



Doing Business in **Canada**

MILLERTHOMSON.COM

Table of contents

GOVERNMENT AND LEGAL SYSTEM	7
What foreign companies need to know before they operate	
01. Levels of government	
02. Regulatory decision-making	
03. Legal system & dispute resolution	
QUEBEC CIVIL LAW AND QUEBEC LANGUAGE COMPLIANCE	15
01. Quebec Civil Law - the legal system that changes everything about your contracts	
02. The Charter of the French language - compliance obligations post-Bill 96	
BUSINESS ORGANIZATIONS IN CANADA	29
Choosing the right structure for your Canadian operations	
01. Introduction	
02. Corporations	
03. Partnerships	
04. Other ways to carry on business in Canada	
05. Registering a business	
06. Investment Canada Act considerations	
07. Quebec's corporate transparency requirements	
FOREIGN INVESTMENT REVIEW	45
Why the Investment Canada Act belongs at the top of your transaction checklist	
COMPETITION LAWS	49
What Canada's reformed Competition Act means for your business	
DEBT FINANCING TRANSACTIONS	53
What foreign lenders & borrowers need to know	
01. Introduction: The Canadian lending market	
02. Specific issues arising from lending & borrowing in Canada	
03. Tax rules affecting interest deductibility	
04. Limitation periods	
05. Security	
CANADIAN SECURITIES LAWS	71
What foreign companies and investors need to know	
01. Canadian securities regulatory regime	
02. Canadian stock exchanges	
03. Cross-border offerings: the multijurisdictional disclosure system	
04. Public company mergers and acquisitions	
05. Insider trading and reporting	
REAL ESTATE DEVELOPMENT	83
Buying, developing, & owning property in Canada as a foreign investor	
01. Registration systems	
02. Title insurance	
03. Ownership restrictions for non-residents	
04. Land transfer taxes	
CANADIAN INSOLVENCY LAW	93
What foreign companies need to know when a subsidiary is	

TRANSPORTATION **107**

Operating in Canada's freight, logistics, and transportation sector

01. Jurisdiction over transport matters
02. Motor carriers
03. Commodity taxes on transportation
04. Transport service intermediaries
05. Commodity taxes
06. Warehousing operations
07. Cargo theft, double-brokering, and fraud
08. Cross-border carriage of goods
09. Canada Border Services Agency ("CBSA")

ESG & SUSTAINABILITY REPORTING IN CANADA **127**

What foreign companies must disclose

01. Modern slavery legislation in Canada: mandatory reporting for supply chain risk
02. OSFI Guideline B-15: climate risk management & AMF climate risk management guideline
03. AMF climate risk management guideline: Quebec-supervised financial institutions
04. General ESG disclosure obligations applicable to all reporting issuers

CANADIAN CUSTOMS & INTERNATIONAL TRADE **137**

What foreign companies must navigate in a shifting trade environment

01. Customs duties
02. Value for duty
03. Tariff classification
04. Origin-preferential tariff treatment
05. Importation and the Canada Border Services Agency
06. Export limitations
07. Anti-dumping and countervailing
08. Free trade agreements
09. Modern slavery legislation

CANADIAN INCOME TAX **153**

What foreign companies need to assess about Canadian taxes

01. Decision 1: subsidiary or branch, and why tax should drive it
02. Key decision 2: where you operate determines what you pay

CANADA SALES TAX **165**

What foreign companies owe before they open a Canadian office

CANADIAN INCOME TAX SOURCE DEDUCTIONS & PAYROLL TAXES **173**

What every foreign employer needs to know

01. Income tax source deductions
02. Federal Canada Pension Plan and Employment Insurance
03. Provincial payroll taxes
04. Exposure for compliance omissions
05. Quebec income tax source deductions and payroll taxes

BUSINESS IMMIGRATION **183**

Getting your people into Canada — and keeping them compliant

01. Temporary business entry and work permits
02. Permanent residency

Table of contents *(cont'd)*

EMPLOYMENT IN CANADA 193

What every foreign employer must know before hiring

01. Jurisdiction of employment
02. Employment standards legislation
03. Human rights and accessibility
04. Termination of employment
05. Occupational health and safety
06. Workers' compensation legislation
07. Unionization
08. Privacy
09. Employment benefits
10. Language requirements in the workplace (Quebec only)

PRIVACY, DATA PROTECTION, & CYBERSECURITY 205

What foreign companies must consider before entering the Canadian market

01. Private sector privacy legislation
02. Artificial intelligence
03. Canada's Anti-Spam legislation
04. Compliance checklist for businesses entering Canada

INTELLECTUAL PROPERTY IN CANADA 215

Protecting and enforcing your IP assets

01. Introduction
02. Key recent developments: 2025–2026
03. Copyright
04. Trademarks
05. Patents
06. Confidential information and trade secrets

PATENTS IN CANADA 235

A practical guide for foreign businesses

01. Patentability requirements
02. Obtaining patent protection
03. Patent prosecution
04. Patent term and patent term adjustment
05. Ownership, assignments and licensing
06. Enforcement
07. Practical considerations for foreign businesses

INDUSTRIAL DESIGNS IN CANADA 245

Protecting your product's appearance

01. What can be protected?
02. Relationship to copyright protection
03. Registration requirements
04. International protection
05. Term of protection
06. Ownership and commercialization
07. Enforcement
08. Practical considerations for businesses



Miller Thomson Office Locations

Vancouver

700 West Georgia Street, Suite 2200
Vancouver, BC V7Y 1K8 Canada
+1 604.687.2242

Saskatoon

123 - 2nd Avenue South, Suite 1100
Saskatoon, SK S7K 7E6 Canada
+1 306.665.7844

Waterloo Region

115 King Street South, Suite 300
Waterloo, ON N2J 5A3 Canada
+1 519.579.3660

Montreal

1000 de la Gauchetière Street West,
Suite 3700
Montreal, QC H3B 4W5 Canada
+1 514.875.5210

Calgary

525 8th Avenue S.W., 43rd Floor
Calgary, AB T2P 1G1 Canada
+1 403.298.2400

Regina

2103-11th Avenue, Suite 600
Regina, SK S4P 3Z8 Canada
+1 306.347.8300

Toronto

40 King Street West, Suite 6600
Toronto, ON M5H 3S1 Canada
+1 416.595.8500

Edmonton

10155 - 102 Street, Suite 2700
Edmonton, AB T5J 4G8 Canada
+1 780.429.1751

London

255 Queens Avenue, Suite 2010
London, ON N6A 5R8 Canada
+1 519.931.3500

Vaughan

100 New Park Place, Suite 700
Vaughan, ON L4K 0H9 Canada
+1 905.532.6600





Canada Government & Legal System

What **foreign companies** need to
know **before** they operate

Canada Government & Legal System

What **foreign companies** need to know **before** they operate

WHO THIS IS FOR:

GCs, CFOs, and regional directors at foreign companies evaluating a Canadian market entry, acquisition, or investment — and legal counsel structuring Canadian operations, contracts, or dispute resolution frameworks.

For non-Canadian companies, Canada generally offers a stable, transparent and independent legal environment. The key expansion risk is not legal-system instability, but the need to identify which level of government regulates the proposed activities, obtain sector- and location-specific approvals, and plan for disputes in both common law and Quebec civil law jurisdictions.

01.

Levels of government

Canada is a constitutional monarchy and a parliamentary democracy. The federal Parliament sits in Ottawa, and each of the ten provinces has its own elected legislature. The three territories (Yukon, Northwest Territories and Nunavut) are governed by their respective governments and receive their legislative authority from the federal government, which has provided the territories with authority similar to that held by the provinces. For an expanding business, the practical point is that a national Canadian strategy often still requires province-by-province and, in some cases, territory-specific legal and regulatory analysis.

The Constitution Act, 1867 assigns exclusive legislative authority over specific matters to the federal and provincial governments respectively. There is overlap in the federal and provincial legislative jurisdictions in some areas. In the event of a conflict between valid federal and provincial legislation, federal laws prevail under the doctrine of paramountcy. Companies should therefore map their products, services, customers, employees, locations and regulated activities to the relevant federal, provincial, territorial and municipal regimes before launch or acquisition.

a. Federal jurisdictions

The federal government's legislative jurisdiction is most relevant to non-Canadian companies where activities involve foreign affairs, international trade, cross-border movement of goods or services, banking and financial services, telecommunications, bankruptcy and insolvency, intellectual property, immigration, competition and criminal law, national defence and other federally regulated sectors. Federal statutes and regulators may apply even where operations are carried out in one province.

b. Provincial jurisdictions

Provincial governments' legislative jurisdiction is particularly important for businesses in relation to real and personal property, contracts, consumer protection, securities and local distribution, employment standards, occupational health and safety, education, hospitals, natural resources, environmental approvals and intra-provincial trade and commerce. Certain powers affecting zoning, licensing, construction, local taxes and day-to-day operations are delegated to municipal governments, meaning a foreign company establishing a physical Canadian presence faces three layers of approval in most cases: federal, provincial, and municipal.

Each level of government is subject to the limits provided by the [Canadian Charter of Rights and Freedoms](#), which forms part of the *Constitution Act*, 1982.

Indigenous governments & consultation obligations

Indigenous government and communities in different parts of Canada exercise a variety of governmental powers within specific geographic areas as a result of agreements with the federal and provincial governments. In addition, constitutionally protected Aboriginal and treaty rights may require Crown consultation and, where appropriate, accommodation where government decisions could affect those rights. Projects in natural resources, infrastructure, real estate and other land- or resource-intensive sectors should assess these issues early because they can affect approvals, timing and dispute risk.

Practical consequence for foreign companies

Projects in natural resources, infrastructure, real estate, and other land- or resource-intensive sectors should assess Indigenous rights and consultation obligations at the earliest stage of project planning, before regulatory applications are filed, before capital is committed, and before implementation timelines are announced publicly. A consultation process that is initiated too late or conducted inadequately can delay or invalidate approvals that took months or years to obtain.

02.

Regulatory decision-making

Regulatory approvals and compliance obligations in Canada may be administered by federal, provincial, territorial, municipal or Indigenous bodies, depending on the activity and location. Non-Canadian companies should identify the decision-maker, applicable statutes, filing timelines, public-consultation requirements and appeal or reconsideration rights before committing capital or announcing implementation timelines.

Administrative decisions are generally subject to procedural fairness and may be challenged by judicial review, but courts often give specialized regulators deference within their mandates. Regulatory risk assessments should therefore consider not only legal compliance, but also regulator engagement, record-building and the timing consequences of review proceedings.

03.

Legal System & Dispute Resolution

a. Common law & civil law

In nine of the ten provinces and all three territories, the legal system is based primarily on common law. In Quebec, private law is based on civil law, although federal law and public law concepts continue to operate across Canada. Non-Canadian companies operating nationally should account for Quebec-specific contract, consumer, language and civil procedure requirements when structuring operations, documentation and dispute strategies.

Courts & litigation

The Canadian judiciary enjoys independence from the government in its decision-making powers. This reduces political-interference risk, but disputes can still involve significant cost, delay and evidentiary obligations, and outcomes may vary by forum and province.

Each province has both provincial courts and superior courts. The provincial courts try most criminal and family law matters, as well as certain regulatory offences. The superior courts deal with matters such as commercial litigation, constitutional litigation, judicial review, insolvency-related proceedings and serious criminal offences. For companies, superior courts are typically the main forum for significant commercial disputes, injunctions and challenges to government action.

There is a separate system of federal courts. The federal courts include the Federal Court, the Federal Court of Appeal and the Tax Court of Canada. The Federal Court and the Federal Court of Appeal have jurisdiction over matters specifically assigned to them by the *Federal Courts Act*, including many judicial reviews of federal administrative decisions and certain intellectual property and regulatory matters. The Tax Court of Canada has jurisdiction over appeals from assessments under the *Income Tax Act*, the *Excise Tax Act*, the *Employment Insurance Act* and the *Canada Pension Plan*. Decisions of the Federal Court and Tax Court of Canada can be appealed to the Federal Court of Appeal. For non-Canadian companies, disputes with federal regulators or tax authorities may proceed in specialized federal forums rather than the provincial courts.

The highest court in Canada is the Supreme Court of Canada. It has the final authority over all questions of Canadian law. For most cases, there is no right of appeal to the Supreme Court, and leave to appeal must be obtained. To be granted leave, an appeal must raise a question that is of sufficient public importance to justify the appeal. Because Supreme Court appeals are exceptional, parties should treat trial and intermediate appellate strategy as critical to dispute planning.

Alternative dispute resolution and enforcement

Commercial agreements in Canada frequently include forum-selection, governing-law, arbitration and mediation provisions. Non-Canadian companies should ensure those clauses are enforceable and aligned with the relevant province or territory, the location of assets and counterparties, and any mandatory statutory forum for employment, consumer, franchise, tax, insolvency or regulatory matters.

Canadian courts generally recognize and enforce foreign judgments and arbitral awards subject to jurisdiction, procedural fairness, public policy and applicable statutory requirements. Enforcement planning should be considered where a counterparty's assets, evidence or operations are located in more than one province or outside Canada.



KEY TAKEAWAYS:

- Canada does not have a single national regulatory approval. Federal, provincial, territorial, and municipal approvals operate in parallel, map all applicable regimes before committing capital or announcing timelines.
- Federal law applies even where operations are entirely within one province. A local business may still be subject to federal competition law, federal employment standards (if federally regulated), and federal sector-specific regulation.
- Indigenous consultation obligations apply to land- and resource-intensive projects and are actively evolving. The *Building Canada Act* streamlines timelines but does not eliminate consultation requirements. Engage early, inadequate consultation is one of the most common grounds for invalidating regulatory approvals in Canada.
- Quebec operates under civil law for private law matters. Contract templates, dispute resolution strategies, and operational documentation designed for common law provinces require Quebec-specific review before use in Quebec.
- Disputes with federal regulators and tax authorities proceed in specialized federal courts, not provincial superior courts. Ensure counsel has the right federal forum experience for regulatory and tax disputes.
- Commercial agreements should include enforceable forum-selection, governing-law, and arbitration provisions, but foreign governing-law choices do not displace Canadian mandatory rules in employment, consumer protection, and franchise contexts.
- Enforcement of foreign judgments and arbitral awards in Canada is generally available but requires jurisdiction, procedural fairness, and public policy compliance. Plan for enforcement at the contract drafting stage.

How Miller Thomson can help

Navigating Canada's multi-layered government and legal framework, including federal, provincial, territorial, municipal, and Indigenous, requires advice that integrates regulatory, litigation, and transactional expertise across jurisdictions. For foreign companies, the risk is not legal system instability but the cost of discovering jurisdictional complexity after capital has been committed and timelines have been announced.

Miller Thomson advises foreign companies on the full spectrum of Canadian government and legal system issues, from regulatory mapping and approval strategy through Indigenous consultation planning, commercial litigation, federal court proceedings, dispute resolution clause drafting, and enforcement of foreign judgments and arbitral awards. Our national presence, including our Montreal practitioners, means we can address the Quebec civil law dimension alongside the common law framework, because a national Canadian strategy requires both.

Speak with a Miller Thomson [*corporate lawyer*](#) about your Canadian regulatory and legal framework.







Quebec Civil Law & Quebec Language Compliance

Quebec Civil Law & Quebec Language Compliance

WHO THIS IS FOR:

GCs, CFOs, and regional directors at companies outside Canada planning to enter the Quebec market — and any foreign company that has already launched in Canada without a Quebec-specific legal and language review. If your Canadian strategy does not have a Quebec chapter, this article is where that changes.

Foreign companies entering Canada routinely underestimate Quebec. The assumption that a single national market entry strategy applies uniformly across provinces is the most common, and most expensive, mistake a foreign company can make. In Quebec, that assumption affects contract enforceability, triggers active regulatory enforcement, exposes directors to personal liability, and can delay or block a product launch before a single unit is sold.

The consequences are not theoretical. *The Office québécois de la langue française* actively investigates complaints, from customers, employees, and competitors. Fines run from \$3,000 to \$30,000 per violation for corporations, doubled for repeat offences, with each day of non-compliance potentially constituting a separate infraction. A foreign company with a non-compliant website, non-compliant packaging, and non-compliant contracts does not face one fine, it faces three, compounding daily.

This article tells you what is different about Quebec, what the consequences are, and what needs to be in place before you open your first Quebec office or sign your first Quebec contract.

For non Canadian companies expanding to Canada, Quebec presents a distinct legal and regulatory environment that can materially affect how a business structures its operations, drafts contracts and manages risk. Unlike other provinces, Quebec operates under a civil law system governed by the *Civil Code of Quebec* and imposes comprehensive French language requirements across commercial activities.

The key business risk for companies doing business in Canada is assuming that a Canadian market entry strategy can be applied uniformly across provinces. In practice, businesses entering Quebec without adapting to its legal and language framework may encounter difficulties with contract enforcement, as well as increased delays and costs.

The *Charter of the French Language* (the “**Charter**”) establishes French as Quebec’s only official and common language¹ and grants all persons the right to be served and communicated with in French by enterprises operating in Quebec².

Bill 96, adopted in 2022 with amendments fundamentally reshaped Quebec’s language compliance regime. The obligations described in this article reflect the post-Bill 96 landscape, which is

materially more stringent, more actively enforced, and broader in scope than what existed before. Foreign companies that reviewed their Quebec compliance before 2023 need to do so again. The rules have changed in ways that affect contracts, signage, software, francization thresholds, and OQLF enforcement powers simultaneously.

01.

Quebec Civil Law - The legal system that changes *everything* about your contracts

Quebec is the only jurisdiction in Canada governed by civil law. Every other province operates under common law inherited from England. This is not a procedural distinction, since it changes how contracts are formed, interpreted, and enforced; how security interests are created and registered; how corporate liability is assessed; and how disputes are resolved. A contract template drafted for use in Ontario, British Columbia, or any common law province requires Quebec-specific review before it is used in Quebec. Using it without that review creates enforceability risk that may not surface until a dispute arises.

Key civil law differences that affect foreign companies *immediately*

Contract formation and interpretation

Under the Civil Code of Quebec, contracts are interpreted according to the common intention of the parties, not solely the written text. Clauses that are standard and enforceable under common law may be read differently, limited, or set aside by Quebec courts applying civil law principles. Standard limitation of liability clauses, indemnification provisions, and dispute resolution mechanisms in global template agreements require Quebec-specific adaptation.

Security interests - the hypothec, not the mortgage or charge

Quebec does not recognize the common law mortgage or floating charge. Security over Quebec assets is created through a hypothec, a civil law security instrument registered in the Register of Personal and Movable Real Rights (RDPRM) or the land register. Foreign lenders and investors accustomed to taking security under PPSA regimes in other provinces must take separate Quebec-specific security documentation. Failing to register correctly in the Quebec registers means the security does not exist as against third parties.

No trust law as common law jurisdictions understand it

Quebec's civil law tradition does not recognize the common law trust in the same way. Certain structures, such as employee benefit trusts, holding structures, securitization vehicles, that function straightforwardly in common law provinces require careful restructuring for Quebec. This affects M&A transactions, financing structures, and estate planning for executives relocating to Quebec.

Directors' and officers' liability

The Civil Code of Quebec imposes specific duties on directors and officers of Quebec companies that differ in nuance from common law provinces. Foreign executives joining the board of a Quebec entity or taking officer roles should receive Quebec-specific advice on their obligations and exposure.

What to do before signing any Quebec contract

- Have every standard contract template reviewed by Quebec civil law counsel before first use in Quebec, not after the first dispute
- Confirm that any security interests over Quebec assets are documented using Quebec hypothec instruments and registered in the correct Quebec registers
- Identify any holding structures, trust arrangements, or financing vehicles in your Canadian structure that touch Quebec assets and have them reviewed for civil law compatibility
- Ensure any directors or officers of Quebec entities receive Quebec-specific governance advice at the time of appointment



02.

The Charter of the French Language - compliance obligations post-Bill 96

a. Language of the courts

For companies expanding to Canada, dispute resolution in Quebec raises specific procedural risks that can affect timing, cost and litigation strategy, and that most foreign legal teams discover only after litigation has begun.

French is the language of the courts in Quebec, subject to limited exceptions³. English-speaking parties can in certain circumstances conduct proceedings in English, but the right is not absolute and has been narrowed post-Bill 96. In addition, legal persons filing pleadings in English are, in principle, required to attach a certified French translation at their expense, although the application of this requirement remains subject to judicial developments and enforcement⁴.

In practice, this means that foreign businesses involved in litigation or administrative proceedings may face additional translation requirements, increased costs and potential delays. Budget for translation costs in any Quebec litigation estimate. In complex commercial disputes, certified translation of pleadings, exhibits, and expert reports can add material cost and time to proceedings.

b. Francization of Business

Bill 96 lowered the francization threshold from 50 employees to 25. If your Quebec workforce reaches 25 employees, francization obligations apply. This is one of the most operationally significant changes introduced by Bill 96 and the one most likely to affect foreign companies scaling their Quebec operations.

i) Certificate of francization

A key operational decision when expanding to Canada is how workforce size will impact compliance obligations in Quebec.

Enterprises employing 25 or more employees in Quebec must register with the *Office québécois de la langue française* and comply with francization requirements⁵. This threshold applies to employees working in Quebec, not total Canadian or global headcount. Once registered, businesses must demonstrate that French is used at an appropriate level internally, failing which they may be required to implement a formal francization program.

For foreign companies scaling operations, this requirement affects internal communications, HR policies, training and management practices. Addressing it late can lead to corrective measures imposed by regulators. A foreign company that reaches 25 Quebec employees without having assessed its francization position is already late. The OQLF does not wait for companies to self-identify, registration obligations are monitored and enforced.

What triggers the francization clock:

- Reaching 25 employees working in Quebec
- The obligation to register with the OQLF arises at that threshold — not at some later point when operations are more established
- Internal communications, management directives, HR documentation, and training materials all fall within the scope of francization review

ii) Francization committee

For companies with larger Quebec workforces, the Charter also permits authorities to require the creation of a francization committee. An additional governance layer that must be integrated into corporate structures.

c. Language of business and commerce**i) Information and service in French**

For companies doing business in Canada, customer interaction is one of the most immediate areas of compliance exposure in Quebec.

Consumers and businesses have a right to be informed and served in French, and enterprises must communicate in French in both B2C and B2B contexts⁶. Commercial documentation such as catalogues, websites and order forms must be available in French on terms that are at least as favourable as any other language version⁷. Meaning a French version that is harder to find, less complete, or less prominently displayed than an English version is non-compliant even if it technically exists.

In practice, a Quebec launch checklist must include:

- French-language website reviewed and live before the Quebec launch date, not after
- All customer-facing materials, such as catalogues, order forms, invoices, receipts, need to be available in compliant French versions
- Customer service capability in French from day one of Quebec operations

ii) Trademarks on goods and their packaging

Branding strategy is a critical and often underestimated decision point when expanding to Canada, particularly for companies entering Quebec with established global trademarks. Post-Bill 96, the rules on packaging and labelling are more strictly applied.

All inscriptions on products, packaging and related materials must be in French, subject to limited exceptions⁸. Registered trademarks may appear in another language only where no French version exists, and any generic terms must be translated into French⁹.

The practical consequence: A foreign company that launches its global packaging in Quebec without a Quebec-specific packaging review risks being required to redesign and reprint, after product has already shipped to retail. The cost of retroactive packaging compliance consistently exceeds the cost of pre-launch review. Build the Quebec packaging assessment into your product launch timeline, not your post-launch remediation plan.

Non-compliance can require redesign of packaging or delay commercialization.

iii) Trademarks on public signs and posters and in commercial advertising

Post-Bill 96, the rules on signage and advertising have been tightened. French must predominate, and where another language appears, it must be markedly subordinate to French. “Markedly subordinate” has a specific meaning under the Charter and its regulations: it is not satisfied by equal-size bilingual signage.

This requirement affects storefront signage, marketing campaigns, and branding decisions. Foreign entrants with global brand standards that assume equal-language treatment in signage need a Quebec-specific brand adaptation assessment before any Quebec-facing marketing materials are produced. These issues are best addressed at the design stage rather than retrofitted after launch.

iv) Goods, promotional material, and other information

This applies across all marketing channels including digital platforms, social media, email marketing, and online advertising, not only physical materials. A digital campaign launched in Quebec without French-language versions that are at least as prominent and complete as English versions is non-compliant from the moment it goes live.

This requires coordination between legal, marketing, and operational teams before campaign launch, not after.

v) Software

For technology-driven businesses expanding to Canada, software compliance is a key operational consideration.

Software used in the workplace, including software procured by the employer for employee use — must be available in French unless no French version exists, and must be offered on terms that are no less favourable. This affects not only software your company develops and sells into Quebec, but software your Quebec employees use internally. A foreign company deploying global enterprise software to its Quebec workforce must confirm that French-language versions of that software are available and offered to Quebec employees on equivalent terms¹⁰.

This can affect procurement, licensing and system implementation decisions. Build a French-language software availability assessment into your Quebec technology procurement process.

d. Language of contracts between privacy parties

i) Contracts of adhesion

Standard-form contracts, which is the agreements your company uses with customers, suppliers, and service providers at scale, are one of the highest-risk areas for foreign companies entering Quebec. Post-Bill 96, the requirements are more strictly applied and more actively enforced.

Standard-form contracts must be provided in French, and a party may only agree to be bound by another language version after receiving the French version¹¹. A global template agreement presented to a Quebec counterparty in English only, without a French version having been provided first, is non-compliant regardless of whether the counterparty speaks English fluently and prefers to contract in English. The obligation is on the enterprise providing the contract, not the counterparty receiving it.

What this means operationally

- Every standard-form contract used in Quebec requires a certified French version
- The French version must be provided to the counterparty before any other language version
- The counterparty's express agreement to use another language must be obtained after receiving the French version, not assumed from past practice or a general language preference clause

Failure to comply can affect enforceability and expose the business to contractual disputes.

ii) Other contracts

Other contracts may be entered into in another language where expressly agreed¹². This offers meaningful flexibility for sophisticated commercial transactions where both parties prefer to contract in English. However, the express agreement must be genuine and documented, a boilerplate "parties agree to contract in English" clause inserted by the stronger party into a standard form will not satisfy the requirement and may be treated as a contract of adhesion.

While this offers flexibility, businesses must ensure that proper processes are followed to avoid non-compliance.

iii) Other documents

Invoices, receipts and similar documents must be drawn up in French, although additional language versions are permitted under compliant conditions¹³. This affects billing systems, accounting software outputs, and operational processes across every Quebec transaction. Foreign companies implementing Canadian ERP or billing systems should confirm that French-language invoice generation is configured for Quebec operations before the first Quebec transaction is processed.

iv) Registration and enforcement of security interests and rights

Security and registration processes must be conducted in French, and filed in the correct Quebec registers, the RDPRM for movable property and hypothecs, and the land register for immovable property. This is a distinct requirement from the common law PPSA registration process used in other provinces. Security documentation prepared for use across Canada cannot simply be filed in Quebec without Quebec-specific review and adaptation.

e. Relations with the civil administration

i) Language of contracts

Contracts with Quebec's civil administration must generally be drafted exclusively in French¹⁴. For foreign companies pursuing public sector contracts in Quebec, this is an absolute requirement. There is no bilingual option for contracts with the civil administration. Ensure your Quebec public sector contracting process includes French-language contract preparation as a mandatory step, not an afterthought.

ii) Services provided to the civil administration

Services rendered to public authorities must be delivered in French¹⁵. This may influence staffing models, operational structures and internal processes. A foreign company that cannot deliver services in French cannot service the Quebec public sector, period.

iii) Interactions with the civil administration

The civil administration is required to communicate in French with legal persons established in Quebec¹⁶.

For companies expanding to Canada with Quebec operations, this creates a practical requirement for French-language capability in all regulatory filings, government correspondence, permit applications, and licence renewals. Ensure your Quebec operations team includes individuals with French-language capacity for regulatory interactions, or that external counsel is mandated to handle them.

f. Enforcement and sanctions

For companies expanding to Canada, enforcement under the Charter is active, complaint-driven, and escalating post-Bill 96. The OQLF's enforcement powers were significantly expanded. Understanding how enforcement works in practice is as important as understanding the obligations themselves.

i) Enforcement

The *Office quebécois de la langue française* oversees compliance and has broad powers to investigate, request documents and require corrective measures¹⁷. Post-Bill 96, the OQLF has expanded investigative authority and can act on complaints more rapidly and with broader scope than before.

In practice, enforcement is frequently triggered by complaints from customers, employees or competitors. This means your Quebec compliance exposure is not managed only by your relationship with the OQLF, it is managed by every customer who receives a non-compliant invoice, every employee who uses non-compliant software, and every competitor who notices a non-compliant storefront. Proactive compliance is the only reliable risk management strategy.

ii) Administrative sanctions

Where non-compliance is identified, authorities may issue formal orders requiring corrective action and take measures that directly affect operations, including restricting access to government contracts, subsidies, and permits. For foreign companies that depend on Quebec public sector revenue or that have applied for or received Quebec government grants or subsidies, this sanction is operationally significant. Loss of access to government contracts is not a theoretical consequence, it is an enforcement tool the OQLF is authorized to deploy.

iii) Penal sanctions

The financial exposure from Charter violations is cumulative, escalating, and frequently underestimated by foreign companies assessing their Quebec compliance risk.

Under section 205 of the Charter, a breach may result in fines of:

- \$700 to \$7,000 for individuals, and
- \$3,000 to \$30,000 for legal persons (corporations).

These amounts are doubled for repeat offences. Each day a violation continues may constitute a separate infraction, meaning a non-compliant website that remains live for 30 days after an OQLF order is not one violation. It is potentially 30.

In addition, courts may impose additional fines equivalent to any economic benefit gained from the violation, further increasing exposure.

The cumulative risk is the critical point: a foreign company with a non-compliant website, non-compliant packaging, and non-compliant standard-form contracts does not face one fine. It faces three separate violation streams, each compounding daily, each subject to doubling on repeat offence. Directors and officers may also face potential personal exposure in certain circumstances.

This makes language compliance a governance issue rather than a discrete legal requirement.



¹ Charter, s. 1.

² Charter, s. 2.

³ Charter, s. 7.

⁴ Charter, s. 9.

⁵ Charter, ss. 136 et seq.

⁶ Charter, ss. 5, 50.2.

⁷ Charter, s. 52.

⁸ Charter, s. 51.

⁹ Charter, s. 51.1.

¹⁰ Charter, s. 52.1.

¹¹ Charter, s. 55.

¹² Charter, s. 55.

¹³ Charter, s. 57.

¹⁴ Charter, s. 21.

¹⁵ Charter, s. 21.11.

¹⁶ Charter, s. 16.

¹⁷ Charter, ss. 165.15 et seq.

KEY TAKEAWAYS:

Before you launch in Quebec,
confirm you have done the following:

Civil law

- Had every standard contract template reviewed by Quebec civil law counsel, not common law counsel applying Quebec law as an afterthought
- Confirmed that security interests over Quebec assets are documented as hypothecs and registered in the correct Quebec registers
- Identified and reviewed any holding structures, trust arrangements, or financing vehicles that touch Quebec assets
- Briefed any directors or officers of Quebec entities on their Quebec-specific governance obligations

Language compliance

- Prepared compliant French versions of all customer-facing materials, such as website, catalogues, order forms, invoices, before going live in Quebec, not after
- Confirmed that all product packaging and labelling meets Charter requirements, including French predominance on all inscriptions
- Reviewed all signage and advertising materials for French predominance, equal bilingual treatment does not satisfy the Charter's markedly subordinate requirement
- Confirmed that workplace software used by Quebec employees is available in French on equivalent terms
- Prepared French versions of all standard-form contracts used in Quebec and established a process for providing them to counterparties before any other language version
- Determined whether your Quebec workforce has reached or is approaching the 25-employee francization threshold and begun implementing internal French-language policies
- Confirmed French-language capability for all regulatory filings, government correspondence, and public sector service delivery in Quebec
- If pursuing Quebec public sector contracts, confirmed that all contract documentation is prepared exclusively in French

Enforcement readiness

- Conducted a Charter compliance audit covering website, packaging, contracts, signage, and software before Quebec launch
- Established an internal process for responding to OQLF complaints, including who is notified, who responds, and what remediation steps are authorized
- Briefed the board or relevant governance body on Charter enforcement risk and the cumulative fine exposure from multiple simultaneous violations

How Miller Thomson can help

Quebec's civil law system and language regime create legal and operational considerations that affect every stage of doing business in the province, from the contracts you sign before you open, to the software your employees use on day one, to the invoices you send on your first transaction. The post-Bill 96 landscape is materially more demanding than what existed before 2023, and foreign companies that built their Quebec compliance framework before those amendments need to revisit it.

Miller Thomson's Quebec and national teams regularly assist international companies expanding to Canada in navigating both dimensions of Quebec's distinct legal environment: the civil law framework that governs how your contracts work and your security interests are enforced, and the Charter obligations that govern how your business communicates, operates, and presents itself in the province.

What makes Miller Thomson's position in Quebec different from national firms without genuine Quebec depth is precisely this: our Montréal practitioners work in both legal traditions simultaneously. We do not apply common law logic to civil law problems, and we do not treat the Charter as a checklist. We help foreign companies build Quebec compliance into their market entry strategy from the outset, because retrofitting it after launch is always more expensive.

Speak with a Miller Thomson Quebec lawyer about your market entry strategy.







Business Organizations in Canada

Choosing **the right structure** for
your **Canadian operations**

Business Organizations in Canada

Choosing **the right structure** for your **Canadian operations**

WHO THIS IS FOR:

CFOs, GCs, and regional directors at foreign companies evaluating their first Canadian market entry, and corporate counsel structuring a Canadian subsidiary, branch, joint venture, or acquisition. The choice of legal vehicle shapes your liability profile, tax position, governance obligations, and regulatory compliance from day one. Getting it right at the outset is substantially less expensive than restructuring after operations have begun.

The structuring decision that most foreign companies underestimate

Foreign companies entering Canada frequently treat the choice of legal vehicle as an administrative step, something to be resolved quickly so that operations can begin. It is not. The decision between a Canadian subsidiary and a branch, between federal and provincial incorporation, and between a corporation and a partnership or limited partnership has direct consequences for your liability exposure, your Canadian and home-country tax position, your governance obligations, your director residency requirements, and your Quebec transparency and *Investment Canada Act* filing obligations. Each of these dimensions needs to be assessed before the first Canadian transaction closes, the first Canadian employee is hired, or the first Canadian contract is signed.

01.

Introduction

There are a number of different legal vehicles through which a foreign corporation or other foreign entity may carry on business in Canada. In choosing a particular legal vehicle, the tax consequences in Canada and in the relevant foreign jurisdiction should be considered. Non-tax factors such as limited liability, governance, public disclosure, registration requirements and regulatory approvals should also be taken into account. For foreign entrants, the initial structuring exercise typically includes deciding whether to incorporate a Canadian subsidiary, establish or register a branch, carry on limited activities without a fixed place of business, or use another form of business organization, and then confirming any extra-provincial registration, [Quebec transparency](#) and [Investment Canada Act](#) filing or review requirements. The most frequently used business organization in Canada is a corporation with share capital. Partnerships, limited partnerships, business trusts and co-ownerships are also common.

02.

Corporations

A Canadian corporation is a separate legal entity. A corporation also generally has the capacity of a natural person. This means that a corporation can enter into contracts or own property in its own name, separate and apart from the individual owners of the corporation. This generally provides limited liability protection to the shareholders as owners of the corporation.

Most corporations in Canada are incorporated as corporations with share capital under the federal, provincial or territorial business corporations' statutes. These statutes provide comprehensive legislative rules dealing with incorporation, amalgamation, liquidation, other fundamental corporate structure changes, share capital, the rights and obligations of shareholders and directors, books and records and other matters.

Incorporating under a business corporation's statute is usually a simple process effected by filing Articles of Incorporation (or a similar document) with the relevant government authority and paying a filing fee. The Articles of Incorporation generally set out the name of the corporation, the authorized share capital, the terms of different classes of shares, restrictions on the transfer of shares, the number of directors who are to control the corporation and the names of the first directors along with certain other provisions.

The Articles of Incorporation are a public document and can often be filed electronically. Other than in British Columbia, more detailed rules for the operation of the corporation (for example, quorum for directors and shareholders' meetings, notice requirements for such meetings, etc.) are contained in the by-laws, which are typically not a public document.

- A corporation is not permitted to incorporate using a name which is the same as or similar to the name of another corporation or entity.
- A corporation carrying on business in Quebec must use a French version of its corporate name. This requirement applies to federal corporations operating in Quebec, not only to Quebec-incorporated corporations. Therefore, foreign companies should confirm their French corporate name before commencing Quebec operations, not after the first Quebec regulatory filing.
- A corporation may incorporate under a number name (e.g. 123456 Ontario Inc.) whereby the number is assigned on incorporation by the governmental authority. Incorporating under a specific name provides some rights with respect to that name, but this is not equivalent to the rights that flow from a trademark registration.
- Corporations with share capital incorporated under the business corporations' statutes can have different classes of shares with different rights. The business corporations' statutes provide significant flexibility in setting the terms of different share classes. There is no minimum or maximum dollar amount of share capital required.

a. Federal or provincial/territorial incorporation

Corporations incorporated under the federal [Canada Business Corporations Act](#) (the “CBCA”) or under the business corporations’ statutes of the provinces and territories can carry on business throughout Canada. The choice of jurisdiction of incorporation will therefore often depend on the planned location of operations, convenience of dealing with the relevant government department for filings, applicable Canadian resident director requirements, corporate name considerations, governance preferences and the public information that must be filed in the applicable jurisdiction.

If a corporation is incorporated in one jurisdiction and carries on business in another jurisdiction, it generally must register extra-provincially in the other province or territory. This registration is usually a straightforward process, but it may require appointment of an attorney or agent for service, maintenance of a local registered office or address, annual renewals and payment of registration or filing fees in each jurisdiction where the business is carried on. Foreign companies that establish operations in multiple provinces without completing extra-provincial registrations face the risk of being unable to enforce contracts in those provinces and exposure to penalties for carrying on business without registration.

CBCA vs. provincial incorporation - the practical choice for foreign companies

The CBCA is often chosen because it may provide greater mobility in moving operations or registering new business locations across Canada. However, the CBCA retains a 25% Canadian-resident director requirement that most provincial jurisdictions have eliminated. For a foreign company whose management team is entirely outside Canada, incorporating under a provincial statute, such as Ontario, British Columbia, Alberta, or Quebec, avoids the need to find and appoint a Canadian-resident director, which can add cost, complexity, and governance risk. The optimal choice for a foreign entrant should be assessed alongside tax planning, director residency, governance arrangements, and the provinces or territories in which the business will operate.

b. Types of corporations

Federal and provincial legislation allow for corporations with share capital (which are generally incorporated under the business corporations’ statutes) and non-share capital corporations. The latter are used for charitable and non-profit activities.

