framed as a "voluntary code", the Canadian government intends to enforce it. This code has detailed disclosure requirements and gives merchants several rights in case of changes to fees.
- Monitor regulatory developments. The Canadian government has launched several studies and consultations in the last few years with a view to facilitate the modernization the payment system as well as to better regulate various aspects of the payment ecosystem. As a result, the payment system regulations are in flux and are expected to be expanded in scope to cover additional businesses and entities.

RELATED TOPICS

- [Collecting debts from consumers](#)



Need more info?

Our Retail team can help. Find out more at osler.com/retail

Collecting debts from consumers



Things to know

- Provincial and federal legislation regulates the collection of debts from consumers (even if an organization is collecting debts from its own consumers).
- The legislation primarily covers licensing obligations and “prohibited practices”:

Licensing:

- If a person is carrying on business as a collection agent or agency, that person must generally be licensed or registered.
- Licensing or registration may impose restrictions and conditions on applications, bonds, trust accounts, employees, statements of account, forms, and other matters.
- A person is exempt from the licensing requirement if that person is collecting its own debts, but very few provinces expressly exclude from the licensing requirement an entity collecting debts on behalf of an affiliate.

Prohibited practices:

- With few exceptions, the prohibited practices apply to anyone collecting or attempting to collect a debt (including an organization collecting its own debts).
- There are detailed restrictions on harassment, disclosure, misrepresentation, and communication with debtors (including acceptable days, times, persons, frequency and locations for communicating with debtors).
- No person may contractually waive or release their rights, benefits, or protections under the provincial legislation.
- There are significant potential penalties for non-compliance, including fines (sometimes up to 3 times the amount of the debt), director and officer liability, and (in some provinces) imprisonment.
- It can be an offense for an organization to engage an unlicensed collection agency.

USEFUL RESOURCES

Government of Canada

- [Dealing with a Debt Collector](#)

Provincial Governments

- AB: [What Creditors Can Do If You Don't Pay](#)
- BC: [Debt Collection](#)
- MB: [Collection Practices](#)
- NL: [Collection Agencies](#) and [Frequently Asked Questions](#)
- NS: [Collectors](#)
- ON: [Collection Agencies](#)
- PEI: [Collection Agencies – Rights and Responsibilities of Consumers](#)
- QC: [Recouvrement de dettes par une agence \(French only\)](#)
- SK: [Problems with Collection Agencies](#)

Things to do

- Determine whether your collection activities trigger any licensing requirements.
- Determine which requirements apply to your activity (by determining, for example, in which province the activity takes place and who's doing the collecting).
- Ensure that you have processes and procedures in place to avoid prohibited practices.
- Provide proper training to your collections staff to avoid prohibited practices.

RELATED TOPICS

- [Consumer privacy](#)
- [Electronic messaging](#)
- [Telemarketing](#)
- [Payment processing](#)



Need more info?

Our Retail team can help. Find out more at osler.com/retail

Selling products or services to government customers in Canada



Things to know

Canada is governed by a federal system, and policies relating to selling to government vary among the federal, provincial/territorial and municipal governments. Common across all jurisdictions are general principles established by case law governing competitive procurements. A party that solicits bids is subject to a duty of fairness and good faith in respect of the execution of the procurement process. This overarching duty includes sub-duties such as

- the duty to treat all bidders fairly and equally
- the duty to provide proper disclosure (relevant, accurate information)
- the duty to avoid conflict of interest and bias
- the duty to evaluate bids according to the disclosed criteria
- the duty to reject non-compliant tenders

Procurement documents (when drafted carefully to account for judicial guidance) can often override at least some elements of these duties.

Under a number of leading cases decided by the Supreme Court of Canada, issuers and bidders have contractual obligations that may arise by participating in a competitive procurement prior to actually entering into the resulting contract. This “Contract A” is deemed to be formed between the party soliciting a bid and the bidder. The terms of Contract A govern the conduct of the parties during the tendering process.

Once a bidder has been selected as the supplier, a second contract, known as “Contract B,” is created between the party soliciting a bid and the bidder. Contract B governs the contract for the goods or services being procured.

USEFUL RESOURCES

- [Canadian Free Trade Agreement](#)
- [CETA](#)
- [Government of Canada procurement opportunity website](#)
- [United States-Mexico-Canada Agreement](#)
- [Canada - Selling to governments](#)
- [Office of the Commissioner of Lobbying Canada](#)

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- [Recent CUSMA, CETA, CPTPP initiatives pose challenges, provide opportunities for cross-border trade](#)

FEDERAL GOVERNMENT POLICIES AND TRADE AGREEMENTS

In addition to these general procurement principles, the Government of Canada has established policies that require competitive procurements (subject to narrow exceptions) for purchases over specified value thresholds. It is also a party to multiple trade agreements that require signatories to provide open access to government procurement for certain goods and services above minimum monetary thresholds.

These trade agreements include:

- Canadian Free Trade Agreement (an agreement governing trade within the Canadian federation)
- The Canada-European Union (EU) Comprehensive Economic and Trade Agreement (CETA)
- The Canada-United States-Mexico Agreement (CUSMA)
- WTO Revised Agreement on Government Procurement (AGP)

The result of these multiple and inter-laced requirements is that federal government procurement documents and contracts are highly standardized and generally inflexible.

Things to do

- Review carefully the procurement documents to ensure that all applicable requirements are understood; there will be little ability for the issuing agency to vary the process, policy and contracting approach.
- Where the federal government is a target customer, monitor carefully the various sites used to issue procurements as these will usually be the exclusive avenues by which services, goods and technology may be sold to the federal government.

RELATED TOPICS

- [Lobbying in Canada](#)
- [Federal government sales – Key policies](#)
- [Federal government sales – Certifications and reporting](#)
- [Federal government sales – Key contracting issues](#)
- [Federal government sales – IP issues](#)
- [Federal government sales – Security](#)
- [Federal government sales – Defence procurement](#)
- [Provincial government sales](#)



Need more info?

Osler's Procurement Group can help. Find out more at osler.com/procurement

Federal government sales

– Key policies



Things to know

Suppliers to the federal government must comply with the [Code of Conduct for Procurement](#). The Code

- consolidates in summary form the federal government's measures on conflict of interest and anti-corruption as well as other legislative and policy requirements relating specifically to procurement
- provides a statement of mutual expectations to ensure a common basic understanding among all participants in procurement

The federal government's [Ineligibility and Suspension Policy](#) (the Policy) sets out when a supplier may be deemed to be ineligible or suspended from doing business with the government. The Policy, together with [Integrity provisions](#), sets out detailed certification and reporting rules that apply to a broad range of domestic and foreign offences and activities that go beyond bribery and corrupt practices. These certifications and reporting rules extend to affiliates of the supplier.

Things to do

- Maintain the required integrity policies and codes of conduct and track compliance with integrity provisions.
- Prior to engaging in supply to the federal government, review the policies referred to in this section and anticipate whether any compliance challenges or reporting obligations may arise under them.

USEFUL RESOURCES

- [Code of Conduct for Procurement](#)
- [Ineligibility and Suspension Policy](#)
- [Integrity provisions](#)
- [Canada - Selling to governments](#)
- [Office of the Commissioner of Lobbying Canada](#)

RELATED TOPICS

- [Selling products or services to government customers in Canada](#)
- [Federal government sales – Certifications and reporting](#)
- [Federal government sales – Key contracting issues](#)
- [Provincial government sales](#)



Need more info?

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Federal government sales – Certifications and reporting



Things to know

Certification and reporting requirements are identified in bid documents or resulting contracts, including external documents that are incorporated by reference. These are usually standard documents set out in the federal government's Standard Acquisition Clauses (SACC) Manual.

A supplier typically must certify that it has not, directly or indirectly, paid or agreed to pay a contingency fee for the solicitation, negotiation or obtaining of a government contract (other than to an employee in the normal course of the employee's duties). Missing certifications will usually result in a non-compliant bid.

Examples of other common certifications include

- Rate or Price Certification
- Former Public Servant (disclosure)
- Federal Contractors Program for Employment Equity Certification
- Workers' Compensation Certification (Letter of Good Standing)
- Software Publisher Certification
- Commercial-off-the-shelf Software Certification

Things to do

- Review procurement documents carefully for all requirements and certifications, including standard certifications available on federal government websites.
- Ensure that you have lined up resources within your organization to accurately complete the certifications.

USEFUL RESOURCES

- [Canada - Selling to governments](#)
- [Office of the Commissioner of Lobbying Canada](#)

RELATED TOPICS

- [Selling products or services to government customers in Canada](#)
- [Federal government sales – Key contracting issues](#)
- [Provincial government sales](#)



Need more info?

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Federal government sales – Key contracting issues



Things to know

The Standard Acquisition Clauses and Conditions (SACC) [Manual](#) sets out the Government of Canada's standard procurement clauses and contractual provisions. Specific provisions forming part of the SACC Manual are incorporated by reference into procurement documents (e.g., RFPs) or resulting contracts.

Typically, the government will not agree to incorporate into a procurement contract a supplier's standard terms or conditions, including, for example, terms relating to commercial-off-the-shelf products. To the extent any changes to the proposed government contract are considered (and available changes are quite limited), it is generally done by selecting alternatives among the standard clauses set out in the SACC Manual. Liability terms and pricing terms are of particular significance.

The [Directive on the Management of Procurement](#) sets out the policy framework for addressing supplier liability. Suppliers are responsible for managing risks under their control and must retain responsibility for risks that they can manage or mitigate. Some delegated authority exists to allow for limits on supplier liability to apply, such as when a procurement involves a good that falls within a commodity grouping established by Public Services and Procurement Canada or Shared Services Canada. In most other cases, Treasury Board approval to limit first- and third-party vendor liability is required.

As a matter of government [policy](#), suppliers must retain financial responsibility for losses arising as a result of the work they perform under contract, and in particular for liabilities from third-party claims. The Attorney General of Canada must have the regulation and conduct of all litigation for or against the Crown, but the Attorney General may request that the supplier defend the Crown against the claim. With limited exceptions, the government will not agree to limit a supplier's liability.

Most-favoured customer pricing clauses are often incorporated by reference from the SACC Manual. For example, [SACC CoooiT](#) requires a bidder to certify that the price proposed is not in excess of the lowest price charged anyone else, including the bidder's most favoured customer, for the like quality and quantity of the goods, services or both.

USEFUL RESOURCES

- Standard Acquisition Clauses and Conditions (SACC) [Manual](#)
- [Directive on the Management of Procurement](#)
- [Canada - Selling to governments](#)
- [Office of the Commissioner of Lobbying Canada](#)

Things to do

- Review procurement documents carefully for all SACC Manual references. Remember that such references are as much a part of the contract as the actual wording presented in full in the procurement document.

RELATED TOPICS

- [Selling products or services to government customers in Canada](#)
- [Federal government sales – Key policies](#)
- [Provincial government sales](#)



Need more info?

Osler's Procurement Group can help. Find out more at osler.com/procurement

Federal government sales – IP issues



Things to know

The [Copyright Act](#) provides that where any work is, or has been, prepared or published by or under the direction or control of the Crown or any government department, the copyright in the work shall belong to the Crown (subject to any agreement with the author).

The [Policy on Title to Intellectual Property Arising Under Crown Procurement Contracts](#) (the Policy) sets out the Crown's policy framework applicable to the ownership and licensing of IP created in connection with procurement contracts. By default, the contractor is to own the Foreground IP arising under government procurement contracts, unless the government applies an exception to the general rule.

Even when the default position set out in the Policy is maintained, the SACC Manual clauses that address IP ownership create challenges and risks for suppliers. For example, pursuant to Supplemental General Conditions [4006](#) (Contractor to Own Intellectual Property Rights in Foreground Information), a supplier could lose ownership to its Foreground Information if the contract is terminated by the government for default. As well, the government receives a perpetual, royalty-free licence to the Background Information (which includes IP of third parties) to the extent that it is reasonably necessary to exercise fully all its rights in the deliverables and in the Foreground Information.

Typically, government RFPs require the bidder to directly license (or sublicense) all deliverables, including if the deliverables originate with a third-party manufacturer or publisher of off-the-shelf products.

USEFUL RESOURCES

- [Copyright Act](#)
- [Policy on Title to Intellectual Property Arising Under Crown Procurement Contracts](#)
- SACC [4006](#) (Contractor to Own Intellectual Property Rights in Foreground Information)
- SACC [4007](#) (Canada to Own Intellectual Property Rights in Foreground Information)
- [Canada - Selling to governments](#)
- [Office of the Commissioner of Lobbying Canada](#)

Things to do

- Ensure that intellectual property ownership is expressly addressed in government contracts.
- Ensure that you obtain the right to sublicense any third-party software, technology or other intellectual property that you supply to the government.

RELATED TOPICS

- [Registering your copyright](#)
- [Retaining intellectual property in what you develop](#)
- [Selling products or services to government customers in Canada](#)



Need more info?

