



# Aird & Berlis LLP Article Differences between the United States and Canada

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While there are many similarities between the legal system in Canada and in the U.S., we have set out below some significant differences that we find are often of interest to companies looking to expand into Canada that are familiar with doing business in the U.S.

## **Types of Entities**

Unlike in the U.S., where companies must determine whether to establish a C Corp, S Corp or LLC, in Canada the choice is quite simple. In most provinces, the only option is a standard corporation. A standard corporation provides limited liability and is a separate legal entity from its parent company. There are some provinces, including Alberta, which offer a unique corporate structure called an unlimited liability corporation, which may be an attractive vehicle for U.S. investors in certain scenarios because of the way a ULC can be viewed under U.S. tax laws.

We note that other types of entity structures do exist; however, they are not covered here because they are less commonly used by companies looking to expand into Canada.

## **Franchise Tax**

A franchise tax is a tax that is levied against businesses simply for conducting business in a certain jurisdiction. There are a number of states in the U.S. that impose a franchise tax on corporations, and the amount of franchise tax varies depending on the state (e.g., flat fee, based authorized capital). In contrast, there is no franchise tax in Canada. There is also no minimum investment that is required to incorporate a Canadian entity.

## **Taxation**

Canada's tax regime for individuals and corporations is primarily governed by the federal *Income Tax Act* (ITA), as well as by laws establishing provincial corporate taxes and sales taxes, among others. Unlike the U.S., Canada does not levy tax based on an individual's citizenship. Instead, the ITA levies income tax on individuals and corporations who are "resident" in Canada. Non-resident persons are liable for Canadian income tax only in respect of income earned in Canada.

## **Employment Law**

Unlike in the U.S., there is no "at-will" employment in Canada. When an employer terminates the position of an employee in Canada without cause, the employee is generally entitled to a minimum amount of notice from the employer by statute. In addition, the Province of Ontario requires severance pay, permitted there is a sufficient payroll for those who are employed for at least five years. Notice may be given in advance of the termination date (working notice) or paid to the employee in lump sum or as salary continuance while the employee does not attend work (pay in lieu of notice). The requirements vary widely across Canada, but an employer is generally obliged to provide an employee with one to two weeks' notice per year of service, usually up to a maximum of eight weeks' notice in most provinces. The employer can implement an employment contract that stipulates the amount of notice/severance owing, including language to limit such amount to statutory minimums.

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## **Litigation**

Since Canada is a member of the Commonwealth of Nations, Canadian courts often recognize legal principles developed in jurisdictions such as England, whereas U.S. jurisprudence has traditionally been less influential in Canada. Commercial law in Canada is generally less codified than in the U.S.; common law jurisprudence continues to be a significant source of legal principles that govern this area.

Generally, damages in the U.S. are considerably higher than those in Canada.

**We hope this information has shed some light on expanding into Canada. We would be happy to answer any questions you have about doing business in Canada.**

**Aird & Berlis LLP is a full-service, corporate-oriented firm with more than 230 lawyers with specialties in all principal areas of business law. In 2022 alone, we helped more than 100 companies enter the Canadian market. We have proudly assisted many of our clients grow from a small operation with a few remote Canadian employees to a large-scale Canada-based division, some of which are now being publicly traded.**

*Disclaimer: This article offers general comments on legal developments of concern to business organizations and individuals and is not intended to provide legal advice. Readers should seek professional legal advice on the particular issues that concern them.*

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Fiona has extensive experience advising international businesses entering the Canadian market. To date, she has advised more than 100 companies expanding into Canada. Fiona advises clients in this space all day, every day. She has been practising for more than a decade and is a regular speaker and writer on market expansion matters. Fiona is proud to have been recognized by *The Best Lawyers in Canada*, *The Canadian Legal Lexpert Directory* and *Benchmark Canada*.

A proactive and comprehensive approach is required to succeed in a new market. Fiona manages teams of other lawyers and patent agents to provide her clients with a full range of legal services to help their businesses grow. She acts as project manager to ensure her clients receive seamless legal services in all relevant areas.

Fiona takes great care to understand her clients' businesses and deliver advice that is tailored to meeting their specific needs. Her responsiveness, dedication to clear communication and hands-on approach show that she is personally invested in the success of her clients.



**Michael F. Horvat**

Partner

Michael is a member of the firm's Workplace Law Group. His practice focuses on all aspects of labour and employment law in both the federal and provincial jurisdictions. He advises employers in a number of industries, including manufacturing, transportation, retail, electrical distribution, construction and financial services, on various matters, including employment standards, human rights, discipline, discharge, union certification, grievances, wrongful dismissal, executive employment matters and transactions, as well as general labour and employment law issues.

Michael represents employers before the courts and administrative tribunals, such as the Ontario Labour Relations Board, the Ontario Superior Court of Justice, the Ontario Divisional Court, the Ontario Court of Appeal, the Grievance Settlement Board, the Canadian Railway Office of Arbitration, the Ontario Employment Standards Branch, the Ontario Workplace Safety and Insurance Board and in grievance arbitration and mediation.



**Andrew Magnus**

Partner

Andrew is a member of the firm's Capital Markets Group. He has experience in mergers and acquisitions, corporate finance and securities law. His practice spans a variety of industry sectors where he has participated in a variety of transactions, including public and private equity financing, debt financing, share and asset purchase transactions, corporate reorganizations and ongoing general corporate and commercial activities. Andrew frequently advises international clients on doing business in Canada.

In 2010/2011, Andrew accepted a secondment with a private equity fund in London, England and worked on a variety of transactions involving the acquisition and management of opportunistic real estate investments in the residential and hospitality sectors.



**Felix Ng**

Associate

Felix is a dedicated corporate lawyer. He is committed to learning about the intricacies of his clients' businesses in order to help them reach their goals. Felix's clients appreciate his responsiveness and problem solving skills on a wide variety of corporate matters.

Felix is a member of the firm's Corporate/Commercial Group. His practice focuses on M&A transactions and advising international clients on expanding their businesses into Canada. Felix represents clients in a range of industries, including pharma, e-commerce, transportation, agriculture, food and beverage and construction.

Felix has passed Level III of the Chartered Financial Analyst (CFA) Program.