Nova Scotia, Alberta, Prince Edward Island and British Columbia have legislation allowing for the incorporation of unlimited liability companies. The unlimited liability company (“ULC”), as the name suggests, does not provide limited liability protection for the shareholder in the same way as a business corporation. A ULC is a separate legal entity under Canadian corporate law and is treated as a separate corporation for Canadian income tax purposes. The hybrid nature of the ULC for Canadian and US income tax purposes has proven to be a popular tool for cross border tax planning. The Canadian income tax consequences of using a ULC should be carefully considered because of the anti-hybrid rules in the Canada-U.S. Income Tax Convention, and rules that Canada recently announced

will be introduced to deny the deductibility (or result in an income inclusion) of certain cross border payments made by ULCs where there is, for example, no corresponding inclusion in the income of a non-resident recipient of the payment. Canada enacted similar legislation that came into effect on June 20, 2024 to deny the tax benefits associated with “hybrid instruments”. Foreign companies considering a ULC structure should obtain current Canadian and US tax advice before selecting this vehicle, the anti-hybrid rules have materially changed the analysis since the ULC became popular.

Corporations which offer their shares to the public are subject to additional rules and regulations under the relevant securities legislation in each province. For more information, please refer to [Canadian securities laws](#).

c. Residency requirements for directors

This is one of the most practically significant differences between CBCA and provincial incorporation for foreign companies, and one of the most commonly overlooked.

The CBCA, Manitoba, and Newfoundland and Labrador require that at least 25% of a corporation’s directors be resident Canadians; where there are fewer than four directors, at least one must be a resident Canadian.

Alberta, Ontario, British Columbia, Quebec, Yukon, Nova Scotia, New Brunswick, Prince Edward Island, Nunavut, and the Northwest Territories do not have a residency requirement for directors. The elimination of residency requirements is said to improve the business environment and attract a greater number of investors in these jurisdictions.

d. Rights and obligations of directors

A non-offering corporation does not need to have more than one director. Directors are not required to own shares in the corporation.

Directors have a duty to act honestly and in good faith with a view to the best interests of the corporation. They must also exercise their powers with the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Their decisions must be in accordance with the governing statutes, regulations, incorporating documents and any shareholder agreements that the corporation may be subject to. If there are any conflicts of interests between the directors and the corporation, these must be disclosed by following stringent disclosure requirements in the governing legislation. Foreign entrants should ensure that Canadian governance arrangements give directors sufficient information and authority to satisfy these duties while preserving appropriate parent-company oversight.

Directors can be personally liable in certain circumstances, including to employees for unpaid wages owing, and to the tax authorities for unremitted employee source deductions, non-resident withholding tax and HST. Directors’ and officers’ liability insurance is often purchased by corporations in respect of these and other potential liabilities.

e. Directors' and shareholders' meetings

Both shareholders' and directors' meetings can be held in person inside or outside of Canada, via telephone or via other electronic means, a flexibility that is particularly relevant for foreign-owned Canadian subsidiaries whose directors and shareholders are located outside Canada.

Meetings of directors can be held at any time as long as they comply with the notice requirements set out in the governing documents of the corporation. Meetings of shareholders are held at least annually at a place determined by the directors or as indicated in the corporation's governing documents. All jurisdictions governing corporations in Canada mandate an annual shareholder meeting for matters of fundamental importance to the corporation. This often includes the election of directors, the appointment of an independent auditor and a review of the corporation's financial health. Apart from this mandatory, annual meeting, shareholders may requisition a meeting under certain circumstances and by following the guidelines stipulated by the corresponding legislation that governs the corporation.

The financial statements of a private corporation can be audited or unaudited, while offering corporations (i.e., a corporation that offers its securities to the public) must have audited financial statements. The financial statements of an offering corporation are required to be filed with the applicable securities regulatory authorities. A business corporation's statutes allow directors' and shareholders' resolutions to be passed by written resolution signed by all the directors or shareholders, as the case may be. Written resolutions in lieu of meetings are commonly used for private corporations.

f. Directors' and shareholders' resolution

Shareholders' and directors' resolutions are typically not available to the public. Directors' resolutions are the formal decisions formed by a vote that are made at a directors' meeting. The board of directors are charged with handling the organization's daily operations and thereby discuss and decide on matters such as past performance, strategic goals and formal plans of action. Shareholders' resolutions are the decisions made in a shareholders' meeting which, as with directors' resolutions, are made by vote.

There are *two different types of resolutions* in shareholder meetings:

- **an ordinary resolution** that requires a simple majority and involves matters of a lesser degree of importance, such as electing directors or appointing an auditor.
- **a special resolution** that requires the approval of two-thirds of the votes cast by either group of voters.

This latter form of resolution involves making a fundamental change in the corporation, such as an amalgamation of corporate entities or amending the Articles of Incorporation.

g. Shareholder agreements

Shareholders' agreements are commonly used to address corporate governance issues. They are much like by-laws that require no public disclosure. Topics often covered in the shareholders' agreement include the management, control and governance of the corporation, including reserved matters, approval thresholds, transfer restrictions, information rights, exit rights and dispute resolution.

A sub-category of shareholders' agreements is the unanimous shareholder agreement ("USA"). A USA may cover a multitude of topics which include a limitation on the powers of the directors as per the governing legislation. If a USA were to restrict certain powers of the directors, the shareholders would then become liable for the fulfillment of these directors' duties instead. In other words, a USA may simultaneously limit the liability of directors while expanding the potential liability of shareholders. For a foreign entrant investing with Canadian co-investors or management, the shareholders' agreement is often a key tool for aligning control, minority protections and reporting obligations with the chosen Canadian entity structure.

h. Disclosure requirements in public corporate filings

A non-offering corporation is generally not required to publicly file its financial statements. An offering corporation is generally required to file its financial statements with the relevant provincial securities regulatory authority.

All corporations must generally make information filings (which are available to the public) identifying their directors, officers and registered office. Shareholders generally do not have to be disclosed in these information filings. However, certain beneficial ownership and significant control disclosure requirements apply at the federal level under the CBCA and in Quebec under the LPA, discussed below.



03.

Partnerships

A partnership, unlike a corporation, is not a separate legal entity but rather a relationship between persons carrying on business together with a view to profit. Partnerships are governed by partnership legislation (which is all provincial) and, where one exists, a partnership agreement. Partnership agreements are generally not public documents.

A detailed partnership agreement is advisable to clearly set out the governance and operational rules for the partnership and to oust certain legislative rules that apply in the absence of agreement to the contrary.

There are *three types of partnerships* in Canada:

- **General partnerships:** all partners are jointly and severally liable for the liabilities of the partnership. For foreign entrants, a general partnership with a Canadian entity or individual creates direct joint and several liability exposure, there is no liability shield equivalent to a corporation.
- **Limited partnerships:** the general partner is liable for the liabilities of the partnership. Limited partners are only liable for their agreed upon capital contribution, unless they lose their limited liability protection by becoming involved in the management of the partnership business. It is common to use a sole-purpose corporation as the general partner of a limited partnership that will have a nominal profit/loss participation in the limited partnership. Formation of a limited partnership also requires a public filing.
- **Limited liability partnerships:** may only be used by certain regulated professionals (e.g., law firms and accounting firms), and it provides certain limited liability to its partners with respect to the negligence of other partners.



04.

Other ways to carry on business in Canada

a. Branch

Instead of forming a Canadian corporate subsidiary, a foreign entity can conduct business in Canada by establishing a branch (i.e., a fixed place of business like an office). In this case, the foreign entity is carrying on business in Canada directly. A branch may be appropriate where the foreign entity wants to avoid maintaining a separate Canadian subsidiary, but it can expose the foreign entity directly to Canadian contractual, tax, employment and regulatory obligations. By contrast, a Canadian subsidiary may provide a separate liability profile, local contracting vehicle and clearer governance structure, but will involve incorporation, corporate maintenance and Canadian tax and reporting obligations.

b. Carrying on business in Canada directly without a branch

Some foreign entities conduct business in Canada without establishing a fixed place of business. This may be done by way of electronic commerce and/or by use of employees or agents who come to Canada for short periods to see customers and potential customers. Even without a fixed branch, the foreign entity should consider whether its activities constitute carrying on business in a province or territory for registration, tax, employment, licensing or consumer-protection purposes. The Canadian tax consequences of this approach are discussed further below.

c. Business trusts

Business trusts are mostly encountered as mutual fund trusts, real estate investment trusts, and income trusts, which issue securities in the public securities markets. A business trust may operate as a partner in a partnership or as a shareholder in a corporation with accompanying tax consequences.

d. Co-ownerships

Co-ownerships are commonly used in the real estate joint venture context, and provide for each co-owner to hold an undivided percentage interest in the whole.

05.

Registering a business

Corporations, partnerships and certain other forms of businesses may have varying registration requirements, depending on the governing jurisdiction. All forms of businesses, save for sole proprietorships operating under the sole proprietor's name, are required to register their business' name.

a. Corporations

A corporation is required to research its corporate name prior to governmental approval by using the corresponding search system of the provincial or federal jurisdiction. Corporate names must end with a legal element indicating the business is a corporation. This includes one of the following: Limited (Ltd.), Incorporated (Inc.), or Corporation (Corp.).

Each name search, the Articles of Incorporation, and the corresponding filing fee must be submitted to the appropriate government agency before the corporation is created. Barring any statutory compliance failures, the corporation will be registered by the government. A Certificate of Incorporation will be issued to the corporation by the relevant jurisdiction on the date the corporation comes into existence.

b. Partnerships

Much like corporations, partnerships are required to register their business name in their relevant jurisdiction. Some jurisdictions may penalize partnerships that have failed to comply with such requirements such as refusing to uphold court actions initiated by unregistered businesses.

General partnerships may come into existence in spite of any registration requirement in certain Canadian jurisdictions. For instance, in Ontario, a partnership is formed when two or more people conduct business in common with a view to profit. Other forms of partnerships do require registration. A limited partnership must be registered with the relevant government authority. The registration requirement would include such details as the names of the minimum number of required general and limited partners in the limited partnership. A limited liability partnership similarly requires registration. Prior to registering this form of business, permission must be obtained from the governing body of the profession (only a limited number of professions may register as an LLP in Canada).

Extra-provincial registration

Each province and territory has its own registration requirements. As such, when conducting business through an extra-provincial corporation, partnership or other form of business, the relevant jurisdiction's legislative registration requirements must be adhered to. Foreign entrants should assess extra-provincial registration early, particularly where they will have employees, agents, offices, warehouses, significant sales activities, licences or other indicia of carrying on business in more than one Canadian jurisdiction.

06.

Investment Canada Act considerations

Foreign entrants should consider at the outset whether the *Investment Canada Act* applies to their proposed Canadian activities. The Act can require a notification for the establishment of a new Canadian business or for certain acquisitions of control of an existing Canadian business, and larger or sensitive transactions may require pre-closing review and approval. For more details, please read our [Foreign Investment Review](#).

07.

Quebec's corporate transparency requirements

The [Act respecting the legal publicity of enterprises](#) (the "LPA"), among other things, sets rules relating to which entities must be registered and the information required to be recorded by enterprises in the *Quebec Enterprise Register* (the "REQ"). Its objective is to increase the transparency of enterprises operating or registered in Quebec and to optimize the reliability of the information contained in the REQ, in an effort to prevent and combat against tax evasion, money laundering and corruption.

[Bill 78](#), which came into effect on March 31, 2023, brought significant amendments to the LPA. As part of the new corporate transparency requirements that came into force, enterprises operating in Quebec, including federal, provincial, and foreign enterprises, must respect the obligations set out below.

a. Ultimate beneficiary disclosure

The LPA creates an obligation for any person or group of persons registered voluntarily or for any corporations, trusts operating a commercial enterprise, cooperatives, sole proprietorships and/or partnerships required to be registered in Quebec (each, a "Registrant"), including entities constituted under a regime other than that of the laws of Quebec, to disclose information on its ultimate beneficiaries. The following information must be reported in respect of every ultimate beneficiary:

- The ultimate beneficiary's name, including any other name(s) they use to identify themselves in Quebec, as applicable;
- Their date of birth (this information will not be published or publicly available in the REQ);
- The address of their domicile (this information will not be published, and publicly available, in the REQ if their professional address is reported);

- The nature of the “significant control” exercised by the ultimate beneficiary or the percentage of shares or units held by or of which each one is a beneficiary; and
- The date on which each person became an ultimate beneficiary and, when applicable, the date on which each person ceased to be an ultimate beneficiary.

Reporting issuers, not-for-profit corporations, certain financial institutions pursuant to the *Insurers Act*, trust corporations, banks and associations within the meaning of the Civil Code of Quebec are exempt from this reporting requirement.

Who is an ultimate beneficiary?

An ultimate beneficiary is a natural person or an entity that exercises “control in fact” of the enterprise or that ultimately holds at least 25% of its shares or units, by satisfying one or more of the following conditions:

1. The person is a holder, even indirectly, or a beneficiary of a number of shares or units of the Registrant, conferring on the person at least 25% of the voting rights or at least 25% of the fair market value of all the shares or units issued by the Registrant;
2. Two or more persons have agreed to jointly exercise their voting rights so that together they have the capacity to exercise at least 25% of the voting rights;
3. The person has any direct or indirect influence that, if exercised, would result in control in fact of the Registrant;
4. The person is the general partner of the Registrant or, if a general partner of the Registrant is not a natural person, the person meets one of the conditions described in items (i) and (iii) or is a party to an agreement referred to in the following paragraph in respect of the general partner; and/or
5. The person is the trustee of the Registrant, noting that a legal person acting as a trustee is considered to be a natural person.

Entities that belong to a category of exempted Registrants as described above, as well as a legal person acting as a fiduciary, are considered natural persons for the purpose of determining ultimate beneficiaries.

How to declare the ultimate beneficiary?

The ultimate beneficiary information is to be reported by means of an annual updating declaration or a current updating declaration filed directly with the REQ, by the end of the production period of the annual updating declaration.

Who will have access to this information?

The information respecting ultimate beneficiaries will be accessible to the public (with the exception of dates of birth, domicile of natural persons if a professional address has been disclosed, and names and domiciles of minors who are ultimate beneficiaries). However, the government may, by regulation, determine any other information contained in the REQ that may not be available for consultation.

b. Directors' identification

Registrants will need to provide the REQ with copies of valid identification, with or without a photo, issued by a governmental authority for each director.

c. Date of birth

Registrants will also need to declare to the REQ the dates of birth of the three shareholders holding the most voting rights, the president, the secretary and the chief executive officer who are not members of the board of directors. For partnerships, Registrants will need to declare to the REQ the dates of birth of each partner or, if the partnership is a limited partnership, of each general partner and of the three largest contributors to the partnership among the special partners.

Penalties for non-compliance

Existing penalties and administrative measures under the LPA will be applicable for Registrants who fail to comply with the new transparency requirements. Consequently, non-compliance with the new LPA requirements may result in the cancellation of the registration of the offending enterprise as well as in fines ranging from between \$500 to \$25,000. The same applies in respect of the Registrant's obligation to provide, for each director, a copy of identification issued by a government authority in support of any declaration concerning the directors.

Considerations for setting up a Canadian entity

Whether to form a Canadian entity, and if so which one, is a threshold decision that shapes a foreign entrant's liability, tax position, governance and compliance obligations. The following considerations help frame that decision.

- **Whether you need a Canadian entity at all.** Consider whether your Canadian activities can be conducted through a branch, agents or e-commerce, or whether a separate Canadian entity is warranted to contain liability, contract locally and present a Canadian face to customers and regulators.
- **Which vehicle fits your liability and tax goals.** Weigh a limited liability corporation against an unlimited liability company (ULC) for cross-border tax planning, or a partnership or limited partnership, taking Canadian and home-country tax consequences into account.
- **Where to incorporate and register.** Decide between federal (CBCA) and provincial or territorial incorporation based on where you will operate, and map the extra-provincial registrations, licences and permits your footprint will require.
- **How you will govern and staff the entity.** Confirm whether your chosen jurisdiction requires Canadian-resident directors, who will serve on the board, and whether a shareholders' agreement is needed to align control, minority protections and reporting with any Canadian co-investors or management.

KEY TAKEAWAYS:

- The choice of legal vehicle is a structuring decision, not an administrative one. It shapes your liability profile, tax position, governance obligations, and compliance requirements from day one.
- A Canadian subsidiary provides a liability shield and a local contracting vehicle. A branch exposes the foreign parent directly to Canadian contractual, tax, employment, and regulatory obligations. Model both structures against your specific operations and tax position before choosing.
- The CBCA requires 25% Canadian-resident directors. Manitoba and Newfoundland and Labrador have the same requirement. Most provincial jurisdictions, including Ontario, BC, Alberta, and Quebec, do not. If your management is entirely outside Canada, provincial incorporation avoids this requirement.
- ULC structures for cross-border tax planning require current advice. The June 2024 anti-hybrid legislation has materially changed the analysis.
- Extra-provincial registration is required in every province where you carry on business. Operating without it can result in inability to enforce contracts and regulatory penalties.
- The threshold for “carrying on business” in a province is lower than most foreign companies expect. Regular customer visits, agents, and e-commerce sales may all be sufficient to trigger registration obligations.
- Quebec’s REQ ultimate beneficiary disclosure requirements apply to federal, provincial, and foreign enterprises operating in Quebec. Non-compliance risks cancellation of registration and fines up to \$25,000.
- The *Investment Canada Act* analysis belongs at the beginning of the structuring exercise, not at closing. Entity choice, investor identity, and sector all affect whether a filing is required and when.
- Directors of Canadian subsidiaries, including non-resident directors, can be personally liable for unpaid wages, unremitted source deductions, and unremitted HST. Understand this exposure before accepting a board appointment.

How Miller Thomson can help

Choosing the right Canadian business structure is the first decision a foreign company makes, and one that is difficult and expensive to undo once operations have begun. The interplay between corporate law, tax, director residency, Quebec transparency obligations, and Investment Canada Act requirements means that the structuring exercise requires coordinated advice across multiple disciplines simultaneously. Miller Thomson advises foreign companies on the full spectrum of Canadian business organization. Our national presence, including our Montreal practitioners, means we can address the Quebec corporate, transparency, and civil law dimensions alongside the common law framework, because a national Canadian corporate structure requires both.

Speak with a Miller Thomson [corporate lawyer](#) about structuring your Canadian operations







Foreign Investment Review

Why the **Investment Canada Act** belongs
at the **top of your transaction checklist**

Foreign Investment Review

Why the **Investment Canada Act** belongs at the **top** of your **transaction checklist**

WHO THIS IS FOR:

CEOs, CFOs, General Counsel, private equity sponsors and M&A advisors evaluating an acquisition of, or investment in, a Canadian business.

The assumption that creates **avoidable risk**

Many foreign investors focus on whether a proposed transaction requires an ICA filing. That is often the wrong starting point. The more important question is whether the transaction could attract heightened scrutiny under Canada's foreign investment review regime and, if so, how that might affect transaction structure, timing and execution risk.

Recent amendments to the *Investment Canada Act* ("ICA") have expanded the government's national security review powers and reinforced its focus on investments involving sensitive sectors and technologies. Investors should therefore incorporate ICA analysis into their initial transaction planning and due diligence process rather than treating it as a matter to address immediately before or after closing.

What the ICA actually requires, and when

The ICA governs investments in Canadian businesses by non-Canadians. Depending on the nature and size of the investment, a foreign investor may be required to file a post-closing notification or, in certain circumstances, obtain pre-closing approval.

For most investors, only larger acquisitions of control are subject to a pre-closing "net benefit to Canada" review. In 2026, the review threshold is generally CAD \$2.179 billion in enterprise value for "trade agreement investors", CAD \$1.452 billion for other WTO investors, and CAD \$578 million in book value of assets for state-owned enterprises.

However, investors should not focus exclusively on these thresholds. The Canadian government may also review investments on national security grounds regardless of transaction value, and national security reviews may apply to minority investments and other transactions that do not involve an acquisition of control.

Sensitive sectors and heightened scrutiny

While every transaction is assessed on its specific facts, investors should expect greater scrutiny where a transaction involves critical minerals, critical infrastructure, artificial intelligence, advanced technologies, defence-related activities, sensitive personal data or other assets that may raise national security concerns.

Recent amendments have strengthened the government's ability to review and address transactions that raise national security issues and have increased the importance of early risk assessment for foreign investors.

What this means for transaction planning

Investors should treat ICA analysis as an early-stage diligence issue rather than a regulatory step to address shortly before closing. Before signing a transaction, investors should:

- determine whether an ICA notification or approval requirement applies;
- assess whether the target operates in a sector that may attract heightened scrutiny;
- evaluate ownership and governance structures, including any state-owned enterprise or government connections;
- identify sensitive technology, data or infrastructure assets that may be of interest to regulators; and
- ensure transaction timelines, commitments, and obligations account for potential regulatory reviews.

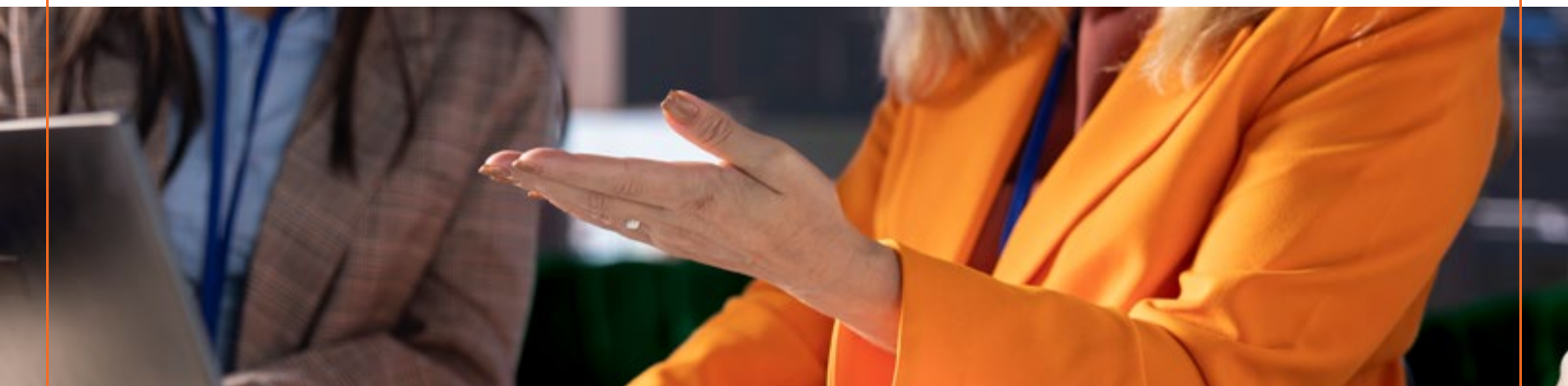
Addressing these issues early can help reduce execution risk, avoid unexpected delays and improve deal certainty.

KEY TAKEAWAYS:

- ICA analysis should begin at the outset of any Canadian transaction.
- Transactions below the net benefit review thresholds may still be subject to national security review.
- Investments involving sensitive sectors, technologies, infrastructure or data may attract increased scrutiny.
- Regulatory timing considerations should be reflected in transaction planning and transaction documents.
- Early risk assessment can help identify concerns before they become material obstacles to closing.

How Miller Thomson can help

Miller Thomson's Competition, Antitrust & Foreign Investment lawyers advise foreign investors, private equity funds and multinational businesses on all aspects of the *Investment Canada Act*, including filing requirements, net benefit reviews, national security risk assessments, transaction structuring and engagement with government officials throughout the review process.







Competition **Laws**

What **Canada's** reformed Competition Act
means for **your business**

Competition Laws

What **Canada's reformed Competition Act** means for **your business**

WHO THIS IS FOR:

General Counsel, business leaders, corporate development teams, private equity firms and M&A advisors acquiring Canadian businesses, entering commercial arrangements or operating in Canadian markets.

The enforcement environment has fundamentally shifted

Canada's Competition Act has undergone significant reforms in recent years. The changes have expanded the Competition Bureau's enforcement powers, increased available penalties, broadened private access to the Competition Tribunal, and heightened scrutiny of a wider range of commercial conduct. As a result, competition law considerations now extend well beyond mergers and acquisitions and should form part of broader business planning and risk management.

Merger review: the thresholds and the timeline

Certain transactions that exceed prescribed financial thresholds must be notified to the Competition Bureau before closing. In 2026, notification is generally required where the parties and their affiliates have assets in Canada or revenues in, from or into Canada exceeding **CAD \$400 million**, and the target business exceeds the applicable **CAD \$93 million size-of-transaction threshold**.

However, transactions that fall below the notification thresholds are not necessarily free from scrutiny. The Competition Bureau retains the authority to review and challenge transactions that are likely to substantially prevent or lessen competition.

Beyond mergers: the conduct that now attracts scrutiny

The *Competition Act* applies to a broad range of commercial activities, including competitor collaborations, distribution arrangements, pricing practices, abuse of dominance and marketing claims. Recent reforms have expanded potential exposure in several areas and increased the importance of proactive compliance programs and competition law risk assessments.

Here is the breakdown:

Competitor collaborations:

Agreements, information-sharing arrangements, joint ventures and other interactions involving competitors should be assessed carefully to ensure compliance with Canadian competition laws.

Abuse of dominance:

Businesses with significant market positions should evaluate whether their conduct could be viewed as excluding competitors or substantially harming competition.

Pricing and distribution practices:

Distribution strategies, exclusivity arrangements and pricing policies should be reviewed to ensure they comply with Canada's civil competition law provisions.

Marketing and environmental claims:

The Competition Bureau has increased its focus on advertising and environmental claims. Businesses should ensure that performance, sustainability and environmental representations can be properly substantiated.

Private access:

Recent amendments have expanded the ability of private parties to bring certain competition law claims directly before the Competition Tribunal, increasing potential exposure beyond traditional Bureau enforcement.

What this means for transaction planning

Competition law analysis should begin early in any acquisition, joint venture, strategic alliance, distribution arrangement or major commercial initiative. Businesses should assess whether regulatory filings may be required, whether competitors are involved in the arrangement, and whether existing commercial practices remain compliant under the expanded enforcement framework.

Regular competition law compliance reviews can help identify and address risks before they become investigations, litigation or challenges before the Competition Tribunal.

KEY TAKEAWAYS:

- The *Competition Act* has undergone significant reform, expanding both enforcement powers and potential liability.
- Transactions below the merger notification thresholds may still be reviewed by the Competition Bureau.
- Arrangements involving competitors warrant careful review before implementation.
- Environmental, sustainability and other marketing claims should be supported by appropriate evidence.
- Expanded private access rights increase the importance of proactive compliance.
- Competition law should be considered early in transaction planning and commercial decision-making.

How Miller Thomson can help

Miller Thomson's Competition, Antitrust & Foreign Investment Group advises domestic and international clients on merger reviews, Competition Bureau investigations, competitor collaborations, pricing and distribution practices, deceptive marketing matters and strategic competition law compliance. Our team helps clients identify and manage regulatory risk before it becomes a transaction delay, enforcement issue or commercial dispute.

Speak with a [Miller Thomson Competition, Antitrust & Foreign Investment lawyer](#) about your complex and strategic competition, foreign investment, and national security issues.





Debt Financing Transactions

What **foreign lenders & borrowers**
need to know

Debt Financing Transactions

What **foreign lenders & borrowers** need to know

WHO THIS IS FOR:

CFOs, treasurers, GCs, and financing counsel at foreign companies lending into Canada, borrowing through Canadian subsidiaries, or taking or granting security over Canadian assets.

01.

Introduction: The Canadian lending market

An ever-increasing global market has resulted in opportunities in Canada for businesses around the world. Many global businesses turn to debt financing to leverage those opportunities. This chapter discusses debt financing in Canada and the major legal issues that foreign entities should be aware of when considering and structuring financing in Canada and taking or granting security over assets in Canada.

Lending in Canada

The banking market in Canada is largely dominated by the country's five largest banks: Royal Bank of Canada, Toronto-Dominion Bank, Bank of Nova Scotia, Bank of Montreal, and Canadian Imperial Bank of Commerce. While these banks dominate the market, borrowers have other options. Alongside the five major banks are many other domestic and foreign bank subsidiaries. Beyond these banks, there is an array of nonbank financial institutions. Borrowers may seek financing from insurers, trust companies, credit unions and Caisses Desjardins, independent leasing companies, and financing arms of certain manufacturers. Additionally, two federal Crown corporations assist small and medium-sized businesses:

- the Business Development Bank of Canada provides specialized financing for higher-risk borrowers; and
- Export Development Canada provides trade credit and insurance products for exporters.

For foreign lenders considering lending to Canadian borrowers, as long as they are not considered to be carrying on business in Canada, the federal *Bank Act* does not restrict a foreign bank or lender from lending to a Canadian borrower or taking security over assets located in Canada.

Generally, a foreign lender will not be considered to be carrying on business in Canada where:

- it is not conducting business through a nominee or agent located in Canada;
- the negotiations between the parties take place outside of Canada; and
- the transaction is completed outside of Canada.

Foreign lenders who structure their Canadian lending activity to satisfy these three conditions can generally lend into Canada without triggering *Bank Act* registration requirements, but the analysis should be confirmed for each lending arrangement, particularly where the lender has other Canadian connections or where ongoing loan administration is conducted from within Canada.

Foreign banks that do wish to have a presence in Canada for the purposes of carrying on the business of banking in Canada are governed by the *Bank Act*. Subject to the requirements of that legislation, a foreign bank may carry on its banking business in Canada by either establishing a branch office or by creating a foreign bank subsidiary in Canada. Additionally, while more limited, a foreign bank may also maintain a representative office in Canada provided that such an office would be limited to promoting the services of and acting as a liaison with customers of the foreign bank.

Types of Canadian lending

As in other countries, most corporate and commercial lending takes place by way of operating or term loans, negotiated with a single lender or syndicated among several lenders.

Operating loans are made to fund the short- to medium-term working capital needs of a business and are almost always repayable on a demand basis. Revolving operating loans are often asset-based, meaning the borrower may borrow up to a borrowing base. Typically, the borrowing base consists of the borrower's most liquid noncash assets: domestic receivables under 90 days, inventory, and work-in-progress.

Term loans are generally made to finance capital acquisitions and are repayable upon the occurrence of an event of default or expiration of the term. The loan is amortized over the term of the loan or a longer term that reflects the useful lifetime of the capital assets that secure the loan. Depending on the type of collateral assets used as security, term loans may be structured in different ways. For example, a real estate development may require a combination of revolving, operating credit, bridge financing, and longer-term debt.

02.

Specific issues arising from **lending & borrowing in Canada**

Withholding tax on interest

For most foreign lenders, withholding tax on interest paid by Canadian borrowers is not a cost — but the conditions for the exemption must be met.

Effective January 1, 2008, the Canadian *Income Tax Act* was amended to eliminate Canadian withholding tax on interest on loans made to Canadian residents by non-residents of Canada provided that:

- a) the lender deals at arm's length with the borrower; and
- b) no portion of the interest on the loan is "contingent or dependent on the use of or production from property in Canada or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation."

For non-arm's length lenders and borrowers, parent-to-subsidary loans being the most common example, withholding tax on interest payments has been eliminated for U.S. residents who can claim the benefits of the Canada-United States Income Tax Convention. For non-arm's length lenders from other jurisdictions, withholding tax at 25% (reduced by applicable treaty) applies.

Where withholding tax is applicable in Canada, a non-resident lender will require the Canadian borrower to gross up the interest payment to ensure the lender receives the expected net amount. This adds material cost to the borrower and should be modelled before the financing is structured.

The thin capitalization and EIFEL rules discussed below further constrain the deductibility of interest paid to non-resident lenders, making the total cost of non-arm's length intercompany financing a multi-variable calculation that requires tax advice before the loan is made.

Interest Rules

Describing the rate of interest

The *Interest Act* permits the parties to a loan to agree as to what rate of interest will apply to borrowed funds. The agreement must provide for a clear and unambiguous rate of interest which can be readily interpreted and calculated. It is common practice to tie the rate of interest to a floating reference rate, that can be readily calculated. This is permissible provided the reference rate can be identified with certainty and the agreements specify the dates on which the applicable interest rate is to be adjusted. Should the parties fail to adequately specify a rate of interest, and no law provides otherwise, the *Interest Act* (Canada) imposes a statutory rate of 5% per annum.

Annual rate of interest

The *Interest Act* provides that, except as to mortgages on real property, whenever any interest is by the terms of any written or printed contract, made payable at a rate or percentage for any period less than a year, no interest exceeding the rate or percentage of 5% per annum shall be chargeable on any part of the principal money unless the contract contains an express statement of the yearly rate or percentage of interest to which the other rate or percentage is equivalent¹. Section 4 is not triggered where interest is payable monthly or at other periods that are less than one year but, rather, where interest is payable, for example, at a monthly rate (or at any rate for any period less than a year). Therefore, as long as the rate of interest is stipulated at an annual rate, section 4 will not be triggered simply because interest payments are calculated and paid more frequently than on a yearly basis.

Interest charged on arrears, where secured by a mortgage on real property

Pursuant to the provisions of section 8 of the *Interest Act*, no fine, penalty, or rate of interest may be exacted on any arrears of principal or interest secured by a mortgage on real property that has the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears.

Criminal rate of interest — updated as of January 1, 2025

The criminal rate of interest under section 347 of the Criminal Code was significantly amended, effective January 1, 2025. The previous cap of 60% effective annual rate has been reduced to 35% annual percentage rate (APR) for most loans.

The new regime introduces a tiered structure for commercial loans:

- Commercial loans to corporations for business purposes exceeding \$500,000: exempt from the criminal rate cap entirely
- Commercial loans to corporations for business purposes between \$10,000 and \$500,000: capped at 48% APR
- All other loans, including loans to individuals: capped at 35% APR

The amendments also expand the scope of the offence. It is now a criminal offence not only to receive payment of interest at a criminal rate, but also to offer or advertise to enter into an agreement at a criminal rate. Lenders must review their standard-form loan documentation and marketing materials to ensure compliance with the new regime.

For foreign lenders providing commercial loans to Canadian borrowers of more than \$500,000, the criminal rate exemption typically applies. For smaller commercial loans or any consumer lending, the 35% APR cap applies and must be respected, noting that “interest” for these purposes is broadly defined to include fees, commissions, penalties, and all other charges, not just the stated interest rate.

03.

Tax rules affecting interest deductibility

Thin capitalization rules

Foreign lenders often lend to a foreign corporation which, in turn, lends those funds to a Canadian subsidiary. The *Income Tax Act* (Canada) contains so-called “thin capitalization” rules which deny the deductibility of interest payable by a Canadian corporation on debt owing to “specified non-residents” (e.g., the parent corporation or certain other non-arm’s length persons that are not residents of Canada) to the extent that the ratio of such debt to the “equity” (as defined in the *Income Tax Act*) of the Canadian subsidiary exceeds 1.5:1. In other words, the rules prevent Canadian subsidiaries from deducting interest on the portion of loans from a foreign parent that exceeds 1.5 times its “equity.” This is a double hit: the interest deduction is lost and withholding tax applies to the disallowed amount. Foreign groups that capitalize Canadian subsidiaries primarily with intercompany debt must model the thin cap ratio before the first loan is advanced — restructuring after the fact triggers its own costs.

The thin capitalization rules have been extended in recent years to apply to non-resident corporations as well as trusts and partnerships (in the case of partnerships, the debt of the partnership is attributed to its members in proportion to their partnership interest). The *Income Tax Act* (Canada) also contains extensive anti-avoidance rules (the so-called back-to-back loan rules) to prevent indirect loan arrangements from avoiding being subject to the thin capitalization rules.

Hybrid Mismatch Rules

In response to the Organization for Economic Co-operation and Development’s (“OECD”) Base Erosion and Profit Shifting (“BEPS”) Action 2 recommendations on hybrid mismatch arrangements, the *Income Tax Act* (Canada) was amended in 2024 to include rules in section 12.7 and 18.4 and related provisions, addressing certain deduction/non-inclusion mismatches arising under three categories of arrangements: hybrid financial instrument arrangements, hybrid transfer arrangements and substitute payment arrangements, as well as a deeming rule for certain notional interest expenses (the “Hybrid Mismatch Rules”). Where the Hybrid Mismatch Rules apply, a deduction (including a deduction of interest) may be denied or an amount may be included in income, and the denied amount may be deemed to be a dividend subject to withholding tax.

On January 29, 2026, the Minister of Finance (Canada) released draft legislation expanding the Hybrid Mismatch Rules to address additional hybrid mismatch outcomes involving certain hybrid entities and imported hybrid arrangements, generally for payments arising on or after July 1, 2026 (the “Hybrid Mismatch Proposals”). The Hybrid Mismatch Proposals, which are in consultation form, are highly complex and there is significant uncertainty as to their interpretation and application.

Excessive Interest and Financing Expenses Limitation (“EIFEL”) rules

Generally effective as of October 1, 2023, the EIFEL rules implement recommendations of the OECD’s BEPS Action 4 report, limiting certain taxpayer’s deductions for interest and similar financing expenses to a proportion of their earnings. The EIFEL rules apply to taxpayers that are corporations or trusts, including non-resident corporations and trusts. Generally, where applicable subsection 18.2(2) denies a deduction for a proportion (determined formulaically) of each of a taxpayer’s interest and financing expenses. As a result, non-excluded entities may deduct interest and financing expenses only up to a cap, which is based primarily on a fixed percentage of the entity’s “adjusted taxable income plus interest and financing revenues.”

The regime is broad applying to interest and certain financing fees, leasing financing payments, some hedging-related payments amounts and some partnership income. There are exclusions and relieving mechanisms, including excluded entities, and certain intra-group payments. If a deduction is denied, it generally becomes a restricted interest and financing expense that may be deductible in a later year.

Guarantees

It is common for a lender to require an intercorporate guarantee from a parent or affiliate of a Canadian borrower.

Federal corporations created under the *Canada Business Corporations Act* and corporations created under provincial legislation in the provinces of British Columbia, Alberta, Saskatchewan, and Ontario are generally permitted to provide financial assistance to any person, for any purpose, on the (in certain of those jurisdictions) condition that the guarantor discloses to its shareholders all material financial assistance (including the granting of a guarantee).

Under Quebec civil law, it is also possible for a corporation to provide financial assistance to its shareholders. However, the form and enforceability requirements for guarantees in Quebec differ from common law provinces, guarantees to be enforced in Quebec require Quebec-law-specific drafting and should not be assumed to work as executed under another province’s law.