Osler's Procurement Group can help. Find out more at osler.com/procurement

Federal government sales – Security



Things to know

The Government of Canada's security framework is set out in the [Policy on Government Security](#).

The government's guide for organizations on federal government security standards and procedures is the [Contract Security Manual](#). Organizations registered with the Contract Security Program must be compliant with the security requirements set out in the manual.

The security requirements associated with a contract are identified in the security requirements checklist (SRCL) issued with bid solicitation documents and subsequent contract, and are contained in one or more security clauses included in the contract document itself.

Security requirements vary depending upon the applicable data classification. The Government of Canada has adopted a [data classification system](#) with eight levels of security: Protected, Protected A, Protected B, Protected C, Classified, Confidential, Secret and Top Secret.

Security clearances fall into two general categories: (i) "organization" clearances, and (ii) "personnel" clearances. Government procurement documents and resulting contracts identify the specific security clearances that a supplier (and its applicable permitted subcontractors) are required to have.

The Treasury Board Secretariat has issued a Directive on Service and Digital that addresses the location of government data. In the case of cloud services, government departments are required to ensure that computing facilities located within the geographic boundaries of Canada or within the premises of a Government of Canada department located abroad be identified and evaluated as a principal delivery option for all sensitive electronic information and data under government control that has been categorized as Protected B, Protected C or is Classified. The [Guideline on Service and Digital](#) indicates that the departmental CIO is responsible for approving departmental decisions to store data outside Canada.

All Protected B, Protected C and Classified Government of Canada electronic data in transit must be encrypted when in transit outside of Government of Canada-controlled Operations and Security Zones within Canada or internationally.

Additional policy requirements are set out in the [Direction on the Secure Use of Commercial Cloud Services: Security Policy Implementation Notice](#) (SPIN).

USEFUL RESOURCES

- [Policy on Government Security](#)
- [Contract Security Manual](#)
- [Data classification system](#)
- [Direction on the Secure Use of Commercial Cloud Services: Security Policy Implementation Notice](#)
- [Canada - Selling to governments](#)
- [Office of the Commissioner of Lobbying Canada](#)

Things to do

- Take steps as an organization to understand and prepare for compliance with the government of Canada security requirements, including required certifications in order to carry out the targeted work.
- Review procurement documents carefully to understand the classification of the information being processed to ensure that technical security requirements, data residency and certification requirements are in place or can be implemented prior to receiving any Government of Canada information under the contract.

RELATED TOPICS

- [Selling products or services to government customers in Canada](#)
- [Data localization](#)



Need more info?

Osler's Procurement Group can help. Find out more at osler.com/procurement

Federal government sales – Defence procurement



Things to know

The [Defence Production Act](#) provides the Government of Canada with far-reaching powers and rights in respect of a defence contract or subcontract, including:

- the right to shelter itself from claims in connection with the premature rescission, resolution or termination of a defence contract or subcontract
- the right to reset the amount paid or payable under a defence contract or subcontract to an amount that the Minister determines is the fair and reasonable cost of performing the contract together with a fair and reasonable profit
- the right to require a defence contractor or supplier to file requested information with respect to defence supplies, the sources of supplies, and facilities or accommodation, including related production or storage or the construction of defence projects

Also pursuant to the [Defence Production Act](#):

- a contractor who has entered into a defence contract or subcontract must keep detailed accounts and records of the cost of carrying out the contract and retain those accounts and records until the expiration of six years after the end of the calendar year in which the contract is terminated or completed
- individuals that examine, possess or transfer controlled goods (which are primarily goods, including technical data, that have military or national security significance and identified in the [Controlled Goods List](#)) must register in the Controlled Goods Program.

USEFUL RESOURCES

- [Defence Production Act](#)
- [Government of Canada procurement opportunity website](#)
- [Public Services and Procurement Canada - Defence and Marine Procurement](#)
- [Canada - Selling to governments](#)
- [Office of the Commissioner of Lobbying Canada](#)
- [Controlled Goods](#)

Things to do

- Where defence-related goods and services are being supplied, factor in the pricing risk that the *Defence Production Act* introduces to supply contracts.
- Ensure that record-keeping procedures and policies are in place to meet the requirements of the *Defence Production Act*.

RELATED TOPICS

- [Selling products or services to government customers in Canada](#)
- [Provincial government sales](#)



Need more info?

Osler's Procurement Group can help. Find out more at osler.com/procurement

Provincial government sales



Things to know

Although the specific rules governing provincial government procurement vary from province to province, principles of procurement fairness and open competition generally apply across the country.

Government ministries and departments and, in certain provinces, entities that are funded by government are required to comply in accordance with binding procurement policies. For example, Ontario Ministries must comply with the OPS Procurement Directive and a wide variety of entities (including many hospitals, school boards and provincially funded agencies) must comply with the *Broader Public Sector Accountability Act* and the Broader Public Sector Procurement Guidelines. These policies set out thresholds above which competitive procurements must be used (with narrow exceptions) as well as detailed requirements for content and conduct of the procurements. Other government actors, such as municipalities, often have their own similar procurement policies.

Such policies do not require compliance by the supplier as such but their requirements will be included in the procurement documents. It is important to understand that the issuer of the procurement may have very little flexibility to vary terms once the RFP is issued. In many procurements, it is quite important to fully comment on any proposed contractual terms, because the combination of general procurement principles and applicable policies may result in the issuer of the procurement having very little latitude to negotiate terms which were not raised in the initial response.

Certain provinces in Canada have specific rules relating to personal information which add additional complexity to selling in the public sector. Personal information under the custody or control of public bodies in Nova Scotia must be stored and accessed only within Canada, subject to exceptions.

USEFUL RESOURCES

- [Broader Public Sector Accountability Act \(Ontario\)](#)
- [Broader Public Sector Procurement Directive](#)

Things to do

- Carefully review any provincial government procurement documents, with particular emphasis on whether negotiations of terms after submission of the proposal will be permitted.
- Ensure that information handling requirements in the procurement documents and as required by law in the province are taken into account when formulating a response, including the economics and practical ability to comply with the requirements.

RELATED TOPICS

- [Selling products or services to government customers in Canada](#)



Need more info?

Osler's Procurement Group can help. Find out more at osler.com/procurement

Lobbying in Canada



Things to know

- Canada has lobbyist registration requirements at the federal, provincial and, in some cases, territorial and municipal levels.
- Lobbying typically encompasses communications with public officials regarding the making, developing or amending of legislative proposals, regulations, policies or programs, or the awarding of government grants, contributions or other financial benefits such as government contracts.
- There are generally two types of lobbyists: consultant lobbyists and in-house lobbyists.
 - Consultant lobbyists are hired by a corporation or organization to communicate with public officials on behalf of the corporation or organization.
 - In-house lobbyists communicate with public office holders on behalf of the corporation or the organization that employs them.
- A corporation or organization with one or more in-house lobbyists may be required to register as a lobbyist in the applicable jurisdiction.
- Lobbyist registrations require periodic updates and renewals, including pro-active reports on certain changes in circumstances.
- Failure to comply with applicable lobbying registration requirements may result in prohibitions from lobbying activities and/or fines.

USEFUL RESOURCES

- [Office of the Commissioner of Lobbying of Canada](#)
- [Office of the Integrity Commissioner \(Ontario\)](#)
- [Office of the Lobbyist Registrar \(Toronto\)](#)

Things to do

- Determine whether your corporation or organization engages in any lobbying activities in Canadian jurisdictions.
- Ensure your corporation or organization's lobbyist registrations are complete and up to date, and that there is a procedure in place for determining when pro-active updates to registrations are required.
- Ensure employees engaged in lobbying activities are familiar with the applicable codes of conduct and rules regarding conflicts of interest.

RELATED TOPICS

- [Filings and registrations](#)
- [Regulated industries](#)



Need more info?

Contact us at counsel@osler.com

Anti-corruption, bribery and enforcement



Things to know

- Anti-corruption and bribery in Canada is enforced principally under two federal statutes:
 - Foreign bribery under Canadian law is governed by the [Corruption of Foreign Public Officials Act](#) (“CFPOA”) which makes it an offence to: i) directly or indirectly give, offer or agree to give or offer any form of advantage or benefit to a foreign public official to obtain an advantage in the course of business; or ii) engage in certain accounting practices where those practices are employed for the purpose of bribing a foreign public official or concealing a bribe.
 - Domestic bribery and corruption is governed under the [Criminal Code](#) which prohibits various forms of corruption including bribery of various officials, frauds on the government, breach of trust by a public officer and secret commissions, as well as various corrupt accounting and record-keeping practices.
- Unlike the United States, there is no central regulatory body responsible for the investigation of anti-corruption matters in Canada. Both the CFPOA and the *Criminal Code* are addressed as police matters and investigated and enforced by the RCMP.
- In Québec, anti-corruption compliance is also enforced by the Unité permanent anticorruption (“UPAC”) pursuant to the province’s [Anti-Corruption Act](#). UPAC employs personnel from different agencies across Québec, including the Sûreté du Québec, the anti-fraud squad of Revenu Québec and the anti-collusion unit of Transports Québec, among others.
- Foreign companies and individuals are subject to the corruption offences in either the CFPOA or the *Criminal Code* if the offence is deemed to have taken place in Canada.
- Both individuals and companies can be held liable under Canada’s anti-corruption laws and may be subject to significant fines and maximum jail terms ranging between five to 14 years. Companies will be held liable where the act was committed with the knowledge of a “senior officer”, as defined under the *Criminal Code*. Recent case law has established this includes individuals responsible for managing an important aspect of an organisation’s activities, including middle management.

USEFUL RESOURCES

Government of Canada

- [Corruption of Foreign Public Officials Act](#)
- [Criminal Code](#)

Government of Québec

- [Anti-Corruption Act](#)

osler.com

- [Risk Management Blog](#)
- [Deferred prosecution agreements to be introduced in Canada](#)

- Canada is a party to several international anti-corruption conventions obligating it to maintain and enforce appropriate anti-corruption legislation. Canada has faced increasing international pressure in recent years to increase its anti-corruption enforcement.

Things to do

- Set a “tone at the top” in which management promotes a culture of compliance.
- Assess your business’ level of risk – including the countries and industries in which it operates – and review your business activities to confirm the scope of restrictions and obligations that apply to you and your business.
- Implement and maintain anti-corruption policies and procedures. Although an anti-corruption compliance program should be designed to address the unique circumstances of your business and its specific risks, an effective compliance program should: i) outline responsibilities for compliance and establish appropriate compliance training; ii) detail internal controls, auditing practices and documentary policies; iii) set forth disciplinary procedures; iv) contain rigorous enforcement procedures; and v) make available a venue for whistleblowers.
- Ensure incentives are designed so as not to encourage corrupt behaviour.
- Watch for trends in the area of bribery and anti-corruption regulation and enforcement in Canada. Canadian laws have become progressively more restrictive – for example, as of October 31, 2017, facilitation payments, sometimes referred to as “grease payments”, are no longer excluded from the bribery offence under the CFPOA, and are thus not permitted under Canadian law – and Canada has faced increasing pressure to ramp up its anti-corruption enforcement.

RELATED TOPICS

- [Lobbying in Canada](#)
- [Anti-money laundering and terrorist financing](#)
- [Sanctions law in Canada](#)

Need more info?



Osler’s Anti-corruption team can help.
Find out more at
osler.com/anticorruption

Sanctions laws in Canada



Things to know

- Canada has a broad range of economic sanctions laws that apply to all individuals and businesses in Canada and to all Canadian citizens and Canadian businesses doing business outside Canada. These laws are included in a number of different statutes and regulations including the [Criminal Code](#), [United Nations Act](#), [Special Economic Measures Act](#), [Freezing Assets of Corrupt Foreign Officials Act](#) and [Justice for Victims of Corrupt Foreign Officials Act](#).
- Given that many Canadian businesses have dealings with other businesses outside Canada (e.g., as customers or suppliers), it is important to understand, and comply with, the applicable sanctions laws that may apply to your business.
- Broadly speaking, the Canadian sanction laws: (i) prohibit all individuals and businesses from dealing with designated persons (e.g., listed on government lists, U.N. lists, etc.), jurisdictions (e.g., North Korea) or within specific sectors (e.g., arms; nuclear materials; certain chemicals), and (ii) impose screening, reporting and asset-freeze obligations on regulated financial institutions as well as other prescribed businesses.
- Canadian sanctions laws provide exemptions for the provision of goods and services for certain purposes (humanitarian relief etc.).
- Canada's export laws should also be reviewed to confirm relevant prohibitions and exemptions.

