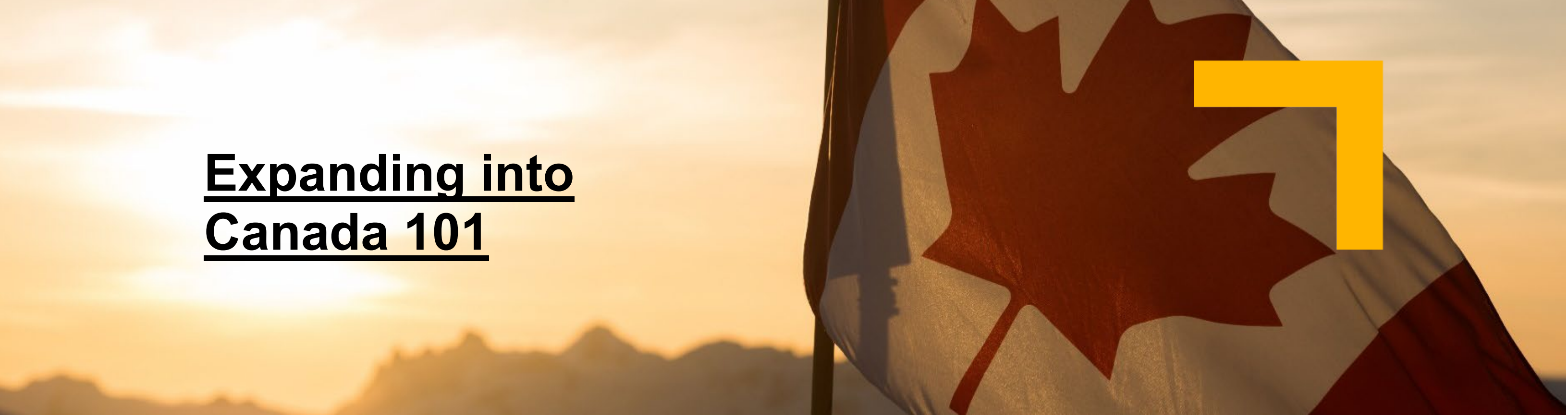

Expanding into Canada 101

July 2025

Canada's Legal Landscape

While jurisdiction is divided between the federal government, 10 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 are generally consistent but may feature additional or differing requirements.

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 may be completed electronically – and unlike 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 also isn't a minimum investment required to incorporate a Canadian entity.

Unlike in the U.S., where companies have to decide on the type of entity to incorporate, in most provinces as well as under the federal corporate statute, the only option is a standard corporation that provides limited liability and is a separate and distinct legal entity from its shareholders. There are a few provinces that offer a unique corporate structure called an unlimited liability company (ULC), which may be of interest to clients with a US parent company for US tax purposes. While the decision of whether to incorporate a ULC is purely a US tax question, our renowned cross-border tax group can help with the decision.

Lastly, 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

Companies accustomed to operating under U.S. employment law will find that Canadian law differs in numerous and important ways. Perhaps most significantly, Canada does not have at-will employment, making it critical to use carefully constructed employment agreements – available from us on a very cost-efficient basis – before work begins. We can also help with other regular features of the Canadian employment context, including wrongful termination law suits, human rights complaints and workplace investigations.

The key to reducing liability exposure as an employer is understanding 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 may not be eligible for any of these benefits.

It is important to remember 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, assignments 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.

Canadianizing Agreements

Clients looking to expand into Canada frequently ask us to 'Canadianize' their distribution, services and supply agreements. The differences can be slight or substantial, but even slight differences can have meaningful legal consequences. Provisions commonly impacted include those related to warranties, intellectual property and privacy.

Industry & Product-Specific Regulation

Canadian law specifically regulates certain industries such as financial institutions, broadcasting, telecommunications, transportation, mining, energy and food and drugs. Our specialized regulatory lawyers provide regular advice to foreign clients regarding these regulations, particularly as they relate to permits and operating licenses. BizPal is a useful online tool managed by various levels of government that helps businesses search for the permits or licenses they may need to operate in Canada.

Aird & Berlis LLP would be pleased to assist with your Canadian expansion. Please don't hesitate to reach out to Fiona Brown for more information or to discuss next steps.

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Have more questions about expanding into Canada? Please click here or scan the following QR code to access Aird & Berlis LLP's Market Expansion Dashboard, your one-stop-shop for market expansion resources:

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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, all of which can be found on the Market Expansion Resources Dashboard.