For foreign parent guarantees of Canadian subsidiary obligations, lenders should confirm which jurisdiction’s law governs the guarantee and that the guarantee is enforceable in that jurisdiction against the foreign guarantor, which may require a foreign law opinion in addition to the standard Canadian legal opinion.

04.

Limitation Periods

Ontario — demand loans

The limitation period on demand promissory notes in Ontario is two years, commencing once a demand for performance is made and dishonoured, following an amendment to the *Limitations Act*, 2002 that took effect retroactively to January 1, 2004. Commercial parties under Ontario law can, to the extent it is permitted under the *Limitations Act*, 2002, extend, suspend, or exclude basic limitation periods for agreements made after October 19, 2006, and guarantees under Ontario law should expressly provide for such an extension to avoid the guarantee becoming unenforceable before the lender has exhausted its remedies against the borrower.

Guarantors — commencing action within limitation periods

There is case law in certain jurisdictions which has held that the limitation period on a guarantee commences when the underlying guaranteed debt becomes due². Therefore, lenders should ensure that they commence an action against any guarantors for payment within applicable limitation periods commencing from when the debtor owes payment (rather than wait until the lender has completed its remedies against the borrower and its assets). In addition, as indicated in §13:11 above, in Ontario commercial parties can extend limitation periods and, therefore, guarantees under Ontario law should contain language to provide for such an extension.



05.

Security

Overview: Canada's substantially uniform personal property security framework

With the single and significant exception of Quebec, Canada offers a substantially uniform approach to taking security over personal property. All common law provinces have enacted Personal Property Security Acts modelled after Article 9 of the U.S. Uniform Commercial Code, with electronic registration systems that allow quick and cost-effective perfection of security interests across the country. Quebec operates its own civil law hypothec regime, described separately below.

PPSA jurisdictions — personal property security

Except for the Province of Quebec, each jurisdiction in Canada has enacted its own *Personal Property Security Act*. Each PPSA provincially regulates the creation, perfection, and enforcement of security interests in personal property and provides for a system of priority among competing interests.

A "security interest" is generally defined as an interest in personal property that secures payment or performance of an obligation. "Personal property" generally includes every tangible and intangible asset that is not real estate (or affixed to real estate).

To create an enforceable PPSA security interest, a creditor must ensure that its interest has "attached" and is then "perfected."

"Attachment" generally occurs when value is given, the debtor has rights in the collateral, and a security agreement has been executed in which the borrower grants a security interest to the lender over specific assets or a described class of assets.

"Perfection" of a security interest occurs when the secured creditor has given notice of its security interests by effecting a registration under the PPSA or, in the case of certain types of collateral, by physical possession or "control."

Each PPSA jurisdiction maintains a computerized registry that allows creditors to electronically file and search security interests. For foreign lenders new to Canadian lending, the PPSA registration process is straightforward and can typically be completed within one business day for standard collateral.

The PPSAs provide for conflict of law rules to determine which provincial registration system takes precedence depending on the type of collateral and the location of the debtor and the collateral itself. Where collateral is moveable and may cross provincial borders, such as vehicles, equipment, rolling stock, security interests may need to be registered in more than one Canadian jurisdiction. Foreign lenders should confirm the location of all collateral and the location of the debtor in accordance with the PPSA to confirm which jurisdiction(s) to file PPSA registrations.

Lenders outside of Canada are often concerned about perfecting a security interest in depositary accounts. While such a security interest may be perfected by registration under the applicable PPSA, as a practical matter, lenders do commonly require a control agreement be entered into between the lender, the borrower (or account holder), and the financial institution holding the account.

Types of PPSA security:

Depending on the nature of the loan, a lender may seek one or more types of security. The security taken may create a general interest over all the present and after-acquired assets of the debtor, or the interest may be asset-specific. In the case of real estate collateral, the security will be registered on title as a dollar amount. Some of the most common security agreements include:

General security agreement (GSA)

The most common form of security used in lending in Canada. Through a GSA, a borrower will grant to a lender a blanket security interest in all of its present and future personal property and proceeds. GSAs can, however, be modified to exclude certain property or to charge only specific assets. For most commercial lending transactions, the GSA is the primary security document, it is broad, well-understood by Canadian courts, and enforceable across all PPSA jurisdictions.

Specific security agreements

Lenders sometimes take a security interest in specific assets (even though this interest may already be included in a GSA). These specific security agreements are generally used for smaller loans and will usually target assets which are particularly valuable such as machinery, equipment, motor vehicles, patents, trademarks, or copyrights. This also allows a lender to tailor the representations, warranties, and covenants to the specific assets.

General assignment of accounts receivables and book debts

Some lenders require that a general assignment of accounts receivables (also known as a general assignment of book debts) be granted to give the lender a security interest in the borrower's accounts receivable (again even though this interest may be already included in a GSA). The terms of the assignment will vary according to the particular circumstances, and the lender will determine whether it wants a general assignment (of all present and future debts) or a specific assignment of particular debts. It is usual for the assignment to provide that, in the event of default, the lender has authority to collect any debts owing to the borrower included in the assignment.

Assignment of insurance

Assignments of key person life insurance and property insurance are common forms of additional security. Notice of any insurance assignment should be provided to the insurer and acknowledgement obtained. Lenders should confirm that any assigned insurance policy remains in force and that the

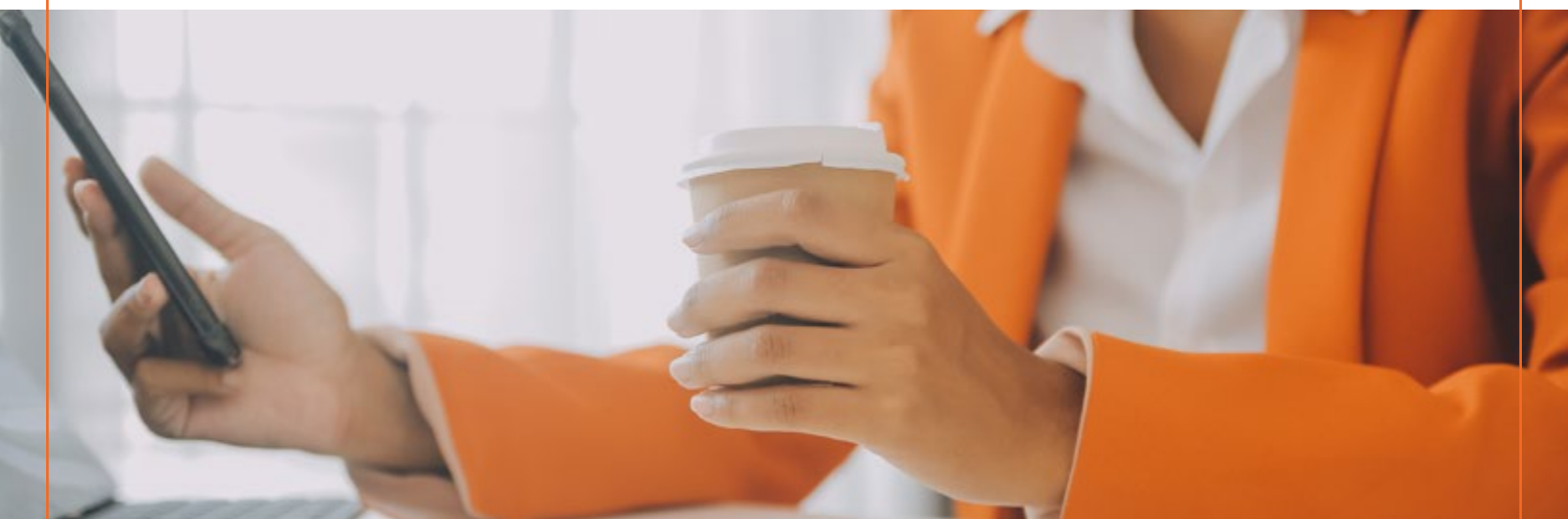
borrower's compliance with policy conditions is monitored throughout the life of the loan, a lapsed policy that was assigned as security leaves the lender unprotected.

Securities pledge agreement

While a GSA generally would include a security interest in securities, lenders will sometimes require specific, more comprehensive securities pledge agreements for the purpose of charging securities owned by a debtor. While these agreements allow lenders certain rights in respect to those securities, in most cases the lender will not have voting rights or rights to any dividends until after an event of default has occurred. In Canada, each PPSA provides for the ability to "perfect" a security interest in securities by possession of physical share certificates, registering under the PPSA, or both. Therefore, in addition to the execution of the securities pledge agreement, where the underlying securities are certificated, it is common for a lender to take possession of share certificates (together with a stock transfer power of attorney). Although less common, some lenders will also require that pledged securities be transferred into the name of the lender or its nominee to avoid problems arising from a private company's constating documents which often restrict the transfer of shares.

The provinces of Ontario, Alberta, British Columbia, Saskatchewan, Newfoundland and Labrador, Quebec, New Brunswick, Nova Scotia, Manitoba, the Northwest Territories, the Yukon Territory and Nunavut have passed *Securities Transfer Acts* (STAs).

The province of Prince Edward Island is the only province or territory without an STA. This new legislation is modelled after Article 8 of the U.S. Uniform Commercial Code. The STAs are designed to work hand in hand with the PPSAs and change substantially the way securities are held and pledged. The key provisions of the STAs are that they, firstly, introduce a concept of "security entitlement." A security entitlement provides the "entitlement holder," that is, the holder of the security, certain rights and property interests. These rights and property interests are enforceable against the "securities intermediary," for example, a stock brokerage firm. Another key area of the STAs is the requirement for the secured party to maintain "control" as another method of achieving "perfection" of the pledge of the security interest. Whether a security interest is perfected by control or registration is important given its effect on priority in the event of competing interests.



Non-PPSA jurisdiction: Quebec

The Province of Quebec is Canada's only civil law jurisdiction and utilizes a Civil Code to codify the province's general principles of law. Like the PPSAs in many respects, the Code sets out a system of registration and enforcement with respect to security interests. While the Civil Code works in a similar fashion as the PPSAs it sets out two types of security interests that can be created:

A **movable hypothec** is similar to a security interest over personal property. It may be granted with or without delivery. A hypothec without delivery allows the grantor to retain use of the property, it must be in writing, describe the hypothecated property with sufficient detail, and be published by registration in the RDPRM. A hypothec with delivery (also known as a pledge) is perfected by the creditor holding the pledged property or title.

An **immovable hypothec**: Quebec's equivalent of a mortgage, must be created by notarial deed executed before a Quebec notary and registered in the land register. There is no equivalent to an informal real property charge in Quebec, the notarial deed requirement is mandatory and cannot be substituted by a document executed in another form.

Cash collateral in Quebec

Since January 2016, Quebec allows the grant of a hypothec with delivery on a monetary claim (cash collateral). A creditor obtaining control of a bank deposit or security deposit by entering into a control agreement with the depositary institution obtains a security interest that ranks ahead of any prior movable hypothec on the same collateral, regardless of when the prior hypothec was registered. This priority-by-control rule is significant for lenders taking security over cash accounts of Quebec borrowers: control agreements are not merely a best practice; they are a priority tool.

A hypothec in Quebec is an accessory right and cannot survive longer than the principal obligation. A hypothec can be legal or conventional and must respect the formalities of the law. A conventional hypothec is created with the consent of the debtor, unlike the legal hypothec, which can be created without the debtor's consent.

Subject to certain exceptions set forth below, only a person, a partnership or a trustee carrying on an enterprise may grant a hypothec on a universality of property (movable or immovable, present or future, corporeal or incorporeal). Carrying on an enterprise means the carrying on by one or more persons of an organized economic activity, whether or not it is commercial in nature, consisting of producing, administering or alienating property, or providing a service, constitutes the carrying on of an enterprise³. Any joint stock legal person who does and any legal person without capital stock which do not carry on an enterprise may, avail itself of notwithstanding the provisions of the Civil Code of Quebec, and grant a hypothec on a universality of property, movable or immovable, present or future, corporeal or incorporeal.

A hypothec "without delivery" allows the debtor to keep possession of the (hypothecated (i.e., charged) property. This hypothec must be in writing and must describe the hypothecated property with sufficiency. By way of exception, a natural person not carrying on an enterprise can only grant a hypothec without delivery on certain properties namely road vehicles, motorcycles, boats, aircrafts,

and incorporeal property (i.e., intangibles) such as securities, claims, and intellectual property rights. The other type of movable hypothec is the hypothec with delivery and is published by physical dispossession of the reditor holding the pledged property in favour of the creditor or title. The hypothec with delivery is also known as a pledge.

Since January 2016, Quebec implemented new rules allowing for the grant of a hypothec with delivery on a monetary claim (i.e. cash collateral). This new regime creates security on monetary claims. A creditor wanting to obtain control of a bank deposit or security deposit, where the deposit is owing by a third party, must enter into a control agreement with the latter.

Before January 2016, a creditor had to obtain a movable hypothec without delivery charging claims as collateral. The rank of this movable hypothec without delivery was thus determined by the date and time of its publication (i.e., registration) in the Register of Personal and Movable Real Rights, and accordingly subject to all other movable hypothecs without delivery already granted by the debtor on the same claims.

Under the new rules, a security charging a monetary claim (i.e. cash collateral) obtained by control ranks ahead of any other movable hypothec encumbering that same claim, from the time control is obtained. Therefore, even if a prior-ranking hypothec was granted by the same debtor on the same collateral, the security obtained on cash collateral by control would be opposable to both secured creditors and third parties.

Such control is obtained in a bilateral relationship, between a debtor and its creditor, if the debtor consents to the monetary claim securing his or her obligations towards the creditor. However, if the monetary claim is due by a third party to the debtor, the control is obtained pursuant to a control agreement entered into by such third party in favour of the creditor.

Secured creditors must bear in mind that the above-described security is a movable hypothec with delivery which implies delivery of the monetary claim to the creditor. Claims being incorporeal property, the delivery is conceptual since there is no physical delivery or possession. Considering that the hypothec is perfected by possession and not publication at the applicable registry, the hypothec created thereof represents an undisclosed security that remains unknown to other creditors, even though it can be set up against them.

The immovable hypothec (the Quebec version of a mortgage) is created pursuant to a notarial deed en minute executed before a Quebec notary. The hypothecs on present and future rents produced by an immovable as well as hypothecs on indemnities paid under the insurance contracts covering the rents are considered immovable hypothecs.

As under the PPSAs, the Civil Code requires the publication (i.e., perfection) of a security interest. Ranking of a hypothec is determined by the time and date of its publication by registration or delivery. Although the Civil Code's terminology and procedures are quite unique in Canada, the taking and enforcing of security in Quebec is substantially the same as in the other provinces. A hypothec confers on the secured party the right to take possession of the property, to take it in payment, to sell it or to cause it to be sold and thus to have a preference upon the proceeds of the sale.

Federal jurisdiction: Other federal legislation

While not commonly done, other federal legislation in Canada exists which provide for the ability to file or register an interest in applicable property. Such legislation includes: the *Patent Act*, the *Trademarks Act*, the *Industrial Design Act*, the *Integrated Circuit Topography Act*, the *Copyright Act*, the *Plant Breeders Rights Act*, the *Canada Shipping Act*, (in respect of any vessel which is registered or recorded under that Act), and the *Canada Transportation Act* (in respect of any rolling stock to which the provisions of that Act may apply).

In addition to the foregoing, Part VII of the *Financial Administration Act*⁴ provides for certain notice and acknowledgement requirements relating to the assignment of Federal Crown (government) debts. An assignment of Federal Crown debts which does not comply with that Act is ineffective as between the assignor and the assignee as against the Crown. Consequently, the secured party would not have a valid security interest in Federal Crown debts unless that Act is complied with.

Real property security

Lenders in Canada commonly take security over real property by way of charge or mortgage of land registered on title to a specific parcel of property granting the lender (the mortgagee) a charge or encumbrance on the property. The lender must perform a land registry/title search to ascertain the mortgagor's title and any registered charges or encumbrances. In addition, lenders will often require a separate assignment of leases and rents. As the rights under the lease and the right to receive rents are considered personal property in some jurisdictions, the security interest granted under an assignment of leases and rents is also commonly registered under PPSA legislation in addition to registration on title to the applicable property.

In Quebec, a security interest in real property is taken by way of a hypothec over "immovable" property as described above.

Finally, some jurisdictions have legislation with restrictions against carrying on business as a "mortgage broker," which may include, among others, any person that carries on business which involves lending of money secured, in whole or in part, by a mortgage or security over real property.

Priority rules

Personal property – PPSA jurisdiction

Under the PPSAs and the Civil Code, the order of registration generally determines priority. Thus, the first creditor who correctly registers their interest will maintain first priority. There are, however, significant exceptions where statutory claims take priority (or "prime") over secured creditors. Most priming liens arise from a debtor's obligation to collect and remit monies owed to the government. These include unremitted payroll deductions and premiums and unremitted federal and provincial sales taxes. Note that the priority of certain statutory claims is affected by a debtor's bankruptcy.

A “purchase-money security interest” (PMSI), whereby a creditor who correctly satisfies the PPSA registration requirements can achieve priority ahead of a prior security interest where it has provided the financing for a debtor to acquire new assets on credit or where a debtor obtains new assets on a lease and the vendor takes a security interest in the assets to secure the payment of the price. If the secured party/vendor/lessor providing the financing complies with the PMSI rules in the applicable PPSA, it will obtain priority over every other PPSA secured party who may have an interest in such assets irrespective of the timing of registration by such other secured parties.

Quebec

In Quebec, prior claims rank ahead of movable or immovable hypothecs regardless of their time and date of publication and may be set up against other creditors notwithstanding any agreement to the contrary. Priority agreements, such as intercreditor agreements and cessions of rank, must be published in Quebec to be effective against third parties.

Enforcement of security

Before enforcing security, a lender is required at common law to make demand on the debtor and give the debtor a “reasonable” amount of time to pay. A party (be it the secured creditor or a receiver appointed by the secured creditor) selling or otherwise disposing of assets secured by security secured creditor must act in good faith and in a commercially reasonable manner when doing so and must give advance notice of its intention to realize on the security. The “reasonable time” to pay following demand is fact-specific and depends on the borrower’s circumstances, the nature of the assets, and the market conditions at the time of demand. In practice, Canadian courts have found that a reasonable time can range from a matter of hours to several days for liquid assets, and longer for complex businesses. Lenders should take legal advice before making demand, the timing and form of demand can affect the enforceability of subsequent enforcement steps.



Legal opinions

When a transaction is nearing its completion, lenders will often require legal opinions (generally from borrower's counsel) to ensure that all documentation is in order and in compliance with applicable laws. Legal opinions are based more on law than fact and will require a thorough review of the corporate records of the corporations and documentation being opined on to ensure that it is in accordance with the law. To the extent the contracts being opined on are governed by the laws of a Canadian jurisdiction, opinions should confirm that the contracts being opined on are valid and legally binding obligations of the applicable parties. If the governing law is the laws of a jurisdiction outside of Canadian law (i.e., foreign law), it is common in Canada to require foreign law opinions covering unfamiliar matters such as, inter alia, recognition of foreign laws and recognition and enforcement of foreign judgments. Although opinion letters are not used in every form of financing, they have become commonplace and allow both sides the opportunity to ensure the accuracy of all documents and agreements.

For transactions involving Quebec entities or Quebec-sited assets, a Quebec law opinion from Quebec-qualified counsel is required. The civil law regime is sufficiently distinct that an opinion from common law counsel does not provide adequate comfort on Quebec-specific issues.



¹ R.S.C. 1985, c. I-15, s. 4.

² *2015673 Ontario Inc. v. Chorny* (2008), 90 O.R. (3d) 207; *Business Development Bank of Canada v. Papke*, [2003] B.C.J. No. 2689; *Business Development Bank of Canada v. Papke*, [2005] B.C.J. No. 1091.

³ R.S.C. 1985, c. F-11

⁴ R.S.C. 1985, c. F-11

KEY TAKEAWAYS:

- Foreign lenders can lend into Canada without *Bank Act* registration, provided they are not conducting business through a Canadian agent, negotiations take place outside Canada, and the transaction completes outside Canada. Confirm this analysis for each lending arrangement.
- Withholding tax on arm's-length interest paid to foreign lenders was eliminated in 2008. For non-arm's length lenders from non-US jurisdictions, withholding tax at treaty-reduced rates applies, and the gross-up obligation adds material cost to the borrower.
- Thin capitalization and EIFEL rules both limit interest deductibility for Canadian subsidiaries with non-resident lenders. They operate independently, modeling both before setting the capital structure.
- The criminal rate of interest is now 35% APR for most loans as of January 1, 2025. Commercial loans to corporations exceeding \$500,000 are exempt. The definition of interest includes all fees, charges, and commissions, not just the stated rate.
- Quebec requires a hypothec, not a PPSA security agreement. Immovable hypothecs must be created by notarial deed. Movable hypothecs are registered in the RDPRM. Standard security documentation from common law provinces is not valid in Quebec.
- Statutory priming claims, unremitted payroll deductions, CPP, EI, and sales taxes, are not visible on a PPSA search.
- Limitation periods against guarantors run from when the underlying debt becomes due, not from the completion of borrower enforcement. Monitor guarantee limitation periods independently and ensure Ontario law guarantees contain limitation period extension language.

How Miller Thomson can help

Debt financing in Canada, whether a foreign lender lending to a Canadian borrower, a foreign parent capitalizing a Canadian subsidiary with intercompany debt, or a foreign borrower taking security over Canadian assets, involves a matrix of federal and provincial rules that do not operate uniformly across the country and that have changed materially in the past two years. The criminal rate amendments, the Hybrid Mismatch Rule expansions, and the EIFEL rules have all altered the landscape for cross-border lending since 2023.

Miller Thomson's banking and financial services team advises foreign lenders and borrowers on Canadian financing transactions across all provinces, from PPSA security structuring and registration through Quebec hypothec documentation, *Bank Act* security, intercreditor arrangements, guarantee enforceability, and legal opinions. Our national presence includes Quebec practitioners who advise on the civil law security regime and can coordinate with common law counsel on national financing transactions involving assets in multiple provinces.

Speak with a [Miller Thomson Financial Services lawyer](#) about your Canadian debt transaction.



Canadian Securities Laws

What **foreign companies**
and **investors need** to know

Canadian Securities Laws

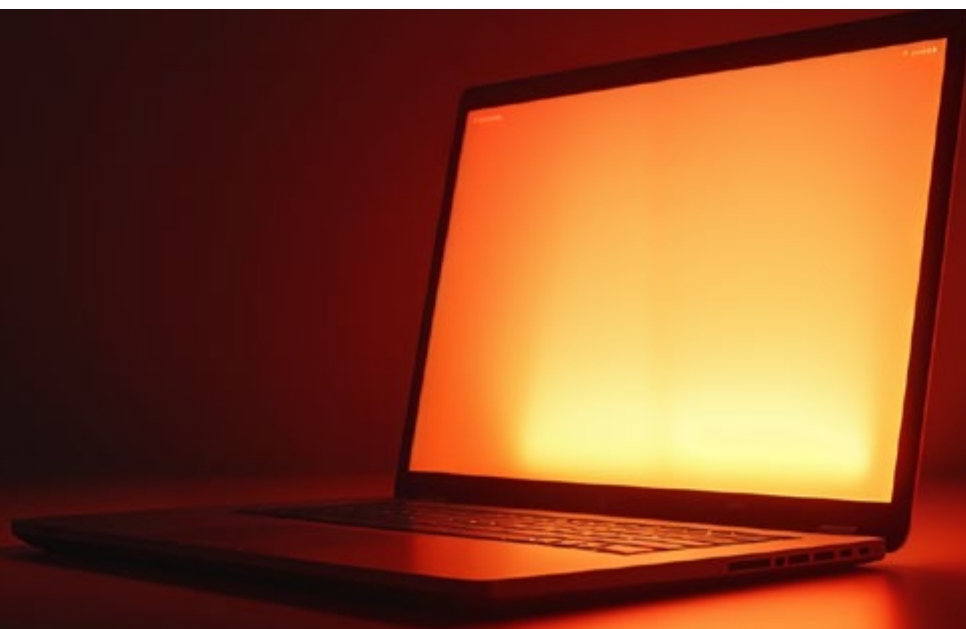
What **foreign companies** and **investors need** to know.

WHO THIS IS FOR:

CFOs, GCs, and capital markets advisors at foreign companies considering a Canadian listing, raising capital from Canadian investors, acquiring a Canadian public company, or sending executives into roles that create insider reporting obligations.

The assumption that costs foreign companies the most:

Foreign companies approaching the Canadian capital markets for the first time make two opposite mistakes. Some assume the Canadian system mirrors the U.S. SEC regime and apply U.S. frameworks to Canadian transactions, missing exemptions, triggering requirements they could have avoided, and misunderstanding the role of provincial regulators. Others dismiss the Canadian market as too small to matter and miss a capital-raising environment that is uniquely well-suited to junior issuers, mining and resource companies, and growth-stage businesses that would face prohibitive costs accessing U.S. markets at the same stage. The right starting point is understanding what Canada's securities system actually is, and what it is not.



01.

Canadian securities regulatory regime

The regulation of the sale and distribution of securities in Canada is a matter of provincial and territorial jurisdiction. In Canada (unlike in the U.S.), there is no national or federal securities legislation, although there have been long-term and unsuccessful efforts towards attempting to develop a federal system. Each of Canada's 10 provinces and three territories is responsible for and has its own system of securities regulation, and its own securities regulatory authority (e.g., the Ontario Securities Commission).

The absence of a federal securities regulator is the first structural difference that foreign companies must internalize. A securities offering in Canada is not filed with a single national regulator. It is filed with the securities regulatory authority of each province and territory in which securities are distributed. In practice, the passport system administered by the CSA (defined below) allows issuers to file in one principal jurisdiction and have that filing accepted by other CSA members, but Ontario does not participate in the passport system and requires its own filing. For any offering that includes Ontario investors, which includes virtually every significant Canadian offering, Ontario is a separate regulatory touchpoint.

Even though securities regulation in Canada is not centrally governed, an umbrella organization of Canada's provincial and territorial securities regulators called the Canadian Securities Administrators (CSA) has been created. The objective of the CSA is to improve, coordinate and harmonize the regulation of the Canadian capital markets. The CSA has generally been successful in harmonizing most of Canada's provincial and territorial securities regulations and the CSA has also created and adopted mutual reliance procedures amongst its members for filing and clearing prospectuses, reviewing other disclosure filings under SEDAR+ (the Canadian equivalent to EDGAR), managing the registrations of those persons and companies required to be registered, as well as cooperating with interprovincial and international enforcement investigations and tribunal hearings.

In Canada, both the trading of securities and the persons and companies, such as dealers and advisors, who participate in the trading process, are governed by securities legislation. Any person who is in the business of trading in securities or is in the business of providing investment advice about securities, or acts as an investment fund manager in Canada, must be registered with the applicable CSA member and must meet and maintain certain proficiency requirements, unless there is an available registration exemption.

Foreign securities brokers, dealers and advisors operating in Canada, including those providing services to Canadian-resident clients from outside Canada, must assess their registration obligations before any Canadian-facing activity begins. The "international dealer" and "international adviser" exemptions are available in some provinces for cross-border activity but are not uniform across jurisdictions and do not apply in all circumstances.

Investment dealers in Canada are required to become members of the Canadian Investment Regulatory Organization (CIRO), which is similar to FINRA in the U.S. and has its own additional rules.

Raising capital in Canada: the prospectus requirement and its exemptions:

When a distribution of securities occurs as a result of the issuance of new shares, bonds, or investment contracts, a detailed prospectus is required, unless an exemption applies. The prospectus is a fulsome disclosure document reviewed and cleared by the relevant securities regulator. Preparation, filing, and regulatory review typically takes three to six months for a full prospectus and involves significant legal, accounting, and filing costs. For most private placements and exempt offerings, the prospectus requirement is avoided entirely through one of the exemptions below.

The most important prospectus exemptions for foreign companies raising capital in Canada:

The accredited investor exemption is the most commonly used exemption for private placements in Canada. An investor who qualifies as an accredited investor under National Instrument 45-106 may purchase securities without a prospectus. The current thresholds for individual accredited investors are:

- **Income test:** annual net income exceeding C\$200,000 in each of the last two years (or C\$300,000 combined with a spouse), with a reasonable expectation of maintaining that level in the current year
- **Financial asset test:** financial assets (cash and securities, net of liabilities) exceeding C\$1,000,000
- **Net asset test:** net assets of at least C\$5,000,000

Entities, such as corporations, trusts, and partnerships, qualify as accredited investors if they have net assets of at least C\$5,000,000 as shown on their most recently prepared financial statements.

Issuers relying on the accredited investor exemption must obtain a signed risk acknowledgement from each individual investor and file a report of exempt distribution with the relevant securities regulator after closing. Failure to properly verify accredited investor status, and document that verification, exposes the issuer to regulatory enforcement and gives investors rescission rights. Verification cannot be casual.

The friends, family, and business associates exemption allows certain investors to purchase securities on a prospectus-exempt basis based on their relationship with the issuer or its directors and officers.

The **minimum amount investment exemption** allows a person that is not an individual, and was not created solely to make the investment, to purchase securities on a prospectus-exempt basis where they invest a minimum of C\$150,000 in cash at the time of distribution.

The **Listed Issuer Financing Exemption (LIFE)** allows eligible public companies to raise capital efficiently without filing a prospectus, enabling investors to acquire new free-trading shares with no required hold period. This exemption has become increasingly used by TSX and TSXV-listed issuers as a faster and lower-cost alternative to a full prospectus offering for follow-on financings.

02.

Canadian stock exchanges

The Toronto Stock Exchange (the “TSX”) and the TSX Venture Exchange (the “TSXV”) are the two largest stock exchanges in Canada. The TSX is Canada’s senior exchange, intended for established issuers with a track record of operations. The TSXV is primarily for junior and development-stage companies that have not met certain requirements for listing on the TSX. A third Canadian exchange is the Canadian Securities Exchange (the “CSE”) which offers an opportunity for micro-cap and emerging growth companies to list their shares with a reduced barrier to listing and reduced ongoing listing requirements as compared against both the TSX and TSXV.

All companies listed on the TSX, TSXV and CSE are required to complete a listing application to the respective exchange which allows the exchange to assess whether the applicant company meets its specific listing criteria. In addition, any company seeking to go public in Canada must file audited consolidated financial statements for two to three years preceding the listing date, which generally must be prepared in accordance with IFRS.

While the TSX, TSXV and CSE each have differing threshold requirements for accepting an application to list on the respective exchange, certain factors considered by the exchanges include, a record of successful operations, sufficient experience and expertise of the management of the applicant company, whether the company has or has access to capital sufficient to operate the company and its business plan for the subsequent 12 months, and whether there are sufficient outstanding securities in order for there to be a viable market in the trading of the company’s listed securities. There are typically additional listing requirements and levels of scrutiny for companies whose principal business operations or operating assets are primarily located in or conducted from a jurisdiction outside Canada, the United States, Australia, New Zealand or Western Europe.

Once a company is listed in Canada, each exchange will have ongoing listing requirements related to corporate governance, ongoing disclosure (in addition to corporate and securities laws requirements) and approvals for certain share issuances or amendments to certain organizational and other key corporate documents. Failure to meet such ongoing listing requirements may lead to, among other things, the issuer being delisted from the exchange.

What makes Canada's equity markets distinctive for foreign issuers, and *why* it matters

The threshold size at which a Canadian IPO is viable is materially lower than in the U.S.

The securities regulatory regime in Canada and the rules of the country's stock exchanges have been developed in a manner to foster efficient capital raising opportunities for small-capitalization companies. The policies and rules have been designed in a manner whereby compliance costs are minimized as compared to other jurisdictions such as the U.S., without sacrificing investor protections. As a result, the threshold size and valuation whereby a company will pursue an initial public offering (IPO) in Canada is typically much smaller than in the U.S. Programs such as the TSXV's capital pool program (CPC) have been specifically designed to foster relatively inexpensive and efficient go-public transactions, which has become the most common IPO route for new listings on the TSXV.

While many sectors are important in the Canadian economy and capital markets, mining remains Canada's most durable public market strength, both domestically and internationally. Canada continues to occupy a unique position within global mineral-resource finance. The TSX, TSXV and CSE collectively support one of the world's most sophisticated and prolific mining finance ecosystems. Canada's National Instrument 43-101 provides a "best-in-class" comprehensive disclosure framework governing scientific and technical information for mining companies, while investors, regulators, analysts, lawyers, accountants and technical consultants possess decades of experience evaluating everything from upstart mineral exploration and development projects to long-producing mining companies.



03.

Cross-border offerings: the multijurisdictional disclosure system

The multijurisdictional disclosure system (the “MJDS”) is a cooperative effort between the U.S. Securities and Exchange Commission (the “SEC”) and Canadian provincial securities regulators. It was established to facilitate cross-border securities offerings between the two countries.

The MJDS operates in two directions, and foreign companies need to understand both:

The northbound MJDS enables U.S. issuers to offer securities in Canada following SEC regulations. It encompasses various activities such as rights offerings, takeover and issuer bids, business combinations, approved debt and preferred share offerings, as well as securities offerings by specific large issuers. Similarly, qualified Canadian issuers can access U.S. capital markets through the southbound MJDS rules.

The southbound MJDS, enables Canadian issuers to offer securities in the United States using a prospectus prepared in accordance with Canadian securities rules, while also incorporating specific additional disclosures. To qualify for the southbound MJDS, a Canadian “foreign private issuer” (excluding “investment companies” as defined by U.S. legislation) must have complied with the continuous disclosure requirements of any provincial securities regulator for a period of 12 calendar months and the issuer’s aggregate market value of equity shares must be at least US\$75 million.



04.

Public company mergers and acquisitions

In general, mergers and acquisitions of public companies are regulated under Canadian securities law, general corporate law, and the common law (precedent set by courts of competent jurisdiction).

Procedural and substantive fairness requirements must be satisfied in order for transactions to be completed. These safeguards attempt to ensure that good corporate governance practices are followed, good disclosure is provided to investors, and that mergers and acquisitions are completed with procedural fairness.

Early warning disclosure is triggered when an investor acquires 10% or more of a public company's voting shares (or securities convertible into voting shares).

Take-over bids are triggered when an investor makes a bid to acquire 20% or more of a public company's voting shares, subject to certain exemptions. A take-over bid in Canada must remain open for at least 105 days, all shareholders must be offered the same consideration, and a minimum tender condition of more than 50% of the outstanding shares (excluding shares held by the bidder) must be met before the bid can be taken up. The 105-day minimum — which can be shortened to 35 days with target board approval — is a material timeline constraint that must be built into transaction planning from the outset.

There are additional regulatory requirements for publicly traded companies that are involved in any transactions with related parties or any issuer bid or insider bids. These types of transactions result in additional disclosure requirements and include requirements for formal valuations and/or the approval of the majority of the minority shareholders, subject to certain exemptions.

What to do before acquiring a significant position in a Canadian public company:

- Map the early warning thresholds against your acquisition plan, filing obligations at 10% and each 2% increment are not optional and carry market disclosure consequences
- Assess whether your acquisition constitutes a take-over bid before crossing 20%, the 105-day minimum tender period and the all-holders equal-treatment requirement have significant transaction structuring implications
- Identify any related party transaction requirements that apply to your specific transaction, formal valuation and minority approval requirements can add time and cost that must be factored into deal certainty provisions
- Assess whether your transaction also triggers *Investment Canada Act* (ICA) review, a public company acquisition that crosses the ICA thresholds requires simultaneous foreign investment and securities law analysis

05.

Insider trading and reporting

In Canada, securities laws prohibit insiders of a publicly traded company and other individuals with privileged access to material information that has not been generally disclosed to the public (i.e. those in a special relationship) from engaging in purchasing or selling securities of that company while possessing such knowledge.

It is also illegal in Canada for a person in a special relationship with a publicly traded company to communicate any confidential material information about the company to another person, unless such communication is in the necessary course of business. Similarly, it is illegal for a person in a special relationship with the publicly traded company to give any investment advice or recommendations about the company while in possession of confidential material information about the company.

Directors, senior officers and large (10% or more) shareholders of a public company are “reporting insiders” and they must publicly report all their securities transactions involving their company’s securities. Reporting insiders are required to file an insider report on the System for Electronic Disclosure by Insiders (SEDI) within five days of any change in their beneficial holdings.

Foreign executives who join the board of a Canadian public company become reporting insiders from the date of appointment. Every acquisition, disposition, or pledge of the company’s securities, including shares received as compensation, must be reported on SEDI within five days. Late filings are a regulatory offence and a reputational issue in Canada’s capital markets, where insider trading compliance is actively monitored.



KEY TAKEAWAYS:

- Canada has no federal securities regulator. Each province and territory has its own regime. The CSA passport system reduces the burden for most filings, but Ontario requires its own filing and is a separate regulatory touchpoint for any significant offering.
- The accredited investor exemption is the foundation of private capital raising in Canada. The thresholds are: C\$200,000 annual income (or C\$300,000 with spouse), C\$1,000,000 in financial assets, or C\$5,000,000 in net assets. Verification and documentation are mandatory, casual reliance on investor self-certification is a regulatory exposure.
- Canada's equity markets are more accessible for junior and growth-stage issuers than the United States. The TSXV and CSE offer viable listing paths at lower compliance costs and smaller capitalization levels than NASDAQ or NYSE. The TSXV CPC program is the most common IPO route for new TSXV listings.
- For mining and mineral exploration companies globally, the Canadian capital markets are the primary venue for junior resource financing. NI 43-101 is the global standard for technical disclosure in mining.
- Foreign issuers from jurisdictions outside Canada, the US, Australia, New Zealand, and Western Europe face additional listing scrutiny. Engage Canadian securities counsel before initiating a listing application.
- Early warning disclosure triggers at 10% of voting shares. Take-over bid rules apply at 20%. The 105-day minimum tender period is a deal timeline constraint that must be built into transaction documents from the outset.
- Foreign executives on Canadian public company boards are reporting insiders from day one. Every securities transaction must be reported on SEDI within five business days.
- The insider trading prohibition applies to anyone in a special relationship with a Canadian public company, including foreign advisors and consultants receiving material non-public information in the course of a transaction. Jurisdiction of residence does not create an exemption.
- A public company acquisition that triggers ICA thresholds requires simultaneous foreign investment review and securities law analysis. These are connected workstreams, not sequential ones.

How **Miller Thomson** can help

Canada's securities regulatory environment rewards issuers, investors, and acquirors who understand its structure, the provincial framework, the passport system and its Ontario exception, the prospectus exemptions that make private placements efficient, the exchange listing paths that are genuinely accessible to growth-stage companies, and the insider trading and reporting obligations that apply from the moment a foreign executive joins a Canadian board or receives material non-public information.