USEFUL RESOURCES

Global Affairs Canada

- [Canadian economic sanctions](#)
- [Canadian export and import controls](#)

Things to do

CONFIRM APPLICATION OF RULES

- Review your business activities and confirm the scope of restrictions and obligations that apply to you. For example, if you are a prescribed business under the Canadian sanctions laws (predominantly businesses involved in finance and insurance), you would be subject to a broad range of obligations, including those relating to continuous screening, reporting and asset-freeze obligations.
- Monitor regulatory developments. The Canadian laws are in flux and are expected to change in scope frequently based on international developments. In addition, the Canadian government is under pressure to keep its sanctions laws up to date with international standards and we expect more strict requirements and enforcement to apply in the coming years.

COMPLIANCE PROGRAM

- To mitigate the risk of corporate criminal liability, damage to reputation and fines, you need to have a robust compliance program that meets the regulatory requirements and expectations.
- If you have a compliance program in place already, you should carefully review your program to confirm that it meets the regulatory requirements and expectations.
- You should carefully review your business activities and arrangements with third parties to mitigate the risk of non-compliance.

RELATED TOPICS

- [Anti-money laundering and terrorist financing](#)
- [Anti-corruption, bribery and enforcement](#)

Need more info?



Osler's International Trade and Investment team can help. Find out more at osler.com/trade

Anti-money laundering and terrorist financing



Things to know

- Canada's anti-money laundering and terrorist financing laws are primarily contained in two statutes: the *Criminal Code* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTA).
- The *Criminal Code* applies to all individuals and businesses.
- Under the *Criminal Code*, it is an offence to knowingly deal with any property or provide or facilitate any financial or related service for any terrorist activity or any terrorist group or "listed person" (i.e., a person or entity on a government or other agency list). The test for "knowledge" includes not being wilfully blind.
- The PCMLTA applies to "reporting entities". These entities include financial institutions, credit unions, life insurance companies, loan companies, securities dealers, foreign exchange dealers, money services business, casinos, real estate brokers and developers.
- Under PCMLTA, reporting entities have four main obligations:
 - 1) establish a compliance program,
 - 2) identify and verify clients,
 - 3) maintain certain specified records, and
 - 4) report certain specified transactions.
- Consequences of non-compliance with the *Criminal Code* and PCMLTA are severe, and include substantial fines and imprisonment.

USEFUL RESOURCES

Government of Canada

- [Financial Transactions and Reports Analysis Centre of Canada](#)

osler.com

- [Canadian government publishes wide-ranging amendments to anti-money laundering laws](#)
- [Canadian anti-money laundering law: What you need to know about compliance program requirements](#)

Things to do

CONFIRM APPLICATION OF RULES

- Review your business activities and confirm whether it is subject to PCMLTA and what activities, if any, could result in non-compliance.
- Monitor regulatory developments. The anti-money laundering laws are in flux and are expected to be expanded in scope to cover additional businesses and entities.

COMPLIANCE PROGRAM

- If you are subject to the PCMLTA or conduct any activities that could result in non-compliance with the Criminal Code, you need to have a robust compliance program to ensure that regulatory requirements are being met.
- If you have a compliance program in place already, you should carefully review your program to confirm that it meets regulatory requirements and expectations.
- You should carefully review your business activities and arrangements with third parties to mitigate the risk of non-compliance.

RELATED TOPICS

- [Anti-corruption, bribery and enforcement](#)
- [Sanctions laws in Canada](#)

Need more info?



Osler's Financial services regulatory team can help. Find out more at osler.com/fsregulatory

Hiring employees



Things to know

- In Canada, employees are hired through verbal or written agreements.
- “At-will” employment does not exist in Canada – unless an employer has “just cause,” it cannot terminate an employee’s employment without notice (or pay in lieu of notice).
- Employees terminated without cause are guaranteed certain minimum statutory entitlements and may also claim common law or contractual termination compensation.
- Arrangements with independent contractors need to be carefully structured to avoid creating an employment relationship.
- Both the federal and provincial levels of government have jurisdiction over employment and labour matters for certain types of employers – the [level of government that has jurisdiction](#) is determined by the industry in which an employer operates.
- Conditions of employment, such as hours of work, overtime pay, minimum wages, holidays, vacations, employee benefit plans, leaves of absence, notice of termination of employment, and severance and termination pay, vary from jurisdiction-to-jurisdiction and are governed, in most cases, by statute.
- It’s important to have a system for identifying the requirements of the positions you want to fill, as well as policies (a) that may be required by applicable law, including occupational health and safety; and (b) specifically for recruitment and selection that are inclusive and fair, with an aim to hiring the most qualified people, and achieving equality in your workplace, including anti-discrimination, harassment and violence.

USEFUL RESOURCES

Government of Canada

- [Hours of work](#)
- [Vacation and general holidays](#)
- [Leave](#)
- [Canada Pension Plan/Employment Insurance \(CPP/EI\)](#)

osler.com

- [Canada: Employment & Labour Law guide](#)
- [Québec Labour & Employment](#)
- [Alberta Labour & Employment](#)
- [Hiring and wage & hour law in Ontario](#)
- [From hiring to firing: Employment law 101](#)
- [The Employee Benefits Landscape in Canada](#)

Things to do

WRITTEN AGREEMENTS

- Review offer letters and employment agreements to ensure compliance with Canadian law (both provincial and applicable federal law) and to confirm all terms and conditions of employment are addressed.

REMITTANCES

- Employers in Canada must make certain deductions at source off of an employee's compensation, including income tax, Canada Pension Plan and Employment Insurance. Once that is completed, employers must contribute certain amounts in respect of Canada Pension Plan and Employment Insurance and then remit these amounts to the Canada Revenue Agency.

LOCALIZING YOUR CURRENT POLICIES

- Canadian law requires an employer to have in place employee-related policies. These requirements vary from province to province but most include policies in respect of occupational health and safety, human rights, anti-discrimination and harassment, and others. In addition, employers often have policies in respect of overtime, hours of work, attendance, social media and computer use, etc. These policies need to be developed or localized to ensure compliance with the applicable provincial laws.

WORKERS COMPENSATION

- Workers compensation in Canada, for most employers, is not private insurance. Instead, it is governed by provincial governments under statute. Under such statutes, an employer is placed into a rate group and must contribute the applicable rate for the employer's industry for each \$100 of payroll. Employers need to determine whether registration is required and, if so, what rate group they are in.

OCCUPATIONAL HEALTH AND SAFETY

- Employers have a legal obligation to maintain the health and safety of the workplace. Policies, training and health and safety practices are necessary to fulfil this obligation under provincial legislation.

IMMIGRATION

- Must have a valid permit to work in Canada, and other conditions may apply. The Government of Canada provides [guidelines for hiring both permanent and temporary foreign workers](#).

RELATED TOPICS

- [Forming a Canadian subsidiary](#)
- [Employment agreements](#)
- [Human rights in the workplace and privacy](#)
- [Accessibility for Ontarians with Disability Act](#)
- [Public retirement income programs](#)
- [Employer-sponsored retirement plans](#)
- [Group benefit \(welfare\) plans](#)
- [Independent Contractor](#)

Need more info?



Osler's Employment and Labour team can help. Find out more at osler.com/employment

Human rights in the workplace and privacy



Things to know

- Human rights legislation prohibits discrimination and harassment based on prohibited grounds.
- Prohibited grounds of discrimination vary province to province, but typically include age, disability, sex, creed, colour, place of origin, ethnic origin, sexual orientation, ancestry, marital status, family status, and citizenship.
- Some provinces also include protections based on gender identity or gender expression.
- Ontario has in place legislation to ensure accessibility of disabled individuals.
- Employers must ensure a workplace free of discrimination and harassment and ensure accessibility for the disabled. In the event that an employee is disabled or has religious restrictions, an employer must also accommodate such issues to the point of undue hardship.
- Non-compliance can lead to damage awards, bad publicity and any other remedy that the applicable human rights tribunal believes is necessary to correct the non-compliance.

USEFUL RESOURCES

Government of Canada

- [Provincial and territorial human rights agencies](#)

Government of Ontario

- [Accessibility for Ontarians with Disabilities Act \(AODA\)](#)

osler.com

- [AODA Compliance Checklist](#)

Things to do

- Ensure that, as an employer, you have processes and protocols in place to address human rights and accommodation obligations, including an anti-harassment and anti-discrimination policy with a complaint and investigation procedure, a program to train employees in their rights and obligations under applicable human rights law, and a disciplined process to address accommodation issues.
- In Ontario, employers must also ensure that you are in compliance with accessibility legislation, including by having accessibility policies, training and reports as required by statute.
- If an employee requests accommodation for a disability or other human rights ground, address such issues on a case-by-case basis.

RELATED TOPICS

- [Hiring employees](#)
- [Employment agreements](#)
- [Accessibility for Ontarians with Disabilities Act](#)

Need more info?



Osler's Employment and Labour team can help. Find out more at osler.com/employment

Employment agreements



Things to know

- Employment agreements can be either verbal or in writing and for an indefinite term or fixed term.
- Employees must be provided with at least their minimum statutory entitlements in respect of terms and conditions of employment as set out in applicable provincial employment standards legislation.
- Written employment agreements are recommended at least if compensation terms are more complex, (for example, benefit and pension terms, if provided, should be set out in an agreement).
- Neither private benefit insurance or pensions are mandatory entitlements.
- Restrictive covenants, like non-competition provisions, non-solicitation provisions, confidentiality, and intellectual property protections need to be in writing. To be enforceable, non-competition and non-solicitation provisions must be drafted narrowly. In Ontario, as of October 25, 2021, non-competition agreements with employees are void, other than (a) for C-suite executives; or (b) in the context of a sale transaction in which such agreements are entered into as part of such transaction.

USEFUL RESOURCES

Government of Canada

- [Federal labour standards](#)
- [Federally regulated businesses and industries](#)

osler.com

- [The Employee Benefits Landscape in Canada](#)

Things to do

- Review your template employment offers and full agreements to ensure they are in compliance with Canadian law (for example, references to ‘at-will’ employment must be removed as this concept is not recognized in Canada).
- Review your compensation structure and model, including incentive compensation and benefits, to ensure competitiveness in the market.
- Consider if you want to establish restrictive covenants or severance provisions and, if so, carefully draft them with legal counsel to ensure, to the extent possible, enforceability.
- If you want to hire foreign workers, such workers typically must apply for a work permit. Any employment agreement drafted for such foreign workers must be consistent with representations made in the application for the work permit.

RELATED TOPICS

- [Hiring employees](#)
- [Human rights in the workplace and privacy](#)
- [Retaining the intellectual property in what you do](#)
- [Accessibility for Ontarians with Disabilities Act](#)
- [Employer-sponsored retirement plans](#)
- [Independent contractor](#)

Need more info?



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Accessibility for Ontarians with Disabilities Act



Things to know

- Ontario is the “high water mark” for accessibility laws in Canada.
- The Province’s AODA – the *Accessibility for Ontarians with Disabilities Act* has detailed standards that must be followed by governments, businesses, non-profits and public sector organizations in five areas:
 - **Customer Service Standards:** How to provide accessible customer service, including communicating with customers with disabilities, allowing assistive devices, service animals, and support persons, and providing accessible documents and feedback processes.
 - **Information and Communication Standards:** How to make information accessible to people with disabilities, including providing accessible formats and communication, websites and feedback processes.
 - **Transportation Standards:** Requirements for transportation service providers.
 - **Employment Standards:** Requirements for making hiring and employee support practices more accessible, including in recruitment, offering employment, providing accessible formats and communication supports, creating documented individual accommodation plans and return to work processes, and accessible performance management and career development.
 - **Design of Public Spaces Standards:** Requirements for making new and redeveloped outdoor public spaces accessible, including ramps, stairs, sidewalks, parking lots, and waiting areas.
- These requirements operate in addition to the duty to accommodate under applicable human rights legislation.
- There are significant potential penalties for non-compliance, including fines and potential director and officer liability.

USEFUL RESOURCES

Government of Canada

- [Accessibility rules for businesses and non-profits](#)
- [Guide to the integrated accessibility standards](#)
- [Completing your accessibility compliance report](#)
- [Accessibility for Ontarians with Disabilities Act](#)
- [Integrated Accessibility Standards](#)

Conference Board of Canada

- [Making Your Business Accessible for People with Disabilities](#)

AccessForward

- [Online AODA training modules](#)

osler.com

- [AODA compliance checklist](#)

Things to do

- Determine which requirements apply to your organization, based on your size and operations.
- Ensure that you have processes and procedures in place to address accessibility and accommodation obligations, including, as applicable, a multi-year accessibility plan, accessibility policy, and accessible customer service policy.
- Provide training to your staff, and others as required by the AODA, on the requirements of the accessibility standards, human rights legislation, and providing accessible customer service.
- If you have 20 or more employees, file accessibility reports with the Accessibility Directorate of Ontario every three years (the next deadline is December 31, 2020).

RELATED TOPICS

- [Hiring employees](#)
- [Human rights in the workplace and privacy](#)
- [Employment agreements](#)

Need more info?



