



About Canada

Doing Business In Canada

Who Makes the Laws in Canada?

Canada has a parliamentary system of government. The political party that elects the greatest number of members to the legislative body (federally, the House of Commons and provincially, the Legislature) is invited to form the government of the day. The federal Prime Minister and the provincial Premiers (the respective heads of the provincial governments) are elected by members of the political parties they represent. In each case, the cabinet is composed of elected members, and in some cases at the federal level, members of the Senate.

Canada also has three Territories — Yukon, Northwest Territories and Nunavut — whose powers are delegated to them by the federal government. While the Premier of Yukon is elected in the same way that the provincial premiers are elected, the Premiers of Northwest Territories and Nunavut are selected from within the non-partisan elected territorial councils.

Special arrangements are also in place for aboriginal peoples in different parts of the country. Indian bands, for instance, have jurisdiction over reserve lands.

Canada is a federation with a written, constitutionally-based division of powers between the federal government and the provincial governments. Municipal governments derive their authority from the provincial governments. The powers of each level of government are subject to limitations imposed on them by the *Charter of Rights and Freedoms* which statute forms part of the Constitution. With limited exceptions, no legislative action (including all legislation and regulations) or administrative proceeding (rulings) may be exercised by either Parliament or a provincial Legislature in a manner that would adversely affect:

- ◆ The freedom of expression and association of individuals;
- ◆ Certain rights of individuals with respect to the enforcement of laws and regulations; and
- ◆ The equality of individuals under Canadian law.

Canada has two official languages, English and French. All federal government services are available in both languages.

Federal Jurisdiction

The federal government has authority to make laws in areas of general interest to the country as a whole. For example, the federal government passes laws on income tax, banking, regulation of interprovincial and international trade, bankruptcy and insolvency, intellectual property, immigration, customs duties and crime.

Provincial Jurisdiction

Provincial governments have authority to make laws in many areas including education, health and matters affecting real and personal property rights. For example, provincial governments pass laws relating to corporate securities, secured interests in personal property, the purchase and sale of interests in real estate, consumer protection, the incorporation of provincial companies, sales tax, insurance, the administration of the courts and the enforcement of judgments.

Municipal Jurisdiction

Municipal governments have authority to make laws that are local in nature. For example, municipal governments pass laws relating to licensing requirements for conducting business within the municipality and zoning requirements affecting the use of land within the municipality.



Overlapping Jurisdiction

This three-tiered system — federal, provincial/territorial and municipal — often creates situations where overlapping levels of government regulation may address a single issue. For example, all three levels of government have enacted (subject to constitutional limitations) legislation, regulations or directives intended to protect the natural environment and to impose responsibility for the cost of cleaning up environmental damage. As well, the federal government and each of the provinces have a *Business Corporations Act*.

What is Canada’s Legal System?

All provinces except Québec and each territory have a legal system that is based on the English common law tradition. Québec has a civil law legal system based on the *Napoleonic Code*. In a sense, this gives Canadian lawyers an advantage: they are likely to be familiar with the underlying concepts of each of the two systems and can help bridge conflicts that arise in international transactions where both civil and common law legal systems play a role.

The Common Law

In Canada, there are many rules affecting the rights of parties conducting business in Canada. These rules derive from the judgments made every day in the courts of Canada. These rules form part of the law and are separate from statutes, regulations, by-laws and directives (the legislative enactments of federal, provincial/territorial and municipal governments). Over time, they are generally embodied in the practices observed by everyone and are referred to as the “common law.”

The Québec Civil Code

The province of Québec has enacted a *Civil Code* containing written rules that govern such matters as the law of commerce in the province. Québec courts then interpret the *Civil Code* on a case-by-case basis.

How Are Disputes Resolved in Canada’s Legal System?

In Canada, there is a comprehensive court system for resolving commercial disputes. Commercial matters are usually heard in the federal courts or the superior courts of the provinces. The judiciary system is fully independent from all levels of government and is comprised of federal and provincial courts. Judges of the courts in Canada are not elected; rather, they are appointed for life (subject to removal for cause and certain age restrictions) by the government of the day.

In addition to the court system, there are specialized independent tribunals which resolve disputes, including employment and municipal matters. In almost all cases, appeals are allowed from final decisions of courts or tribunals.

Disputes may also be adjudicated through arbitration if the parties have agreed to do so. In arbitrations, the decision-maker is not a judge; rather, he or she is an independent person agreed upon by the parties or appointed by a judge. Each province has legislation that governs the arbitration process, if selected by the parties in their contract or otherwise.



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