Miller Thomson's capital markets and securities team advises foreign companies and investors across the full spectrum of Canadian securities law, from private placements and prospectus offerings through exchange listings, cross-border MJDS transactions, public company M&A, take-over bids, and regulatory compliance. Our national presence means we can coordinate securities advice with the ICA review, competition law, and tax structuring that frequently arise in the same transaction, because the companies that close Canadian transactions efficiently are the ones that treat these as connected disciplines, not parallel silos.

Speak with a [Miller Thomson Capital Markets and Securities lawyer](#) about your Canadian capital markets strategy.







Real Estate Development

Buying, developing, & owning property
in Canada as a foreign investor

Real Estate Development

Buying, developing, & owning property in Canada as a foreign investor

WHO THIS IS FOR:

CFOs, general counsel, and investment leads at foreign companies and investors evaluating the acquisition, development, or ownership of real property in Canada, whether for commercial operations, investment purposes, or corporate real estate needs.

The assumption that surprises foreign real estate investors most

Foreign investors entering the Canadian real estate market frequently underestimate how much of the regulatory framework is provincial rather than federal, and how significantly the rules differ between provinces. There is no single Canadian real estate law. Title registration systems differ by province. Land transfer taxes vary widely. Ownership restrictions for non-residents apply differently depending on the type of property, the province, and the structure through which the investment is made. Since 2023, a federal prohibition on non-Canadian purchases of residential property has added a layer of compliance that applies nationally but is subject to a specific set of exemptions that must be assessed for every transaction.

The practical consequence: a real estate strategy designed for one province cannot be assumed to work in another, and a foreign investor's eligibility to purchase depends on the type of property, its location, and the corporate or individual structure through which the acquisition is made, not simply on whether they have the funds to close.



01.

Registration systems

There are two registration systems in Canada and the system that applies depends on the province and, in some cases the specific parcel of land.

a. The registry system

The registry system is the older of the two. Registration under the registry system provides notice to third parties and can establish priorities among competing interests, but it does not establish whether there is a valid interest in the land. To determine what interest is actually held, it may be necessary to review all documents affecting the land back to the initial Crown grant. Title searches must be undertaken, and prospective buyers receive legal opinions regarding title and the interests attached to the land. The practical consequence for a foreign buyer is a more extensive and time-consuming due diligence process. The chain of title must be traced historically, and the legal opinion carries more weight as the primary assurance of clean title.

b. The land titles system

The land titles system, also known as the Torrens system, provides an up-to-date statement of ownership and other interests in the land without requiring examination of all documents dating back to the Crown grant. The register itself is the authoritative record of title. For foreign buyers, this system is more familiar in structure and more efficient in due diligence, the register reflects the current state of title and interests, and the search process is considerably shorter than under the registry system.

Most registry systems in Canada have been converted to land titles systems. However, certain parcels, particularly in older urban areas and rural regions in Ontario, Nova Scotia, Prince Edward Island, and Newfoundland, may still be governed by the registry system. Foreign buyers should confirm which system applies to the specific property being acquired before scoping their due diligence timeline and budget.



02.

Title insurance

Title insurance is used to provide protection against fraud or forgery in real estate transactions as well as indemnification against specified losses. A title insurance policy will protect the insured to the extent of the policy and provides for a duty to defend in the event of a claim.

This differs from a legal opinion. For example, while title insurance provides an indemnity against specified losses, a solicitor who furnishes a legal opinion can only be held responsible if there has been a breach of their professional duty of care. Title insurance does not replace legal due diligence, it compensates for certain losses that arise despite due diligence. For commercial real estate transactions, both legal due diligence and title insurance are typically obtained, serving different risk management functions. Foreign buyers who rely solely on title insurance without obtaining independent legal advice on title assume risks that the policy may not cover.

Title insurance is available from a small number of Canadian insurers and is now standard practice in most Canadian residential and commercial transactions. Premiums are typically a one-time payment at closing and are modest relative to transaction value. For commercial transactions, coverage amounts and policy terms require specific negotiation.



03.

Ownership restrictions for non-residents

This is the section of Canadian real estate law that has changed most significantly since 2023 and that requires the most careful current-year analysis for any foreign investor.

Non-residents can generally own real property in Canada without restriction. However, as each province regulates property ownership, each province is able to restrict the acquisition of land by individuals who are not citizens or permanent residents or corporations controlled by citizens or permanent residents.

Provincial restrictions

For example, in **Alberta**, there is a limit to the types of land that can be held by non-residents. For corporations that are not incorporated in the subject province, the corporation will generally need to acquire an extra-provincial licence to purchase property in the province in which the land is located, a step that applies across most provinces and that foreign corporate buyers frequently overlook until the transaction is already in progress. The extra-provincial registration process takes time and should be initiated well before the anticipated closing date.

Also, **both British Columbia and Ontario** have introduced a “foreign buyers tax” in respect of certain acquisitions of real property by non-Canadian residents. The current rates are:

- British Columbia: 20% on the fair market value of the property
- Ontario: 25%

Both taxes apply to residential property acquisitions and are subject to specific exemptions, including exemptions for certain work permit holders and permanent residents. The applicable exemptions must be assessed for each transaction and each buyer before closing, not assumed.

Quebec has specific legislation regulating the ability of non-residents to purchase more than four hectares of agricultural land.

Federal prohibition on non-Canadian purchases of residential property

The *Prohibition on the Purchase of Residential Property by Non-Canadians* (the “Act”), came into effect on January 1, 2023. The prohibition was initially set for a two-year period but has been extended and is now in force until January 1, 2027. Non-Canadians are prohibited from purchasing certain types of residential property, defined as buildings with three or fewer dwelling units, including but not limited to, semi-detached houses and condominium units, in Census Metropolitan Areas and Census Agglomerations across Canada.

The prohibition applies to non-Canadian individuals and to Canadian corporations that are privately held and either not listed on a Canadian stock exchange or controlled by non-Canadians holding at least 10% equity or voting rights. Foreign companies acquiring Canadian residential property through a Canadian subsidiary must assess whether the subsidiary is caught by this definition.

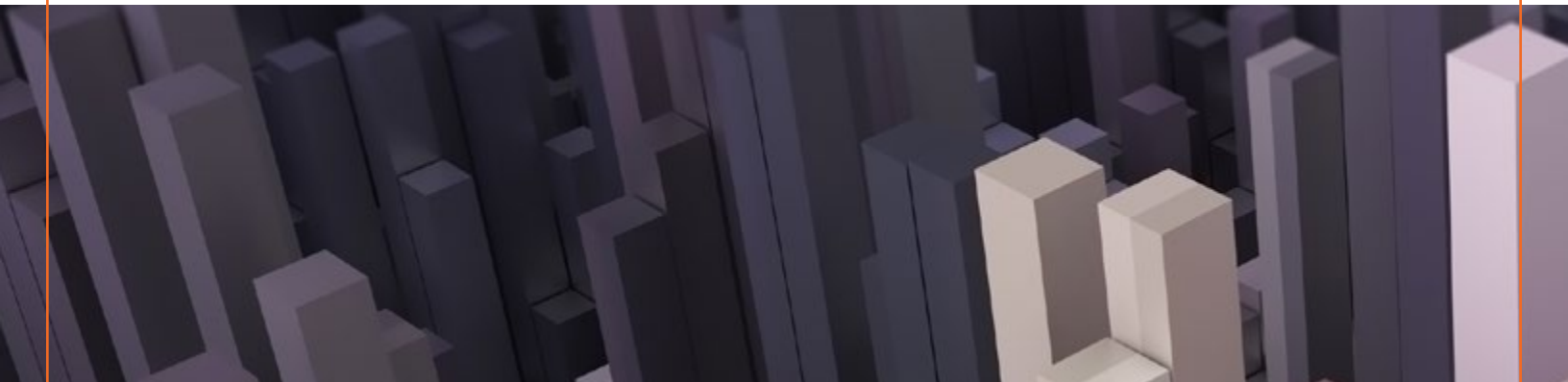
Exemptions exist, including for holders of valid work permits with 183 or more days remaining, certain international students, certain spouses or parents, refugees and protected persons, and purchases of property outside Census Metropolitan Areas and Census Agglomerations. However, exemptions must be positively established for each transaction. The prohibition does not apply to commercial real property, industrial property, or residential property with more than three dwelling units, meaning a foreign investor acquiring a mid-rise apartment building or commercial development is not caught by the Act.

Violations of the Act constitute a criminal offence. Non-Canadians found in violation, and any persons or entities that assisted them, may be fined up to CAD \$10,000. In addition, a court may order the property to be sold.

Underused Housing Tax, eliminated for 2025 and beyond

Foreign investors who acquired Canadian residential property between 2022 and 2024 should be aware that the federal Underused Housing Tax, a 1% annual tax on the value of vacant or underused residential property owned by non-residents and certain Canadian entities, applied for the 2022, 2023, and 2024 calendar years. The UHT was eliminated effective 2025 when the Budget 2025 Implementation Act received royal assent on March 26, 2026. However, filing obligations and tax owing for 2022, 2023, and 2024 remain in force. Foreign owners of Canadian residential property who have not filed UHT returns for those years should address outstanding compliance before the CRA initiates collection action.

When a non-resident disposes of real property situated in Canada, the non-resident is subject to the withholding tax obligations applicable to taxable Canadian property under section 116 of the Income Tax Act, discussed in detail in the Income Tax section of this publication. A clearance certificate from the CRA must be obtained before closing to avoid the purchaser withholding up to 25% of the gross purchase price. The clearance certificate application should be built into any disposition timeline by providing at least 120 days before the anticipated closing date.



04.

Land transfer taxes

All provinces impose a tax on the transfer of real property. Rates vary widely and in some cases affect different portions of the purchase price of the land.

Current land transfer tax rates for reference:

- **Ontario:** 0.5% on the first \$55,000; 1.0% on \$55,000–\$250,000; 1.5% on \$250,000–\$400,000; 2.0% on \$400,000–\$2,000,000; 2.5% on amounts over \$2,000,000 for single-family residences
- **British Columbia:** 1% on the first \$200,000; 2% on \$200,000–\$2,000,000; 3% on \$2,000,000–\$3,000,000; 5% on amounts over \$3,000,000
- **Alberta:** no provincial land transfer tax, a land title transfer fee applies but is significantly lower than provincial transfer taxes in other provinces. This is one reason Alberta remains an attractive entry point for foreign real estate investment.
- **Quebec:** transfer duties (taxe de bienvenue) apply at rates between 0.5% and 1.5% depending on the value of the property

Toronto imposes an additional municipal land transfer tax on top of the Ontario provincial tax, effectively doubling the land transfer tax cost for Toronto acquisitions. For a commercial property purchase in Toronto, the combined provincial and municipal land transfer tax can represent a material transaction cost that must be modeled in advance.

There are differences between commercial and residential land transfer tax rates in certain provinces. In some provinces, first-time homebuyer rebates reduce or eliminate land transfer tax for qualifying individuals, these rebates do not apply to foreign corporate buyers and are generally unavailable to non-residents.



KEY TAKEAWAYS:

- Canada has no single real estate law. Registration systems, ownership restrictions, land transfer taxes, and foreign buyer taxes are all provincially administered and vary materially between provinces. A legal review specific to the province where the property is located is required for every acquisition.
- The federal prohibition on non-Canadian purchases of residential property is in force until January 1, 2027. It applies to buildings with three or fewer dwelling units in Census Metropolitan Areas. Commercial property, industrial property, and larger residential buildings are not caught. Exemptions exist but must be assessed for each transaction.
- Ontario's Non-Resident Speculation Tax is now 25%, not 15%. British Columbia's foreign buyers tax is 20%. Both apply to residential property acquisitions by non-Canadians subject to specific exemptions. These rates must be modeled into any residential acquisition cost analysis.
- Extra-provincial registration is required for foreign corporations purchasing property in most provinces. Initiate the process well before the anticipated closing date.
- The Underused Housing Tax has been eliminated for 2025 and subsequent years. However, filing obligations for 2022, 2023, and 2024 remain. Foreign owners of Canadian residential property during those years should confirm UHT compliance before the CRA acts.
- Section 116 clearance certificates are required for non-resident dispositions of Canadian real property. Apply at least 120 days before closing. Without a certificate, the purchaser is required to withhold up to 25% of the gross purchase price at closing.
- Land transfer taxes are a material transaction cost — particularly in Toronto, where provincial and municipal taxes combine. Model them into your acquisition cost analysis before any offer is made.
- Alberta has no provincial land transfer tax, making it a cost-effective province for real estate acquisition relative to Ontario and British Columbia.

How Miller Thomson can help

Real estate transactions in Canada involve a layered web of provincial registration requirements, federal ownership restrictions, foreign buyer taxes, land transfer taxes, and tax withholding obligations, none of which operate uniformly across the country and all of which have changed materially in the past two years. A transaction structure that works in one province may be prohibited or significantly more expensive in another.

Miller Thomson's real estate group advises foreign investors and companies on Canadian property acquisitions, dispositions, and development projects across all provinces, from title due diligence and registration through ownership structure analysis, foreign buyer tax exemption assessment, section 116 clearance certificate applications, and land transfer tax planning. Our national presence means we can coordinate real estate advice with the tax, immigration, and corporate structuring considerations that arise in the same transaction.

Speak with a [Miller Thomson Real Estate lawyer](#) about your Canadian property investment







Canadian Insolvency Law

What **foreign companies** need
to know **when a subsidiary is in distress**

Canadian Insolvency Law

What **foreign companies** need to know **when a subsidiary is in distress**

WHO THIS IS FOR:

CFOs, GCs, and boards of foreign companies with Canadian subsidiaries showing signs of financial stress, and foreign lenders and creditors with exposure to Canadian debtors. Canada's restructuring framework is sophisticated, court-supervised, and capable of handling complex cross-border situations. But it operates differently from Chapter 11, the UK's restructuring plan, and most other foreign regimes in ways that materially affect what the foreign parent, lender, and creditor can do, and how quickly they need to act in distress.

Financial distress at a Canadian subsidiary is rarely just a Canadian subsidiary problem.

A foreign parent may begin from two flawed assumptions:

1. That the subsidiary's separate corporate existence isolates the parent from the insolvency; and
2. If formal protection becomes necessary, Canada's restructuring regime will operate broadly like Chapter 11 or the restructuring process with which the parent is familiar at home.

Neither assumption is a safe basis for planning.

The Supreme Court of Canada recently reaffirmed the policy behind Canadian insolvency law in *Peace River Hydro Partners v. Petrowest Corp.*: stakeholder rights are generally channelled into a centralized "single proceeding" so that an insolvency can be administered efficiently rather than through a collection of competing enforcement actions.

For foreign companies, the more important questions are what falls inside that collective proceeding and what does not, and whether enough liquidity remains to choose the process rather than have one imposed by events.

What does a Canadian filing actually protect?

The first mistake is equating separate corporate personality with total economic or legal insulation.

Ordinarily, a shareholder is not liable simply because its subsidiary cannot pay its debts. But a CCAA stay or proceedings protecting the Canadian debtor does not automatically protect the foreign parent, other affiliates or every person associated with the corporate group.

Parent and affiliate guarantees remain live

Section 11.04 of the CCAA makes the point directly: a CCAA stay does not, by itself, stop a creditor from proceeding against another person that has guaranteed the debtor's obligation or issued a related letter of credit. The CCAA also permits a limited stay of certain claims against directors, but excludes claims based on guarantees personally given by them¹.

For a foreign group, that means the first exposure map should extend beyond the Canadian entity's accounts payable. It should identify parent and affiliate guarantees, shared credit facilities, cross-defaults, cash pooling, intercompany loans and security, comfort arrangements, shared contracts and any liabilities sitting with parent-appointed directors or officers.

The Canadian board is not simply an extension of head office

A second trap is governance. Parent-appointed directors of a Canadian corporation owe their statutory duties to the Canadian corporation, not to the shareholder that nominated them.

The Supreme Court has repeatedly emphasized that the fiduciary duty is owed to the corporation and does not switch to creditors merely because the corporation approaches insolvency. At the same time, directors and officers can face specific statutory liabilities, including for certain employee wages and unremitted source deductions or GST/HST, subject to the governing statutory conditions and defences².

In practice, a distressed multinational should separate the parent's capital-allocation decision from the Canadian board's decision-making process. Intercompany funding, asset transfers, management charges, cash sweeps and decisions about which obligations will be paid should be supported by a record showing what the Canadian company knew, what alternatives were considered, and why the decision was in the corporation's interests.



Intercompany transactions can be reviewed after the fact

This third exposure is historical. The point is not that ordinary intercompany activity becomes suspect simply because a subsidiary later restructures. It is that once distress is visible, moving cash or value around the group should be reviewed because:

1. [Section 36.1 of the CCAA](#) imports the BIA's preference and transfer-at-undervalue remedies into a CCAA compromise or arrangement.
2. [Section 95 of the BIA](#) targets transactions that prefer one creditor over another: for a non-arm's-length creditor, a payment, transfer, security grant or other listed transaction can be vulnerable if it occurred in the 12 months before the initial bankruptcy event and had the effect of giving that creditor a preference.
3. [Section 96 of the BIA](#) addresses transfers at undervalue and permits a court, in the statutory circumstances, to set the transaction aside or require value to be restored to the estate; for non-arm's-length transactions, the review period can extend as far back as five years, subject to the statutory tests³.



CCAA or BIA? Which process fits the problem?

The answer is not simply “CCAA for large companies and BIA for small companies.”

The CCAA has a statutory threshold - total claims must exceed \$5 million for the debtor company or affiliated debtor companies proceeding together - but above that threshold the real choice is operational: what needs to be accomplished, how quickly, and with how much liquidity

Decision Point	CCAA	BIA Proposal / NOI
Entry Point	Court application by an eligible debtor company; >\$5 million claims threshold.	An insolvent person can file an NOI before filing a proposal; no comparable \$5 million threshold.
Stay	Court-ordered; initial stay is capped at 10 days, then extended by further order if statutory requirements are met.	Filing an NOI generally produces a statutory stay under s. 69.
Oversight	Mandatory court-appointed monitor; continuing supervision by the CCAA court.	Proposal trustee; more of the timetable and process is prescribed by statute.
Clock	No fixed overall statutory deadline for completing the restructuring, although continued stays require court approval and liquidity must support the process.	Cash-flow materials are due within 10 days after the NOI. A proposal is initially due within 30 days; extensions are capped at 45 days each and, in aggregate, five months beyond the initial period.
Failure	The court may lift the stay or the process may transition to a sale, receivership or bankruptcy depending on the circumstances.	Failure to meet the NOI filing requirements or proposal deadline results in a deemed assignment in bankruptcy.
Tools	Highly flexible; interim financing, sales, contract disclaimers, plans and other case-specific relief are available subject to the CCAA.	Not merely a “simple proposal” regime: the BIA also permits interim financing and court-authorized sales outside the ordinary course, but within a more prescriptive statutory framework.

Why choosing the wrong process costs real money

An NOI proceeding under the BIA can be an efficient way to create immediate breathing room while the company negotiates a proposal, refinancing or transaction. But the statutory clock matters. Within 10 days of filing the NOI, the debtor must file prescribed cash-flow materials. The proposal is initially due within 30 days. The court may grant extensions only within the statutory limits and only if the debtor satisfies the statutory criteria, including good faith, due diligence, a likely viable proposal and lack of material prejudice to creditors. If the deadline expires without a proposal, the debtor is deemed to have made an assignment in bankruptcy⁴.

The CCAA offers more flexibility for a complex multi-entity or cross-border restructuring, but it is also court-intensive and requires a monitor. The professional and administrative cost can be disproportionate for a smaller or straightforward situation. Conversely, choosing a timetable that is too tight can force a distressed business to spend its remaining liquidity converting processes or responding to a bankruptcy consequence instead of executing the transaction.

The regimes can interact. [Section 11.6 of the CCAA](#) permits a BIA proposal proceeding to be continued under the CCAA before a proposal is filed. That flexibility is useful, but it should be a contingency rather than the initial strategy. Every transition consumes time, management attention and cash.

When does a foreign insolvency proceeding get recognized in Canada?

A Chapter 11 case, UK restructuring process or other foreign proceeding does not, merely by existing, create a Canadian stay or transfer control over Canadian property to the foreign court. Recognition is the bridge between the foreign proceeding and Canadian legal relief.

Recognition has two questions: does the proceeding qualify, and is it main or non-main?

Under Part IV of the CCAA, the Canadian court must recognize a proceeding if it is a qualifying “foreign proceeding” and the applicant is its “foreign representative.” The court must then classify the proceeding as foreign main or foreign non-main. A main proceeding is one taking place where the debtor has its centre of main interests, or COMI. The debtor’s registered office is presumed to be its COMI unless the evidence shows otherwise⁵. COMI is therefore not a corporate-organizational label. Canadian courts look to operational realities.

What does foreign-main recognition actually give you?

If a CCAA foreign proceeding is recognized as main, section 48 requires the Canadian court, subject to appropriate terms, to grant a core package of protections: stays and restraints against

proceedings involving the debtor and restrictions on dispositions of Canadian property outside the ordinary course. Section 49 then permits additional relief where necessary to protect the debtor's property or creditor interests, including information and monitoring relief⁶.

This is the practical value of recognition: it gives the foreign restructuring a Canadian legal mechanism for the stay, asset protection, information-sharing, coordination and recognition of foreign-court orders that the foreign order could not automatically supply in Canada.

A recent **Miller Thomson** example: *Thentia Global Systems Inc. et al.*

A recent cross-border example is [the restructuring of Thentia Global Systems Inc.](#) and its affiliates, a cross-border technology group with operations and customer relationships in Canada, the United States and Europe.

In February 2026, the Ontario Superior Court of Justice (Commercial List) granted CCAA protection to the Thentia group and appointed Grant Thornton Limited as Monitor. The Court also authorized the Monitor to act as foreign representative for the purpose of seeking recognition of the Canadian proceeding in the United States. Miller Thomson acts as counsel to the Monitor.

Shortly thereafter, Chapter 15 proceedings were commenced in the U.S. Bankruptcy Court for the District of Delaware seeking recognition of the Canadian CCAA proceedings as foreign main proceedings. The U.S. Court granted provisional relief while the recognition application proceeded, providing a mechanism to coordinate the Canadian restructuring with Thentia's significant U.S. operations and assets.

This case illustrates the same cross-border principle from the opposite direction: a restructuring order does not necessarily travel with the debtor simply because the business crosses borders. Where the principal restructuring is in Canada, Chapter 15 can provide the U.S. legal infrastructure needed to protect assets, coordinate proceedings and support implementation of the Canadian restructuring south of the border. Conversely, where the principal proceeding is outside Canada, Part IV of the CCAA or Part XIII of the BIA performs the corresponding recognition function in Canada.

What if the foreign proceeding is non-main?

Non-main recognition is not failed recognition. It means the proceeding qualifies, but it is not taking place where the debtor has its COMI. The consequence is important: the mandatory section 48 package associated with foreign-main recognition does not automatically follow. Instead, under section 49, the foreign representative asks the Canadian court for relief that is necessary to protect property or creditor interests, and that relief can include the same types of stays available on main recognition.

If you are a foreign creditor, what rights - and deadline - matter most?

A U.S., European or Asian creditor is not subordinated because it is outside Canada.

The CCAA definitions expressly contemplate secured and unsecured creditors resident or domiciled outside Canada. A foreign creditor can monitor the court record and the monitor's reports, appear where its interests are affected, assert or dispute claims, rely on set-off where [section 21](#) applies, participate in a sale or claims process and, if a plan compromises its claim, vote in the appropriate class.

The deadline most likely to be missed is the claims bar date

There is no single statutory CCAA proof-of-claim deadline. Claims processes are usually established by court order, and the order can create bar dates for specified claims, including contingent, restructuring, D&O or transaction-related claims depending on the process. The monitor's website and notices are therefore not administrative background; they are part of the procedural record that determines whether and how a creditor participates.

Courts have discretion in appropriate circumstances to allow a late or amended claim, but that is not an entitlement. For a foreign creditor, the practical discipline is simple: as soon as a Canadian customer or counterparty enters CCAA protection, identify the monitor, download the initial and subsequent orders, calendar every claims, sale-process and hearing deadline, and determine whether the claim includes more than ordinary trade receivables - for example, damages, indemnities, guarantees, set-off, security or contractual termination rights.

Some creditor rights expire even faster than a claims bar date

The proceeding itself can create short, process-specific windows. For example, [section 81.1 of the BIA](#) can permit an unpaid supplier to repossess qualifying goods delivered to a purchaser within the applicable 30-day period before bankruptcy or receivership, but the prescribed written demand generally must be made within 15 days after the bankruptcy or receivership and the goods must still satisfy detailed statutory conditions. The right ranks ahead of other claims to those goods, but it disappears quickly if not exercised.

That remedy does not simply translate into every CCAA case, which is precisely the point. A foreign creditor should identify the Canadian proceeding before assuming that its only option is to file an unsecured proof of claim. Bankruptcy, receivership, a BIA proposal and CCAA protection can preserve - or eliminate - different remedies on different timelines.

What signals tell a CFO to move from monitoring to restructuring planning?

Canadian restructurings often appear sudden from head office because the legal filing occurs on one day. The operational deterioration usually does not. Six to twelve months earlier, the pattern is often visible in the way the subsidiary funds itself, pays statutory obligations and interacts with its lender group.

Signal 01 — the subsidiary has stopped funding its own working capital

Recurring emergency parent advances, cash calls immediately before payroll, chronic intercompany receivables, stretched payables or repeated requests to defer group charges are evidence that the Canadian business is no longer self-funding. The relevant question is no longer simply whether head office can send another tranche. It is what that tranche buys: time to complete a transaction, or only a later crisis date.

Signal 02 — statutory and critical obligations are becoming a liquidity source

When management begins deferring source deductions, GST/HST, payroll, pension contributions, rent or critical suppliers to create liquidity, the company is no longer simply stretching payables. Not every dollar of accounts payable is economically equivalent once distress is visible: different obligations can attract different deemed-trust, priority, director-liability or operational consequences, and those consequences can change again depending on whether the company enters a proposal, CCAA proceeding, bankruptcy or receivership⁷.

Signal 03 — the lender has shifted from relationship management to downside protection

Frequent borrowing-base testing, recurring covenant waivers, tighter reserves, weekly liquidity reporting, independent business reviews, demands for additional security or a formal reservation of rights should be treated as restructuring signals. By the time a secured creditor issues a notice of intention to enforce security under [section 244 of the BIA](#), the debtor may still have options, but the timetable is no longer solely management's.

At the first warning signs, move from reporting to an options process

For a sophisticated CFO, a 13-week cash flow is the starting point, not the end product. The model should be entity-specific and show unrestricted cash, borrowing availability, covenant or borrowing-base headroom, critical payments, statutory remittances, parent funding assumptions and forecast-to-actual variance. Management should know not just when cash reaches zero, but which assumption causes the break and what decisions move that date.

In parallel, the group should build a legal and transactional map: secured debt and priority claims by legal entity; guarantees and cross-defaults; material leases, licences and customer contracts; intercompany balances and recent affiliate transactions; payroll and tax exposure; key employees and suppliers; security registrations; pending litigation; and any assets or operations in Quebec that require a distinct civil-law analysis.

The board should also define the outcome it is funding. A consensual amendment, refinancing, parent recapitalization, going-concern sale, BIA proposal and CCAA process have different timing, information and liquidity requirements. “Keep funding until something happens” is not a restructuring strategy.

The intervention that changes outcomes is funded optionality

The single intervention that most changes the outcome is usually enough liquidity and stakeholder stability to run a process rather than react to one. That runway can come from parent support, a bridge facility, a lender standstill or forbearance, asset monetization, or - once in a formal process - court-approved interim financing. [Section 11.2 of the CCAA](#) permits interim financing secured by a court-ordered charge, with the court considering factors including duration, management, creditor confidence, prospects of a viable restructuring, asset value and material prejudice to creditors. The BIA has a parallel interim-financing power in proposal proceedings.

It becomes “too late” as a practical matter before it becomes too late as a legal matter. A company can still file after liquidity is severely constrained, but the menu of outcomes may have collapsed. When payroll is at risk, critical suppliers have stopped shipping, customers are leaving and secured lenders are ready to enforce, a restructuring statute may preserve order without preserving much optionality.

What changes when assets or operations are in Quebec?

The federal insolvency statutes apply across Canada. The private-law rights that enter those proceedings do not. Quebec is the clearest example because its private law is based on the Civil Code of Quebec rather than the common law used in the other provinces and territories.

Security is not a PPSA exercise

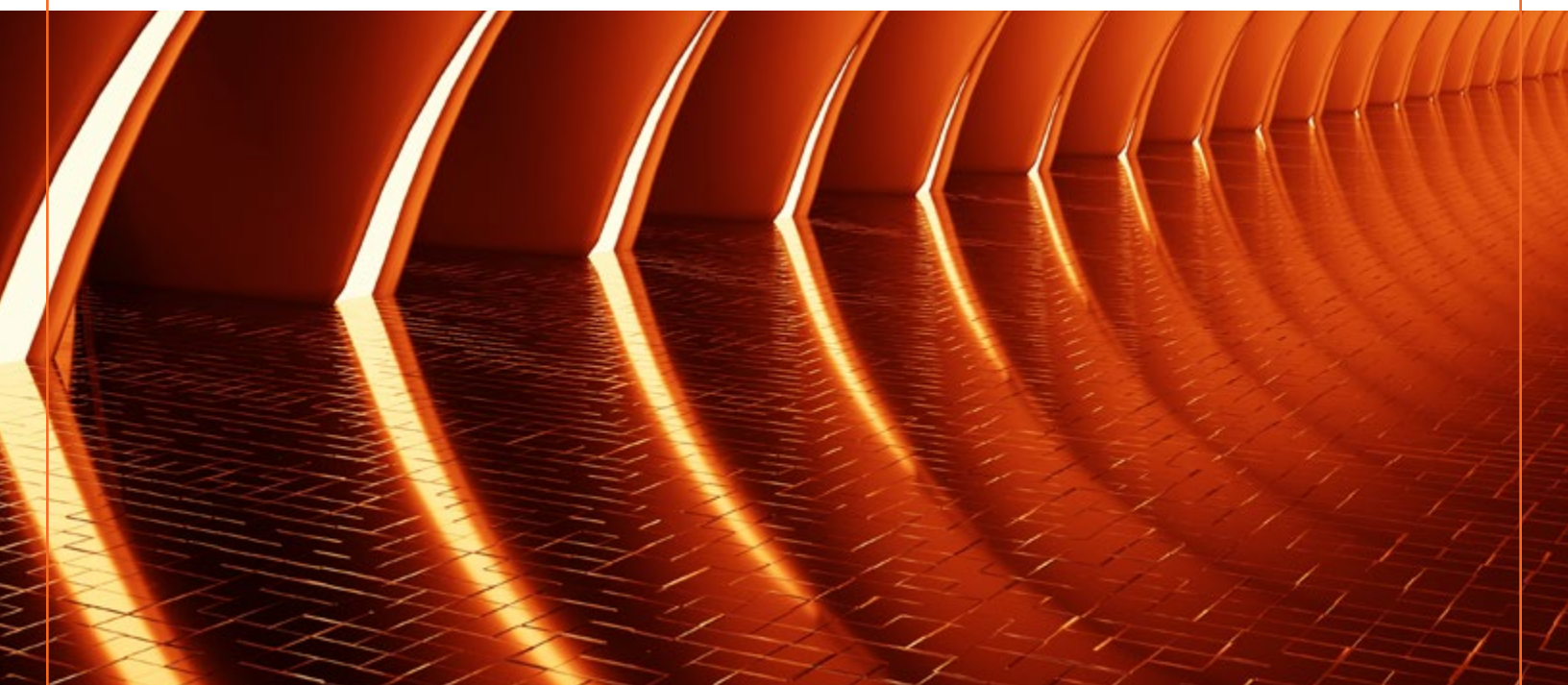
In the common-law provinces, consensual security over personal property is generally analyzed under provincial Personal Property Security Act legislation. Quebec instead uses a civil-law framework of hypothecs, priorities and publication of rights. [Article 2660 of the Civil Code](#) defines a hypothec as a real right over movable or immovable property securing performance of an obligation, with realization rights and preference according to rank. Quebec also recognizes prior claims, and some have priority over hypothecs regardless of when the hypothec was published⁸.

Depending on the right and property, publication may involve the Register of Personal and Movable Real Rights (RDPRM) or the land register. The creation, scope, publication, rank and enforcement analysis is therefore not a matter of swapping a Quebec registration for an Ontario PPSA registration.

The broader provincial trap is assuming one Canadian commercial law

Quebec is the most visible distinction, but the underlying point applies nationally. Insolvency is federal; property, security, many contractual issues, real estate, employment and other commercial rights are substantially provincial. A cross-border restructuring can therefore be national in strategy while still requiring province-specific diligence on the rights that determine priority, leverage and value.

For a foreign lender or parent, this is often the surprise: the CCAA court may be administering one national restructuring, but it is doing so against legal rights created by more than one private-law system. A security review or enforcement analysis prepared for Ontario should not simply be rolled across Quebec.



KEY TAKEAWAYS:

- Separate corporate existence does not isolate the foreign parent from the Canadian subsidiary's insolvency. Guarantees remain live. Director liability persists. Intercompany transactions made when distress was visible can be reviewed and reversed.
- Map your group exposure before distress becomes acute, such as guarantees, cross-defaults, cash pooling, intercompany balances, and director liability across the Canadian structure. This is most valuable and least expensive before a filing, not after.
- The CCAA and BIA are different tools for different problems. Choosing the wrong one, or choosing too late, consumes liquidity without preserving optionality. The process choice should be deliberate and advised.
- An NOI under the BIA creates a hard statutory clock: cash-flow materials within 10 days, a proposal within 30 days with capped extensions. Missing the deadline produces a deemed assignment in bankruptcy. The clock starts on filing.
- Foreign insolvency proceedings do not automatically create a Canadian stay. Recognition under Part IV of the CCAA is required, and COMI classification determines whether the mandatory section 48 protection package applies.
- Foreign creditors are not subordinated by geography, but claims bar dates in Canadian proceedings are set by court order, not statute. Identify the monitor, download the orders, and calendar every deadline from day one of the Canadian proceeding.
- The three early warning signals: the subsidiary has stopped self-funding, statutory obligations are being deferred, and the lender has shifted to downside protection, are visible six to twelve months before a formal filing. Move from monitoring to an options process at the first signal, not the third.
- "Keep funding until something happens" is not a restructuring strategy. Define the outcome the board is funding and confirm there is enough runway to execute it before committing the next tranche.
- Quebec assets require Quebec civil law analysis. Security taken in common-law provinces does not transfer to Quebec. A CCAA proceeding is national; the private-law rights inside it are not.

¹ *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (CCAA), ss. 11.03(2) and 11.04.

² *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at paras. 36-37; *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68 at paras. 32-43; *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, s. 119; *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 227.1; *Excise Tax Act*, R.S.C. 1985, c. E-15, s. 323.

³ CCAA, s. 36.1; *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (BIA), ss. 95(1)(b) and 96(1)(b). Section 96 may also apply to arm's-length transfers within its separate statutory test.

⁴ BIA, ss. 50.4(2), 50.4(8)-(11) and 69(1). See also BIA, ss. 50.6 (interim financing) and 65.13 (court-authorized sale or disposition outside the ordinary course).

⁵ CCAA, ss. 45 and 47; *Hornblower Cruises and Events Canada Ltd.*, 2024 ONSC 1209 at paras. 21-33 (registered-office presumption rebutted by evidence of operational realities and central management).

⁶ BIA, ss. 50.4(2), 50.4(8)-(11) and 69(1). See also BIA, ss. 50.6 (interim financing) and 65.13 (court-authorized sale or disposition outside the ordinary course).

⁷ CCAA, s. 37; BIA, ss. 67(2)-(3) and 86. These provisions illustrate that Crown claims and statutory deemed trusts are not treated uniformly in insolvency. Source-deduction deemed trusts are specifically preserved by the CCAA and BIA, while other Crown claims may be affected differently by the proceeding and the applicable legislation.

⁸ Civil Code of Quebec, CQLR c. CCQ-1991, arts. 2650, 2657 and 2660. Article 2657 provides that prior claims rank, according to their order among themselves and without regard to date, before movable or immovable hypothecs.

How **Miller Thomson** can help

The critical Canadian restructuring decision is usually made before the court filing. A company that identifies group exposure, chooses the right statutory route, and preserves enough liquidity to execute a plan can use the CCAA or BIA as a value-preservation tool. A company that arrives after liquidity and stakeholder support have disappeared may still obtain an orderly process, but not the same range of outcomes. Miller Thomson's Restructuring and Insolvency team advises foreign parents, Canadian subsidiaries, lenders, and creditors on domestic and cross-border restructurings across Canada, including CCAA and BIA proceedings, foreign recognition, distressed M&A, and Quebec-specific issues. Our cross-border experience includes acting as counsel to the Monitor in the Thentia Global Systems CCAA proceeding, where Canadian and US proceedings were coordinated to protect assets and support a cross-border sale process. Early advice is most valuable when the business still has choices.

Speak with a Miller Thomson [Restructuring and Insolvency](#) lawyer about your Canadian exposure.







Transportation

Operating in Canada's freight,
logistics, and transportation sector

Transportation

Operating in **Canada's freight, logistics, and transportation sector**

WHO THIS IS FOR:

Operations directors, GCs, and compliance leads at foreign transportation companies, freight forwarders, load brokers, and warehouse operators entering the Canadian market, and foreign shippers and manufacturers that rely on Canadian carriers or logistics providers to move goods across the country or across the Canada–U.S. border. Responsibility for the regulation of road and rail transportation in Canada is divided between the federal government and the provinces, with territorial governments exercising transportation-related powers delegated by federal legislation. By contrast, the federal government has exclusive jurisdiction over air and marine transportation. This distinction affects licensing, insurance and employment obligations described in this article.

The operating assumption that creates the most compliance exposure

Foreign trucking companies entering Canada frequently assume that US Department of Transportation compliance and FMCSA registration are sufficient to operate in Canada. They are not, and the gap between that assumption and Canadian compliance reality is where the most common and most expensive problems arise: operating without a valid safety fitness certificate in Ontario or Quebec, misclassifying domestic movements as incidental international moves in violation of cabotage rules, or sending non-Canadian drivers on domestic point-to-point moves that Canadian immigration law expressly prohibits.

The current cross-border trade environment adds urgency to this compliance picture. As of July 1, 2026, the United States did not agree to renew the Canada—United States–Mexico Agreement (CUSMA) in its current form, converting a stable long-term trade framework into an ongoing annual negotiation process. Had all three countries agreed to renew, CUSMA would effectively have received a fresh 16-year term extending certainty to 2042. Because the United States declined to renew, annual reviews are now required until the parties agree on an extension or the agreement reaches its sunset date of July 1, 2036. Although trucking companies, load brokers and forwarders continue to move or arrange for the movement of freight across the Canada—U.S. border, this new uncertainty is expected to reduce freight growth, trigger a renewed focus on supply-chain diversification, increase the need for customs and trade compliance, and cause shippers, carriers and logistics services providers to postpone major investment decisions.