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Public retirement income programs



Things to know

Canada's retirement income system consists of a mix of public pensions and private pension and retirement savings plans. The public programs referred to below (Old Age Security, Guaranteed Income Supplement and the Canadian Pension Plan or Quebec Pension Plan) are meant to be supplemented by other sources of income and benefits such as private plans and personal savings.

UNIVERSAL GOVERNMENT PENSION BENEFITS

- The Old Age Security program (OAS) provides a basic level of retirement income (up to \$642.25 per month in 2022) to Canadian residents, along with additional support for low-income seniors (up to \$959.26 per month in 2022) through the Guaranteed Income Supplement (GIS).
- As of July 2022, individuals aged 75 and over will receive an automatic 10% increase in their Old Age Security pension.
- These programs are funded from general tax revenues – no employer or employee contributions are required.
- Benefits under the OAS and GIS are income-based and may be scaled back as prescribed income thresholds are met.

CANADA PENSION PLAN (CPP) AND THE QUÉBEC PENSION PLAN (QPP)

- CPP (or QPP in Québec) are compulsory public retirement plans that provide additional retirement income for workers in Canada. On retirement (which can start as early as age 60 and as late as age 70), CPP/QPP replaces a maximum of 33.3% of earnings up to the Year's Maximum Pensionable Earnings (YMPE) (\$64,900 in 2022). The pension is based on earnings, years of participation and the retirement age. The maximum benefit in 2022 is \$1,253.59 per month for a person retired at age 65.
- Both employers and employees are required to contribute a percentage of earnings to the CPP (or QPP if employed in Québec) up to the YMPE. In 2022, the employee must contribute 5.7% of his/her

USEFUL RESOURCES

Government of Canada

- [Public Pensions](#)
- [Canada Pension Plan Enhancement](#)

Retraite Québec

- [Québec Pension Plan](#)

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- [The Employee Benefits Landscape in Canada](#)

earnings (6.15% in Québec) up to \$3,499 per year (\$3,776 per year in Québec). The employer is required to contribute an equal amount.

- Many employers design their private retirement plan so as to integrate the benefits that employees will receive under the CPP/QPP and the benefits payable under the employer's retirement plan (i.e. the contributions required and the benefits payable under the employer plan will take into account CPP/QPP contributions and benefits).
- CPP and QPP was enhanced gradually starting in 2019 and the income replacement ratio was increased from 25% to 33.33% of pensionable earnings, from the first dollar earned up to an increased YMPE (projected to be equal to roughly \$82,700 in 2025). The exact increase will depend on how much and for how long an employee has contributed to the enhanced CPP. A worker will get the full increase after contributing to the enhanced CPP for 40 years. It is expected that the CPP enhancement will ultimately lead to an increase of the maximum CPP retirement pension by 50% once mature.
- Employer and employee contributions will increase in order to fund the enhancements. Increased contributions will be phased in over a seven-year period commencing in 2019 and ending in 2023. A second phase will commence in 2024 and will affect individuals in higher income bands.

Things to do

- Employers establishing private pension and retirement savings plans need to consider how to coordinate their plans with public retirement income programs to achieve the desired retirement outcome for their employees.
- In light of the recent CPP/QPP enhancement (and increased employer contributions), employers should assess whether they want to offset these increased employee costs through certain amendments to their pension plans and/or other employee benefit plans (e.g. lower employer contributions to private plans, reduce/eliminate certain benefits; limit salary increases, etc).

RELATED TOPICS

- [Employer-sponsored retirement plans](#)
- [Group benefit \(welfare\) plans](#)
- [Hiring employees](#)



Need more info?

Our Pensions and Benefits Group can help.
Find out more at osler.com/benefits

Employer-sponsored retirement plans



Things to know

- With the exception of Québec (discussed below), there is currently no legislative requirement for employers to establish or participate in any type of employer sponsored retirement plan for the benefit of their employees. The decision to establish an employer sponsored retirement plan is a voluntary business decision. However, where employers decide to establish retirement plans for their employees, the employer must comply with the governing legislative requirements which contain prescriptive rules regarding the operation of such plans.

Employer sponsored retirement plans (which include private pension and retirement savings arrangements) can be divided between the broad categories set out below:

REGISTERED PENSION PLANS (RPP)

- RPPs are plans designed and administered to provide pension benefits to employees and to which the employer is required to contribute. RPP's can be defined benefit, defined contribution or a hybrid of both.
- All RPPs must comply with federal or provincial pension standards legislation (as applicable), which imposes various requirements in respect of matters such as eligibility for membership, vesting, locking in, retirement age, forms of pension, funding, duties of plan sponsors and administrators, and pension plan investments and mechanisms for winding up the RPP.
- To qualify for a preferential tax treatment, pension plans must also comply with the federal [Income Tax Act](#) (ITA). The ITA essentially limits the amount that may be contributed to a RPP on a tax-sheltered basis and limits the benefits that may be paid from a RPP. Such limits are changed every calendar year.

USEFUL RESOURCES

Government of Canada

- [Registered Pension Plans](#)

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- [The Employee Benefits Landscape in Canada](#)

OTHER REGISTERED RETIREMENT ARRANGEMENTS

- Other tax-assisted retirement savings arrangements that an employer may sponsor include a group retirement savings plan (RRSP), a deferred profit sharing plan (DPSP) or a group tax-free savings account (TFSA). These plans are defined contribution in nature. Contributions are typically invested at the direction of the employees and the benefits payable are equal to the balance of the member's account. These plans are not subject to minimum standard legislation, but are regulated by the ITA.
- Another arrangement is a pooled registered pension plan (PRPP) (known as a voluntary retirement savings plan (VRSP) in Québec), which is also a defined contribution arrangement, but the individual's assets are pooled. These plans are subject to their own minimum standards legislation.
- An employer with at least 10 Québec employees is required to join a VRSP if the employer does not offer a RPP, group RRSP or group TFSA. The employer is not, however, required to contribute to a VRSP.

UNREGISTERED RETIREMENT PLANS

- Supplemental plans (sometimes referred to as supplemental employee retirement plans) may be established to allow employees to “top up” their pension benefits above the ITA limits applicable to RPPs. They are not subject to minimum standards legislation. The plan may be classified as a retirement compensation arrangement under the ITA if funded and will be subject to particular tax requirements.
- Employers may also set up non-registered defined contribution plans for amounts in excess of what is allowed under the ITA limits. Contributions to these plans are not tax deductible and income earned in these plans is not tax exempt.

Things to do

- Consider whether your retirement program is consistent with your business objectives, including as it relates to workforce recruitment and retention.
- It is imperative to implement and regularly review the governance of your retirement plans to ensure that it establishes clear responsibilities and accountability for compliance with minimum standards legislation, the ITA and other laws and regulatory requirements applicable to private retirement plans.

RELATED TOPICS

- [Hiring employees](#)
- [Public retirement income programs](#)
- [Group benefit \(welfare\) plans](#)



Need more info?

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Find out more at osler.com/benefits

Group benefit (welfare) plans



Things to know

- Canada has a universal health care system funded through general tax revenues. All Canadians are covered and receive medically necessary hospital and doctors' services without direct charges at the point of service. Provincial governments are responsible for managing and providing most health-care related services. Accordingly, standards and requirements may differ across Canada.
- Some services are not covered under the public health care plan, including prescription drugs outside hospitals, dental care, vision care, medical equipment and appliances, and the services of other health professionals such as physiotherapists.
- While there is no legislative requirement to do so, many employers offer supplemental private health insurance to their employees to help cover some of the expenses that are not covered under the public health care plan.
- Other welfare benefits offered by employers often include life insurance, accidental death and dismemberment insurance, long-term disability and short-term disability insurance. They may also include out-of-country medical coverage, employee assistance programs and other mental health and wellness programs.
- The types and level of coverage provided under these various health and welfare plans varies widely among employers.
- Employers often require employees to pay a portion of the cost of these plans, although the tax treatment of certain benefits received by an employee may be impacted by whether or not the benefit is paid for by the employer and/or by the employee.
- Benefits may be provided on a fully insured basis (i.e., through an insurance provider, where premiums are paid to the insurer and the insurer is responsible for the provision of benefits) or on a self-insured basis (i.e., where the company operates the plan). In certain cases, legislation may require that certain benefits be provided on a fully insured basis. Employers who elect to self-insure the benefits are often purchasing "stop-loss" insurance to protect against large claims.

USEFUL RESOURCES

Government of Canada

- [Canada's Health Care System](#)

osler.com

- [The Employee Benefits Landscape](#)

- In certain instances, employers may provide post-retirement health or life insurance benefits to certain or all of its employees. The cost of such benefits has risen sharply over the years and many employers have now taken steps to manage these post-retirement liabilities (e.g. limiting eligibility and introducing lifetime caps).
- There are few legislative requirements that regulate the provision of benefits under these group benefit plans. However, both employment standards legislation (which requires the continuation of benefits during certain types of leaves) and human rights legislation (which forbids discrimination based on prohibited grounds) do apply. If an employer makes a prescription drug plan available to employees in Quebec, additional requirements will also apply ([Quebec prescription drug insurance plans](#)).

Things to do

- Regularly review your health and welfare benefit plans to ensure that the coverage made available is aligned with business objectives.
- Consider whether appropriate cost containment measures are in place (e.g., for self-insured plans this could include obtaining stop-loss insurance; for fully-insured plans this could include modifications to coverage levels, deductibles etc.).
- Implement procedures to ensure that any health and welfare benefit plans in place for employees comply with relevant legislation including employment standards legislation and human rights legislation.
- Employers should consider the health and welfare benefits plans in place when making acquisitions to ensure comparable benefits are offered to transferring employees post-closing.

RELATED TOPICS

- [Hiring employees](#)
- [Public retirement income programs](#)
- [Employer-sponsored retirement plans](#)



Need more info?

Our Pensions and Benefits Group can help.
Find out more at osler.com/benefits

Independent contractor



Things to know

- Employers should only enter into independent contractor relationships if the facts of the working relationship support this designation
- Misclassifying someone as an independent contractor can result in significant liability for the company
- A mere statement in a written contract that an individual is an independent contractor is not sufficient
- The determination of whether an individual is an employee or an independent contractor depends on common law principles and the particular facts of each situation – there is no bright line test
- Among the factors that may be considered when determining whether an employer/employee relationship exists are:
 - Whether or not the individual exclusively provided services to the company;
 - The degree of control the company had over the individual's work (including where, when and how to perform the work under the contract);
 - Whether the individual was required to supply their own tools and equipment;
 - The degree of risk taken by the individual (e.g. their chances for profit and risk of loss); and
 - The degree of integration between the individual's activities and the company's business.
- Potential exposure for misclassifying someone as independent contractor includes:
 - (i) liability for unpaid wages and payroll taxes along with interest and penalties for failing to deduct and remit income tax and premiums pursuant to employment standards legislation; [Income Tax Act](#); [Employment Insurance Act](#) and [Canada Pension Plan](#);
 - (ii) if the company terminates the engagement, a claim for reasonable notice or pay in lieu thereof at common law (which generally ranges from 3-24 months' pay depending on the circumstances); and
 - (iii) other penalties in respect of the company's failure to comply with employment standards legislation

USEFUL RESOURCES

Government of Canada

- [Employee or Self-employed?](#)

Government of Ontario

- [Employee Status](#)

osler.com

- [Employment law 101: Managing risks and liabilities](#) (Webinar)

Things to do

- When considering retaining someone as an independent contractor ask yourself: is the worker going to be in business for themselves (i.e. “independent”), or are they going to be under the company’s control (i.e. dependent and similar to an employee)?
- If you hire someone as an independent contractor, ensure that the facts of the working relationship support this designation
- Carefully draft independent contractor agreements with legal counsel to reduce misclassification risk

RELATED TOPICS

- [Hiring employees](#)
- [Employment agreements](#)



Need more info?

Osler’s Employment and Labour team can help. Find out more at osler.com/employment

Leasing a place of business



Things to know

- Most office, retail and industrial space in Canada is available only through a commercial lease.
- Most commercial lease transactions start with a binding offer to lease that sets out the most important business terms; a non-binding letter of intent could also be used for this purpose, although it is less common.
- Commercial leases in Canada are typically on a fully net basis, which requires a tenant to pay basic rent plus a proportionate share of the realty taxes, insurance, utility and other maintenance charges for the building.
- In a retail lease, the tenant may also be required to pay a percentage of its sales as “percentage rent”.

Things to do

DETERMINE YOUR SPACE REQUIREMENTS

- Leases generally have a term of five or ten years, so consider whether you need expansion or contraction rights or a right of first refusal on other space in the building.

CONSIDER THE FINANCIAL OBLIGATIONS

- Determine if the entity doing business in Canada has a sufficient net worth to satisfy the lease obligations or if an indemnity from a related company or other security might be necessary.

