Legal Tech in Canada

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Currently, Canada’s legal technology landscape is ripe for competition. As it stands, a few large companies control the majority of the market share when it comes to legal tech. As a result, legal professionals, whether large firms or sole practitioners, while reliant on these few large companies for their current needs, tend to be frustrated by the lack of competition, choice and customization available to them.

The largest trend in the legal tech market – and likely the global economy as a whole at the moment – seems to be artificial intelligence. However, despite the fixation on AI, many practitioners are wary, particularly of the potential for confidentiality breaches and the actual functionality.

Put simply, practitioners are looking for practical, cost-effective products that integrate with their practice and will make their lives simpler. In a market such as Canada’s, which is currently controlled in large part by a few companies, the competition will likely be welcome.

This appetite for growth is shown by the emergence of a “start-up culture” in Canada, particularly in Toronto and Vancouver. As an example, Toronto Metropolitan University’s Legal Innovation Zone regularly hosts international start-ups and has entered into international partnerships.

Blue chip tech companies like Meta, Microsoft, Amazon and LinkedIn all have outposts in Canada, contributing to the growing start-up culture. Statistics Canada’s last report on the information and communications technology sector showed the sector being responsible for 15.3% of national GDP growth between 2016 and 2021 and having grown by more than 27% in terms of its contribution to national GDP in that same time period.

Canada’s Legal Landscape

While jurisdiction is divided between the federal government, ten provincial governments and three territorial governments, the rules governing commerce are similar and in many cases identical. For example, corporate and employment laws, with the exception of Quebec’s civil law system, vary provincially, but are largely similar. Canada’s main privacy law is federal, but certain provinces have their own legislation, which is generally consistent but may feature additional or differing requirements.

Canada’s legal system has many similarities to those of the United Kingdom and the United States. Canada is a common law system, with the exception of Quebec. Alongside Quebec’s civil law system, there are specific French language laws that include specific regulation on having French as the common language in the workplace and apply to any business with 25 or more employees.

While not identical to the United Kingdom, Canada's legal market is accessible and attractive due to its similarities with the United Kingdom's legal market, its proximity to the expansive United States market and its upward trend in terms of growth.

Canadian taxes blend federal and provincial elements and include a VAT-like tax that has a federal component (GST) and a provincial component (PST). Many provinces have combined the two, meaning consumers pay a harmonized sales tax (HST).

Income tax rates also vary provincially, but the jurisdiction of incorporation is not determinative for tax purposes. Instead, the applicable rate is based on the province or provinces in which the corporation has a "permanent establishment," defined very generally as a fixed place of business.

Incorporation Considerations

Overall, incorporating a Canadian entity is a relatively quick and simple process compared to many other jurisdictions. For example, we can set up the Canadian entity within 24 hours of receiving the requested information from you. It is not necessary to be physically present in Canada, as all the forms can be signed and filed electronically and, unlike in certain European jurisdictions, there is no notary requirement. In addition, most provinces in Canada, including Ontario, Alberta and British Columbia, no longer require that there be a Canadian resident director, thus removing a significant hurdle for international companies at the beginning stages of a Canadian expansion. There is no minimum investment required to incorporate a Canadian entity.

Further, incorporating a Canadian entity also provides access to potential Scientific Research and Experimental Development credits, as many are only available to Canadian companies.

Employment Law: Special Considerations

Unlike in the United States, 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 Ontario and in the case of federally regulated employers, the employee is also entitled to severance pay, provided the employer in Ontario has the requisite payroll under the statute and the employee meets the applicable service thresholds. 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 of notice per year of service, usually up to a maximum of eight weeks' notice in most provinces. The employer can utilize an employment contract which stipulates the amount of notice/severance owing, including language to limit such amounts, subject to meeting all statutory employment standards requirements.

Employers also need to be mindful of the distinction between employees, dependent contractors, and independent contractors. Generally speaking, employees and dependent contractors are afforded additional rights and protections (particularly upon termination) than independent contractors. For instance, many employees are entitled to notice of termination or pay in lieu of that notice, as well as public holiday, vacation and overtime compensation, while independent contractors are not eligible for any of these benefits.

It is important to note that employers cannot arbitrarily categorize workers. Canadian courts and tribunals scrutinize independent contractor relationships carefully and have not hesitated to deem workers to be employees notwithstanding the employer's characterization. Should this occur, a company may be stuck with a "deemed employee" with whom they do not have the benefit of an employment agreement restricting entitlements. Such an employee would likely therefore be eligible for, among other things, common law reasonable notice of termination as well as accrued and unpaid public holiday, vacation and overtime pay.

While there is no universal test and no single factor is determinative, courts have made it clear that exclusivity and economic dependence are hallmarks of the employee/dependent contractor relationship. We work closely with clients in determining the structure of a working relationship and limiting certain liabilities, whether the result is an employee or independent contractor arrangement.

It is critical that properly drafted employment agreements address restrictions on payments following termination. Since Canada does not recognize "at will" employment, and in the absence of an enforceable agreement restricting notice or pay in lieu, courts will determine the appropriate notice period by assessing a number of factors, including length of service, age and job responsibilities. Employment agreements should also address, among other things, assignment of intellectual property and post-termination obligations relating to non-competition (now outlawed in some provinces), non-solicitation, non-disparagement and return of company property.

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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.

Fiona is pleased to offer a multitude of resources answering often-asked questions about expanding into Canada, including this video and this one-page guide.

Felix Ng

Partner

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

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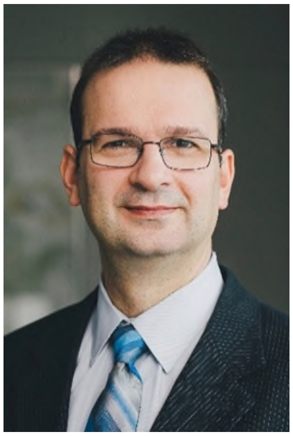

Michael Horvat

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.

Michael is a regular speaker and writer on employment and labour law matters.

Neil Guthrie, DPhil, LLB

Director, Professional Development, Research & Knowledge Management

With a focus on education, innovation and collaboration, Neil is responsible for managing Aird & Berlis LLP's professional development activities and knowledge management initiatives.

Neil's experience includes continuing legal education, student training, writing and editorial support, and knowledge management. He also has conducted and supervised legal research on a wide range of matters from all areas of practice.

Neil was responsible for developing the curriculum in legal research and writing for the Law Practice Program at Ryerson University, and currently teaches Advanced Legal Research and Writing at the Faculty of Law, University of Toronto.

Neil serves as the firm's representative to the Law Firm Diversity and Inclusion Network.

Bardia Jalayer

Legal Trainee

Bardia summered at the firm in 2021 and 2022. In connection with his law school's Integrated Practice Curriculum, he also completed a professional placement at the firm in fall 2022.

Bardia recently graduated with Distinction from the Lincoln Alexander School of Law at Toronto Metropolitan University and holds a Bachelor of Arts from the University of Western Ontario.