Notably, cross-border truck freight volumes between Canada and the U.S. declined approximately 6-8% in the first half of 2026 compared to the prior year, while at the same time origin verification requirements are tightening. The regulatory environment for cross-border operations is more volatile than at any point since NAFTA's replacement. Companies that treat Canadian transportation compliance as a static exercise risk being caught by rule changes that could significantly affect their operations.

01.

Jurisdiction over transport matters

The federal government oversees all national transportation, including air and marine modes of transportation, as well rail and road transportation for the carriage of goods and passengers across provincial or international boundaries (referred to as “**extra-provincial**” carriers). Each provincial government has jurisdiction over rail and road transportation within the boundaries of that jurisdiction, including shortline and industrial railways and intra-provincial motor carriers, while the territorial governments exercise similar powers as delegated by federal legislation.

The jurisdictional split has a direct operational consequence: a motor carrier operating exclusively within Ontario is provincially regulated under Ontario law, and it is required to conform to Ontario’s provincial employment standards. However, it will be deemed to be a federally regulated extra-provincial motor carrier if its operations involve the regular and continuous movement of passengers or goods across provincial or international boundaries. As a federally-regulated company, the motor carrier must conform to the requirements of the [*Canada Labour Code*](#) rather than provincial employment standards, and there are some notable differences between the two legislative schemes. Foreign companies establishing Canadian transportation operations must determine from the outset whether their operations will be intra- or extra-provincial, because the answer determines which regulatory framework governs their employment standards and labour relations.



02.

Motor Carriers

Carrier safety regulation

While the federal government has jurisdiction over extra-provincial motor carriers, Parliament has conferred federal administrative powers on provincial and territorial regulators to enact laws and regulations for the safe operation of commercial motor vehicles pursuant to the [*Motor Vehicle Transport Act*](#) (Canada). As a result, each province and territory has developed its own carrier safety regulatory framework, which applies to both intra- and extra-provincial operators of trucks or tractor-trailer combinations with a registered gross vehicle weight or actual weight exceeding 4,500 kg, and buses with a seating capacity of more than 10 persons (collectively, “commercial motor vehicles”) that are registered and plated in that jurisdiction. to the negligence of other partners.

National Safety Code

Federal, provincial and territorial transport regulatory authorities have jointly developed the [*National Safety Code*](#) (the “NSC”), which sets minimum standards for the carrier safety programs in effect across Canada. There are currently 16 standards covering Single Driver Licence Concept; Knowledge and Performance Tests (Drivers); Driver Examiner Training Program; Driver Licensing Classification; Self-Certification Standards and Procedures; Determining Driver Fitness in Canada; Carrier and Driver Profiles; Short-Term Suspension; Commercial Vehicle Drivers Hours of Service; Cargo Securement; Maintenance and Periodic Inspection; CVSA On-Road Inspection; Trip Inspection; Safety Rating; Facility Audits; and Entry Level Training.

The NSC itself does not have the force of law, although several of these standards have been incorporated by reference into provincial regulations. There continue to be some notable differences in provincial and territorial regulations; however, federal law does provide a uniform set of hours-of-service rules, and a mandatory electronic logging device requirement, which apply to all extra-provincial motor carriers.

Foreign carriers should not assume that compliance with U.S. hours-of-service rules satisfies Canadian requirements, while the frameworks are similar, they are not identical and the mandatory ELD requirements have specific Canadian technical specifications.

Safety fitness certificates

Each province and territory requires the operator of a single vehicle or a combination of vehicles that exceeds a registered gross weight or actual combined weight of 4,500 kilograms to hold a valid safety fitness certificate, issued by the transport authorities of that jurisdiction, as confirmation that the operator has met the minimum safety standards required by law to operate commercial motor vehicles¹. [*The Motor Vehicle Transport Act*](#) (Canada) provides that safety fitness certificates are valid for operation across Canada, but larger motor carriers with operations in various parts of the country typically hold multiple safety fitness certificates, issued by each province or territory where subfleets of their commercial motor vehicles are registered and plated.

Safety ratings

Provincial and territorial transport authorities monitor moving violations, preventable collisions, roadside inspections and convictions for safety-related offences over a 24-month period and record all such infractions, plus facility audit results, against each carrier's safety fitness certificate number to develop a profile, which in turn generates a safety rating (e.g.: Excellent, Satisfactory, Conditional or Unsatisfactory). Several provinces allow the public to access these safety ratings.

A Conditional or Unsatisfactory safety rating can affect a carrier's ability to obtain contracts with shippers and intermediaries, who increasingly require a minimum Satisfactory rating as a contractual condition. Foreign carriers establishing Canadian operations should closely monitor their compliance record and safety ratings on an ongoing basis.

Operating authorities

By January 1, 2006, all Canadian provinces and territories had fully deregulated private and for-hire trucking operations, eliminating the requirement for operating authorities. Operating authorities are still required in connection with passenger bus operations in some provinces (e.g.: British Columbia and Quebec).

Foreign motor carriers

U.S. and Mexican motor carriers that hold valid USDOT numbers and meet the insurance requirements set out in the [*Motor Carrier Safety Fitness Certificate Regulations*](#) (Canada) are generally permitted to operate anywhere in Canada. The exceptions are Ontario and Quebec, where they are also required to hold valid safety fitness certificates issued by the local transport authorities.

Foreign carriers planning operations in Ontario or Quebec should apply for provincial safety fitness certificates before commencing operations in those provinces, the application process takes time and operating without a certificate constitutes a regulatory offence.

Drive for greater harmonization

On June 12, 2026, federal, provincial, and territorial transportation ministers signed a Memorandum of Understanding on Interprovincial Trucking, marking an important step toward reducing regulatory barriers and facilitating the more efficient movement of goods across Canada. The MOU commits governments to pursuing greater harmonization in several key operational areas, including Mandatory Entry-Level Training for commercial drivers, oversized and overweight vehicle permitting, long combination vehicle training requirements, and common standards governing signage, lighting, and escort vehicle requirements. Collectively, these initiatives are intended to improve regulatory consistency across jurisdictions and support a more seamless national transportation network.

The MOU does not have the force of law and implementation timelines have not been confirmed for all measures. Foreign carriers planning Canadian operations should monitor developments under the MOU rather than assuming harmonized rules are already in effect.

Transportation of dangerous goods

The extra-provincial and cross-border transportation of dangerous goods is regulated under the [*Transportation of Dangerous Goods Act*, 1992 \(Canada\)](#) and the [*Transportation of Dangerous Goods Regulations*](#) (the “TDGR”). Requirements include training for the safe handling of dangerous goods, vehicle placarding, emergency response assistance plans, shipping documentation, packaging and labeling. In the interests of uniformity, the TDGR have been adopted by reference into the regulations of all Canadian provinces and territories, establishing the same safety requirements for the intra-provincial transportation of dangerous goods.

Since October 2024, carriers that have a place of business in Canada and transport dangerous goods have been required to register in Transport Canada’s Client Identification Database. Notably, this registration requirement applies equally to foreign carriers that transport dangerous goods across the Canadian border, if they have a place of business in Canada.

Other regulated commodities

The transportation of several other commodities are also regulated by federal, provincial and territorial governments:

- (i) carriers of firearms, prohibited weapons, prohibited devices or prohibited ammunition anywhere within Canada or across Canadian border must hold a licence issued by the Royal Canadian Mounted Police;
- (ii) extra-provincial carriers transporting diesel, gasoline, aviation fuel or propane in bulk into or out of any province or territory are required to register with the finance ministry of that jurisdiction;
- (iii) conveyances used for the carriage of food products must comply with the [*Safe Food for Canadians Regulations*](#); and
- (iv) carriers of hazardous waste are typically required to register with the environment ministries of the provinces and territories in which they operate.

Equipment

Ownership of rolling stock (trucks, trailers and buses) is evidenced by vehicles registrations or permits, which are issued by the province or territory where the equipment is based. Most provinces have a dual-registration system, so that in the case of leased vehicles the permit would show the lessor as the vehicle owner, and the lessee as the plate/registered owner. In the common law provinces and territories, secured creditors typically register financing statements under the [*Personal Property Security Act*](#) or local equivalent of the borrower’s home jurisdiction, and if these registrations include the vehicle identification numbers, their liens will appear on title. In Quebec, security interests are created by means of a hypothec registered in the Register of Personal and Movable Real Rights pursuant to the [*Civil Code of Quebec*](#).

Additional registrations for extra-provincial carriers

Motor carriers that operate across provincial boundaries or the Canada-U.S. border, whether foreign or domestic, should also hold the following registrations:

- **International Fuel Tax Agreement (IFTA):** Required for motor vehicles with two axles and a gross vehicle weight exceeding 11,797 kg, or vehicles used in combination with a combined gross vehicle weight exceeding 11,797 kg, operating in more than one IFTA jurisdiction.
- **International Registration (IRP):** Required for vehicles used in interstate or interprovincial commerce with a combined registered weight exceeding 11,794 kg, or vehicles with three or more axles regardless of weight.

Insurance requirements

Under the [*Motor Carrier Safety Fitness Certificate Regulations*](#) (Canada), extra-provincial motor carriers are required to hold liability insurance coverage for bodily injury to or death of any person or loss of or damage to property of other persons, other than cargo, of at least:

- (i) C\$1,000,000 for each motor vehicle; and
- (ii) C\$2,000,000 for each motor vehicle used to transport dangerous goods.

Provinces may require higher amounts of insurance in connection with the transportation of passengers. In addition, provincial law requires trucking companies to hold sufficient cargo liability insurance to cover the value of shipments being transported. These are statutory minimums; however, many shippers and freight brokers require substantially higher insurance coverage as a contractual condition of tender. Foreign carriers should review their current insurance programs against both the statutory minimums and the commercial requirements of their Canadian customer base before accepting their first Canadian shipment.

Cargo loss or damage

The standard liability of a motor carrier in the event of loss of or damage to a shipment originating anywhere in Canada is the lesser of:

- (i) the value of the goods at the time and place of shipment including freight and other charges, if paid; and
- (ii) C\$4.41 per kilogram computed on the total weight of the shipment, unless a higher value is declared in the contract of carriage or on the face of the bill of lading, as applicable.

Notwithstanding this default rule, shipper-carrier agreements or broker-carrier agreements will often include a clause wherein the carrier accepts liability for a higher amount, up to the full value of the goods. These clauses require careful wording to clearly express the intentions of both parties, and to waive the requirement for a value declaration. The [*Uniform Conditions of Carriage*](#) provide that written notice of the loss, damage or delay setting out particulars of the origin, destination and date of shipment and the estimated amount claimed must be given to the carrier within 60 days after delivery or, in the case of failure to make delivery, within nine months after the date of shipment, and the final statement of the claim must be filed within nine months after the date of shipment, together with a copy of the paid freight bill.

These time limits are strictly enforced. Shippers and intermediaries that fail to provide timely notice or file timely claims may lose their right to recovery regardless of the merits of the underlying claim.

03.

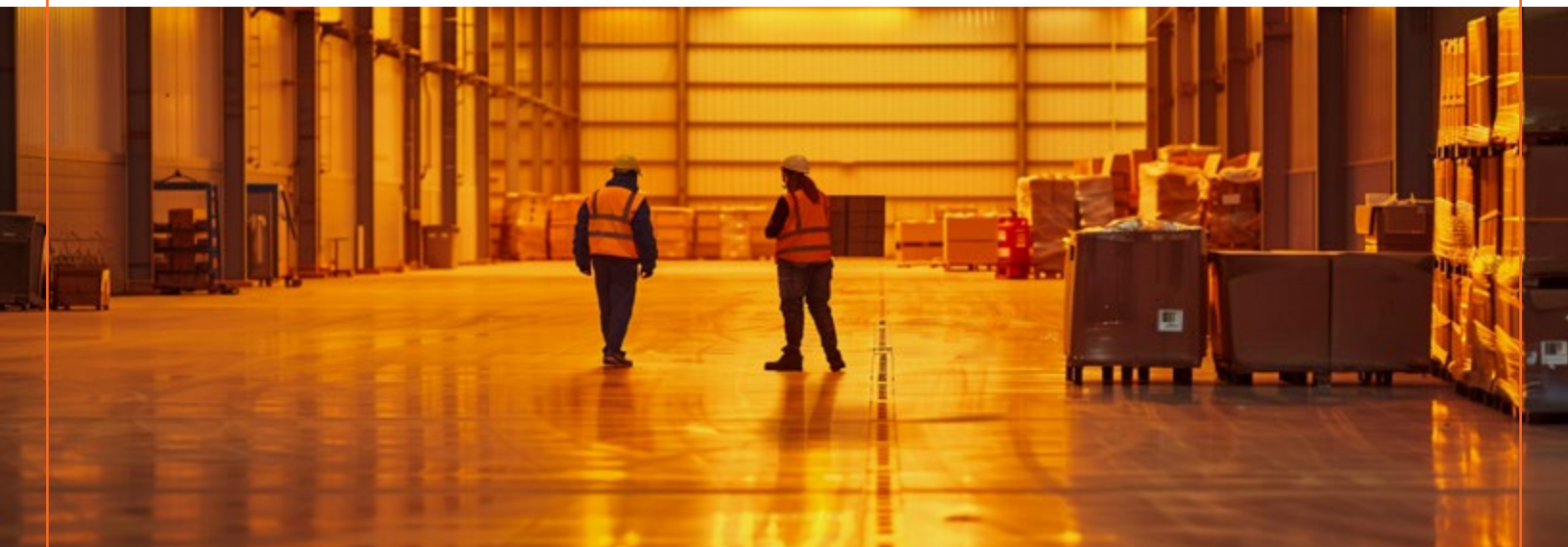
Commodity taxes on transportation

Canada applies a federal value-added tax called the Goods and Services Tax (“GST”) to most transactions, including the sale of goods and the provision of services. The current GST rate is five %. In addition, British Columbia, Saskatchewan and Manitoba impose a separate sales tax (“PST”), and Quebec imposes the Quebec Sales Tax (“QST”), which is charged in addition to GST. Ontario and the Atlantic provinces have combined their provincial retail sales taxes with the federal GST to form the Harmonized Sales Tax (“HST”) at rates which vary between 13 and 15 percent. Generally, companies carrying on business in Canada can recover any GST/HST paid through input tax credits, and companies carrying on business in Quebec can recover any QST paid through input tax refunds.

Both Canadian and non-resident businesses may be required to register for the GST/HST, QST or PST, depending on where and how they carry on business. All Canadian sales taxes are paid by the recipient of the taxable transaction (e.g., the purchaser, customer, or client), while the supplier (e.g., the vendor, seller, or service provider) is ordinarily required to collect, remit, and report the tax. GST/HST, QST and PST collected by a supplier is considered to be held in trust for the Crown until it has been duly accounted for and remitted to the applicable tax authority.

Taxes on equipment

Upon importation to Canada for use within the Canadian stream of commerce, rolling stock may be subject to customs duties – depending on the place of origin and any applicable free trade agreements – plus GST at the rate of five % of the value for duty. In most provinces, at the time of purchase or registration with some exceptions, both new and used commercial motor vehicles and trailers are subject to PST, QST or HST. In the case of leased vehicles, these taxes are typically payable with each periodic lease payment.



Taxes on transportation services

There are unique rules governing the taxation of freight charges. In the case of intra-Canada shipments (i.e. domestic, point-to-point movements of cargo within Canada), carriers are required to charge and collect from shippers GST, HST or GST plus QST at the applicable rate, depending on the destination province or territory.

International freight transportation services are “zero-rated” for tax purposes, meaning that no tax is applied to the corresponding freight charges, provided the service involves:

- transportation of goods from a place in Canada to a place outside Canada, when the freight charge is C\$5 or more;
- transportation of goods from a place outside Canada to a place in Canada; or
- transportation of goods from a place outside Canada to another place outside Canada, even if the goods pass through Canada.

When multiple interlining carriers take part in the supply of a freight transportation service but only one carrier invoices the customer, it is the invoicing carrier that is responsible for charging and collecting any applicable GST/HST. The supplies of freight transportation services by the interlining carriers are zero-rated, meaning no tax is payable on the fee that the interlining carriers charge to the invoicing carriers.

04.

Transport service intermediaries

Regulatory requirements

In Canada, the services provided by transport service intermediaries, such as freight forwarders, shipping agents and load brokers, are generally unregulated, with the exception of those intermediaries carrying on business in Ontario or Quebec.

- **Ontario** – Under s. 191.0.1(3) of Ontario’s *Highway Traffic Act*, freight charges received by a person arranging transportation by motor carrier are impressed with a statutory trust to the extent those amounts are payable to the carrier performing the transportation. Although the scope of the provision and the circumstances in which personal liability may arise have received limited judicial consideration, a failure to preserve and account for such trust funds may give rise to claims not only against the intermediary but, in appropriate cases, against directors and officers who knowingly participate in a breach of the trust obligation. transportation of goods from a place outside Canada to a place in Canada; or
- **Quebec** – Under s. 16 of Quebec’s *Act respecting owners, operators and drivers of heavy vehicles*, only companies that are duly registered as transport service intermediaries with the *Commission des transports du Québec* (CTQ) may arrange for the carriage of goods by motor carrier. Failure to register with the CTQ may render the intermediary’s contracts unenforceable and deprive it of the right to recover its brokerage fees, even though the underlying carrier may remain entitled to payment for the transportation services performed.

Common law considerations

Intermediaries are generally not liable for loss of or damage to cargo unless they have been negligent in the selection of the carrier, or in the transmission of instructions to the carrier. To avoid liability, intermediaries should exercise due diligence when engaging a motor carrier, to ensure that the carrier:

- (i) holds a valid safety fitness certificate;
- (ii) has a safety rating that is at least “satisfactory”; and
- (iii) holds insurance coverage in amounts that align with statutory minimums, industry standards, or the customer’s specific requirements, as applicable.

Additionally, they must be sure to pass along any necessary handling instructions with regard to the cargo. Increasingly, however, shippers are requiring intermediaries to accept liability, by contract, for cargo loss, damage or delay.

Increasingly, shippers are requiring intermediaries to accept contractual liability for cargo loss, damage, or delay, shifting the risk management obligation from the carrier to the intermediary. Foreign intermediaries entering the Canadian market should review their standard-form contracts to understand whether they are assuming carrier-equivalent liability.

Insurance requirements

There are no federal or provincial regulations placing any insurance requirements on transport service intermediaries that carry on business in Canada, but in practice, brokers and forwarders should hold, at a minimum:

- (i) Commercial General Liability (typically C\$2 million to C\$5 million per occurrence);
- (ii) Errors & Omissions Coverage;
- (iii) Contingent Cargo Liability / Freight Forwarders Legal Liability;
- (iv) Cyber Insurance; and
- (v) Crime / Employee Dishonesty Coverage.

It may be prudent to hold other coverages, depending on the range of services provided by the intermediary.

05.

Commodity taxes

Acting for Canadian shippers

When a broker or freight forwarder acts solely as an agent for a Canadian shipper, where it arranges for the transportation of goods by a third party but accepts no liability for the transportation of the goods, it is required to charge the GST/HST on its commission, whether the destination of the goods is domestic or international. However, when a broker or forwarder does accept liability for the transportation of goods, it is treated as a “carrier” for tax purposes, and the rules described above in Section 3 - *Taxes on Transportation Services* will apply to the fees charged by the intermediary.

Zero-rated services

The services of a broker or freight forwarder are zero-rated for tax purposes when:

- (i) it acts solely as an agent for a non-resident shipper who is not registered for GST/HST; or
- (ii) the services relate to a zero-rated freight transportation service, such as a cross-border movement of cargo.



06.

Warehousing operations

Permits

Warehousing is largely unregulated in Canada, aside from provincial laws governing the issuance of warehouse receipts, and the applicable minimum standard of care that applies to warehouse operators. Note also that facilities handling certain types of commodities may require specific permits based on local rules and regulations.

Liens

Warehouse operators generally have possessory lien rights on stored goods for unpaid charges, as codified in the laws of various provinces and the Civil Code of Quebec. In most provinces, operators can sell the goods to recover payments for services subject to certain procedural requirements. By contrast, Quebec law only contemplates a right of retention, allowing the warehouse operator to hold the goods until payment is received. Quebec law only contemplates a right of retention, the warehouse operator may hold goods until payment is received but does not have the right to sell them as in common law provinces. Foreign warehouse operators establishing Quebec facilities should not assume that their standard lien enforcement procedures work in Quebec.

Liability

- **Common law provinces** – In the common law provinces and territories (i.e. all of Canada except Quebec), a warehouse operator is generally only liable for loss of or damage to goods caused by its failure to meet the applicable standard of care, which is typically described as such care and diligence in regard to the stored goods as a careful and vigilant owner of similar goods would exercise under similar circumstances. Warehouse operators can limit their liability for breach of this standard through contract or in the terms set out in its warehouse receipt, such as by introducing a “shrinkage allowance”, a liability cap, or both.
- **Quebec** – In Quebec, liability depends on the type of contract: (i) for gratuitous deposit, where no storage fees are charged, the operator has an obligation of means and the customer bears the burden of proving loss was caused by the operator; (ii) for onerous contracts, where storage fees are payable to the operator, the operator is held to an obligation of results and is deemed liable for any loss except force majeure. The shift in burden of proof between gratuitous and onerous contracts in Quebec is a material commercial distinction, foreign warehouse operators should confirm which regime applies to each Quebec customer relationship and price their liability exposure accordingly.



07.

Cargo theft, double-brokering, and fraud

Cargo theft and fraud

Cargo theft and fraud are becoming increasingly common in the transport and logistics industry, particularly with respect to products that are in high demand, such as pharmaceuticals, electronics and alcohol. In Canada, we are less likely to see cargo trucks being hijacked or similar aggressive methods, but rather theft from locations such as parking lots, unauthorized persons posing as delivery drivers, or inside jobs where employees at warehouses, trucking companies or load brokers are involved in facilitating the cargo theft. Foreign carriers and intermediaries entering the Canadian market should implement cargo security protocols from their first Canadian shipment, the theft risk is not limited to high-value cargo categories and the financial and reputational consequences of a cargo theft claim in a new market can be disproportionate to the value of the goods.

Double-brokering

Double-brokering may occur in circumstances where the engagement of a third-party carrier to perform the transportation has not been authorized by the shipper or broker. In such cases, it is common for the shipper to pay the broker or carrier, as applicable; however, in some instances, the broker or carrier does not pass along monies that are owed to the actual delivering carrier. In these cases, the delivering carrier may attempt to recover payment from the shipper or its customers. Canadian jurisprudence on these cases are very fact specific, and there can be compelling arguments made in favour of both the shipper/broker and the actual delivering carrier, depending on the circumstances. The written arrangements between the parties, an objective assessment of their reasonable expectations, and their actual behaviour in the performance of these transactions, could all have a direct impact on which party, if any, is ultimately liable for the payment of freight charges to the delivering carrier, and whether or not one of those parties would end up having paid twice for the same shipment. Foreign intermediaries should include express prohibitions on sub-brokering in their carrier agreements and implement carrier identity verification processes to reduce double-brokering exposure.

08.

Cross-border carriage of goods

Regulatory requirements

Cross-border trucking between Canada and the US is operating in a more complex and volatile regulatory environment in 2026 than at any point since CUSMA replaced NAFTA. As of July 1, 2026, the United States did not agree to renew CUSMA in its current form. Most – but not all – CUSMA-compliant goods continue to move duty-free, but origin verification requirements are tightening, border crossing scrutiny is increasing, and with supply chain disruptions and an uncertain investment environment, freight volumes on Canada—US lanes declined approximately 6-8% in the first half of 2026.

The June 3, 2026 Executive Order, *Strengthening Customs Enforcement*, directs US Customs and Border Protection and the Department of Homeland Security to significantly tighten importer-of-record (IOR) eligibility requirements. Among other things, the Order contemplates:

- higher bond requirements;
- minimum domestic asset requirements;
- expanded ownership and beneficial ownership disclosures;
- additional importer reporting obligations;
- enhanced scrutiny of foreign or non-resident importers; and
- restrictions on the ability of foreign IORs to operate without satisfying additional compliance requirements.

Many of these changes will be implemented through future CBP rulemaking over the next several months, but the policy direction is clear: CBP intends to increase accountability and financial responsibility for importers. Cross-border carriers and forwarders can expect increased secondary inspections and considerable border delays during the implementation of these new measures, which may warrant a review of contractual commitments to build in additional transit time, an allocation of risk for shipments that are denied entry to the US, and a clear statement regarding responsibility for any added costs arising from border delays.

Motor carriers and intermediaries must treat compliance with import/export and recordkeeping requirements as an ongoing operational obligation, not a one-time setup task.

Driver requirements

U.S. truck drivers must hold a valid passport or Free and Secure Trade (“FAST”) card, and a valid commercial driver’s licence (“CDL”) to operate across the border into Canada. The CDL must not have a code V restriction, which would indicate that the driver is not permitted to operate in Canada for medical reasons. Mexican truck drivers must hold a valid passport or FAST card, and a valid Licencia Federal de Conductor issued by the Secretaría de Comunicaciones y Transportes SCT that is suitable for the type of vehicle being operated. Drivers from both countries must meet Canada’s general admissibility requirements (including with regard to criminal records, health considerations, misrepresentation and security concerns), failing which they may be refused entry to Canada.

Cabotage restrictions

While the [Canada-United States-Mexico Agreement \(“CUSMA”\)](#) permits U.S. and Mexican truck drivers to perform cross-border movements of cargo between the United States and Canada, or between Mexico and Canada: (i) Canadian immigration law strictly prohibits non-Canadian drivers from transporting cargo on a domestic, point-to-point basis within Canada; and (ii) Canadian customs legislation strictly prohibits the use of equipment that is registered and plated in any jurisdiction other than a Canadian province or territory for such domestic movements within Canada. All domestic transportation services are reserved solely for Canadian resident drivers and Canadian-plated equipment, and there are very few exceptions to these rules.

Cabotage violations carry significant consequences: fines, seizure of equipment, and potential exclusion from future Canadian operations. The distinction between a permitted incidental move and a prohibited cabotage move is fact-specific and the rules are actively enforced at the border.

Permitted incidental movement

Domestic, point-to-point movements within Canada by foreign-based conveyances are allowed where:

- the transportation is incidental to the international traffic of the goods;
- the transportation does not occur outside the territorial limits of Canada; and
- the conveyance has not entered Canada for the purpose of an in-transit movement through Canada to a point outside Canada.

Only one incidental move can be made per international trip. Additionally, only minor deviations can be made from the international route and the incidental move must occur immediately before or after the international move.

Immigration laws

Note that even though the permitted incidental moves described above might be in compliance with customs laws regarding conveyances, non-Canadian drivers are prohibited from performing any domestic moves within Canada, including any of the permitted incidental moves described above, unless they hold a valid work permit.

This is one of the most common compliance failures for US carriers operating in Canada: the customs rule allows a foreign-registered truck to be used in the performance of an incidental domestic movement; however, the immigration rule strictly prohibits a non-Canadian driver from operating it on that domestic leg without a work permit. Both rules must be satisfied simultaneously.

Canada Border Services Agency ("CBSA")

All carriers transporting goods into Canada must hold a carrier code issued by the CBSA, which must appear on all cargo control documents. Highway carriers may be bonded or non-bonded; non-bonded carriers must have all shipments released at the first port of arrival, while bonded carriers that have posted financial security with the CBSA (ranging from C\$5,000 to C\$25,000) may transport in-bond goods beyond the first port of arrival.

The ACI/eManifest program requires highway carriers to transmit cargo and conveyance information to CBSA at least one hour prior to arrival at the first port of entry. Freight forwarders must transmit house bills within mode-specific timeframes. Data must be true, accurate, and complete, supported by source documentation available on request. Carriers and forwarders must retain copies of all invoices, bills, accounts, and statements related to transported goods for three complete calendar years plus the current year.

Trusted trader programs

Partners in Protection ("PIP") is a trusted trader program administered by CBSA, which aims to enhance border and trade chain security. PIP is largely harmonized with the U.S. Customs-Trade Partnership Against Terrorism ("CTPAT") program, and is similar to authorized economic operator ("AEO") programs in other countries. PIP is a purely voluntary program, but it is generally viewed as providing valuable benefits, which could translate into reduced (or less frequent) scrutiny of shipments at Canadian ports of entry. Participation in PIP is restricted to candidates who meet all applicable background checks and security investigations, and fulfil other applicable eligibility requirements. Canada has entered into mutual recognition agreements with the United States, the European Union, Japan, Korea, Singapore, Mexico, Israel, Australia, Hong Kong, New Zealand and Peru with regard to their respective AEO programs.

Many shippers and freight forwarders / load brokers will choose to only utilize carriers that are registered in PIP. Another trusted trade program, Free And Secure Trade ("FAST") is jointly administered by U.S. Customs & Border Protection and CSBA, which allows for faster and more efficient border clearance with minimal documentation, including access to dedicated lanes and booths at designated ports of entry. To use FAST lanes at land border crossings into Canada, both the motor carrier and the importers whose goods are on board the vehicle must be authorized under the PIP program. The driver of the vehicle must hold a valid FAST card or Commercial Driver Registration Program card.

Non-resident withholding taxes

Generally, services rendered in Canada by U.S. truck drivers are not taxable in Canada under the [Convention Between Canada and the United States of America with respect to Taxes on Income and on Capital](#) (the “Convention”), as referenced in Article XV, Section 3 of the Convention for employees, and Article VIII, Section 4 of the Convention for subcontractors. Nonetheless, Canada Revenue Agency (the “CRA”) currently asserts that:

- pursuant to section 102 of the [*Income Tax Regulations*](#), carriers are required to withhold from the wages payable to non-resident employee drivers on account of services performed in Canada, an amount that is based on the typical Canadian payroll source deductions for combined federal and provincial income taxes in the applicable province(s) and territory(ies) in which the transport service is rendered; and
- pursuant to section 105 of the *Income Tax Regulations*, carriers are required to withhold 15 percent from the fees payable to independent contractors on account of services performed in Canada.

In this context, “services performed in Canada” includes any portions of a cross-border trip that take place within Canada. Non-resident drivers and contractors can seek reimbursement by filing returns with the CRA in reliance on the Convention. A more practical approach is for non-resident drivers and contractors to obtain waivers from the CRA, which the motor carrier must retain for production on audit. Motor carriers can also seek designation as a Qualified Non-Resident Employer, which eliminates the withholding requirement for employee drivers. The Qualified Non-Resident Employer designation requires advance application to the CRA and approval before withholding is stopped, carriers should not cease withholding on the assumption that the designation will be granted.

KEY TAKEAWAYS:

- Motor carriers that have commercial motor vehicles registered and base-plated in one or more Canadian provinces or territories must hold a safety fitness certificate issued by the transport authority of each of those jurisdictions.
- US or Mexican motor carriers that wish to perform cross-border movements into Canada must hold a valid USDOT number. In addition: (i) to operate into or through Ontario, they must also hold a valid Ontario safety fitness certificate, referred to as a Commercial Vehicle Operator Registration or CVOR, issued by the provincial Ministry of Transportation, and (ii) to operate into or through Quebec, they must also hold a valid Quebec safety fitness certificate, in the form of registration with the CTQ as an Owner and/or Operator of Heavy Vehicles.
- Cabotage rules are strictly enforced. Non-Canadian drivers cannot perform domestic point-to-point moves in Canada regardless of whether the equipment move itself is permitted. Both the customs rule and the immigration rule must be satisfied simultaneously.

- The cross-border trade environment is more volatile in 2026 than at any point since CUSMA replaced NAFTA. Origin verification requirements are tightening, and non-resident importers face significant new restrictions and requirements with regard to exports to the US. Ensure that the risk of border delays and related costs are properly addressed in all transport service contracts. Treat compliance with import/export and recordkeeping requirements as an ongoing operational discipline, not a one-time setup task.
- Quebec is a separate regulatory environment for transportation. Transport service intermediaries must register with the Commission des transports du Québec. Standard-form contracts must be available in French. Law 25 privacy obligations apply to personal information of Quebec residents. The Civil Code governs security interests in rolling stock, warehouse liability, and cargo claims differently from common law provinces.
- Obtain workers' compensation clearance certificates before engaging service providers. Failure to do so can expose your company to liability for injuries sustained by the service provider's personnel.
- Cargo claim time limits are strictly enforced. Written notice must be given within 60 days of delivery. Final claims must be filed within nine months of shipment. Missing these deadlines may extinguish the right to recovery.
- The Qualified Non-Resident Employer designation must be obtained before stopping withholding on non-resident employee driver wages. Apply to the CRA in advance, do not cease withholding on the assumption that the application will be approved.

How **Miller Thomson** can help

Operating in Canada's transportation, logistics, and warehousing sector involves navigating a layered matrix of federal and provincial regulatory requirements that differ by mode of transportation, by province of operation, and by whether the carrier operates intra- or extra-provincially. There is near, but not total, uniformity in these regulatory requirements across the country, and many of these requirements have a Quebec-specific dimension that requires civil law expertise that firms without genuine Quebec capacity cannot provide.

Miller Thomson's transportation and logistics team advises foreign carriers, freight forwarders, load brokers, and warehouse operators on the full spectrum of Canadian transportation compliance, from safety fitness certification and carrier code registration through cabotage compliance, cargo liability, cross-border customs obligations, Quebec-specific requirements, employment standards, and workers' compensation. Our national presence means we can address the intersection of transportation regulation with Quebec's civil law, French language obligations, and privacy regime simultaneously.

Speak with a [Miller Thomson Transportation & Logistics lawyer](#) about your Canadian market entry.





ESG & Sustainability Reporting in Canada

What foreign companies must disclose

ESG & Sustainability Reporting in Canada

What **foreign companies** must **disclose**

WHO THIS IS FOR:

GCs, CFOs, Chief Sustainability Officers, and compliance leads at foreign companies operating in Canada, importing goods into Canada, listed on Canadian stock exchanges, or operating as federally or provincially regulated financial institutions.

The assumption that creates the most compliance exposure

Foreign companies entering Canada may assume that ESG reporting is a voluntary exercise like a reputational commitment rather than a legal obligation. That assumption was more defensible two years ago, but not anymore. For example, *the Fighting Against Forced Labour and Child Labour in Supply Chains Act*, commonly referred to as the Modern Slavery Act (the MSA), has been in force since January 1, 2024 and carries penalties of up to CAD \$250,000 per offence with personal liability for directors and officers.

For federally regulated financial institutions, the Office of the Superintendent of Financial Institutions' (OSFI) Guideline B-15 imposes mandatory climate risk management and disclosure obligations. The AMF has issued parallel climate risk guidance for Quebec-supervised financial institutions.

In addition, all reporting issuers, generally companies that have offered securities to the public in Canada, are subject to existing continuous disclosure obligations that require material ESG risks, including risks related to climate change, loss of biodiversity, and forced labour, to be disclosed in their annual filings.

Consequently, the direction of travel in Canada is toward more mandatory disclosure, not less. The Canadian Sustainability Standards Board released Canada's first voluntary sustainability disclosure standards in December 2024. Foreign companies that begin building their Canadian ESG reporting infrastructure now will be materially better positioned than those who wait for mandatory rules to arrive.

01.

Modern Slavery Legislation in Canada: mandatory reporting for supply chain risk

The MSA, which came into force on January 1, 2024, requires affected businesses operating in Canada to submit a public report by May 31 of each year detailing their efforts to prevent and reduce the risks of forced or child labour within their supply chains.

Who must report?

The MSA applies to any corporation, partnership, trust, or other unincorporated organization (i) that is listed on a Canadian stock exchange, or (ii) that has a place of business in Canada, does business in Canada, or holds assets in Canada, and meets at least two of the following three criteria for at least one of its two most recent financial years:

- Holds at least **\$20 million** in assets.
- Generated at least **\$40 million** in revenue.
- Employs an average of at least **250 employees**.

The MSA imposes a reporting obligation on in-scope entities if they produce goods in Canada or elsewhere or import into Canada goods produced outside Canada. An in-scope entity controlling another entity engaged in the production of goods or in the importation into Canada of goods will also be subject to the annual reporting obligation.

Key compliance requirements

1. **Annual Disclosure:** Impacted businesses must complete an online questionnaire and submit an annual report to Public Safety Canada by May 31 of each year.
2. **Board Approval:** The annual report must be formally approved by the entity's governing body, for a corporation/company, that is its board of directors, before submission.
3. **Public Accessibility:** Reporting entities must publish the report prominently on their corporate website, if they have one.
4. **Mandatory Content:** The report must outline the entity's structure, operational activities, supply chains, due diligence policies, remediation measures, and internal employee training programs. A report that is generic, incomplete, or inconsistent with the company's actual supply chain practices may create reputational exposure that is separate from and potentially greater than the regulatory penalty for non-filing.

Penalties for non-compliance

Failing to submit a report, failing to publish it publicly, or providing false or misleading information is a summary offence.

- **Fines: Violations** can lead to financial penalties of up to **\$250,000 CAD** per offence.
- **Personal Liability:** Corporate directors, officers, and agents can be held personally liable if they directed, authorized, or acquiesced to the offence.

The MSA is primarily a **transparency and disclosure statute**, rather than due-diligence legislation; it does not require companies to eliminate forced labour from their supply chains, but to report on what they are doing about it. However, foreign companies interested in doing business in Canada should proactively review their global procurement processes, as Canadian customs authorities also enforce a strict import ban on goods flagged for forced labour risks. A company whose MSA report identifies forced labour risk in its supply chain and takes no remediation action faces not only regulatory exposure under the MSA but potential import ban enforcement on the goods themselves. The two regimes operate independently but their intersection creates compounding exposure.

Quebec-specific disclosure obligations for listed issuers

In addition to the MSA, Quebec's Autorité des marchés financiers (**AMF**) (Quebec's securities regulator) has issued a notice relating to modern slavery disclosure requirements applicable to issuers subject to the regulatory purview of the AMF. The notice reminds issuers that Canadian continuous information regulation requires issuers to disclose in their Annual Information Form (**AIF**), the risk factors relating to the company and its business most likely to influence an investor's decision to purchase securities of the company which could include information regarding modern slavery if a reasonable investor's decision to buy, sell or hold securities of the issuer would likely be influenced or changed if the information in question was omitted or misstated.

For example, an issuer could face the following risks : litigation risks, reputational risks and operational risks associated with modern slavery. The issuer could also face risks affecting its supply chain, where applicable.