FIND A REAL ESTATE BROKER IN CANADA

- Consider leveraging your business relationship with your local real estate broker, if any, to see if they have relationships with a broker located in Canada, or consult local advisors for recommendations – a local broker can provide invaluable information on local market conditions and rental rates.

USEFUL RESOURCES

Government of Canada

- [How to lease commercial real estate](#)

osler.com

- [Negotiating leases 101: Implications of deal terms and extensions](#)

RELATED TOPICS

- [Acquiring real estate](#)
- [Forming a Canadian subsidiary](#)
- [Filings and registrations](#)
- [Hiring employees](#)



Need more info?

Osler's Real Estate Group can help. Find out more at osler.com/realestate

Acquiring real estate



Things to know

- Interests in land are generally held directly in fee simple (meaning absolute title to land, free of any other claims against the title, which one can sell or pass to another by will or inheritance) or by leases as leasehold interests.
- Condominium or strata title ownership is also common throughout Canada.
- All provinces maintain a system of public land titles registration whereby ownership can be verified and through which interests in land are registered.
- Most commercial real estate transactions start with a non-binding letter of intent that sets out the most important business terms; a formal comprehensive agreement would follow containing all the necessary business terms, including representations and warranties and any conditions to be satisfied.

USEFUL RESOURCES

Government of Canada

- [Buying commercial real estate](#)

Things to do

DETERMINE YOUR OWNERSHIP VEHICLE

- There are several legal structures available for investment in Canadian real estate, including a general partnership, a limited partnership, co-ownership (commonly known as a “joint venture”), a corporation, a trust, personal ownership or any combination of the foregoing.
- The choice of an appropriate investment structure will be governed by factors such as tax planning requirements, liability issues and business considerations and each foreign investor’s rules and regulations.

DUE DILIGENCE

- Once the Agreement of Purchase and Sale is signed, it is generally the responsibility of the purchaser (usually through counsel) to conduct due diligence concerning the property being acquired. This includes title and zoning searches and a review of any leases and surveys of the property.

FIND A REAL ESTATE BROKER IN CANADA

- Consider leveraging your business relationship with your local real estate broker, if any, to see if they have relationships with a broker located in Canada, or consult local advisors for recommendations – a local broker can provide invaluable information on local market conditions and values.

RELATED TOPICS

- [Leasing a place of business](#)
- [Forming a Canadian subsidiary](#)
- [Filings and registrations](#)
- [Financing and banking arrangements](#)
- [Initial structuring and income tax considerations](#)
- [Municipal land use planning and development](#)
- [Construction issues](#)



Need more info?

Osler’s Real Estate Group can help. Find out more at osler.com/realstate

Municipal land use planning and development



Things to know

- In Canada, land use planning is governed by provincial legislation (such as Ontario's *Planning Act*).
- Municipal councils adopt land use plans and enact zoning by-laws to regulate land use planning and development within their jurisdiction.
- Municipalities are responsible for preparing and implementing planning instruments such as:
 - Official plans and official plan amendments setting out policies that will guide land use planning and development;
 - Zoning by-laws and zoning by-law amendments to implement official plan policies and to restrict and control the use of land and buildings;
 - Subdivision plans and land severances;
 - Site plan approvals;
 - Building and demolition permits.
- Applications for planning and development approvals are made to municipalities. The specific planning approvals required will depend on the nature of the proposed development.
- Prior to an application being considered by municipal council, most municipalities will require a planning review by municipal planning and other professional staff. A public meeting is also required at which time other community stakeholders can comment on planning applications and proposals.
- Although there is deference to the planning decisions of municipal councils, in most jurisdictions there are limited appeal rights of municipal planning decisions to provincial planning tribunals.

USEFUL RESOURCES

Provincial ministries for municipal affairs

- [Ontario Ministry of Municipal Affairs and Housing](#)
- [BC Ministry of Municipal Affairs & Housing](#)
- [Alberta Municipal Affairs](#)
- [Manitoba Municipal Relations](#)
- [Affaires municipales et Habitation – Québec](#)
- [Municipal planning – Nova Scotia](#)
- [Land use planning – Newfoundland and Labrador](#)
- [Municipal land use planning – PEI](#)
- [Guidelines for the Delivery of Planning Services – New Brunswick](#)
- [Community Planning, Land Use, and Development – Saskatchewan](#)

Things to do

- Identify the planning policies and zoning that apply to the particular parcel of land in the municipality in which you have an interest. Many municipalities post their official plan and zoning by-laws on-line.
- Depending on the nature and complexity of your proposed development or development application, it is prudent to engage a qualified land use planner who can give you an independent opinion regarding the planning merits of your development application or proposal.
- Applications for the required planning approvals will need to be made to the municipality in which the lands are located. Most municipalities will require planning application fees as well as documentation in support of the planning applications. Depending on the nature and scope of the planning application, it may need to be supported by: a planning justification report; engineering and servicing reports; traffic studies; environmental reports; development and landscape plans and other supporting documentation, and the appropriate experts may need to be retained.
- It is usually prudent to arrange a preliminary meeting with municipal representatives such as the local municipal councilor and coordinating planner in order to explain the proposed development application and to identify issues that will require review or resolution.

USEFUL RESOURCES

osler.com

- [Ontario planning process undergoes significant changes: Bill 139 receives Royal Assent](#)
- [Ontario government proposes significant overhaul to municipal planning approval and appeal process with Bill 139](#)
- [Cross Canada land development update: Opportunities in a changing legislative landscape \(Webinar\)](#)

RELATED TOPICS

- [Acquiring real estate](#)
- [Leasing a place of business](#)
- [Construction issues](#)



Need more info?

Our Real Estate Group can help.
Find out more at [osler.com/realstate](https://www.osler.com/realstate)

Construction issues



Things to know

- Architectural and engineering professionals are provincially/territorially regulated, and both individuals and businesses engaged in these practices must be licensed.
- Licences for general contractors are generally not required, other than in Québec. Regardless, all provinces/territories require specific registrations and filings for issues ranging from occupational health and safety (OHS) to workers' compensation. In addition, the conduct of specialized trades or activities such as electrical work must be licensed.
- Non-resident businesses performing work in Canada are subject to a statutory withholding tax.
- Canada has a “contract-based” approach to competitive procurement – including tendering and requests for proposals – which, along with duties implied by jurisprudence, can result in duties and liabilities for bidders and bid-calling entities alike. This is applicable to both the private and public sectors.
- Québec is a civil law province, with unique requirements for procurement and contract matters, including anti-corruption compliance when contracting with the public sector.
- Standard-form design and construction contracts are issued by the [Canadian Construction Documents Committee](#) (CCDC), the [Royal Architectural Institute of Canada](#) (RAIC), and other organizations depending on geography and industry. However, standard forms tend to be modified by supplementary conditions or replaced entirely depending on the owner, industry, and the project.
- Each province/territory has legislation that requires statutory holdbacks (the equivalent of a “retainage” in the U.S.) and creates lien rights. Some provinces have legislation creating trust rights.
- Since 2019, Ontario adopted U.K./U.S.-style “prompt payment” regimes along with a U.K.-style adjudication regime; since then, other jurisdictions in Canada including Nova Scotia, Saskatchewan, Alberta, and the federal government, have since followed with similar initiatives.
- Understanding and compliance with one's obligations and duties under occupational health and safety legislation is critical, as accidents and injuries can lead to corporate and director and officer liabilities, as well as charges under the Criminal Code of Canada.

USEFUL RESOURCES

osler.com

- [Ontario prompt payment and adjudication: The final countdown](#)
- [Canadian prompt payment and construction law reforms](#)
- [The Canadian Construction Contracts Guidebook](#)

Things to do

- Identify key provinces/territories of interest, and understand the applicable procurement, licensing, and registration requirements.
- Develop a corporate structure for the contracting entity (e.g. branch or subsidiary), including consideration of non-residency tax issues, and how much and how regularly work will be performed in Canada.
- Determine what contracts you are expected to enter into and want to use in Canada, and develop the necessary forms (including “Canadianizing” if applicable) for the province/territory at issue.
- Develop an internal “playbook” to assist and coordinate your various business units and divisions within your organization, including procurement, contract administration, accounts payable, and claims and disputes.

RELATED TOPICS

- [Filings and registrations](#)
- [Hiring employees](#)
- [Initial structuring and income tax considerations](#)
- [Doing business in Québec](#)
- [Canadianizing commercial agreements](#)
- [Acquiring real estate](#)
- [Municipal land use planning and development](#)



Need more info?

Our Construction team can help. Find out more at osler.com/construction

Indigenous consultation



Things to know

- Indigenous communities in Canada (i.e., First Nations, Inuit and Métis) have constitutionally protected Indigenous and treaty rights. The federal or provincial government has a duty to consult indigenous communities when government conduct could adversely affect such rights (e.g., issuing a permit allowing a project to proceed).
- Despite consultation being a duty owed by government to potentially impacted indigenous communities, project owners will be expected to carry out significant procedural aspects of consultation.
- The federal or provincial government will supply project owners with a list of potentially affected indigenous communities. Consultation can involve the following:
 - meeting with Indigenous communities to share information about the project
 - providing reasonable resources for Indigenous communities to participate in consultation
 - responding to questions and concerns raised by Indigenous communities
 - maintaining a complete record of all Indigenous consultation activities
 - discussing any concerns or asserted impacts of the project on Indigenous or treaty rights
- Consultation requirements are circumstance-specific and dependent on the nature of the rights at stake and potential project impacts.
- The government, not the project owner, determines whether consultation has been adequate.
- Indigenous communities that believe consultation has been inadequate can have the issue determined by courts, leading to project delay.

USEFUL RESOURCES

Government resources

- [Consultation and accommodation advice for proponents](#) (Federal)
- [Environmental assessments: Consulting Indigenous communities](#) (Ontario)
- [The Government of Alberta's proponent guide to First Nations and Métis Settlements consultation procedures](#) (Alberta)
- [Consulting with First Nations](#) (British Columbia)

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- [Managing Indigenous risk for resource projects in Canada](#)
- [Resource projects and Indigenous consultation – What is best practice after a year of uncertainty?](#)
- [Indigenous Law Insights monthly webinar series](#)

Things to do

- Understand your consultation obligations to avoid regulatory delay and legal challenges.
- Develop an Indigenous consultation strategy early in the life of a proposed project.
- Keep abreast of legal developments to ensure that any changes in the law are incorporated into your consultation strategies.

RELATED TOPICS

- [Developing a project – Environmental impact assessments](#)
- [Mining](#)



Need more info?

Osler's Indigenous team can help.
Find out more at osler.com/indigenous

Environmental emergency response



Things to know

- Regulation of environmental emergencies, such as spills and releases, can vary considerably from province to province. Federal statutes also contain specific spill reporting and remediation requirements.
- In the event of a spill, most provinces impose obligations to remediate and to report the incident to government officials, although the specifics of such a duty depend on the applicable legislation.
- Municipalities also have their own reporting obligations, particularly relating to spills or discharges to sewer or sanitary systems.
- Multiple regulators may need to be advised of an emergency incident: provincial, federal and municipal, and sometimes multiple provincial ministries (e.g., Ministry of Labour and Ministry of the Environment).
- The reporting duty is generally broad and can apply to any person who released/spilled the substance or caused or permitted the release/spill, or to a person having possession, charge or control of the substance.
- Once reported, the reporting party generally has a statutory duty to provide spill reports, answer questions from the regulator and remediate the spill to restore the natural environment.
- If a spill is not reported, environmental regulators have enforcement powers that can result in prosecution and fines.

USEFUL RESOURCES

- [B.C. spill reporting fact sheet](#)
- [Alberta guide to release reporting](#)
- [Spill reporting in New Brunswick](#)
- [Ontario guide to reporting pollution and spills](#)
- [Québec: Urgence-Environnement, the environmental emergency service](#)
- [Significant spills liability decision – osler.com](#)
- [Environmental emergency regulations Reporting a spill or release](#)

Things to do

- The Supreme Court of Canada has advised “when in doubt, report” an incident as a spill or discharge to the appropriate regulator. If the incident is in the “grey zone,” consider implications of not reporting if the regulator views the incident, after the fact, as a spill.
- Ensure your business has robust spill response procedures and protocols for employees/contractors to follow, including protocols clarifying what constitutes a spill or a reportable discharge, who reports, to whom the report is required to be provided, and have emergency response personnel “on call,” as necessary.
- Carefully consider the content of your spill reports to avoid speculation, opinion or unnecessary commentary. Get an Emergency Health and Safety colleague and/or legal counsel to review spill reports, to the extent possible, before submitting to the regulator.

RELATED TOPICS

- [Contaminated Lands](#)
- [Dealing with Environmental Regulators](#)
- [Owning or leasing real property in Canada](#)
- [Investing in a Canadian Business](#)
- [Insolvency and Restructuring in Canada](#)

Need more info?