The AMF notice also reminds issuers that the AIF requires an issuer to describe the social policies the company has implemented that are fundamental to its operations as well as the steps to implement them. The definition of "social policy" is broad and may include policies dealing with issues related to modern slavery. Finally, the AMF notice reminds issuers that *Regulation 58-101 respecting Disclosure of Corporate Governance Practices (Regulation 58-101)* requires issuers to disclose whether or not the board of directors has adopted a code of conduct and ethics for directors, officers and employees. Such code of conduct and ethics should be designed to promote integrity and deter wrongdoing, in particular, as regards fair dealing with the issuer's employees. Regulation 58-101 also requires the issuer to disclose the steps taken by the board of directors to encourage and promote a culture of ethical business conduct.

02.

OSFI Guideline B-15: Climate risk management & AMF climate risk management **Guideline**

Who it applies to

OSFI Climate Risk Management Guideline (**Guideline B-15**) establishes OSFI's expectations related to the federally regulated financial institutions' (FRFIs) management of climate-related risks (both physical and transitional risks). It aims to support FRFIs in developing greater resilience to, and management of, these risks. Guideline B-15 applies to all FRFIs except foreign bank branches.

What it requires

Guideline B-15 is divided into two chapters and is aligned with the four pillars contained in the Task Force on Climate-related Financial Disclosure (TCFD) Framework now embedded in the International Sustainability Standards Board (ISSB) IFRS S2.

Chapter 1 — Governance and risk management:

The FRFI must identify and understand the impact of climate-related risk on its short-term and long-term strategy, capital and financial plans and recommend the implementation of a climate transition plan in line with its business plan and strategy. In developing this climate transition plan the FRFI should assess its achievability under different climate-related scenarios and have internal metrics and targets to help measure its progress in achieving its climate transition plan.

Chapter 2 — Climate-related financial disclosures:

FRFIs must disclose information specific to the current and potential future impact of climate-related risks and opportunities on the FRFI's markets, business, corporate or investment strategy, financial statements and future cash flows. The climate-related financial disclosure should serve the needs of sophisticated users, but also be concise enough to be understood by the general public and be balanced between qualitative and quantitative information. The information reported should be verifiable and of high-quality and use best-in-class measurement methodologies (for example GHG emissions should be accounted for using the GHG Protocol Corporate Standard) and be based on the Canadian Sustainability Standards Board (CSSB) disclosure standards and recognized climate scenarios such as the ones developed by the International Energy Agency, the Intergovernmental Panel on Climate Change and the Network for Greening the Financial System and should also consider domestic legislation such as the *Canadian Net-Zero Emissions Accountability Act*.

03.

AMF Climate Risk Management Guideline: Quebec-supervised financial institutions

Who it applies to

Similar to Guideline B-15, in July 2024, the AMF issued its *Climate Risk Management Guideline*, aligned with the ISSB IFRS S2. The guideline applies to insurers, financial services cooperatives, trust companies, and other deposit-taking institutions operating under the AMF's supervision.

Implementation timeline

The guideline establishes phased implementation timelines based on institution size:

- **Larger institutions:** Required to comply within 180 days following the end of the 2024 financial year, meaning larger AMF-supervised institutions should already be in compliance.
- **Smaller institutions:** Required to comply by the close of the 2025 financial year.
- **Scope 3 GHG emissions:** Disclosure obligations become effective one year after the primary implementation deadline for each institution size category.

Foreign financial institutions operating in Quebec under AMF supervision should confirm which category they fall into and whether their implementation deadline has already passed. For larger institutions whose 180-day window has elapsed, the AMF guideline is not a future compliance project, but a current obligation.

Finally, in July 2026, the AMF issued a staff notice informing in-scope financial institutions carrying out asset management activities that it was indefinitely deferring the disclosure requirement for financed emissions related to off-balance-sheet investments. These disclosure obligations were initially set to take effect in 2029.

04.

General ESG disclosure obligations applicable to all reporting issuers

Who it applies to

All reporting issuers (companies that have made a distribution of securities to the public in Canada) are subject to disclosure of ESG risks in their continuous disclosure documents. Foreign companies listed on Canadian exchanges or that have otherwise made a public distribution of securities in Canada are reporting issuers subject to these obligations.

Climate and environmental risk disclosure

Reporting issuers are required to disclose in their Management's Discussion & Analysis (MD&A) and AIF risks that may reasonably have a material effect on the future performance of the issuer including total revenue and profit or loss from continuing operations. These risks may include risks resulting from climate change or loss of biodiversity, the effects of environmental regulation or policies. These obligations exist under current securities law and apply regardless of whether CSSB standards are adopted voluntarily or mandated. A foreign company that is a Canadian reporting issuer and does not disclose material climate-related risks in its MD&A or AIF is non-compliant today, not at some future date when mandatory sustainability standards take effect.

The Canadian Sustainability Standards Board - voluntary standards now, mandatory framework coming

The CSSB released its finalized sustainability disclosure standards, CSDS 1 (General Requirements for Disclosure of Sustainability-related Financial Information) and CSDS 2 (Climate-related Disclosures), in December 2024, effective for annual reporting periods beginning on or after January 1, 2025. The standards are currently voluntary.

For reporting issuers preparing for the eventual mandatory regime, early voluntary adoption of CSDS 1 and CSDS 2 serves two purposes: it builds the internal data infrastructure and governance processes that mandatory compliance will require, and it signals to investors and regulators that the issuer is engaged with the direction of Canadian disclosure expectations. Companies that wait for mandatory rules to adopt the standards will face a compressed implementation timeline that companies already reporting voluntarily will not.

Board diversity disclosure — non-venture issuers

Certain reporting issuers (non-venture issuers) are required to disclose in their proxy solicitation circular or AIF governance information concerning the representation of women on the board of directors and in executive officer positions.

CBCA diversity disclosure — publicly traded CBCA corporations

Finally, all publicly traded corporations governed by the *Canada Business Corporations Act* (CBCA) are required to disclose information on the issuer's policy regarding diversity of the board of directors and senior management. The CBCA requires information concerning the number and percentage of members of the board of directors and senior management who are women, indigenous peoples, members of visible minorities and persons with disabilities and also requires the issuer to disclose whether or not it has adopted a target of representation in such positions, and if no such target has been adopted, the reason why. Foreign companies incorporated under the CBCA that are publicly traded in Canada must meet this disclosure obligation annually. The absence of a diversity target does not excuse the disclosure; the obligation is to disclose the policy position, whatever it is.



KEY TAKEAWAYS:

- The Modern Slavery Act is in force since January 1, 2024. If your company does business in Canada and meets two of the three financial thresholds, the annual reporting obligation exists now.
- The MSA board approval requirement is a governance obligation, not a management compliance task. The board of the Canadian entity, or the foreign parent board in some cases, must formally approve the report before submission.
- The import ban on goods produced with forced labour operates independently from the MSA. A company that identifies forced labour risk in its MSA report and takes no remediation action faces potential enforcement on the goods themselves, not only the reporting penalty.
- OSFI Guideline B-15 applies to all federally regulated financial institutions except foreign bank branches. Scope 3 GHG emissions disclosure is required by FY 2028. Begin building data collection infrastructure now.
- AMF-supervised institutions in Quebec have implementation deadlines that have already passed for larger institutions. Confirm your category and compliance status immediately.
- Material climate change, loss of biodiversity, forced labour, and environmental risks must already be disclosed in MD&A and AIF filings under existing securities law.
- CSSB standards are voluntary as of 2025. Early voluntary adoption builds the infrastructure and governance processes that mandatory compliance will require, and compresses the implementation risk if and when mandatory rules arrive.
- Publicly traded CBCA corporations must disclose diversity data for the board and senior management annually, including Indigenous peoples, visible minorities, and persons with disabilities, and must state whether a diversity target has been adopted and if not, why (comply or explain approach).

How Miller Thomson can help

Canada's ESG and sustainability reporting landscape is evolving faster than at any point in its history. The Modern Slavery Act, OSFI Guideline B-15, the AMF Climate Risk Guideline, existing securities disclosure obligations, and the voluntary sustainability standards framework of the CSSB collectively create a compliance environment that requires coordinated legal, governance, and reporting advice, not a single-practitioner response.

Miller Thomson's ESG and Carbon Finance teams advise foreign companies on the full spectrum of Canadian ESG reporting obligations, from Modern Slavery Act threshold assessment, compliance program implementation and annual report preparation through OSFI and AMF climate risk compliance, continuous disclosure obligation review, CSSB voluntary adoption planning, and board diversity disclosure. Our national presence includes Quebec practitioners who advise on the AMF-specific obligations that apply in addition to the federal framework.

Speak with a [Miller Thomson ESG & Carbon Finance lawyer](#) about your Canadian reporting obligations





Canadian Customs & International Trade

What **foreign companies** must *navigate*
in a **shifting trade environment**

Canadian Customs & International Trade

What **foreign companies** must *navigate* in a **shifting trade environment**

WHO THIS IS FOR:

Supply chain managers, CFOs, and legal counsel at companies outside Canada that import goods into Canada, export from Canada, or are evaluating Canada as a manufacturing or distribution base. The trade environment described here reflects the current landscape as of July 2026, which is materially different from what existed two years ago. If your Canadian trade strategy predates 2025, it needs to be reviewed.

Any foreign company assessing Canadian customs and trade compliance in 2026 must understand the current North American trade environment before it can meaningfully assess its cost structure, supply chain design, or market entry timing.

The Canada-US-Mexico Agreement (CUSMA) remains in force but is no longer the stable framework it appeared to be. The mandatory CUSMA review deadline passed July 1, 2026, without an agreement to extend the treaty to 2042. CUSMA has now shifted to annual reviews until its scheduled expiry in 2036. At each annual review, the parties may agree to extend, or not. This means the preferential tariff access that has defined North American trade for the past several years is subject to annual renegotiation for the foreseeable future.

The practical consequence for foreign companies: supply chain structures, manufacturing location decisions, and sourcing strategies that assumed stable CUSMA access need to be stress-tested against a scenario where that access changes. Build contingency into your Canadian trade structure now, not when the next annual review produces an unwelcome result.

Beginning February 24, 2026, the United States imposed a temporary 10% global tariff under Section 122 of the *Trade Act* of 1974 on most imports, including imports from Canada. Goods qualifying for preferential treatment under CUSMA remained exempt from that Section 122 tariff, while CUSMA-non-compliant goods were generally subject to the additional duty. The Section 122 measure was intended as a temporary bridge following the invalidation of the earlier IEEPA tariffs and has since been supplemented or replaced by country-specific tariff actions under other statutory authorities, including Section 301 of the *Trade Act* of 1974, with additional targeted measures affecting Canada pursued under Section 338 of the *Tariff Act* of 1930. Accordingly, Canadian exporters must assess the specific tariff authority applicable to their goods rather than relying solely on the former Section 122 regime. CUSMA compliance continues to provide important relief from certain country-specific tariffs were expressly exempted, but it does not shield goods

from U.S. sectoral tariffs imposed under Section 232 of the *Trade Expansion Act* of 1962. As a result, Canadian exports of products such as steel, aluminum, copper, automobiles and automotive parts, trucks, buses, certain wood products, and certain semiconductors may remain subject to sector-specific duties even where the goods otherwise qualify as originating under CUSMA.

Canada's counter-tariffs: Canada removed most of its retaliatory counter-tariffs on US goods effective September 1, 2025, in recognition of the US approach to allow most Canadian goods to enter the US tariff-free under CUSMA. However, Canada maintains counter-tariffs on US steel, aluminum, and automobiles while negotiations in those sectors continue.

What this means for a foreign company entering Canada

- If your Canadian operation will import inputs from the US, confirm whether those inputs are subject to Canada's remaining counter-tariffs before finalizing your cost model
- If your Canadian operation will export to the US, confirm CUSMA rules of origin compliance for your specific goods, CUSMA compliance is not automatic and must be assessed product by product
- If your goods are in steel, aluminum, automotive, or other tariff-affected sectors, get current advice on the applicable rates before committing to a supply chain structure, the tariff position in these sectors has changed multiple times since 2025 and continues to evolve



01.

Customs duties

Generally speaking, the importer of goods into Canada is the person who has title to the goods at the time of importation and reports and accounts for the goods to the Canada Border Services Agency (“**CBSA**”) upon entry into Canada. The importer must pay any applicable customs duty and GST in respect of the goods to the CBSA at the time the goods are accounted for.

The importer of record designation matters more than most foreign companies realize. The importer of record bears full legal responsibility for the accuracy of the customs declaration, the payment of duties, and compliance with all applicable Canadian import requirements. Where a foreign company uses a Canadian distributor or third-party logistics provider, the importer of record question: who it is, and who bears the liability, must be resolved contractually before the first shipment crosses the border, not after a CBSA assessment arrives.

GST is payable on importation of the goods on the “value for tax.” The value for tax is deemed under the ETA to be equal to the total of the value for duty (discussed below) plus the amount of duties and taxes, if any, payable on the goods under certain other federal statutes. Provided the foreign investor (or its Canadian subsidiary, as the case may be) is registered for GST at the time the goods are accounted for and otherwise satisfies the requirements for claiming input tax credits, the foreign investor (or its Canadian subsidiary) will be entitled to claim ITCs to recover the full amount of GST paid on importation of the goods into Canada.

The ITC recovery on imported goods is a material cash flow item for foreign companies with significant Canadian import volumes. Confirm GST registration is in place before the first shipment, GST paid on imports before registration cannot be recovered through ITCs.

The import/export profile of the company’s Business Number needs to be activated in order for the company to import or export commercial goods to and from Canada. This activation is a separate step from obtaining the Business Number itself and from GST registration. Foreign companies that obtain a Business Number for payroll or GST purposes without activating the import/export profile will be unable to import commercially until the profile is activated. Build this into your pre-launch timeline.

02.

Value for duty

Depending on the tariff classification and tariff treatment of the imported goods, customs duty may also be payable at the time of importation in addition to the GST. Customs duty will be calculated on the value for duty of the goods. Even if customs duty is not applicable on certain goods, the value for duty must be determined and reported to the CBSA at the time of importation.

In most cases, the value for duty is the amount paid to the vendor for the goods. The company's declaration of value for duty should be supported by a receipt or sales invoice from the vendor. This document must include a complete description of the goods, the selling price and conditions and terms of the sale.

The value for duty declaration is a compliance risk area for foreign companies importing from related parties. Where the importer and the vendor are related, such as parent and subsidiary, or affiliated companies, the CBSA has authority to scrutinize whether the transaction value reflects an arm's-length price. This intersects directly with transfer pricing obligations under the Income Tax Act. A transaction price set for income tax transfer pricing purposes may not automatically satisfy the CBSA's customs valuation requirements. These are two separate regimes with two separate tests, and a price that passes one does not automatically pass the other.

[Memorandum D1-4-1, CBSA Invoice Requirements](#) provides additional information. The value for duty declared to the CBSA is in Canadian funds.

Since most goods are imported to Canada as a result of a sale for export to a purchaser in Canada, the transactional value method ("TVM") is applicable. Under the *Customs Act* (the "**Customs Act**"), the primary basis of determining the value for duty of imported goods is the TVM. This method and the five alternate methods of determination are identified in sections 48 to 53 of the *Customs Act*. The sequential order of these methods must be followed in order to determine value for duty.

The five alternative customs valuation methods are:

- **Section 49** – The transaction value method of identical goods
- **Section 50** – The transaction value method of similar goods
- **Section 51** – The deductive method of valuation
- **Section 52** – The computed method of valuation
- **Section 53** – The residual method of valuation

The sequential nature of these methods is not optional. The CBSA requires that each method be considered and rejected before the next is applied. Importers who skip directly to a more convenient method without documenting why the earlier methods were rejected expose themselves to reassessment. Where the TVM cannot be applied, because there is no identifiable sale for export to Canada, document the analysis and the method selected before the CBSA asks.

03.

Tariff classification

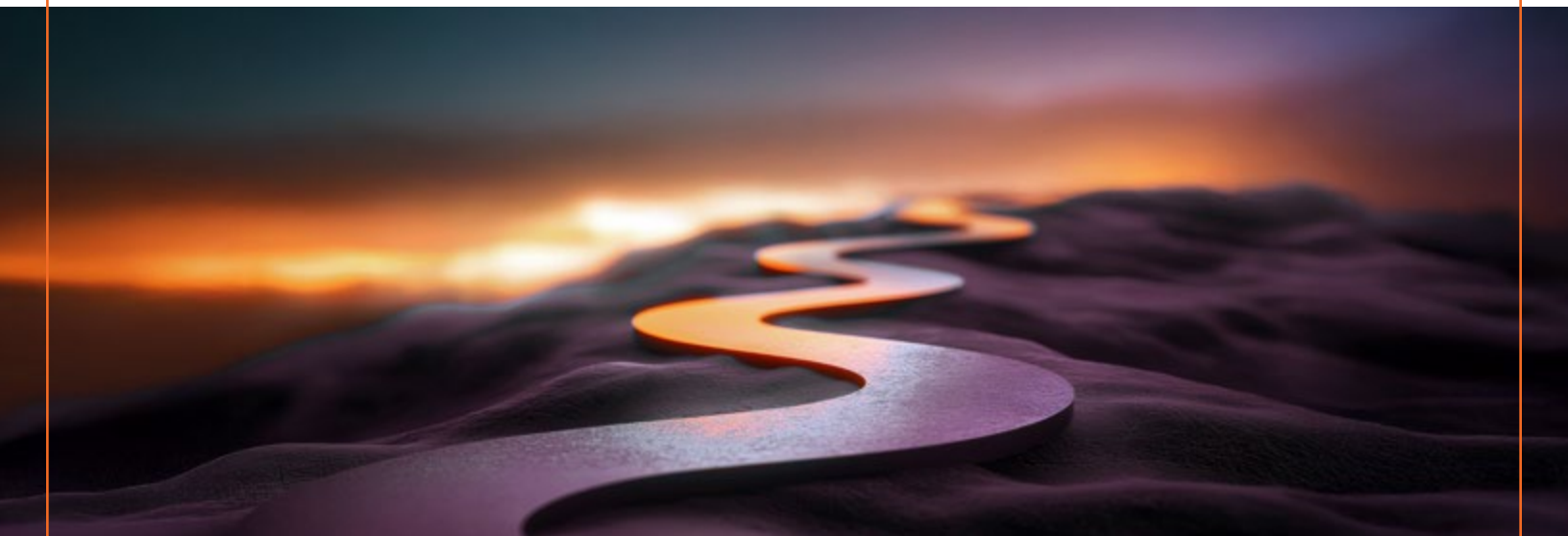
The importer will need to determine the correct tariff classification number. These numbers along with the goods country of origin are used to determine the rate of duty applied to the goods at the time of importation.

Most countries use the World Customs Organization's ("WCO") Harmonized Commodity Description and Coding System, which is generally referred to as the Harmonized System (the "HS"). The classification is composed of 10 digits. The first six digits are a common identifier across all countries using the HS for that particular good. The following four are unique to Canada and used to establish the duty rates and for statistical purposes.

Tariff classification errors are one of the most common sources of CBSA reassessments and penalties. A wrong classification number can result in underpayment of duties, which the CBSA will assess with interest and potential penalties, or overpayment, which requires a formal correction process to recover. For companies importing multiple product lines into Canada, a classification review before the first importation is not overhead, it is insurance.

Where there is genuine uncertainty about the correct classification of a good, importers can request an advance ruling from the CBSA before importation. An advance ruling binds the CBSA to the classification stated in the ruling for the goods described, providing certainty for future importations. For new products or unusual goods, this is the most reliable way to eliminate classification risk.

For more information on classifying goods imported into Canada please refer to Canada customs memorandum [D10-13-1-Tariff Classification of Goods](#).



04.

Origin-preferential tariff treatment

There are two elements that establish the customs rate of duty payable on imported goods: the tariff classification of the goods and the origin of the goods.

A lower rate of duty, typically duty-free, may be applied on imported goods originating from countries with whom Canada has free trade agreements. Other preferential tariff treatments, such as the Least Developed Country Tariff and the General Preferential Tariff, also provide duty relief.

Canada has 15 free trade agreements covering 51 countries, including CUSMA (U.S. and Mexico), CETA (European Union), and CPTPP (twelve countries primarily from the Asia-Pacific region). For foreign companies entering Canada, these agreements can materially affect the landed cost of imported goods. A European company importing components from EU member states into its Canadian operation may qualify for duty-free treatment under CETA. An Asia-Pacific supplier may qualify under CPTPP. The applicable agreement, and whether the specific goods meet the rules of origin, must be assessed for each product and each supplier.

Rules of origin under CUSMA: CUSMA rules of origin are product-specific and can be complex, particularly for manufactured goods that incorporate materials sourced from outside North America. A good is not automatically CUSMA-compliant because it was made in the US, Canada, or Mexico, it must meet the applicable product-specific rule of origin, which may require a change in tariff classification, a regional value content calculation, or both. For companies with North American supply chains, confirming CUSMA compliance product by product is not optional, it is the basis on which preferential tariff treatment is claimed and, if the claim is wrong, the basis on which the CBSA will assess duties, interest, and penalties.

The importer must have valid proof of origin in their possession at the time of accounting to be provided to the CBSA upon request. All claims for a preferential tariff treatment must also meet the shipping requirements (such as direct shipment, transit and transshipment) for that tariff treatment.

What to do before claiming preferential tariff treatment

- Confirm the applicable free trade agreement for each supplier jurisdiction and each product.
- Assess whether the specific goods meet the rules of origin for that agreement, do not assume compliance.
- Obtain and retain proof of origin documentation before the goods are accounted for, the CBSA can request it at any time.
- For CUSMA claims, assess whether your goods are in a sector subject to additional sectoral tariffs that apply even to CUSMA-compliant goods (steel, aluminum, copper, autos).

05.

Importation and the Canada Border Services Agency

All goods entering into Canada must be declared with the CBSA which verifies compliance of the imported goods with Canadian laws and collects customs duties and applicable excise taxes.

CARM —

the compliance change every importer in Canada must have addressed

As of October 21, 2024, the CBSA implemented the CBSA Assessment and Revenue Management system (CARM) as the official platform for assessing and collecting duties and taxes on imports. CARM is not an incremental update, it fundamentally changed how importers manage their customs compliance in Canada, and foreign companies that have not assessed their CARM obligations are exposed.

Under CARM, importers are now required to:

- Register on the CARM Client Portal, this is mandatory for all importers carrying on business in Canada.
- Manage their own customs account directly through the portal, including access to their statement of account and transaction history.
- Maintain their own financial security arrangements with the CBSA in most cases, previously, customs brokers could post security on behalf of importers, and that arrangement has changed.
- Receive and respond to CBSA communications through the portal.

Foreign companies that have been importing into Canada through a customs broker without direct CARM portal registration need to confirm their compliance status immediately. The broker's portal access does not substitute for the importer's own registration. Non-registered importers face compliance exposure on every shipment.

The federal government also controls the import, export and transfer of certain goods and technology. The *Export and Import Permits Act* provides for the control of certain goods imported or exported, and requires the importer or exporter, as the case may be, to obtain applicable permits prior to the importation or exportation of the listed goods. For example, an import permit must be obtained for importing goods such as steel products, weapons and firearms, and certain agricultural and food products.

Permit requirements are product-specific and change based on current trade conditions. In the current environment, where tariff-rate quotas on steel have been adjusted multiple times since 2025, importers of steel and steel-derivative products should confirm current permit and quota requirements before each shipment, not annually.

Pursuant to the *Defence Protection Act*, an entity that possesses, examines or transports “controlled goods” within Canada must be registered under the Controlled Goods Program, which is administered by the Department of Public Works and Government Services. Controlled goods are listed in the Export Control List and include “Group 2” goods, being certain munitions.

There are also significant legislative requirements relating to the importation of foods, agricultural commodities, aquatic commodities and agricultural inputs. They are all subject to the inspection procedures of the Canadian Food Inspection Agency.

Imported goods may need to comply with bilingual (English and French) labelling requirements if the goods are sold in Canada. This requirement intersects with Quebec’s Charter of the French Language obligations described in the Quebec section of this publication. For goods sold in Quebec, French labelling is not merely a bilingual requirement, it is a distinct obligation with its own compliance regime and enforcement consequences.



06.

Export limitations

Canadian exporters may be restricted from exporting certain goods to any country. For example, if an exporter is exporting certain restricted goods listed in the Export Control List, export permits or other authorizations may be required. Canadian exporters may also be restricted from exporting any goods to certain countries.

The Area Control List is a list of countries to which the export of any and all goods is restricted. Further, the Special Economic Measures Act (“SEMA”) restricts dealings with subject countries (e.g., Russia), including limitations on travel and the imposition of trade prohibitions.

Canadian sanctions are imposed under the *United Nations Act*, SEMA or the *Justice for Victims of Corrupt Foreign Officials Act*.

The sanctions landscape has evolved significantly since 2022 and continues to change. Foreign companies with Canadian operations that have existing business relationships, or supply chain connections, with sanctioned jurisdictions must assess those relationships against current Canadian sanctions, not the sanctions regime that existed when the relationship was established. A relationship that was permissible under Canadian law two years ago may now be prohibited. The CBSA and Global Affairs Canada actively enforce export controls and sanctions, and penalties include criminal liability for individuals.

What to do before your first Canadian export

- Screen your export destination against the Area Control List and current SEMA sanctions.
- Confirm whether your goods appear on the Export Control List and whether an export permit is required.
- Screen end users and ultimate consignees against Canadian sanctions lists, not only the CBSA list but also the lists maintained under SEMA and the *United Nations Act*.
- Establish an ongoing sanctions screening process, a one-time pre-export check is not sufficient when sanctions lists are updated continuously.

View the [current Canadian sanctions](#).

07.

Anti-dumping and countervailing

The CBSA supports Canadian producers who face unfair foreign competition in the domestic marketplace. The CBSA administers the *Special Import Measures Act (SIMA)*, to protect Canadian industry from injury caused by the dumping and subsidizing of imported goods. SIMA provides the framework with respect to establishing whether Canadian producers have been injured and the applicable antidumping and countervailing duty.

Anti-dumping and countervailing duties are in addition to regular customs duties and apply to specific goods from specific countries where the CBSA and the Canadian International Trade Tribunal have made findings of dumping or subsidization. These duties can be substantial, in some cases exceeding 100% of the value of the goods, and are not always obvious from a tariff classification review alone.

Foreign companies importing goods into Canada should screen their products and source countries against current SIMA measures before finalizing their sourcing strategy. Importing goods subject to SIMA measures without accounting for anti-dumping or countervailing duties will result in CBSA assessments on arrival, with no opportunity to restructure the supply chain before the liability is incurred.

View the [current measures in force to which countervailing and antidumping duties are applicable](#).



08.

Free trade agreements

In recent years, Canada has been a full participant in the effort to reduce global trade barriers. Canada is a member of the World Trade Organization and has 15 FTAs with 51 different countries. The most notable FTAs are CUSMA (Canada, US, and Mexico), CETA (Canada and the EU), and CPTPP (Canada and twelve countries primarily from the Asia-Pacific region).

The current state of **CUSMA** - what foreign companies need to know right now

CUSMA is the foundation of North American trade, but its stability can no longer be assumed. The mandatory review deadline of July 1, 2026, passed without an agreement to extend the treaty to 2042. CUSMA has shifted to annual reviews and will remain subject to annual renegotiation until its scheduled expiry in 2036.

For foreign companies making long-term investment decisions in Canada, such as manufacturing facilities, distribution infrastructure, supply chain commitments, the CUSMA uncertainty is a material factor that belongs in the investment analysis, not as a footnote. The preferential tariff access that makes Canada attractive as a North American manufacturing base is subject to change at each annual review.

CETA - the underused advantage for European companies entering Canada

For European companies expanding into Canada, CETA eliminates customs duties on 98% of EU tariff lines. This is a significant cost advantage that many European companies entering Canada have not fully utilized, either because they have not assessed which of their goods qualify, or because they have not established the required proof of origin documentation to claim preferential treatment. A pre-entry CETA origin assessment is one of the highest-return compliance exercises a European company can undertake before Canadian operations begin.

CPTPP - the entry point for Asia-Pacific companies

For companies from Japan, Australia, Singapore, Vietnam, Chile, Peru, and other CPTPP member countries, CPTPP provides preferential tariff access to Canada. As with CETA, the benefit requires compliance with the applicable rules of origin and proper documentation. Companies from CPTPP member countries that are currently paying MFN rates on Canadian imports should assess whether their goods qualify for CPTPP preferential treatment.

Modern slavery legislation

Canada's Fighting Against *Forced Labour and Child Labour in Supply Chains Act* (the Modern Slavery Act or MSA) came into force on January 1, 2024. The MSA imposes reporting obligations on a broad range of entities, including government institutions, Canadian-listed companies, domestic companies, and certain foreign companies that do business or own assets in Canada, requiring annual filing of a statement on measures taken to identify, address, and prevent forced labour and child labour in their supply chains and operations. Affected companies must file their statement by May 31 of each year.

The MSA is the compliance obligation that most foreign companies doing business in Canada have not yet assessed, and the one that is most likely to create board-level exposure if it is ignored.

Who is caught - the foreign company question: The MSA applies to entities that are "listed" on a Canadian stock exchange or that meet two of the following three thresholds in a financial year: at least CAD \$20 million in assets, at least CAD \$40 million in revenue, and at least 250 employees. It applies to entities that produce, sell, or distribute goods in Canada or elsewhere, import goods into Canada, or control an entity that does any of these things. A foreign parent company that controls a Canadian subsidiary that imports goods may itself be a reporting entity under the MSA, regardless of where the parent is incorporated.

What the report must cover: The annual statement must address the organization's structure and supply chains, its policies and due diligence processes relating to forced and child labour, the parts of its business and supply chains that carry risk, the measures taken to remediate any forced or child labour identified, the training provided to employees, and how the organization assesses the effectiveness of its actions.

The filing and approval process: The statement must be approved by the board of directors, or equivalent governing body, and attested to by a director. For foreign companies with Canadian subsidiaries, this means the board of the Canadian entity, or in some cases the foreign parent board, must review and approve the filing. The statement is filed publicly with the Minister of Public Safety and is available for anyone to read. Reputational exposure from a statement that is inadequate, incomplete, or inconsistent with the company's actual supply chain practices is significant.

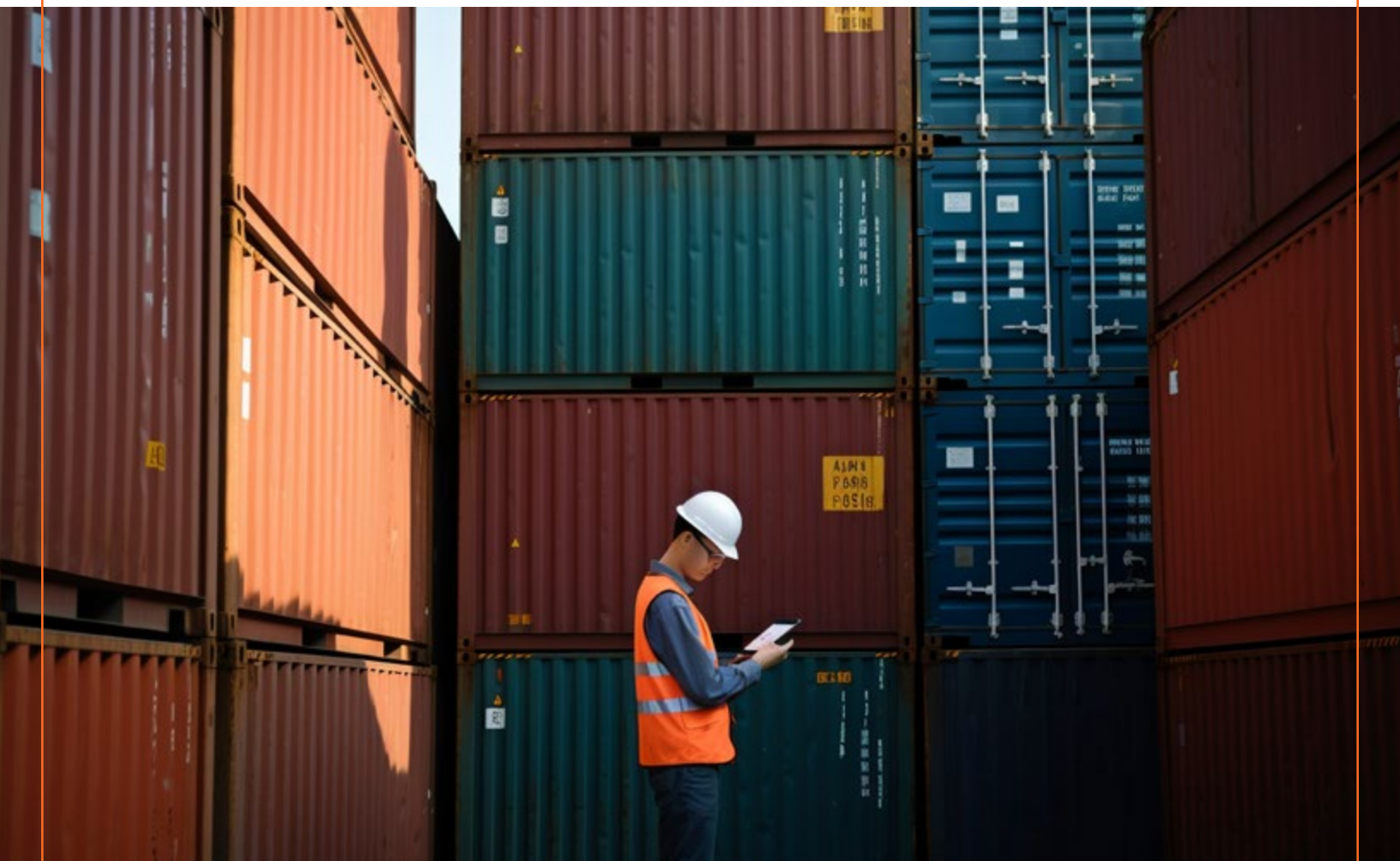
The penalty for non-filing or false reporting: Failure to file, filing a false or misleading statement, or obstructing an investigation under the MSA can result in fines of up to CAD \$250,000. Directors and officers who directed or authorized non-compliance may be personally liable.

What to do now if you have not assessed your MSA obligations

- Determine whether your Canadian entity, your foreign parent, or both are reporting entities under the MSA.
- If a reporting obligation exists and statements have not been filed for 2024 or 2025, assess the remediation options, late filing is better than continued non-filing.
- Map your supply chain at least two tiers deep to identify forced and child labour risk, a statement that covers only tier-one suppliers will not satisfy the MSA's due diligence expectations.
- Establish board approval and attestation processes for the annual filing before the next May 31 deadline.

KEY TAKEAWAYS:

- CUSMA is no longer a stable assumption. The July 2026 review deadline passed without extension. CUSMA is now on annual review until 2036. Supply chain structures and investment decisions that assumed permanent preferential access need to be stress-tested.
- CUSMA-compliant does not mean tariff-free in all sectors. Steel, aluminum, copper, autos, and certain other goods face US sectoral tariffs even when CUSMA-compliant. Confirm sector-specific exposure before finalizing your cost model.
- CARM registration is mandatory and not delegable to your customs broker. Register on the CARM Client Portal directly and confirm your financial security arrangements are in place.
- The importer of record designation is a legal liability question. Resolve it contractually before the first shipment, not after a CBSA assessment.
- Tariff classification errors are the most common source of CBSA reassessments. Where there is uncertainty, apply for an advance ruling before importation.
- Related-party import pricing is assessed by two separate regimes, customs valuation and income tax transfer pricing, with two separate tests. A price that satisfies one does not automatically satisfy the other.
- CETA and CPTPP are underused. European and Asia-Pacific companies entering Canada should assess preferential tariff access under these agreements before paying MFN rates on every shipment.
- The Modern Slavery Act applies to foreign companies controlling Canadian importers. Board approval of the annual statement is required. The May 31 filing deadline applies. Fines reach CAD \$250,000 and directors can be personally liable.
- Sanctions screening is continuous, not one-time. The Canadian sanctions landscape has evolved significantly since 2022. Relationships and supply chain connections that were permissible two years ago may now be prohibited.
- Bilingual labelling for goods sold in Canada intersects with Quebec's Charter obligations. French labelling in Quebec is not just a bilingual requirement, it is a distinct regime with its own enforcement consequences.



How **Miller Thomson** can help

Canadian customs and international trade compliance in 2026 is not the stable, predictable discipline it appeared to be three years ago. The CUSMA uncertainty, the evolving US tariff landscape, CARM implementation, and the Modern Slavery Act have collectively created a compliance environment where assumptions built before 2024 need to be revisited, and where the cost of getting it wrong has increased significantly.

Miller Thomson's trade and customs team advises foreign companies on every dimension of Canadian import and export compliance, from tariff classification and advance rulings through CUSMA rules of origin analysis, CARM registration, SIMA screening, export controls, sanctions compliance, and Modern Slavery Act reporting obligations. Our national presence means we can address the intersection of trade compliance with Quebec labelling requirements, provincial regulatory obligations, and the income tax transfer pricing rules that apply to the same intercompany transactions that customs valuations scrutinize.

If you are entering the Canadian market, restructuring a supply chain in response to the current tariff environment, or assessing whether your existing Canadian trade compliance framework remains fit for purpose, we would be pleased to discuss your specific situation.

Speak with a [Miller Thomson Trade and customs lawyer](#).



A close-up, slightly blurred photograph of orange calculator keys. The number '3' is clearly visible on one of the keys in the foreground. The image has a warm, orange-toned aesthetic.

Canadian Income Tax

What **foreign companies** need to
assess about **Canadian taxes**

Canadian Income Tax

What **foreign companies** need to **assess** about **Canadian taxes**

WHO THIS IS FOR:

CFOs, GCs, and regional tax directors at companies headquartered outside Canada evaluating a subsidiary, branch, or acquisition, and their in-house tax counsel.

The tax assumption that costs foreign companies

Most foreign companies enter Canada assuming their home-country tax logic will transfer, that what is deductible at home is deductible here, that intercompany charges work the same way, and that their existing holding structure is neutral. None of that is safe to assume.

Canada taxes its residents on worldwide income, operates a layered federal-plus-provincial system, and has enforcement mechanisms, such as transfer pricing penalties, thin cap rules, branch tax. All of these tax provisions could trigger consequences for the Canadian business structure that is implemented. The cost of discovering these after the fact is almost always higher than the cost of structuring correctly at the start.



01.

Decision 1: Subsidiary or branch, and why tax should drive it

This is the first structural decision every foreign company faces, being the selection of the legal structure to conduct the Canadian business.

Subsidiary (Canadian corporation)

- Subject to Canadian tax on worldwide income at a combined federal and provincial rate of approximately 23–31%, depending on province;
- The federal general rate is 15% after the general tax reduction; provincial rates are added on top;
- Dividends to the foreign shareholder trigger Canadian withholding taxes on the dividend; and
- Losses stay inside the subsidiary. There are no consolidated income tax filings in Canada for a corporate group.

Branch of a foreign corporation

- Only Canadian-source income is taxed, including income from a business carried on in Canada, and capital gains from taxable Canadian property;
- Tax losses of the Canadian branch may be available to the parent entity under its home-country tax rules, and thereby permit the Canadian tax losses to flow through to the entity's income earned outside of Canada;
- A branch tax is an annual levy on after-tax income and this branch tax could be payable whether or not the entity repatriates monies out of Canada; and
- A branch means the foreign parent is directly carrying on business in Canada, with the legal and regulatory exposure that entails.

A Canadian branch of a foreign corporation pays tax at the general corporate rate on its Canadian-source income, and then pays an additional 25% branch tax on after-tax income. This calculation base for the branch tax, which is based on the after-tax income of that branch, is reduced by an investment allowance for business assets and for retained earnings re-invested in Canada. Canada's income tax treaties generally reduce the branch tax rate to the same rate that would apply as if it were a dividend paid to a non-Canadian shareholder.

The branch tax could be payable whether or not there is an actual repatriation of monies out of the Canadian operation and back to the so-called “home” office. That is the critical distinction from dividend withholding on a subsidiary, which is only triggered when dividends are declared and paid.

Individuals are resident if the centre of their life - family, home, work, property - is in Canada. An individual who sojourns in Canada for 183 days or more in a calendar year is deemed to be a resident for that full year. Executives of foreign companies who spend significant time in Canada over multiple years, while maintaining ties in their home country, frequently find themselves as a tax resident in both jurisdictions simultaneously. Where Canada has a tax treaty with the other country, tie-breaker rules apply, but those rules must be actively analyzed.

Non-residents and Canadian-source income: A non-resident individual or corporation that does not meet the residency threshold is subject to Canadian income tax only on Canadian-source income, such as business carried on in Canada, employment performed in Canada, and capital gains from taxable Canadian property. Canada's tax treaties generally protect non-resident business profits from Canadian tax unless they are attributable to a permanent establishment in Canada. Treaty protection on short-term employment income and certain services income is also available, but must be actively claimed.

02.

Key decision 2: Where you operate determines what you pay

Canada's 15% federal rate is only half the equation. Every province and territory levies its own corporate income tax on top, and the combined federal-plus-provincial rate typically ranges from 23% to 31% depending on where your operations are located.

Ontario, British Columbia and Alberta are common landing points for foreign companies entering Canada. If your operations are location-flexible, provincial tax rates are a legitimate input into the location decision. The province of Alberta has the lowest provincial corporate income tax rate of 8%, resulting in a combined federal and provincial corporate income tax rate of 23%. In contrast, the combined corporate tax rate for a company subject to taxation in Ontario and British Columbia would be 26.5% and 27% respectively.

Quebec adds a further layer: Civil law governs contracts in Quebec, employment arrangements differ from common law provinces, and French-language obligations affect your operations, your documents, and the engagement of employees from day one. The legal structure conversation requires expertise in both Quebec taxation provisions and commercial law.

How income is allocated across provinces: If your Canadian entity operates in more than one province, income is allocated using a two-factor formula based on both on gross revenue and on salaries and wages attributable to the permanent establishment situated in a particular province. Each province taxes only the income allocated to it. Understanding how that allocation works, and how to structure operations to optimize it could be a planning exercise in advance of commencing business activity in Canada.

Computation of taxable income: what counts and what doesn't

Income subject to Canadian tax includes income from employment, business and property, and taxable capital gains net of allowable capital losses.

1. **Employment income:** Encompasses wages, bonuses, and taxable benefits. Remuneration paid to directors is considered to represent employment income earned by that individual. Deductions against employment income are very limited. Non-resident employers with employees working in Canada are required, subject to treaty relief, to withhold source deductions covering income tax, employment insurance premiums, and Canada Pension Plan contributions, and to remit them to the Canada Revenue Agency ("CRA") on the employee's behalf. Directors of the employing corporation can be held personally liable if source deductions are not withheld and remitted.
2. **Business and property income:** Determined by reference to profit under accepted accounting and commercial principles, subject to Income Tax Act ("ITA") adjustments. Expenses must be incurred for the purpose of earning income to be deductible.
3. **Capital gains:** are only partially included in income at one-half of the regular corporate tax rate. Capital losses are generally deductible only against capital gains, not against income from other sources.

No consolidated tax returns: Unlike in the United States, Canadian corporations cannot file consolidated tax returns. Each corporation in a corporate group must file a separate T2 corporate tax return (and if applicable, a provincial corporate tax return) and calculate its income on a stand-alone, non-consolidated basis. This limits the ability to offset losses in one Canadian entity against profits in another, and affects how foreign groups structure their Canadian operations.

Thin capitalization & EIFEL:

Two rules that together cap your interest deductions

Foreign companies routinely capitalize Canadian subsidiaries with intercompany debt because interest deductions would be expected to reduce Canadian taxable income. Canada has two overlapping regimes designed to limit such deductions.

1. **Thin capitalization rules** limit the debt a Canadian subsidiary or branch can carry to a foreign parent or related non-resident and still deduct the interest. The permitted debt-to-equity ratio is 1.5:1. The proportion of interest on debt exceeding that ratio is not deductible, and is recharacterized as a deemed dividend, triggering withholding tax on top of the disallowance. This is a double hit: the entity loses the deduction, and it owes withholding tax on the accrued amount that is denied as a tax-deductible expense.
2. **The EIFEL rules**, or “Excessive Interest and Financing Expenses Limitation”, add a second and independent constraint that applies regardless of whether the lender is a third party or a related group company. They cap the deduction of net interest and financing expenses at 30% of adjusted taxable income (an approximation of EBITDA with Canadian tax adjustments). Amounts above that cap are denied in the current year, though they can be carried forward to future years subject to conditions.

The two rules operate independently. A structure that passes the thin cap test can still be caught by EIFEL. A structure that passes EIFEL can still be caught by thin cap. Both must be modelled simultaneously before the capital structure is set.

What to do

- Review your proposed debt-to-equity ratio before the subsidiary is capitalized;
- Model all interest and financing costs, including guarantee fees, hedging costs, and certain lease financing, against the EIFEL cap before assuming they are deductible;
- If your Canadian operations are capital-intensive or carry significant third-party debt, the EIFEL rules may be more restrictive than the thin cap limitations. The exact after-tax financial position of the capital structure should be evaluated before it is finalized.

Withholding tax on distributions: what triggers it, what the rates are, and what foreign companies miss

A Canadian subsidiary distributing profits to its foreign parent owes withholding tax on every dividend paid. The statutory rate is 25%, reduced by treaty, to 15% generally under the Canada-US treaty, and to 5% for companies owning 10% or more of the voting shares. The Canada-UK treaty similarly reduces it to 5% for qualifying corporate shareholders above that threshold.

But withholding tax extends well beyond ordinary dividends. Three situations are relevant to foreign companies:

1. **Deemed dividends on share redemptions** When a Canadian subsidiary redeems or cancels shares at a price above the paid-up capital of those shares, the excess is deemed to be a dividend under the ITA, and withholding tax applies to that deemed dividend at the full statutory rate, subject to treaty reduction. This can affect every exit and reorganization involving a Canadian subsidiary, not just annual profit distributions.

2. **Return of capital versus dividend.** Not every distribution from a Canadian subsidiary is a dividend. Distributions up to the paid-up capital of shares are returns of capital and not subject to withholding, provided that a legal resolution were to be passed by the company to designate the distribution of its capital. But paid-up capital must be accurately tracked from the date of incorporation. The paid-up capital balances will change when Canadian subsidiaries issue new shares or undergo reorganizations.
3. **Interest and royalty payments to non-resident related parties** are also subject to withholding. Typically at a rate of 25%, but reduced by treaty. The Canada-US treaty reduces withholding on non-arm's length interest to nil and on royalties to 10%. Generally, treaty access must be actively claimed and the beneficial ownership of each payment must be scrutinized in light of the General Anti-Avoidance Rule ("GAAR") treaty anti-abuse rules.

What to do

- Establish a paid-up capital register from the first share issuance and maintain it through every subsequent share issuance and reorganization;
- Before any reorganization or return of capital, confirm the paid-up capital position;
- Review all intercompany payment flows, not just dividends, for withholding exposure before the first payment is made.

Transfer pricing: New focus of CRA scrutiny

If your Canadian subsidiary buys goods or services from, licenses IP to or from, pays management fees to, or borrows from a related non-resident entity, transfer pricing rules apply. Every one of those transactions must be priced as if conducted between arm's-length parties, documented contemporaneously, and defensible on audit.

Amendments to Canada's transfer pricing rules were announced in 2025 to align more closely with the OECD Transfer Pricing Guidelines. The amended rules place greater emphasis on identifying the actual transaction and its economically relevant characteristics, and not just their contractual terms. The CRA now has broader grounds to challenge arrangements that do not reflect arm's-length dealing, even where the contractual structure was carefully designed.

The penalty exposure is not limited to the tax adjustment itself. Specific transfer pricing penalties could apply when the taxpayer does not have required contemporaneous documentation in place at the time of filing. The CRA does not accept documentation prepared after the fact as a substitute to the contemporaneous documentation requirement.

What to do

- Identify every cross-border intercompany transaction before the Canadian subsidiary commences business operations;
- Establish a transfer pricing policy and prepare contemporaneous documentation in the same tax year the transactions occur.

Tax on sale of Canadian assets: the section 116 mechanism & the purchaser's liability

When a non-resident sells "Taxable Canadian Property", then Canadian capital gains tax may be applicable under the ITA. Taxable Canadian Property is defined to include real property situated in Canada, shares of private corporations that derive more than 50% of their value from Canadian real property, and assets used in a Canadian business.

The mechanism to enforce collection of any taxes owing by the non-Canadian vendor of Taxable Canadian Property is the withholding requirements under section 116 of the ITA. This section 116 requires the purchaser to withhold a portion of the gross purchase price, either at a rate of 25% or 50% depending on the particular type of property, otherwise payable to the non-Canadian vendor and remit this amount to the CRA. Therefore, it is the purchaser, and not the vendor, who becomes responsible for remitting to the CRA the estimated amount of the Canadian taxes. The vendor can avoid or eliminate the imposition of this withholding tax remittance by obtaining an advance "Clearance Certificate" from the CRA before closing. In the event that no Clearance Certificate were to be obtained and the requisite withholding amount is remitted to the CRA by the purchaser, the vendor can subsequently obtain a refund of any overpayment by filing a tax return with the CRA.

The practical consequence is stark: if a non-Canadian vendor arrives at closing without a Clearance Certificate, the purchaser is legally required to withhold up on the gross purchase price and remit this amount to the CRA. For example, on a \$10 million transaction of a real estate property that is held on capital account, then \$2.5 million is to be withheld at closing and remitted to the CRA. Once the seller files a Canadian return and ascertains the exact amount of Canadian tax owing, it would be able to receive a refund of any excess balance that had been remitted to the CRA. However, it could be many months after the closing of the transaction before the tax return can be filed and then assessed by the CRA; accordingly, it could be a lengthy period of time after the closing of the transaction to receive a refund of any overpayment. In some cases, it may be possible for the vendor to obtain permission (known as a "Comfort Letter") that would permit the purchaser to delay the remittance of the withholding tax until the CRA has had time to process the Clearance Certificate. In such cases, the amount of the withheld tax at issue should be held in an ultra conservative investment, such as an interest-bearing savings account held with a large Canadian chartered bank, in order for this withheld amount to be fully and readily available to be remitted to the CRA as necessary. This Comfort Letter approach is practical if the parties anticipate that the CRA would be in a position to issue a Clearance Certificate within a short period of time following the closing of the sale transaction.

The province of Quebec has its own parallel system of withholding tax imposed on the sale proceeds of "Taxable Quebec Property". In such case, the reporting and potentially withholding tax remittances must be separately made to the CRA and Revenu Québec. The definition of Taxable Quebec Property is generally similar to Taxable Canadian Property, except that the property would have a nexus with the province of Quebec. The withholding tax to be remitted to Revenu Québec is 12.875% or 30% of the gross sale proceeds of Taxable Quebec Property, unless a clearance certificate has been obtained from Revenu Québec.

What to do

- Apply for a section 116 clearance certificate and as applicable to Revenu Québec as early as possible, as processing times can be lengthy;
- If you are the purchaser in a transaction involving a non-resident seller, verify Clearance Certificate status before releasing any funds at closing. The withholding obligation falls on the Purchaser.

Tax treaties: what they do, what they don't, and what has changed

Canada has almost 100 international tax treaties, most based on the OECD Model Tax Convention. They generally reduce withholding tax rates on dividends, interest, and royalties, and protect non-resident business profits from Canadian tax absent a permanent establishment. For most foreign companies entering Canada, their home-country treaty with Canada is one of their most valuable structuring tools.

But three things are routinely misunderstood:

1. **Treaty protection is not automatic.** You must actively claim it by filing a treaty based income tax return with the CRA. Being a tax resident of a country with which Canada has a income tax treaty does not eliminate the Canadian tax filing obligations. For example, a non-resident corporation must file a T2 corporate tax return even if all business income is treaty-protected, and failure to file triggers penalties regardless of whether tax was actually owed.
2. **The GAAR was significantly broadened in 2024.** Canada's general anti-avoidance rule now applies more broadly to arrangements that, while technically compliant, produce results inconsistent with the object and spirit of the ITA or applicable treaty. Arrangements structured to access treaty benefits without the economic substance those benefits were designed to reward are now more vulnerable to challenge. Structures that were reviewed under the prior rules warrant a further review if they are subsequently modified or replicated after the 2024 amendments.
3. **The MLI has changed many of Canada's income tax treaties.** The MLI came into force in Canada in December 2019 and applies anti-abuse provisions to most of Canada's covered treaties. The Canada-US Income Tax Convention is not covered by the MLI, as it has its own Limitation on Benefits provisions. The Tax Court of Canada has not yet fully considered the MLI's application to alleged treaty shopping arrangements, meaning the legal landscape is still developing.



KEY TAKEAWAYS:

- **Structure before you operate.** The subsidiary vs. branch decision, the capitalization approach, the intercompany pricing policy, and your withholding tax exposure all need to be in place before the first Canadian transaction.
 - **Thin cap and EIFEL must be modelled together.** They are independent rules with independent caps. Satisfying one requirement does not necessarily mean satisfying the other. Review the intended capital structure before the subsidiary is funded with debt and equity.
 - **Transfer pricing documentation is not optional.** Prepare contemporaneous documentation in the same year the intercompany transactions begin.
 - **Track paid-up capital from day one.** Access to the a reliable paid-up capital calculation would validate the amount that can be repatriated on a tax-free basis back to the non-Canadian shareholder.
 - **Section 116 and Taxable Quebec Property Withholding Process.** Get your section 116 clearance certificate as early as possible in the transaction acquisition process.
-

How Miller Thomson can help

Miller Thomson's tax group advises foreign companies at every stage of their Canadian presence, from initial market entry structuring through transfer pricing policy design, CRA audit defence, and cross-border transaction support. Our practitioners work across all ten of our Canadian offices, including Montreal, where our Quebec tax capacity addresses the civil law and French-language dimensions that firms without a genuine Quebec presence cannot fully cover.

Book a Canadian [tax structuring consultation with a Miller Thomson's lawyer](#).





Canada Sales Tax

What **foreign companies owe** before
they open a **Canadian office**

Canada Sales Tax

What **foreign companies owe** before they open a **Canadian office**

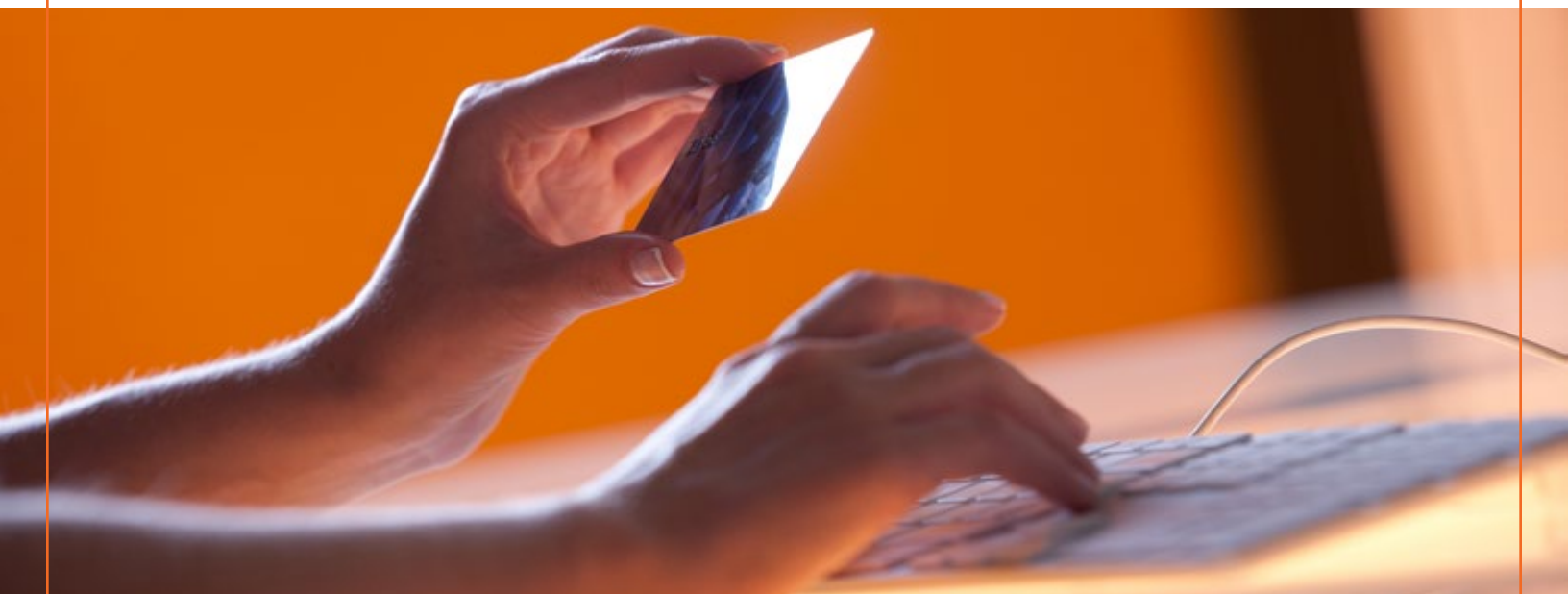
WHO THIS IS FOR:

CFOs, controllers, and operations leads at companies outside Canada selling goods, services, or digital products to Canadian customers, and any company evaluating a physical Canadian presence. If you are already selling into Canada without having assessed your sales tax position, this article is urgent reading.

The compliance gap that is already open

Most foreign companies think Canadian sales tax obligations begin when they open a Canadian office or hire a Canadian employee. They do not, and in Quebec, they never did. Quebec required non-resident suppliers to register for QST as early as January 1, 2019. Federally, since July 1, 2021, the obligation extends to any foreign company introducing a new product line into the Canadian market, expanding an existing service offering to Canadian clients, or acquiring a Canadian business, with no physical presence in Canada required.

The deeper problem is this: sales tax is the most underestimated compliance risk in Canadian tax. It moves quietly, no annual return flags it, no auditor raises it at the board level, until the CRA or Revenu Québec does. By then, the exposure includes years of unremitted tax, compounding interest, and penalties that dwarf the original obligation. The penalty for non-compliance is not hypothetical. The CRA has enforcement tools against non-resident suppliers, and the reputational and financial cost of a retroactive registration and remittance, with interest, is substantially higher than proactive compliance from the start.



Canada's sales tax system: four parallel regimes, one country

Canada does not have a single national sales tax. It has four overlapping systems that apply simultaneously depending on where your customer is located, what you are selling, and how you are selling it. Foreign companies that treat Canadian sales tax as a single calculation routinely get it wrong.

a. GST — the federal baseline (5%, applies everywhere)

The Goods and Services Tax is a 5% federal value-added tax on the supply of most goods and services in Canada, imposed under the *Excise Tax Act*. It applies in every province and territory. A registered supplier charges GST, collects it from customers, and remits it to the CRA. The supplier can then claim input tax credits (ITCs) for GST paid on goods and services acquired in the course of its commercial activities — meaning GST is ultimately borne by the end consumer, not by businesses in the supply chain. For foreign companies with Canadian commercial activities, the ITC mechanism is a cash recovery opportunity that is frequently missed.

b. HST — harmonized provinces (13–15%, replaces GST)

Five provinces: Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island, have harmonized their provincial sales tax with the federal GST into a single Harmonized Sales Tax.

The combined rate is:

- Ontario: 13% (5% federal + 8% provincial);
- New Brunswick, Newfoundland and Labrador: 15% (5% federal + 10% provincial);
- Nova Scotia: 15% (5% federal + 10% provincial);
- Prince Edward Island: 15% (5% federal + 10% provincial).

HST is administered by the CRA under the same rules as GST, using the same registration number. ITCs are available in the same way. The practical consequence: a foreign company selling into Ontario owes 13% on every taxable supply, not 5%. Getting this wrong in pricing, invoicing, or remittance creates both a customer relationship problem and a CRA problem simultaneously.

c. QST — Quebec's parallel system (9.975%, stacked on GST)

Quebec did not join the HST framework. Instead it harmonized its own Quebec Sales Tax with the GST in structure, but administers it separately through Revenu Québec, not the CRA. The QST rate is 9.975%, applied in addition to the 5% federal GST, for a combined effective rate of 14.975% on taxable supplies in Quebec.

For businesses whose principal place of business is in Quebec, Revenu Québec administers both GST and QST on behalf of the CRA, a single point of contact for both taxes. For all other businesses, including most foreign companies entering Canada, the CRA administers GST directly while Revenu Québec administers QST separately. Either way, if your Canadian operations include Quebec or if you are selling goods or services to Quebec consumers, you have both a GST registration obligation and a QST registration obligation. These are separate registrations, separate returns, and separate remittances, even where Revenu Québec is the common administrator. Companies that register only for GST and assume Quebec is covered are non-compliant from day one of their Quebec sales.

d. PST — retail sales tax in BC, Manitoba, and Saskatchewan

British Columbia, Manitoba, and Saskatchewan impose their own provincial retail sales tax on the end user, similar in concept to US sales and use tax, not to the VAT-style GST. PST is not recoverable through an ITC mechanism. It is a cost to the end customer, collected and remitted by the supplier.

Current PST rates:

- British Columbia: 7%;
- Manitoba: 7%;
- Saskatchewan: 6%.

Alberta, the Northwest Territories, Nunavut, and Yukon have no provincial sales tax. A foreign company selling exclusively into Alberta faces only the 5% federal GST, which is one reason Alberta is a common first entry point for US companies testing the Canadian market.

The \$30,000 threshold: when registration becomes mandatory

A foreign company that does not otherwise carry on business in Canada in the traditional sense is nevertheless required to register for GST/HST once its taxable supplies to Canadian customers cross CAD \$30,000 over four consecutive calendar quarters. This threshold applies regardless of what you are selling: goods, services, digital products, or platform access, and regardless of whether you have a single employee or asset in Canada.

Since July 1, 2021, this obligation has been extended and actively enforced across a broad range of business models, including suppliers of software, streaming, and cloud services; distribution and accommodation platform operators; and any foreign company selling goods or services to Canadian consumers without a physical Canadian presence. If your Canadian revenue is approaching or has crossed this threshold, registration is not optional.

The ITC distinction that determines which regime to register under: Suppliers registered under the simplified registration regime, designed for non-resident companies without a traditional Canadian business presence, are not eligible to claim ITCs. Only suppliers registered under the regular GST/HST regime can recover input tax credits on Canadian expenditures. For corporations already carrying on business in Canada through a branch, subsidiary, or regular Canadian commercial activity, registration under the general regime is a legal requirement, and ITC access follows automatically. For companies below the mandatory threshold, voluntary registration under the general regime may unlock ITC recovery on Canadian expenditures, such as legal fees, consulting costs, trade show expenses, that more than justifies the compliance cost.

Quebec's regime operates in parallel and requires a separate registration assessment with Revenu Quebec. The same voluntary registration logic applies for Quebec expenditures.

Registration: subsidiary vs. branch, and the security deposit distinction

The path to GST/HST registration differs depending on how you are operating in Canada, and one difference matters significantly to cash flow.

Canadian subsidiary: A resident corporation registers for GST/HST purposes without posting security. Registration is straightforward and the subsidiary is treated as a Canadian person for GST purposes from the date of incorporation.

Non-resident making taxable supplies in Canada: A non-resident is required to register for GST/HST when it makes taxable supplies in Canada and is not a small supplier, that is, when its total taxable supplies exceed CAD \$30,000 over four consecutive calendar quarters. The trigger is the making of taxable supplies, not the carrying on of business in the income tax sense. These are distinct tests under distinct statutes, and a foreign company that has concluded it has no Canadian income tax presence should not assume it has no GST/HST registration obligation. A non-resident registrant without a permanent establishment in Canada must post security as a condition of GST/HST registration, a cash or bond requirement that can run to meaningful amounts depending on expected remittances. A non-resident with a permanent establishment in Canada, a fixed place of business through which it makes supplies, including an office, factory, branch, or warehouse, is permitted to register without posting security. The security posting requirement is a cash flow consideration that is frequently overlooked when foreign companies assess the cost of Canadian market entry. Budget for it before registration, not after.

Voluntary registration: Even if a non-resident does not carry on business in Canada and falls below the registration threshold, voluntary registration for GST purposes is available, and may be commercially valuable if the company incurs GST on Canadian expenditures that it could recover through ITCs.

Past non-compliance: how to correct it?

The good news is that past non-compliance is not a dead end. [The CRA's Voluntary Disclosures Program](#) and [Revenu Québec's equivalent](#) allow businesses to come forward, correct their position, and significantly reduce or eliminate penalties, provided they act before the tax authority contacts them first. A business that identifies a GST, HST, QST, or PST exposure has a window to fix it on its own terms. That window closes the moment an audit begins.

Director liability: the exposure that reaches across the border

Canadian GST/HST, like payroll source deductions, creates personal liability for directors of corporations that fail to collect and remit. A director of a Canadian subsidiary who allows GST/HST to go uncollected or unremitted can be assessed personally for the unremitted amounts, plus interest and penalties, subject to a two-year limitation period from the date they cease to be a director.

This liability applies to non-resident directors of Canadian subsidiaries just as it applies to Canadian-resident directors. Foreign executives sitting on the board of a Canadian subsidiary carry this exposure. It is not theoretical, the CRA actively pursues director liability assessments where corporate collections are unrecoverable.

What to do

Ensure your Canadian subsidiary has GST/HST compliance controls in place before the first taxable supply is made. Review director liability exposure at the time any executive is appointed to the board of a Canadian entity.



KEY TAKEAWAYS:

- **Assess your position before your first Canadian sale — not after.** The obligation exists the moment you introduce a new product, expand a service offering, or acquire a Canadian business. No physical presence is required to trigger it.
- **Canada has four sales tax systems, not one.** GST applies everywhere at 5%. HST replaces it in five provinces at 13–15%. Quebec runs a parallel QST at 9.975% on top of GST, administered separately by Revenu Québec. BC, Manitoba, and Saskatchewan apply PST on top of GST. Alberta has no provincial sales tax. Each requires a separate registration assessment.
- **Quebec and PST provinces are never covered by GST registration alone.** In Quebec, GST with the CRA and QST with Revenu Québec are separate obligations. In BC, Manitoba, and Saskatchewan, GST registration has no bearing on PST obligations. There is no umbrella Canadian sales tax registration.
- **The PST warehouse trap.** Inventory stored in a third-party fulfillment centre in BC, Manitoba, or Saskatchewan can trigger a PST registration obligation before you have sold a single unit in that province. Assess before the inventory ships.
- **Voluntary registration can recover costs you are already incurring.** A foreign company below the mandatory registration threshold that incurs Canadian expenditures should assess whether voluntary GST/HST or QST registration unlocks ITC recovery worth more than the compliance cost.
- **Past non-compliance has a remedy, but only if you move first.** The CRA's Voluntary Disclosures Program and Revenu Québec's equivalent reduce or eliminate penalties for businesses that come forward before an audit begins. The window closes when the tax authority contacts you.
- **Directors are personally liable for unremitted GST/HST.** This applies to non-resident directors of Canadian subsidiaries. Compliance controls are not optional, they are personal liability protection.
- **The security deposit requirement for non-resident branches is a cash flow decision.** If your Canadian operations do not constitute a permanent establishment, budget for the security posting requirement before registration.

How Miller Thomson can help

Canada's layered sales tax system, four parallel regimes, provincial variations, a digital economy overlay, and Revenu Québec operating independently from the CRA, is not a compliance exercise that responds well to assumptions imported from other jurisdictions. The cost of retroactive registration, interest, and penalties consistently exceeds the cost of getting it right at the start.

Miller Thomson's tax group advises foreign companies on Canadian sales tax registration, compliance structuring, ITC optimization, and CRA audit response across all provinces, including Quebec, where our Montréal practitioners work directly with Revenu Québec and advise on the QST dimension that firms without genuine Quebec capacity cannot fully address.

Speak with a [Miller Thomson Sales, Commodity and Indirect tax lawyer](#) about the Canadian sales tax position.



15.810

18.20

12



Canadian Income Tax Source Deductions & Payroll Taxes

What **every foreign employer**
needs to know

Canadian Income Tax Source Deductions & Payroll Taxes

What **every foreign employer** needs to know

WHO THIS IS FOR:

HR directors, CFOs, and operations leads at companies outside Canada who are hiring Canadian employees, sending staff to work in Canada temporarily, or allowing remote employees to work from Canada. The obligations described here apply to you as the foreign employer, not only to Canadian subsidiaries.

The obligation that applies before your first Canadian hire

The most important fact for any foreign company to understand: Canadian payroll obligations begin the moment an employee performs employment duties from a location situated in Canada, regardless of whether the employer has a Canadian subsidiary, a Canadian office, or any other Canadian presence. Every employer, resident or non-resident, who pays remuneration to an individual performing employment duties in Canada needs to consider if it is required to register for a CRA payroll account, apply income tax source deductions, withhold for Canada Pension Plan (“**CPP**”) and Employment Insurance (“**EI**”) premiums from that employee’s pay, and remit both the withheld deductions and premiums to the CRA. The fact that your company is incorporated and based outside of Canada does not create an exemption. The obligation follows the employee’s work location, not the employer’s.

Remote work arrangements that allow existing employees to work from Canada, even temporarily, trigger these obligations from the first day of Canadian employment duties. This has become one of the most common payroll compliance gaps among foreign companies entering Canada.



01.

Income tax source deductions

Every employer who employs an individual to provide employment services from a location within Canada is required to remit income tax source deductions on that employment income, unless an exemption were to apply.

The remote work trap: whether an employee working from their Canadian home or so-called “home office” triggers Canadian tax remittance obligations

This is the highest-urgency topic for any foreign company with mobile employees.

An employee of a foreign company who relocates to Canada, or who simply works remotely from Canada for an extended period, is performing employment duties in Canada. From that first day of Canadian work, the foreign employer owes Canadian income tax source deductions and CPP and EI premiums unless an exemption were to apply.

The employer’s physical location is irrelevant. The place of work of the employee, and specifically whether that employee is working in Canada, is the critical measure.

An employee working in Canada, particularly a senior employee with authority to conclude contracts on behalf of the foreign employer, can simultaneously create a Canadian permanent establishment for income tax purposes. This means payroll non-compliance and corporate income tax exposure for the foreign company can arise from the same fact pattern.

Non-resident employer certification: the income tax source deduction relief mechanism

Foreign employers with employees working temporarily in Canada may qualify for non-resident employer certification (“**NREC**”). NREC is a CRA-administered mechanism that eliminates the requirement to withhold and remit Canadian income tax on the covered employees, provided conditions are met.

To qualify:

- The non-resident employee must work in Canada for fewer than 45 days in the calendar year, or be present in Canada for fewer than 90 days in any 12-month period including the time of payment; and
- The foreign employer must be exempt from Canadian income tax on its business income under an applicable income tax treaty.

The foreign employer applies to the CRA for certification in advance of the first required payroll remittance in respect of its non-resident employees who are assigned to work in Canada. Crucially, the foreign employer cannot stop Canadian income tax source deduction withholdings until the CRA approves the certification; the Canadian withholding obligations do not cease when the application is submitted. Foreign employers who stop the source deduction remittances on the assumption that certification will be granted expose themselves to the same unremitted source deductions liability as employers who never applied for the exemption.

Where NREC does not apply, because the employee does not meet the days in Canada presence thresholds or the foreign employer is not exempt under a tax treaty on its business income, each employee may still be able to apply for a Regulation 102 waiver if a treaty exemption were available. A separate Regulation 102 waiver application must be filed for each affected non-resident employee, and there is no group filings possible under the Regulation 102 application. Again, withholding must continue until the CRA grants the waiver.

02.

Federal Canada Pension Plan and Employment Insurance

Employers in Canada are required to pay CPP contributions and EI premiums to the CRA. These payments are calculated as a percentage of payroll, subject to yearly maximums.

CPP

CPP is a mandatory social insurance program providing retirement, disability, and survivor benefits. Both employer and employee contribute at the same rate. There are two components for CPP premiums, the “Basic” CPP premiums and the enhanced CPP premiums.

With respect to the [Basic CPP premiums](#), the premium rates for the 2026 calendar year are as follows:

- Basic annual exemption (earnings below which no CPP premiums applies): CAD \$3,500;
- Year’s Maximum earning threshold for premium contributions: CAD \$74,600;
- The Basic CPP contribution rate: 5.95% of pensionable earnings for both employer and employee, after the basic annual exemption on the first CAD \$3,500 of earnings;
- Maximum annual employee contribution on first earning threshold: CAD \$ 4230.45; and
- Maximum annual employer contribution on first earning threshold: CAD \$ 4230.45.

The CPP also includes an enhanced premium component which requires an additional contribution for higher employment earnings earned by the employee. An additional maximum pensionable earnings (being a “second” earnings threshold) requires employers and employees to make an additional CPP contribution (known as “**CPP2**”) on these earnings, beginning at the first earnings threshold (being CAD \$74,600 for the 2026 calendar year) and going up to the second earnings threshold (of CAD\$ 85,000). The CPP2 contribution rate is 4% of additional employment earnings. This results a maximum CPP2 contribution by each of the employer and employee of CAD \$416 for the 2026 calendar year.

The employer is required to withhold the employee portion of the CPP and CPP2 premiums from the employee's wages and salary and remit these contribution amounts to the CRA, together with the employer portion of the premiums.

In certain cases, the CPP and CPP2 contributions to these plans may not be necessary in respect of employment earnings paid to a non-resident of Canada who is working in Canada. Specifically, if there is a social security agreement between Canada and a non-resident employee's home jurisdiction, there may be no CPP premiums required to be withheld and remitted to the CRA. In most cases, the non-resident employee will need to obtain a certificate evidencing social security coverage in their home jurisdiction.

If the employee's province of employment is Quebec, different rules may apply, including participation in the Quebec Pension Plan ("**QPP**") instead of the CPP.

EI

EI provides temporary income replacement for job loss, parental leave, illness, and certain other circumstances. The [contribution amounts for the 2026 calendar year](#) are as follows:

- Employee EI premium rate: 1.63% of insurable earnings;
- Maximum annual employee premium: CAD \$1,123.07;
- Employer EI premium rate: 1.4 times the employee's premium; and
- Maximum annual employer premium: CAD \$1,572.30.

The employer always pays more than the employee on EI. This asymmetry surprises foreign employers accustomed to symmetric social contribution structures.

The employer is required to withhold the employee portion of the EI premiums from the employee's salary, and remit these to the CRA together with the employer portion of the premiums. In certain cases, an exemption from EI premiums will be available in respect of the non-resident employee.

Timing of remittances for CPP and EI premiums

Most new employers remit by the 15th of the month following the payroll period. However, employers with larger annual payrolls are required to remit the premiums on an accelerated basis with more frequent deadlines. Failure to remit on time triggers penalties and interest, and personal director liability as described below.

In certain cases, contributions to the CPP and EI programs may not be necessary from non-resident employees who are working in Canada. However, the non-resident employee will generally need to obtain a certificate evidencing social security coverage and, as applicable, the unemployment insurance coverage in their home jurisdiction. This certificate must be obtained before the first pay period, not at year end when the T4 tax information slip is being prepared by the employer. Without the certificate in hand by the employer, the premiums will still need to be remitted to the CRA, regardless.

What to do before any employee works from Canada

- Assess whether the employee's role and authority level creates permanent establishment risk for income tax purposes.
- Assess CPP, EI, as well as income tax source deduction remittance before the commencement of any Canadian-source employment duties, and evaluate whether any exemptions would be available in respect of the remuneration payable to the non-resident employees.
- Register for a CRA payroll account before the first Canadian payroll.

CPP and EI are separate from the NREC: NREC covers income tax source deductions only. CPP contributions are separately exempt only when a certificate of coverage from the employee's home country social security authority is issued. EI premiums may be exempt under certain conditions. These are three separate assessments, not a single determination.

03.

Provincial payroll taxes

The Canadian provinces may require Employer Health Tax ("EHT") premiums to be paid, as well as workers compensation premiums.

Ontario

Ontario imposes EHT based on the employer's payroll. Employers with annual Ontario payroll above CAD \$1 million are subject to EHT at a rate of 1.95% on the excess above the exemption threshold and the payroll exemption amount is clawed back once the annual employment income paid to Ontario employees exceeds CAD \$5 million in respect of a calendar year. The EHT applies to all employers who have employees who report to work in Ontario. This can include foreign employers without a physical Ontario office, if they have employees performing duties in Ontario. As the amount of the annual payroll grows, employers must monitor their compliance requirements and in particular their position with respect to the annual CAD \$1 million exemption threshold.

British Columbia

Employers who have employees reporting to work in British Columbia have an obligation to pay British Columbia EHT if the annual payroll exceeds CAD \$1 million. There is a formulaic premium rate for payroll between CAD\$1 million and CAD \$1.5 million, and the premium rate is 1.95% for all British Columbia payroll in excess of CAD \$1.5 million.

Workers Compensation

The employer may also be required to pay premiums to the provincial Workplace Safety and Insurance Board. Every province operates its own workplace safety and insurance regime. Employers with employees working in a province are generally required to register with the provincial workplace safety board and pay premiums based on the industry classification of the work performed by the employees and the annual payroll amounts. Failure to register exposes the employer to uninsured employer penalties in each province, which can be significant. Generally, these registrations cannot be completed retroactively without penalty.