Osler’s Environmental Group can help.
Find out more at
osler.com/environmental

Developing a project – Environmental impact assessments



Things to know

- Legislative responsibility for the protection of the natural environment is shared by federal, provincial and municipal governments. For example, federal and provincial governments both have environmental assessment legislation and endangered species legislation.
- Environmental regulations can apply to both greenfield developments and existing industrial operations. For example, the expansion or alteration of an existing facility could trigger a new environmental assessment and new operating permits/approvals.
- At the federal level, designated projects (activities listed in the [Physical Activities Regulations](#)) are subject to the [Impact Assessment Act](#). The federal Minister of Environment also has the authority to require impact assessments for non-designated projects. Federal impact assessments involve detailed consideration and assessment of potential environmental, health, social and economic impacts of the proposed project, as well as consultation with potentially affected Indigenous groups. At the conclusion of the process, the Impact Assessment Agency of Canada or a review panel will provide recommendations regarding the project's impacts and conditions of approval to the Minister of Environment and Climate Change or the federal Governor-in-Council.
- Each province has environmental assessment legislation that typically coordinates with the *Impact Assessment Act* in order to avoid duplication.

USEFUL RESOURCES

Government resources

- [Impact assessment process overview](#)
- [Practitioner's guide to federal impact assessments under the *Impact Assessment Act*](#)
- [Guide to applying for an environmental compliance approval](#) (Ontario)
- [Apply for *Environmental Protection and Enhancement Act* approvals](#) (Alberta)
- [Compliance and enforcement for environmental assessment projects](#) (British Columbia)
- [Environmental assessment for Northern Québec projects](#)
- [Environmental assessment for Southern Québec projects](#)

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- [Government of Canada enacts changes to environmental assessment processes](#)

Things to do

- For major new projects, determine (based on the proposed project details) whether any federal or provincial environmental assessment is required.
- Prepare an initial “Material Permits List” to better plan project development, understand any critical path items and initiate contact with applicable regulators.
- Develop a regulatory and engagement strategy to ensure that key project risks are identified and managed from the outset of project planning.
- Communicate directly with the Impact Assessment Agency, if applicable, prior to submitting an Initial Project Description to facilitate development of documentation and a timely and efficient planning phase.

RELATED TOPICS

- [Indigenous consultation](#)
- [Dealing with environmental regulators](#)
- [Municipal land use planning and development](#)

Need more info?



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Find out more at
osler.com/environmental

Dealing with environmental regulators



Things to know

- Companies carrying on business in Canada are subject to overlapping environmental regulation by all levels of government – federal, provincial/territorial and municipal.
- Each province has environmental protection laws and has a regulator charged with administration and enforcement.
- All jurisdictions generally take a “laddered approach” to enforcement, ranging from voluntary compliance through inspections and education to compulsory tools such as broad order powers, administrative penalties, investigation, charges and prosecution powers.
- Environmental offences in Canada are quasi-criminal “strict liability” charges, potentially subject to significant fines and/or imprisonment.
- Most environmental statutes extend a regulator’s reach to persons in “management or control” of the business and/or property, potentially including current/former owners, current/former landlords/tenants/occupants and current/former directors and officers.
- Directors and officers may be exposed to personal liability, including being named personally in orders and prosecution.
- Depending on the circumstances, bankruptcy or insolvency may not relieve a company from complying with a regulator’s order to deal with contamination.

USEFUL RESOURCES

- [Environment and Climate Change Canada](#)
- [Fisheries and Oceans Canada](#)
- [Transport Canada](#)
- [Ministry of Sustainable Development, Environment and the Fight Against Climate Change](#) (Québec)
- [Ministry of the Environment, Conservation and Parks](#) (Ontario)
- [Ministry of Environment and Parks](#) (Alberta)
- [Ministry of Environment & Climate Change Strategy](#) (British Columbia)
- [Guidance – Inspections](#) (Ontario)
- [Environmental permits](#)
- [Guidance – Occupational health and safety](#) (Ontario Ministry of Labour)
- [Enforcement notifications](#) (Federal)
- [Fisheries Enforcement](#) (Federal)
- [Compliance Policy](#) (Ontario)

Things to do

- Regulators inspecting your premises have broad powers, and you have corresponding statutory obligations. In contrast, regulators investigating potential offences have more limited powers. Know the difference and call your lawyer.
- Implement a robust Environmental Management System, with written procedures, training and follow up, to assist in a due-diligence defence in the event of any investigation or potential charges by a regulator.
- Work with your regulator to achieve compliance, get feedback and develop goodwill and trust. Consider negotiating timing and scope of compliance requirements, in a way that demonstrates that the regulator's perceived risks would still be addressed.

RELATED TOPICS

- [Contaminated Lands](#)
- [Environmental emergency response](#)
- [Insolvency and Restructuring in Canada](#)

Need more info?



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Find out more at
osler.com/environmental

Contaminated lands



Things to know

- Each province of Canada has its own regulations, rules and standards that must be followed for contaminated sites.
- Provinces permit either a risk-based or a standards-based approach to remediating contaminated lands.
- In Ontario, the Ministry of the Environment, Conservation and Parks has a brownfield regime mandating that those who develop or change the use of land to a more sensitive use (e.g., commercial to residential) must first meet certain standards and obtain a Record of Site Condition (RSC).
- Municipalities may have their own rules – separate and apart from applicable provincial requirements – that must be considered.
- Regulators have broad “clean-up” order powers that can potentially reach current and former owners, occupiers/tenants and other persons responsible for the contaminant, the contaminated land or the business that caused the contamination.
- Third parties or the government typically have a statutory right of compensation in various regulatory regimes across Canada for losses or damages suffered as a result of contaminated land, including contamination that has migrated off-site. These claims for compensation are dealt with by the courts in a civil action.
- Once you own a business that has contaminated land, or purchase a contaminated site, as a general rule, you inherit the liability associated with that business/site. That liability can be indefinite.
- If you discover your land is contaminated, you may be able to start a claim against the responsible party(s). Understand there will be an applicable limitation period – a set period of time after you have discovered a possible claim within which you must start a claim. Limitation periods can vary province to province.

USEFUL RESOURCES

- [Brownfields redevelopment in Ontario](#)
- [Ontario Regulation 153/04](#)
- [Rules for Soil Management and Excess Soil Quality Standards](#)
- [On-Site and Excess Soil Regulation](#)
- [Alberta land management/development](#)
- [British Columbia – Contaminated sites](#)
- Canadian Brownfields Network – [The State of Brownfields in Canada](#) (Nov 2018)
- [Handling excess soil](#)
- [Excess Soil Pause in Implementation](#)
- [Excess Soil Registry](#)

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- [Ontario courts continue to clarify statutory rights of compensation](#)
- [Ontario courts' guidance on discoverability](#)
- [Ontario's new excess soils legislation: legal obligations and risk management](#) (webinar)

Things to do

- Do your due diligence before purchasing or leasing potentially contaminated sites. Engage environmental consultants and legal counsel early to ensure full understanding of the potential for contamination on, in or under any property or business you are considering purchasing or leasing.
- If purchasing a contaminated site, work with your environmental consultants and legal counsel to build in appropriate representations, warranties and indemnities for contamination, or factor the contamination costs and contingencies into your purchase price. Consider whether insurance may be available to cover certain environmental risks.
- Understand you may have self-reporting obligations at law, once you discover contamination, depending on where the contamination resides and in which province the site is located.

RELATED TOPICS

- [Dealing with environmental regulators](#)
- [Environmental emergency response](#)
- [Owning or leasing real property in Canada](#)
- [Investing in a Canadian business](#)
- [Insolvency and restructuring in Canada](#)

Need more info?



Osler's Environmental Group can help.
Find out more at
osler.com/environmental

Retaining intellectual property in what you develop



Things to know

CANADA IS DIFFERENT

Important differences exist between intellectual property (IP) rules in Canada and elsewhere. Key points to remember as between Canada and the U.S. include the following:

- Canada does not have a “work for hire” regime, making it critical to localize IP ownership clauses in agreements with employees, contractors and service providers.
- Canada’s “fair dealing” exceptions to infringement of copyright are different from “fair use” principles in the U.S. and may not be available in similar circumstances.
- It is necessary in Canada to have a waiver of moral rights signed by each person involved in the creation of a work protected by copyright.

OWNERSHIP

The rules for ownership of IP depend on the type of IP:

- For copyright, in most circumstances, an employer is deemed to own a work created by an employee, but an independent contractor or service provider is deemed to own a work that it creates (subject to an override in a written contract).
- For patent, the employee owns their invention except in circumstances where the company is the intended owner or there is an override in a written employment or services contract.
- IP created by more than one person or entity will be jointly owned, unless otherwise agreed; joint ownership can create challenges in decision-making regarding how IP rights are prosecuted, maintained and enforced and how profits are shared.

USEFUL RESOURCES

Government of Canada

- [Basics of IP](#)
- [Doing business abroad: Protecting your IP](#)
- [Copyright guide](#)
- [Patents - Learn the basics](#)
- [Policy on IP in government procurement](#)

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- [IP 101: Protecting your ideas your way](#)

Things to do

EMPLOYMENT RELATIONSHIPS

Address intellectual property (IP) ownership in a written agreement with each employee. Key concepts to cover include:

- No incorporation of previously created or third-party IP, such as work done during prior studies or employment, into company IP without clear permission
- Assignment to employer of all IP generated by employee in the course of employment
- Waiver of moral rights by employee
- Commitment of employee to take steps required by employer to register, maintain, protect and enforce its IP

AGREEMENTS WITH CONTRACTORS AND SERVICE PROVIDERS

Address IP ownership in a written agreement with each contractor or service provider. Key concepts to cover include the ones applicable to employment contracts (see above), plus rules regarding each party's rights with respect to:

- Background IP owned by each party before the arrangement
- IP generated within the arrangement
- IP that may be developed following the arrangement

AGREEMENTS WITH CUSTOMERS

Where commercially feasible, address licence rights and IP ownership in agreements with customers. Key concepts to cover include:

- Retention of ownership of IP by you, particularly in any contract with the government
- Restrictions on use, distribution, sublicensing and assignment

RELATED TOPICS

- [Registering your trademarks](#)
- [Registering your copyright](#)
- [Applying for a patent](#)
- [Registering your industrial designs and integrated circuits](#)
- [Registering a .CA domain name](#)
- [Employment agreements](#)
- [Protecting your trade secrets](#)
- [IP licensing in Canada](#)



Need more info?

Our Intellectual Property team can help.
Find out more at osler.com/IP

Registering your trademarks



Things to know

REGISTRATION RIGHTS

- A Canadian trademark registration will give you the exclusive right to use your mark in association with your registered products or services across Canada, and the right to exclude others from using confusingly similar marks.
- A registration expires 10 years from the registration date but can be renewed for successive terms for as long as the trademark is in use in Canada.
- Amendments to the [Trademarks Act](#) extend availability of trademark protection to go beyond words, symbols and designs to include additional types of marks, such as scents, tastes and textures.

USEFUL RESOURCES

Government of Canada

- [Understanding the basics of IP](#)
- [A guide to trademarks](#)
- [Canadian Intellectual Property Office](#)

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- [IP 101: Protecting your ideas your way](#)

Things to do

DEVELOP A REGISTRATION STRATEGY FOR CANADA

- Undertake a review of your trademark portfolio and assess the costs and benefits of applying for Canadian registrations on existing or newly developed marks.

REGISTERING A TRADEMARK

- A trademark application may be filed electronically with the Canadian Intellectual Property Office (CIPO) on its website. The application sets out, among other things, the applicant's name and address, the trademark, and the goods and services with which the mark will be used in Canada.
- As the application is examined by CIPO in both form and substance, it is advisable to engage a registered Canadian trademark agent to prepare and file the application and assist in the application process. A registered trademark agent may be a law firm, a lawyer, or a non-lawyer professional, and may also act as a representative for service. CIPO maintains a list of registered trademark agents on its website. If the applicant does not (yet) have an office or place of business in Canada, a representative for service in Canada can be appointed for the purpose of receiving correspondence from CIPO.
- File applications to register your trademarks in Canada before starting to sell products or provide services in Canada (doing so will minimize the possibility that another business, observing your use of the marks elsewhere, will attempt to register the same marks first in Canada and preclude registrations by you).

RELATED TOPICS

- [Retaining intellectual property in what you develop](#)
- [Choosing, registering and protecting your corporate name](#)
- [Registering a .CA domain name](#)
- [Applying for a patent](#)
- [Registering your copyright](#)
- [Registering your industrial designs and integrated circuits](#)
- [Protecting your trade secrets](#)
- [IP licensing in Canada](#)



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Our Intellectual Property team can help.
Find out more at [osler.com/IP](https://www.osler.com/IP)

Applying for a patent



Things to know

- A Canadian patent gives the patent holder the exclusive right to make, use and sell the patented invention.
- A patent generally expires 20 years from the filing date of the application.
- Canadian patents are granted on a “first-to-file” basis, not “first-to-invent” – this means that it is essential to prepare and *file* a patent application at the earliest opportunity.
- For an invention to be patentable in Canada, it must be:
 - new (i.e., not already publicly disclosed);
 - useful (i.e., capable of use for a practical purpose); and
 - not obvious to someone skilled in the art (i.e., inventive).

USEFUL RESOURCES

Government of Canada

- [Understanding the basics of IP](#)
- [A guide to patents](#)
- [Canadian Intellectual Property Office](#)

osler.com

- [IP 101: Protecting your ideas your way](#)

Things to do

DEVELOP A PATENT STRATEGY FOR CANADA

- Undertake a review of your patent portfolio and assess the costs and benefits of applying for Canadian patents on existing or newly developed inventions.

APPLY FOR A PATENT

- A patent application may be filed electronically with the Canadian Intellectual Property Office (CIPO) on its website. The application sets out, among other things, the applicant's name and address, the inventor(s), drawings for the invention, and specifications and claims to the invention.
- Because the application is examined by CIPO in both form and substance and because of the complexity of patenting an invention, it is customary (and indeed recommended) to engage a registered Canadian patent agent to prepare and file the application and assist in the application process. A registered patent agent may be a law firm, a lawyer, or a non-lawyer professional. CIPO maintains a list of registered patent agents on its website.
- If you have filed a patent application in a member country of the *Paris Convention* or the WTO, and you are considering exploiting the same invention in Canada, file an application for the invention in Canada within 1 year of the filing date of that earlier application (to claim the benefit of the earlier filing date for the Canadian application).

RELATED TOPICS

- [Retaining intellectual property in what you develop](#)
- [Registering a .CA domain name](#)
- [Registering your trademarks](#)
- [Registering your copyright](#)
- [Registering your industrial designs and integrated circuits](#)
- [Protecting your trade secrets](#)
- [IP licensing in Canada](#)



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Registering your copyright



Things to know

- Copyright protection in respect of an original work arises upon the creation the work.
- Registration of copyright is not necessary, but registration provides presumptions that are useful in the event of litigation.
- Copyright generally lasts for the life of the author of the work plus 50 years (and this period will soon be extended to 70 years).
- The *Copyright Act* protects moral rights of authors, which generally include the right to the integrity of the work, the right of attribution, and the right to remain anonymous. Moral rights are not assignable and can be waived only by the author.

USEFUL RESOURCES

Government of Canada

- [Understanding the basics of IP](#)
- [A guide to copyright](#)
- [Canadian Intellectual Property Office](#)

osler.com

- [IP 101: Protecting your ideas your way](#)

Things to do

- When you suspect that someone has infringed your copyright, consider filing an application to register the copyright before starting a lawsuit to benefit from useful evidentiary presumptions provided by the registration.
- An application to register copyright may be filed electronically with the Canadian Intellectual Property Office (CIPO) on its website. The application sets out, among other things, the applicant's name and address, the title of the work, the category of work (e.g. literary, dramatic, etc.), the author(s), and the date and country of first publication if the work has been published. It is not necessary to submit a copy of the work with the application.
- CIPO only conducts a cursory examination of the application. If the application meets the formal requirements, registration typically issues within days of filing the application. Although it is not necessary to engage a legal professional to assist in the application process, it is advisable to obtain legal advice when preparing the application.
- Have a waiver of moral rights signed by each person involved in the creation of a work protected by copyright.

RELATED TOPICS

- [Retaining the intellectual property in what you develop](#)
- [Registering your trademarks](#)
- [Applying for a patent](#)
- [Registering your industrial designs and integrated circuits](#)
- [Registering a .CA domain name](#)
- [Protecting your trade secrets](#)
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Registering your industrial designs and integrated circuits



Things to know

INDUSTRIAL DESIGNS

- Registration gives the registrant the exclusive right to manufacture, import, sell and rent any article in respect of which a design is registered and to which the design (or a design not differing substantially from the registered design) has been applied.
- An aesthetic shape, configuration, pattern or ornament of useful objects or articles may be registered as an industrial design.
- The graphical user interface for a computer or mobile application may be protectable by industrial design.
- Colour is now a registrable design feature in Canada.
- An industrial design filed after November 5, 2018, once registered, will expire on the later of 10 years after the registration date of the design or 15 years after the filing date of the application.

INTEGRATED CIRCUITS

- Registration protects the topography, or three-dimensional layout or configuration of electronic circuits, in integrated semiconductor chips and provides the exclusive right to reproduce the topography, manufacture integrated circuit products that incorporate the topography, and import or commercially exploit (i.e., sell and lease) the topography or integrated circuit products that incorporate the topography.
- A registration expires after 10 years from the application filing date or when the topography was first commercially exploited, whichever comes first.

USEFUL RESOURCES

Government of Canada

- [Understanding the basics of IP](#)
- [A guide to industrial designs](#)
- [A guide to integrated circuit topographies](#)
- [Canadian Intellectual Property Office](#)

osler.com

- [IP 101: Protecting your ideas your way](#)

Things to do

DEVELOP A REGISTRATION STRATEGY FOR CANADA

- Undertake a review of your industrial designs and integrated circuits and assess the costs and benefits of applying for registrations in Canada.

REGISTRATIONS

- If you have filed an industrial design application in a member country of the [Paris Convention](#) or the WTO, and you are considering exploiting the same design in Canada, file an application for the design in Canada within 6 month of the filing date of that earlier application (to claim the benefit of the earlier filing date for the Canadian application).
- Canada now accepts *Hague* industrial design applications designating Canada (similar to the PCT regime for patents).
- If you have already published the design anywhere in the world, file the application to register the design in Canada within 1 year of the publication date.
- An application to register an industrial design may be filed electronically with the Canadian Intellectual Property Office (CIPO) on its website. The application sets out, among other things, the applicant's name and address, a description of the design, and drawings of the design.
- An application to register a topography must be filed with CIPO in hardcopy. The application sets out, among other things, the applicant's name and address, the date and place of first commercial exploitation if applicable, drawings/photographs of the topography, and a description of the topography's nature or function.
- If the industrial design or topography applicant does not (yet) have an office or place of business in Canada, a representative for service in Canada must be appointed for the purpose of receiving correspondence from CIPO. It is customary to seek legal advice and/or retain legal professionals to prepare and file the application and assist in the application process.

RELATED TOPICS

- [Retaining intellectual property in what you develop](#)
- [Registering your trademarks](#)
- [Applying for a patent](#)
- [Registering your copyright](#)
- [Registering a .CA domain name](#)
- [Protecting your trade secrets](#)



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Protecting your trade secrets



Things to know

TRADE SECRETS

- Trade secrets are a form of intellectual property.
- A broad range of information can be considered trade secrets, including for example formulas, processes, designs, production methods, customer lists and business plans.
- Information will only be protected by trade secret if it is confidential (known to relatively few people and not publicly disclosed) and if the holders of the trade secret took reasonable steps to maintain its secrecy.
- Trade secrets must also have economic value, providing a competitive advantage or having industrial or commercial application.
- There is no set expiry date for trade secret protection – the information will be protected for as long as it remains a secret.

ENFORCEMENT

- While the U.S. has both federal and state trade secret legislation, Canada does not protect trade secret rights under statute or through any formal registration process.
- Trade secrets are protected in Canada by contract or by tort where a duty of confidence or fiduciary duty is owed by a recipient to a discloser of confidential business information.
- Misappropriating confidential information can lead to criminal sanctions for fraud. Additionally, improperly disclosing trade secrets is economic espionage under the federal *Security of Information Act* if done in connection with a foreign economic entity and if resulting in damage to Canada's economy, security or international relations.

USEFUL RESOURCES

Government of Canada

- [Understanding the basics of IP](#)
- [What is a trade secret?](#)
- [Canadian Intellectual Property Office](#)

World Intellectual Property Organization

- [What is a trade secret?](#)

osler.com

- [IP 101: Protecting your ideas your way](#)

Things to do

DEVELOP POLICIES AND SYSTEMS TO PROTECT TRADE SECRETS

- Keep an updated inventory of your trade secrets and other intellectual property.
- Store trade secrets securely, locking up tangible information and providing appropriate protection for computer-based systems.
- Limit access to trade secrets on a “need to know” basis.
- Require workers to comply with policies governing confidentiality and trade secrets, including at the start of employment and during exit interviews.

ENTER INTO APPROPRIATE AGREEMENTS WITH EMPLOYEES, CONTRACTORS AND THIRD PARTIES

- Enter into clear agreements with employees and contractors governing use and ownership of company confidential information.
- Minimize external disclosure of confidential business information by segregating confidential and non-confidential information, and require third-parties to sign appropriate non-disclosure agreements if confidential information must be shared.

RELATED TOPICS

- [Retaining intellectual property in what you develop](#)
- [Registering your trademarks](#)
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- [Registering your copyright](#)
- [Registering your industrial designs and integrated circuits](#)
- [IP licensing in Canada](#)



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Registering a .CA domain name



Things to know

- Many foreign companies use a .CA domain name to build goodwill and target consumers in Canada.
- All .CA domain names must be registered by individuals or companies that meet “Canadian Presence Requirements” — even if the domain name is being used only to re-direct internet traffic to another URL.
- Options for meeting the Canadian Presence Requirements include being:
 - A federally or provincially incorporated company (including a Canadian subsidiary of a foreign entity)
 - A Canadian citizen or permanent resident of Canada
 - The holder of a trademark registered in Canada (but only where the domain name consists of or includes the exact word component of the registered trademark)
- You can’t assume that because you have a registered trademark or have registered a business name, another person would be prevented from registering a .CA domain name that includes the same mark or name.
- A .CA domain name can be registered for a term of one to ten years, and can be renewed for subsequent terms indefinitely as long as the registrant continues to meet the Canadian Presence Requirements.

USEFUL RESOURCES

Canadian Internet Registration Authority

- [Canadian Presence Requirements](#)
- [Checking Domain Name Availability](#)
- [Finding a Registrar](#)
- [Registering Your Domain Name](#)

Things to do

CHECK AVAILABILITY

- You can find out if a domain name is available by using the [search function](#) provided by the Canadian Internet Registration Authority (CIRA).

CHOOSE A REGISTRAR

- All .CA domain names are registered through online retailers called Registrars – CIRA publishes a list of all certified Registrars to choose from.

REGISTER YOUR DOMAIN NAME

- Because CIRA and Registrars only communicate (including for renewal notices) with the registrant and administrative contacts provided during the registration process, think twice before letting a third party, such as a marketing agency, register a domain name on your behalf and always ensure that registration information is up to date.

RELATED TOPICS

- [Registering your trademarks](#)
- [Choosing, registering and protecting your corporate name](#)



Need more info?

Contact us at counsel@osler.com

IP licensing in Canada



Things to know

- The structuring of arrangements that provide for the exchange and sharing of intellectual property, such as the rights held under patents, trademarks, copyright and industrial designs, is a critical component of many commercial transactions including agreements governing asset and share acquisitions, technology and software licence agreements, manufacturing and distribution arrangements, construction contracts, franchise agreements, entertainment and other media agreements and arrangements with universities and governmental authorities.
- Considerations such as the ability to use, own, maintain and enforce intellectual property, as well as liability for intellectual property infringement and misappropriation, are core considerations in many commercial arrangements.
- In Canada, trademarks function to notify consumers about the source and quality of goods and services. Trademark owners must exercise sufficient control in licensing arrangements to maintain the distinctiveness and validity of licensed trademarks.
- Intellectual property rights allow rights holders to exclude others from the use of their intellectual property. However, care should be taken to ensure that any contractual restrictions that leverage the exclusive rights conferred under an intellectual property right do not raise competition law concerns.

USEFUL RESOURCES

Government of Canada

- [Ways to take your idea to the market](#)

World Intellectual Property Organization

- [Successful Technology Licensing](#)

Innovaccess (an EU-funded initiative)

- [Intellectual Property Licensing](#)

European IP Helpdesk

- [Commercializing Intellectual Property: Licence Agreements](#)

Things to do

- Understand exactly what intellectual property forms part of the business deal and how those rights integrate with the subject matter of the deal and the intentions of the parties. Ensure that the commercial terms properly reflect these considerations.
- With respect to the licensing of intellectual property, ensure that all parties involved understand and agree upon the nature and scope of the intellectual property and the terms under which it will be used, including permitted uses, geographic scope, fields of use, financial terms, representations and warranties, term, right to sublicense or subcontract, technical support, responsibilities to defend and pursue claims of infringement and rights regarding future developments relating to the licensed intellectual property.
- With respect to the creation or development of intellectual property and related subject matter, address the ownership and right to use such foreground intellectual property as well as the use of the parties' background intellectual property and any future intellectual property.
- With respect to the transfer of intellectual property, address the transfer of current and future intellectual property, the obligation to record the transfers with Canadian and foreign authorities, temporary or long term technical support and the transfer of supporting media.
- Ensure that the parties involved in the transaction are properly compensated for the use or transfer of intellectual property through arrangements that may involve forms of royalty support; initial fees; milestone payments based on events, sales goals or time and/or equity participation; and protecting the parties' interests in the event of insolvency.

RELATED TOPICS

- [Retaining intellectual property in what you develop](#)
- [Registering your trademarks](#)
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- [Registering your copyright](#)
- [Protecting your trade secrets](#)

Need more info?



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Consumer privacy



Things to know

- Canada broadly regulates the collection, use and disclosure of personal information in the course of commercial activity.
- Canada's privacy laws apply to organizations collecting personal information of Canadian residents, even if those organizations are located outside of Canada.
- Personal information is defined to cover "information about an identifiable individual", regardless of whether the information is publicly available.
- Subject to exceptions, consent of the individual is required for any collection, use or disclosure of personal information.
- Even with consent, any collection, use or disclosure of personal information must meet a reasonable person test.
- Additional fair information principles reflected in Canadian privacy laws include: limiting collection, limiting use, disclosure and retention, accuracy, openness, individual access and challenging compliance.
- Canada's data privacy regulators take an active approach to enforcement.

Things to do

- Localize your privacy policy.
- Compare your current privacy practices (including notice and consent processes) to Canadian requirements.
- Build privacy into the design of your products, services and business processes.
- Ensure that you have documented internal policies and procedures that comply with privacy commissioner "accountability" guidance, including for responding to a data breach.

USEFUL RESOURCES

- [Privacy toolkit for businesses from the Office of the Privacy Commissioner of Canada](#)
- [AccessPrivacy by Osler](#)

osler.com

- [Batten down the hatches: The GDPR wind is about to blow](#)

RELATED TOPICS

- [Data localization](#)
- [Mobile app privacy](#)
- [Telemarketing](#)
- [Electronic messaging](#)
- [Online behavioural / targeted advertising](#)
- [Human rights in the workplace and privacy](#)



Need more info?

Osler's Privacy team can help. Find out more at osler.com/dataprivacy

Data localization



Things to know

- Private sector privacy laws permit organizations in Canada to transfer personal information to another jurisdiction for processing, but does impose conditions.
- Public sector privacy laws in some provinces (British Columbia and Nova Scotia) prohibit personal information in the custody or control of public bodies from being stored or accessed outside of Canada, subject to exceptions.
- In some circumstances, health information laws prohibit personal information from being disclosed outside of a province or Canada.

Things to do

- Before transferring personal information, assess the risks to the integrity, security and confidentiality of the data outside of Canada – this may require avoiding transfers to certain countries or transferring sensitive information.
- Obtain contractual commitments from any service provider (including affiliated companies) so that the personal information will have comparable protections to the protections in Canada.
- Inform individuals that their information may be sent to another country and may be accessed by the courts, law enforcement and national security authorities under local laws (which may be different than the laws in Canada).
- Ensure that you do not store or access personal information (e.g., when providing a digital or cloud service) on behalf of a public body, hospital or health provider without considering how geographic restrictions found in Canadian legislation may apply.

USEFUL RESOURCES

- [Guidelines for Processing Personal Data Across Borders](#)

RELATED TOPICS

- [Consumer privacy](#)
- [Mobile app privacy](#)
- [Human rights in the workplace and privacy](#)



Need more info?

Osler's Privacy team can help. Find out more at osler.com/dataprivacy

Online behavioural / targeted advertising



Things to know

- Canadian privacy regulators take the position that the information involved in tailoring ads for users based on their online activities or contact information generally constitutes personal information.
- Opt-out consent for online behavioural advertising (OBA) is generally considered reasonable, provided certain conditions are met.

Things to do

- Provide notice to individuals at the time or before the OBA data flow takes place in a manner that is clear and understandable using communication methods such as online banners, layered approaches, and interactive tools.
- Provide information about the various parties involved in online behavioural advertising.
- Ensure individuals are able to easily opt-out.
- Ensure the opt-out takes effect immediately and is persistent.
- Do not collect or use, to the extent practicable, sensitive personal information.
- Destroy personal information as soon as possible or effectively de-identify it.
- Ensure that your practices comply with the relevant guidance and decisions of Canadian privacy regulators.

USEFUL RESOURCES

- [Privacy commissioner guidance](#)
- [Digital Advertising Alliance of Canada](#)

RELATED TOPICS

- [Advertising to Canadians](#)
- [Electronic messaging](#)
- [Telemarketing](#)
- [Consumer privacy](#)



Need more info?

Osler's Privacy team can help. Find out more at osler.com/dataprivacy

Mobile app privacy



Things to know

- Canadian privacy laws apply to the collection, use and disclosure of personal information through mobile apps.
- Privacy regulators have issued detailed [guidance](#) on how they expect app developers to overcome the challenges of small mobile device screens and the speed of the mobile app development cycle.
- Mobile app developers have been targeted in compliance sweeps by regulators.

Things to do

- Build privacy (including compliance with [regulatory guidance](#)) into the design of your app.
- Use layered, just-in-time notices, and avoid relying on disclosures in your privacy policy.
- Tell potential users what personal information will be collected and why, where it will be stored (on the device or elsewhere), who it will be shared with and why, how long you will keep it, and any other issues that will affect user privacy.
- Avoid collecting location information without express consent.
- Avoid collecting unique device identifiers not essential to the functioning of the app.
- Review the use of cross-app identifiers for compliance with online advertising requirements.

USEFUL RESOURCES

Government of Canada

- [Data privacy regulator guidance on mobile apps](#)

RELATED TOPICS

- [Consumer privacy](#)
- [Data localization](#)
- [Computer program rules](#)
- [Online behavioural / targeted advertising](#)



Need more info?

Osler's Privacy team can help. Find out more at osler.com/dataprivacy

Electronic messaging



Things to know

- Canada's Anti-Spam Law (known as CASL) is likely the most comprehensive e-messaging law in the world.
- CASL applies to “commercial electronic messages” (CEM), which is defined very broadly to include almost all email, SMS, instant messaging and at least some social media communications sent for a commercial purpose.
- CASL applies to messages received in Canada (even when the sender is outside Canada) and messages sent from Canada.
- Penalties for non-compliance include fines of up to CAD \$10,000,000 per violation (e.g., per message).

Things to do

- Establish which lawful authority (such as consent, an exemption to consent or a full exemption) can be used to send a CEM to Canadian recipients.
- If requesting express consent, ensure that your request complies with CASL's prescriptive form and content rules.
- Ensure that the content of any regulated message complies with CASL's disclosure and unsubscribe requirements.
- Implement a corporate compliance plan.
- Honour any unsubscribe request without delay, but in any event, no later than 10 business days after receiving it.
- Document your approach to compliance.

USEFUL RESOURCES

Canadian Radio-television and Telecommunications Commission

- [Canada's Anti-Spam Legislation](#)
- [Frequently asked questions](#)
- [Agreements and guidelines](#)

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- [CASL compliance: More than spam. Understanding Canada's anti-spam law](#)

RELATED TOPICS

- [Online behavioural / targeted advertising](#)
- [Telemarketing](#)
- [Advertising to Canadians](#)
- [Consumer privacy](#)



Need more info?

Osler's Privacy team can help. Find out more at osler.com/dataprivacy

Telemarketing



Things to know

- The Canadian Radio-television and Telecommunications Commission's (CRTC) Unsolicited Telecommunications Rules:
 - restrict which consumer phone numbers telemarketers can contact for solicitation purposes.
 - restrict calling hours.
 - prescribe information that must be disclosed.
 - restrict the use of Automatic Dialing-Announcing Devices (ADADs).
 - impose record-keeping obligations.
- Active enforcement by the CRTC, including maximum fines of up to CAD \$15,000 per violation (e.g. per call), make vigilant compliance critical.
- The Canadian Common Short Code Application Guidelines set out the telecommunications industry's requirements for short code services.
- There are licensing requirements (and additional operational rules) applicable to call centres in the provinces of British Columbia and Manitoba.

Things to do

- Determine whether registration with the CRTC is required, and if so, register.
- Determine whether your telemarketing activities require scrubbing against the Do Not Call List and the payment of ongoing fees, or whether they are exempt.
- Ensure that any text message-based advertising and scripts comply with the Canadian Common Short Code Guidelines.
- For text messages, consider what lawful authority you have to send the message and how the strict disclosure and unsubscribe requirements will be met under Canada's Anti-Spam Legislation.

USEFUL RESOURCES

- [CRTC Unsolicited Telecommunications Rules](#)
- [Canadian Common Short Code Application Guidelines](#)

RELATED TOPICS

- [Electronic messaging](#)
- [Online behavioural / targeted advertising](#)
- [Advertising to Canadians](#)
- [Consumer privacy](#)



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Computer program rules



Things to know

- Computer program provisions in Canada’s Anti-Spam Law (known as CASL) impose express (opt-in) consent rules on the installation of a computer program (including updates) another person’s laptop, smartphone, desktop, gaming console or other computing device.
- It is prohibited for a website to automatically install software on a visitor’s computer without getting consent, or for software to be updated without first obtaining consent.
- The consent rules apply regardless of whether the program is installed for a malicious or fraudulent purpose.
- Regulatory guidance suggests that self-installed software (e.g., a download from an app store) is not covered under CASL – although consent is needed for software that is not brought to the attention of the consumer prior to installation.
- Penalties for non-compliance include fines of up to CAD \$10 million per violation.

Things to do

- Consider whether Canada’s Anti-Spam Law (CASL) applies in your situation and whether you can rely on an exception to the consent rules.
- If requesting express consent, ensure that your request complies with CASL’s prescriptive notice rules (which include setting out a description in general terms of the functions and purpose of the computer program to be installed, a statement that consent may be withdrawn, the purpose/scope of the consent, and prescribed identity and contact information) and regulator guidance.
- Consider whether your program will trigger “written acknowledgement” rules applicable to certain computer functions that you know and intend to be contrary to reasonable expectations of the owner or authorized user of the device.

USEFUL RESOURCES

Government of Canada

- [Regulator’s CASL website](#)
- [Regulator guidance on computer program installations](#)
- [Regulator’s guidance on toggling/consent](#)
- [Regulator’s guidance on CASL regulations](#)

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- [CASL’s computer program rules cover much more than spyware](#)

RELATED TOPICS

- [Electronic messaging](#)
- [Mobile app privacy](#)
- [Consumer privacy](#)



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Insolvency and restructuring in Canada



Things to know

- Canada's insolvency and restructuring regime consists primarily of two statutes: (1) the [Companies' Creditors Arrangement Act](#) (CCAA), and (2) the [Bankruptcy & Insolvency Act](#) (BIA)
 - Both statutes provide for restructurings similar to Chapter 11 of the U.S. Bankruptcy Code (the Code), and the BIA provides for liquidations analogous to Chapter 7 of the Code
 - The BIA is available to most corporate debtors and provides a structured set of rules and regulations. The CCAA provides tremendous flexibility in restructuring proceedings for debtors with total debts of over \$5 million
 - Both statutes provide for a broad stay of creditors' rights and remedies; the filing of a plan or proposal to compromise the debtor's debts (or, as an alternative, the sale of some or all of its assets); meeting(s) of affected classes of creditors for voting on the debtor's plan or proposal; followed by court sanction. A court appointed officer monitors the proceedings and reports to the court and creditors
- The [Winding-Up and Restructuring Act](#) governs the restructuring and liquidation of certain eligible corporations, mainly financial institutions.
- In certain circumstances, Canadian companies may restructure pursuant to corporate statutes, such as the [Canada Business Corporations Act](#), fundamental changes in corporate structure through a court-approved plan of arrangement, including a compromise of corporate bonds and similar debt obligations.
- Secured creditors may apply to court for the appointment of a receiver or may privately appoint a receiver under their security documents to realize on secured assets.
- There is a hierarchy of priorities for claims against an insolvent debtor.
 - Super-priority status applies to certain claims, such as unpaid employee wages, payroll deductions, and certain pension payments.

USEFUL RESOURCES

Government of Canada

- [Office of the Superintendent of Bankruptcy](#)

Things to do

- In a cross-border insolvency, Canadian courts generally encourage coordination among the various insolvency proceedings in all jurisdictions so that the restructuring or liquidation can proceed in a fair and orderly manner
 - Part IV of the CCAA and Part XIII of the BIA enable coordination of cross-border insolvencies by permitting Canadian courts to recognize certain orders made in foreign insolvency proceedings

RELATED TOPICS

- [Financing and banking arrangements](#)
- [Investing in a Canadian business](#)
- [Acquiring a Canadian Business](#)

Need more info?



Our Insolvency and Restructuring Group team can help. Find out more at osler.com/insolvency

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