04.

Exposure for compliance omissions

Worker classification

Canada's CRA distinguishes between employees and independent contractors. The consequences of misclassification in Canada reach further than most foreign companies expect.

If a worker the foreign company has treated as an independent contractor is determined by the CRA to be an employee, the employer owes:

- Both the employer's and the employee's share of CPP contributions;
- Both the employer's and the employee's share of EI premiums;
- The income tax source deductions for non-resident employee;
- Arrears interest on all of the above; and
- Potential penalties.

The employer generally cannot recover from the employee of the employee's portion of CPP and EI premiums that the employer failed to withhold from the wages and salaries paid to the affected employees. The exposure would then fall entirely on the employer.

The CRA applies a multi-factor test to evaluate an individual's status as an independent contractor: control over the work, who provides tools and equipment, chance of profit and risk of loss, and integration into the business. The test does not depend simply on the label provided in the employment contract. A worker called a "contractor" in a contract who is functionally managed as an employee will be reclassified. Foreign companies using Canadian contractors to avoid setting up a payroll account should have each relationship assessed against CRA criteria before the first payment.

Director liability: personal exposure for unremitted payroll deductions

Directors of Canadian corporations are personally liable for unremitted payroll source deductions, such as CPP, and EI, that the corporation fails to withhold and remit and income tax source deductions in respect of non-resident employees working in Canada. (As an aside, the CRA can recover the unpaid income taxes directly from employees who are resident of Canada). This liability for unpaid payroll remittance applies to non-resident directors of Canadian subsidiaries exactly as it applies to Canadian-resident directors.

A foreign executive serving on the board of a Canadian subsidiary who allows payroll source deductions to go unremitted can be assessed personally for the full amount, plus interest and penalties, subject to a two-year limitation period from the date they ceased to be a director.

This is the same personal liability mechanism that applies to unremitted GST/HST covered in the sales tax section of this Guide. The CRA actively pursues director assessments where corporate assets are insufficient to cover the liability.

05.

Quebec income tax source deductions and payroll taxes

The province of Quebec operates a parallel payroll reporting system in respect of employees who work in that province, and this provincial reporting system is in addition to any Canadian Federal payroll compliance provisions.

QPP instead of CPP

Employees working in Quebec contribute to the QPP, not the CPP. [QPP contribution rates and maximums](#) are set separately and differ from CPP. Employers in Quebec register with Revenu Québec for QPP, not with the CRA for CPP.

Quebec Parental Insurance Plan (“QPIP”)

Quebec operates its own parental benefits program separate from federal EI. Both employer and employee contribute to QPIP. The [employee’s EI premium rate in Quebec](#) is subsequently reduced from the EI premium rate of 1.63% that applies to employees who work in the other provinces and territories of Canada. The reason is that QPIP covers parental leave benefits that federal EI covers elsewhere in Canada. However, the employer must contribute to both QPIP and the reduced-rate EI program.

Quebec also impose health care payroll taxes (being the Quebec Health Services Fund or “Cotisation au Fonds des Services de Sante”). The premium rate ranges from 1.25% for an employer in the primary and manufacturing sectors with annual Quebec payroll less than CAD \$1 million to a maximum rate of 4.26% for all employers with annual Quebec payroll in excess of CAD \$7.8 million. The Quebec payroll calculation will specifically include the salaries and wages paid to non-Canadian employees temporarily posted to Quebec and who are covered by a social security agreement.

Employers with employees working in Quebec must register with the Commission des normes, de l’équité, de la santé et de la sécurité du travail (“**CNESST**”), which administers workplace health and safety and workers’ compensation. Contribution rates are assessed based on industry classification and payroll. This is Quebec’s equivalent of the Workplace Safety and Insurance Board in Ontario, but it is a separate registration, a separate contribution, and a separate compliance regime.

Implications to employers with employees working in multiple provinces

Employers with both employees based inside and outside of Quebec will be managing two parallel payroll remittance obligations simultaneously, one to the CRA for federal obligations and one to Revenu Québec for provincial obligations.

KEY TAKEAWAYS:

- Payroll obligations begin the moment someone works in Canada, not when you open a Canadian office. Register for a CRA payroll account before the first Canadian payroll is processed.
 - Remote work arrangements are a common compliance gap. An employee working from Canada triggers CPP, EI, and income tax source deductions obligations from day one, and may simultaneously create permanent establishment risk for business income tax purposes.
 - Non-resident employer certification eliminates income tax source deductions for qualifying temporary arrangements, but only after CRA approval is received. Continue withholding until written confirmation is received from the CRA.
 - Social security agreement exemptions require a certificate of coverage obtained before the first pay period.
 - Quebec has a parallel income tax and payroll reporting system.
 - Worker misclassification exposes the employer to both the employer's and the employee's unpaid CPP and EI.
 - Directors are personally liable for unremitted payroll tax premiums and for unremitted income tax source deductions for non-resident employees working in Canada. This applies to non-resident directors of Canadian subsidiaries.
 - Provincial payroll taxes apply on top of the federal framework. Provincial payroll taxes and remittance requirements apply even if the employer is not a Canadian company.
-

How **Miller Thomson** can help

Miller Thomson's [Labour and employment lawyers](#) and [Tax Lawyers](#) advise foreign companies on Canadian payroll registration, non-resident employer certification, social security agreement exemptions, worker classification, and Quebec-specific compliance, including CNESST and Revenu Québec obligations that require practitioners with genuine Quebec expertise to navigate correctly.

Speak with a Miller Thomson lawyer about your Canadian payroll obligations.





Business Immigration

Getting **your people into Canada**
— and keeping them compliant

Business Immigration

Getting **your people into Canada** — and keeping them compliant

WHO THIS IS FOR:

HR directors, GCs, and operations leads at companies outside Canada that need to send employees to work in Canada, hire foreign nationals for Canadian roles, or relocate key personnel as part of a Canadian market entry.

Canadian business immigration is not a single process. It is a matrix of pathways with different eligibility criteria, timelines, employer obligations, and consequences for getting it wrong. The companies that move fastest into Canada are the ones that map the right pathway before they need it, not after the offer letter is signed.

There is also a risk that immigration planning consistently misses: an employee who starts working in Canada, even informally or temporarily, triggers Canadian payroll obligations and potentially permanent establishment risk for the employer from the first day of Canadian duties. Immigration compliance and tax compliance arise from the same fact pattern. They must be planned together.

01.

Temporary business entry and work permits

Business travelers to Canada are typically classified as “Business Visitors”, for whom work permits are not required, or “Workers”, for whom a work permit is required.

The business visitor vs. worker distinction: where foreign companies get it wrong

The most common immigration compliance error for foreign companies entering Canada is misclassifying employees as business visitors when they are legally workers. The consequences are significant: a foreign national who works in Canada without a required work permit is inadmissible and can be removed. The employer can face penalties and reputational damage with IRCC that affects future applications.

Subject to certain exceptions, foreign nationals cannot work in Canada without a valid work permit. Under the Canadian regulation, “work” is broadly defined as:

an activity for which wages are paid or commission is earned, or that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market.

As such, it is the nature of the activity(ies) that will be conducted in Canada that determine whether a work permit is required. Factors such as:

- Frequency of travel to Canada
- Length of stay in Canada
- Source of pay

are relevant considerations, but ultimately do not determine whether a foreign national is “working” in Canada.

What business visitors can do, and cannot do

Business visitors can attend meetings, negotiate contracts, conduct after-sales service, and engage in certain other business activities without a work permit, provided they are not entering the Canadian labour market, their primary place of business remains outside Canada, and the profit from their activities accrues outside Canada.

What they cannot do is

Perform work that a Canadian employee would otherwise perform, provide services to Canadian clients on an ongoing basis, or carry out duties that are part of the Canadian operation’s regular activities. The line between attending a meeting and performing work is not always obvious. When in doubt, assess before travel, not after an inadmissibility finding at the border.

The two pathways: LMIA-required and LMIA-exempt

There are many different work permit categories, each with its own eligibility criteria. These categories are generally distinguished as those for which a Labour Market Impact Assessment is not required and those for which one is required.

The LMIA pathway: when it applies and what it costs in time

The LMIA is a process conducted with Employment and Social Development Canada by which a Canadian employer must prove that it is unable to hire a Canadian citizen or permanent resident who possesses the minimum qualifications required for the position. In most cases, the employer must conduct extensive recruitment efforts in a strictly mandated manner, demonstrate that it is paying the prevailing wage for the occupation in the relevant geographic region, and provide a summary of recruitment results. The employer must also show how the foreign worker, if permitted to fill the position, will provide a benefit to other Canadians — such as job creation, skills transfer, or knowledge transfer.

What the LMIA pathway actually costs in time in 2026

- Standard high-wage LMIA: 4–8 weeks for ESDC processing alone, before the work permit application begins;
- Work permit application after positive LMIA: a further 8–12 weeks for overseas applicants, or currently approximately 144 days for in-Canada extension applicants;
- Total LMIA-based pathway: 8–30 weeks from start to finish in straightforward cases, longer where ESDC requests additional documentation;
- Global Talent Stream LMIA (tech roles only): approximately 10 business days for LMIA processing, with the work permit following on a faster timeline.

Before committing to an LMIA-based pathway, assess whether an LMIA-exempt category applies. For most corporate transfers and professional roles, it will, and the time saving is material.

The LMIA-exempt pathway: faster, broader, and underused

LMIA-exempt work permit categories allow foreign nationals to apply directly for a work permit without the employer completing the LMIA process. In 2026, IRCC issues approximately three LMIA-exempt permits for every one LMIA-based permit, reflecting both the breadth of the exempt categories and the growing preference among employers for faster pathways.

The most important LMIA-exempt categories for foreign companies entering Canada are:

Intra-company transferees (ICT): Foreign nationals who have worked for the same employer or a related company for at least one year in the previous three years, in an executive, senior managerial, or specialized knowledge capacity, can transfer to a Canadian branch, subsidiary, affiliate, or parent without an LMIA. Processing time: 4–8 weeks. This is the most commonly used pathway for companies sending key personnel to establish or lead Canadian operations.

CUSMA professionals (U.S. and Mexican citizens only): Citizens of the United States and Mexico benefit from expedited work permit access under CUSMA for roles listed in the treaty's professional categories, including engineers, accountants, lawyers, scientists, computer systems analysts, and others. US citizens can often receive a CUSMA work permit at a port of entry on the same day. Mexican citizens apply at a visa application centre. No LMIA is required. For US and Mexican companies entering Canada, this is frequently the fastest and most cost-effective pathway for professional roles, and it is consistently underused because companies default to the standard LMIA pathway without assessing treaty options first.

Francophone Mobility Program: French-speaking foreign nationals applying to work outside Quebec in a skilled occupation may be eligible for a work permit without an LMIA under the Francophone Mobility Program. This is a meaningful pathway for francophone companies, particularly those from France, Belgium, Switzerland, and North African countries, establishing Canadian operations.

International Experience Canada: A reciprocal program providing working holiday and other work permit access for young nationals of participating countries. Relevant for companies recruiting international talent for junior roles.

Significant Benefit (C11) permit: Where a foreign national's work in Canada would provide a significant benefit to Canada, culturally, socially, or economically, a work permit can be issued without an LMIA. This category requires individual assessment but can apply to senior executives, specialized researchers, and others whose presence in Canada provides demonstrable national benefit.

Employer compliance obligations: what most foreign companies do not know they owe

Obtaining a work permit for an employee is not the end of the employer's immigration compliance obligations, it is the beginning. Foreign employers with workers in Canada on employer-specific work permits have ongoing compliance obligations that are actively monitored by IRCC.

Employer-specific work permit holders can only work for the employer named on the permit, in the role described, and in the location specified. If the employee's role changes, their location changes, or the employer's corporate structure changes, through a merger, acquisition, or reorganization, the work permit may no longer be valid and a new permit may be required before the change takes effect.

IRCC conducts employer compliance inspections, including unannounced site visits, and can suspend or revoke an employer's ability to hire foreign workers where violations are found. Violations include paying less than the wage stated in the work permit application, failing to provide the working conditions described, and failing to maintain required records.

What to do before your first Canadian work permit hire

- Confirm the correct work permit category before drafting the offer letter, the category determines the timeline, the application process, and the ongoing compliance obligations;
- Assess whether the role qualifies for an LMIA-exempt pathway before initiating an LMIA, the time saving can be months;
- For US and Mexican hires, assess CUSMA professional categories first, same-day port of entry processing is available for qualifying roles;
- Establish a work permit expiry tracking system before the first permit is issued, working beyond a permit's expiry date is a serious inadmissibility issue;
- Brief HR and finance on the payroll and source deduction obligations that arise simultaneously with the work authorization, these are separate compliance streams that must be managed together.

Quebec: a separate immigration layer

Foreign companies with Quebec operations must navigate an additional layer of provincial immigration, requiring a Certificat d'acceptation du Quebec (CAQ) for most Temporary Foreign Worker Program (TFWP) applicants, which adds 4-8 weeks to timelines. While LMIA-exempt pathways under the International Mobility Program often bypass this, employers must consider mandatory French language proficiency for CAQ renewals after three years.

02.

Permanent residency

A Permanent Resident of Canada can work in any capacity, for any employer, and in any location in Canada.

Why permanent residency matters for foreign companies

For foreign companies planning a sustained Canadian presence, permanent residency is not only an employee benefit, it is a workforce stability and compliance tool. A permanent resident cannot have their work authorization revoked, does not require employer-specific permits, and can move between roles and employers without triggering new permit requirements. For key personnel whose long-term presence in Canada is central to the Canadian operation, a pathway to permanent residency is often the most operationally efficient long-term solution.

Important note: foreign companies placing talent in Quebec must navigate a separate, points-based provincial immigration framework that bypasses the federal Express Entry system, requiring a Certificat de selection du Quebec (CSQ) for permanent residency. Both the Programme de l'experience quebecoise (PEQ) and the Programme de selection des travailleurs qualifies (PSTQ) necessitate verified French language proficiency, meaning that employees destined for long-term Quebec roles should begin French language preparation well in advance of any permanent residency application, it is a threshold requirement, not a scoring factor.

Like with work permit categories, there are multiple pathways to obtaining Permanent Residency status - each with its own unique set of criteria. Some of these categories require a first approval step through a program established by a specific province or territory (commonly known as "Provincial Nominee Programs") while others involve a direct application to the federal government.

The main pathways relevant to foreign companies and their employees

Express Entry - the federal points-based system: Express Entry manages applications for three federal economic immigration programs: the Federal Skilled Worker Program, the Canadian Experience Class, and the Federal Skilled Trades Program. Candidates are scored on a Comprehensive Ranking System (CRS) based on age, education, language ability, and Canadian work experience. The highest-scoring candidates receive Invitations to Apply in regular draws conducted by IRCC. Processing time for Express Entry applications with complete documentation is targeted at six months. A valid job offer from a Canadian employer adds significant points and can accelerate invitation timing.

Provincial Nominee Programs (PNPs): Every province and territory operates its own immigration streams targeting workers with skills and experience relevant to that province's labour market. PNP nominations add 600 CRS points in Express Entry, effectively guaranteeing an invitation to apply. For employees who do not score competitively in Express Entry without employer support, a PNP pathway supported by the Canadian employer is frequently the most reliable route to permanent residency. Each province has different streams, different eligibility criteria, and different processing timelines.

Intra-company transferees and the path to permanent residency: Employees who enter Canada as intra-company transferees on LMIA-exempt work permits can accumulate Canadian work experience that qualifies them for the Canadian Experience Class under Express Entry. For companies that bring key personnel to Canada as ICT workers, the permanent residency pathway through Canadian work experience is a natural continuation, and one that companies should map out from the initial ICT application, not after the employee has been in Canada for two years.

Eligibility criteria across pathways include: education level, work experience outside Canada, work experience in Canada, work experience in a specific occupation, employer support and job offer, and language ability in English and/or French. French language ability carries increasing weight in Express Entry draws, particularly for candidates targeting Quebec or francophone communities outside Quebec.

The intersection of immigration and tax: the risk that falls between departments

This is the compliance gap that costs foreign companies the, and that immigration counsel and tax counsel address separately when they should be addressing it together.

When a foreign employee works in Canada, whether on a work permit, as a business visitor who crosses the line into worker status, or informally as a remote employee, the following obligations arise simultaneously:

- Canadian payroll source deductions: income tax withholding, CPP contributions, and EI premiums from the first day of Canadian employment duties
- Potential permanent establishment risk: an employee with authority to conclude contracts in Canada can create a Canadian permanent establishment for the foreign employer, triggering corporate income tax exposure
- Social security agreement assessment: whether the employee can remain covered under their home-country social security program rather than contributing to CPP

None of these obligations are triggered by the immigration pathway chosen. They are triggered by the physical presence of the employee performing employment duties in Canada. A company that manages work permit compliance correctly but does not connect the immigration team with the tax and payroll team will be compliant on the border and non-compliant everywhere else.

KEY TAKEAWAYS:

- Map the right immigration pathway before the offer letter is signed, not after. The difference between LMIA-required and LMIA-exempt can be months. The difference between the right LMIA-exempt category and the wrong one can be weeks.
- Business visitor status is not a safe default. If the employee's activities in Canada enter the Canadian labour market, a work permit is required regardless of how the role is described internally. Assess before travel.
- For U.S. and Mexican companies, CUSMA professional categories are the fastest pathway for qualifying roles, same-day port of entry processing for U.S. citizens. Assess treaty options before initiating an LMIA.
- LMIA-based permits take 8–30 weeks total in 2026. Global Talent Stream tech roles take approximately 2 weeks for LMIA processing. Intra-company transferees take 4–8 weeks for the work permit. Build the right timeline into your hiring plan.
- Quebec requires a CAQ before the federal work permit can be finalized. Add 4–8 weeks for CAQ processing in any Quebec-bound timeline.
- Employer compliance obligations continue after the permit is issued. Role changes, location changes, and corporate restructuring can invalidate an existing work permit. Track expiry dates and trigger points before they become inadmissibility issues.
- For long-term key personnel, map the permanent residency pathway from the initial work permit stage. Canadian work experience accumulated on an ICT or other permit creates Express Entry eligibility. This is a workforce retention tool, not only an immigration question.
- Immigration and tax compliance arise from the same fact pattern. The moment an employee works in Canada, payroll, CPP, EI, and potential permanent establishment obligations activate. These must be managed together, not in separate departmental silos.

How Miller Thomson can help

Canadian business immigration is not a commodity service, the pathway matters as much as the application. A work permit obtained on the wrong category, for the wrong employer, or without proper employer compliance infrastructure creates downstream problems that are expensive to fix and that can affect the employer's ability to hire foreign workers in the future.

Miller Thomson's labour and employment team advises foreign companies on the full spectrum of Canadian business immigration, from initial pathway assessment and work permit applications through employer compliance programs, Provincial Nominee Program nominations, Express Entry strategy, and permanent residency applications for key personnel. We work alongside our tax and employment teams to ensure that immigration planning is coordinated with payroll compliance, permanent establishment assessment, and Quebec-specific obligations, because the companies that get Canadian market entry right are the ones that treat these as connected workstreams, not separate files.

Speak with a [Miller Thomson's Labour & Employment lawyer](#) about your Canadian workforce strategy.







Employment in Canada

What **every** foreign employer
must know **before hiring**

Employment in Canada

What **every foreign employer** must know **before hiring**

WHO THIS IS FOR:

HR directors, GCs, CFOs, and operations leads at foreign companies hiring Canadian employees, establishing Canadian operations, or managing a Canadian workforce. Canada is a more employee-friendly jurisdiction than the United States in almost every respect, and the gap is wider than most foreign employers expect. This article covers the framework that applies from your first Canadian hire.

The assumption that creates the most expensive employment disputes

Foreign companies, particularly U.S.-based ones, enter Canada assuming that employment practices that are legal and standard at home will work in Canada. They frequently do not. At-will termination does not exist in Canada. Random drug testing is generally prohibited. Non-compete clauses are largely unenforceable in most provinces. Termination provisions that are standard in U.S. offer letters routinely fail Canadian legal scrutiny and expose employers to common law reasonable notice claims that can reach two years of compensation for a senior employee. And the federal and provincial divide means that a single Canadian workforce may be subject to two entirely different regulatory regimes depending on the industry the employer operates in. The cost of discovering these differences after the first Canadian termination dispute, or after the first human rights complaint, is substantially higher than the cost of building the right framework before the first Canadian hire.

Employment relationships in Canada are affected by various sources, including:

- **Legislation:** Provincial and federal statutes regulate all aspects of employment, including minimum employment standards, human rights and accessibility, occupational health and safety, workers' compensation, and benefits/pensions. Labour law legislation in each jurisdiction also regulates workplace relations and collective bargaining between employers and unions.
- **Contracts:** Employers and employees are free to negotiate the contractual terms and conditions of the employment relationship, as long as these terms do not fall below the minimum standards established by employment-related legislation.
- **Common Law:** In all Canadian jurisdictions except Quebec (where employment is governed by the rules set out in the Civil Code), the common law (i.e., judge-made law) incorporates implied rights and obligations into employment relationships, such as the obligation to provide employees with "reasonable notice" of termination of employment absent a limiting provision in their employment contract, unless there is just cause for summary dismissal. A similar right to reasonable notice is required in Quebec, as set out in the Civil Code.

01.

Jurisdiction of employment

The default rule is that provincial governments have exclusive authority to regulate labour and employment law within their borders. However, due to the way in which Canada's constitution divides powers between the provincial and federal governments, employment in certain industries (such as banking, interprovincial transportation, and telecommunications) is regulated solely by the federal government. Employers who are provincially regulated for employment law purposes will be subject to provincial employment standards, health and safety, labour relations, and human rights legislation, while federally regulated employers will be subject to federal legislation, such as the [Canada Labour Code](#). Confirming your jurisdictional status before your first Canadian hire is essential.

02.

Employment standards legislation

Legislation in each jurisdiction (i.e., each province and territory, and the federal sector) establishes the minimum employment standards that apply to work performed in that jurisdiction. These statutes cover subjects such as minimum wage, overtime pay, hours of work, holidays, vacation and various paid and unpaid leaves of absence (e.g., sick leave, parental leave, bereavement leave, compassionate care leave, organ donor leave, etc.). Employers cannot contract out of these minimum entitlements.

Overtime: The manner in which an employee is paid (i.e., whether on a salaried or hourly basis) does not affect an employee's entitlement to statutory overtime pay in Canada. Rather, exemptions from statutory overtime pay are generally tied to the employee's job functions; for example, many jurisdictions exempt professionals (lawyers, information technology professionals, etc.) and managerial and supervisory employees from entitlement to statutory overtime pay. Foreign employers who apply U.S.-style salaried-exempt classifications to Canadian employees may be misclassifying those employees and exposing themselves to retroactive overtime claims.

Minimum wage: Minimum wage rates vary by province and territory and are adjusted periodically. Foreign employers should confirm the current minimum wage in each province where Canadian employees work. For instance, federal minimum wage applies to federally regulated employees, and provincial minimums apply to all others.

03.

Human rights and accessibility

The *Canadian Charter of Rights and Freedoms* establishes equality rights which constrain the actions that the government may take. It does not apply to private businesses.

Each jurisdiction has human rights legislation which prohibits employers from discriminating against an individual in employment on the basis of protected grounds. Protected grounds differ between jurisdictions, but include characteristics such as race, ancestry, place of origin, colour, ethnic origin, citizenship, creed/religion, sex, gender expression, gender identity, sexual orientation, age, record of offences, marital status, family status, and disability (which includes mental health disorders, addiction, etc.). The law prohibits direct discrimination of individuals on these grounds, as well as “constructive” or adverse effect discrimination, where a seemingly neutral rule has the effect of subjecting a group to unequal treatment.

Employers have a duty to accommodate employees’ needs in relation to their protected personal characteristics, up to the point of undue hardship. Accommodations most commonly relate to the protected grounds of disability, sex (pregnancy), family status, and creed/religion. Examples of workplace accommodations include changing an employee’s work schedule, modifying their job duties, and/or permitting a leave of absence.

Each province, and the federal government, has established human rights commissions or tribunals to process human rights complaints. Individuals who believe that they have experienced unlawful discrimination may file a complaint with the applicable body. Alternatively, individuals may sometimes be able to allege contraventions of human rights legislation in court proceedings (for example, as part of a wrongful dismissal lawsuit).

Several Canadian jurisdictions have implemented, or are in the process of implementing, accessibility standards with the goal of making it easier for individuals with disabilities to access goods, services, and employment. Currently, accessibility legislation in Ontario, Manitoba and Canada requires employers to, among other things, provide employees with training on the accessibility standards (e.g., on providing accessible customer service) and to share employment-related information in accessible formats. Larger employers must also submit accessibility compliance reports to the provincial government at regular intervals.

04.

Termination of employment

This is the area of Canadian employment law that most consistently surprises and most expensively catches foreign employers unprepared.

Generally, non-union employee may be terminated by the employer “for cause” or without cause providing they are provided with proper advance notice. Employees in Quebec and federally-regulated businesses have certain just cause protections, similar to unionized employees.

Termination without cause

When employment is terminated without cause, employees will be entitled to, at minimum:

- (i) any contracted-for entitlements set out in their employment agreement, and
- (ii) statutory notice of termination or payment in lieu thereof, along with other entitlements such as statutory severance pay, benefits continuation, etc., as may be required by the applicable employment standards legislation.

In large group terminations, the minimum statutory notice entitlements are higher. In addition, notice of large group terminations must be provided to the government.

Common law reasonable notice: In Canada, the common law (i.e., judge-made law) implies an obligation for an employer to provide employees with “reasonable notice” of the termination of employment, absent an express term in an employment agreement that limits an employee’s entitlement to same.

The calculation of reasonable notice depends on such factors as the employee’s age, position, salary, years of service, likelihood of securing alternative employment. Reasonable notice is inclusive of the minimums, and generally maxes out at two years’ notice for long service management employees. If less notice is provided, courts on a wrongful dismissal action will generally award damages to put the employee in the same position they would have been in if actively working during that time, minus any amounts the employee earned from new employment during that period.

Termination provisions: An employee’s entitlement to reasonable notice of termination at common law can be limited via a termination provision in their employment agreement. Care is needed when drafting such provisions, as Canadian courts subject termination provisions in employment agreements to heavy scrutiny. If any part of a termination provision contravenes applicable employment standards legislation, even inadvertently, the entire provision will be declared void and unenforceable and the employee will be entitled to reasonable notice of termination at common law.

Quebec: In Quebec and unlike the common law jurisdictions, employees cannot contract out of their right to reasonable notice under the Civil Code of Quebec upon signing the employment agreement. In Quebec and Nova Scotia, employees who believe that their employments have been unlawfully terminated may file a claim and seek reinstatement as a remedy under employment standards legislation. Reinstatement is also an available remedy under the *Canada Labour Code*.

Termination for cause

Alternatively, an employee who has engaged in severe misconduct (i.e., conduct that fundamentally breaches the essential terms of the employment relationship, or otherwise renders continued employment impossible) may be terminated on a summary basis for “just cause”. Just cause for termination is a high threshold. In most jurisdictions, the employment standards legislation contains a similar exemption for conduct amounting to “just cause”, “willful misconduct” or “serious reason” for termination. The bar for summary dismissal in Canada is significantly higher than in most U.S. jurisdictions. Progressive discipline, documentation, and proportionality of response are all relevant factors. Employers should obtain legal advice before proceeding with any termination for cause, as a failed just cause termination typically results in an award of reasonable notice damages plus potential punitive damages for the manner of dismissal.

In Quebec, employees with two or more years of service may challenge their termination for performance related reasons under a government tribunal which provides a free lawyer, and may have a right to reinstatement. Federally-regulated non-management employees with more than one year of service have a similar right.

Due to the nuances in this area, employers should obtain legal advice before proceeding with a termination for cause.

05.

Occupational health and safety

Each jurisdiction has established occupational health and safety legislation to keep workers and the public safe. This legislation imposes rights and duties upon employers, supervisors, owners, and employees, including:

- an obligation to take every precaution reasonable in the circumstances to protect the health and safety of workers;
- the right for workers to refuse unsafe work;
- the requirement to establish workplace health and safety committees;
- prohibitions on reprisal against an employee for raising a workplace health and safety complaint;
- the requirement to provide adequate training to workers and supervisors;
- the requirement to report workplace accidents to the appropriate government body; and
- the requirement to establish policies and procedures to prevent and investigate incidents of workplace violence and harassment.

An employer’s breach of workplace safety requirements can result in substantial fines and/or imprisonment (including, in some jurisdictions, against directors and officers personally).

06.

Workers' compensation legislation

Each jurisdiction has established a no-fault worker's compensation system to compensate employees who are injured in the course of their employment. These programs are funded by employer-paid premiums, with applicable rates generally being determined on the basis of factors like the employer's payroll, industry sector, and the employer's history of injuries or accidents in their workplace.

Employers must register with the workers' compensation board in each province where their employees work. Foreign employers who fail to register before their first Canadian employee begins work are exposed to uninsured employer penalties and personal liability in the event of a workplace injury.

07.

Unionization

Each province, and the federal jurisdiction, has its own labour relations legislation regulating workplace relations and collective bargaining between employers and unions.

Typically, the process by which a workplace becomes unionized begins with a union conducting an organizing campaign in which it attempts to obtain sufficient support among workers in a proposed group of employees in a workplace (a "bargaining unit"). Support for the union is evidenced by the signing of union membership cards. If sufficient support is obtained, the union will file a certification application before the applicable labour relations board or tribunal. The labour relations board will determine which employees fall within the bargaining unit. At that point, depending on the jurisdiction, the union may become certified immediately if it submits union membership cards from a majority of employees in the bargaining unit (card-based certification) or, if the union has sufficient membership evidence, a secret ballot will be conducted to determine whether the union is to be certified.

When a certification application is successful, the union becomes the sole bargaining agent of the employees in the bargaining unit, with authority to negotiate the terms and conditions of employment on their behalf.

The timelines in which employers must respond to a certification application before a labour relations board or tribunal is generally very short. Employer conduct during the certification process will be scrutinized heavily, as labour relations legislation prohibits employers from interfering with the formation of a trade union. Employers who are alerted to a union organizing campaign or a certification application should consult legal counsel immediately.

08.

Privacy

Privacy-related rights and obligations in the employment context do not apply uniformly across Canada but instead are subject to the specific jurisdiction of the employment relationship.

The federal government, and certain provinces including British Columbia, Alberta, and Quebec, have passed legislation regulating how employers handle employees' personal information. In these jurisdictions, consent is typically required to collect, use, or disclose personal information. These statutes also create obligations as to how employers store and retain employees' personal information.



09.

Employment benefits

Canada Pension Plan (CPP) and Employment Insurance (EI): Employers in Canada are required to pay Canada Pension Plan contributions and Employment Insurance premiums to the Canada Revenue Agency (CRA), calculated as a percentage of payroll, subject to yearly maximums.

Employees are also required to pay Canada Pension Plan contributions and Employment Insurance premiums; employers must withhold these employee contributions from the employee's salary and remit these to the CRA together with the employer contributions/premiums.

Moreover, since January 1, 2024, Canada introduced a second tier of CPP contributions, the CPP2, applying to earnings above the first earnings ceiling (the Year's Maximum Pensionable Earnings) up to a second, higher ceiling (the Year's Additional Maximum Pensionable Earnings). For 2026, the second earnings ceiling is \$85,000, and employers and employees each contribute 4% on earnings between the two ceilings, with a maximum CPP2 contribution of \$416 per employee, matched dollar for dollar by the employer. Foreign employers setting up Canadian payroll for the first time must account for both CPP and CPP2 in their payroll systems, calculated separately and tracked separately on T4 slips and CRA remittances.

Health care: Government-funded medical care is available to all citizens in Canada. However, government health insurance does not cover everything (e.g., vision and dental care), and so many employers provide group extended health insurance, intended to pick up where the government plan ends. In order to be competitive, an employer might wish to provide such extended coverage.

Other private insurance: Many employers also choose to provide employees with long term disability insurance and life insurance as an additional employment benefit, in addition to other types of non-mandatory coverage. Short term disability coverage is less common, particularly for smaller employers. Although some government-funded disability benefits are available (currently for up to 17 weeks), and some minimal life insurance is available through the Canada Pension Plan, most employers offer some type of additional coverage to their employees.

Retirement savings benefits: Canada has government provided pension benefits, but many employers will supplement these by offering a Group Registered Retirement Savings Plan (RRSP), similar to a 401K Plan in the U.S. This allows employees the opportunity to establish personal savings accounts for tax-deferred retirement savings. Under this system, employees can establish individual, personal accounts on their own with a bank or other provider, and an employer can optionally choose to make its own contributions to the employee's individual account in whatever amount it elects.

Larger employers may have a Registered Pension Plan, although defined benefit pension plans in the public sector are becoming less common due to high administrative costs and potential funding deficits for defined benefits plans.

10.

Language requirements in the workplace (Quebec only)

The province of Quebec's sole official language is French. *Bill 96, An Act respecting French, the official and common language of Quebec*, came into force on June 1, 2022, amending the Charter of the French Language to introduce new measures ensuring the predominance of French in the workplace.

Accordingly, workers have a right to carry on all activities in the workplace in French. As a corollary to this right, an employer must use French in all written communication to its employees or exclusively in a language other than French, if so expressly requested by the employee.

Under the Charter of the French Language, employers must also:

- use French in any employment contract the employer enters into (or in a language other than French at the express wish of the parties);
- draft employment-related documents in French and, if available in another language, ensure that the French documents are available on equally or more favourable terms;
- if a job posting is posted by the employer or a recruiter in a language other than French, the employer must ensure the postings in English and French are posted simultaneously, using transmission means of the same nature and that reach a target audience of a comparable size; and,
- not require the knowledge of a language other than French to obtain or maintain a position, unless the nature of the duties require such knowledge and the employer first took reasonable means to avoid imposing such a requirement.

As of June 1, 2025, all businesses employing more than 25 persons in Quebec for at least 6 months must register with the Office québécois de la langue française ("OQLF") and comply with various francization obligations (as previously discussed in Section B above).

Businesses with 100 or more employees in Quebec must form a francization committee. This committee must analyze the linguistic situation and develop, implement and supervise the francization program. This measure does not have to be met from day one. It can be implemented gradually, over a certain period of time.

Bill 96 has doubled the minimum fine for any misrepresentation to the OQLF or any contravention of an order of the OQLF, as well as when an offence is committed by a director or officer of a legal person. It also provides that, unless they have exercised due diligence, directors of a legal person will be presumed to have committed an offence by that legal person.

KEY TAKEAWAYS:

- At-will termination does not exist in Canada. Employees are entitled to reasonable notice at common law, which can reach two years for senior employees. This entitlement can only be limited by a carefully drafted termination provision, and most U.S.-form offer letters do not meet Canadian standards.
- Termination provisions are void if any part contravenes employment standards legislation, even inadvertently. The entire provision fails, not just the offending clause. Have every Canadian employment agreement reviewed by Canadian employment counsel before use.
- The federal/provincial divide is a threshold question. Employers in banking, interprovincial transportation, and telecommunications are federally regulated under the Canada Labour Code, with different termination rights, unionization rules, and just cause protections than provincial employers.
- The duty to accommodate is an active, documented obligation. Employers must engage in a genuine accommodation process before concluding undue hardship. Build an accommodation framework before your first Canadian hire.
- CPP2 is in force since January 2024. Employers must contribute 4% on employee earnings above the first CPP ceiling up to the second ceiling, matched dollar for dollar. Ensure your Canadian payroll system accounts for both CPP and CPP2 before the first payroll run.
- Union certification timelines are short and employer conduct is heavily scrutinized. Contact legal counsel immediately upon learning of a union organizing campaign, response time is days, not weeks.
- Workers' compensation registration is mandatory in every province where employees work. Register before the first employee begins work, uninsured employer penalties and personal liability apply from day one of non-registration.
- Quebec employment operates under a distinct legal framework: civil law reasonable notice that cannot be contracted out of at the time of hiring, francization obligations from 25 employees, Bill 96 language requirements in all employment documents, and reinstatement as an available remedy for wrongful dismissal.
- Just cause termination in Canada requires a high threshold. Progressive discipline, documentation, and proportionality all matter. Obtain legal advice before proceeding with any termination for cause.

How **Miller Thomson** can help

Canadian employment law is not a single framework, but ten provincial regimes, a federal regime, and a Quebec civil law system, each with different termination rules, human rights obligations, occupational health and safety requirements, and labour relations legislation.

The cost of getting it wrong is disproportionately high. Miller Thomson's employment and labour team advises foreign companies on the full spectrum of Canadian employment compliance, from employment agreement drafting and termination provision review through human rights accommodation, occupational health and safety, workers' compensation registration, union response strategy, and Quebec-specific civil law and language obligations.

Speak with a [Miller Thomson's Labour & Employment lawyer](#) about your Canadian workforce strategy.





Privacy, Data Protection, & Cybersecurity

What **foreign companies** must consider
before entering the **Canadian market**

Privacy, Data Protection, & Cybersecurity

What **foreign companies must consider before** entering the **Canadian market**

WHO THIS IS FOR:

GCs, Chief Privacy Officers, CTOs, and compliance leads at companies outside Canada that collect, use, or disclose personal information in the course of commercial activities, or that are deploying AI, sending marketing communications, or operating in Canada's regulated financial sector.

The importance of a Canadian specific privacy strategy

Foreign companies entering Canada often assume that their existing privacy program, designed for privacy regimes such as the GDPR or the CCPA, can simply be extended to Canadian operations. While those frameworks provide a strong foundation, they do not automatically address Canada's legal requirements. Differences in concepts such as consent rules, breach reporting obligations, marketing requirements, or Quebec specific automated decision-making transparency obligations can require targeted modifications before launching in Canada. A Canadian-specific legal review can help determine whether an organization's existing global privacy program requires adjustments before it begins operating in Canada.

01.

Private sector privacy legislation

a. Canada's framework

To operate in Canada, foreign businesses need to adapt their privacy practices to ensure they are compliant with Canada's framework. Failing to identify the applicable regime early can lead to redesigning privacy programs, delayed product launches, regulatory investigations and costly remediation.

Canada's federal private-sector privacy law, the *Personal Information Protection and Electronic Documents Act* ("PIPEDA"), governs the collection, use and disclosure of personal information in the course of commercial activities by private sector entities in Canada. Notably, while PIPEDA applies to all customer personal information, it does not apply to personal employee information unless it is held by a federal work, undertaking, or business. Further, given Canada's federalist system, some provinces have their own private sector privacy legislation which has been deemed "substantially

similar” to PIPEDA, including British Columbia’s *Personal Information Protection Act*, Alberta’s *Personal Information Protection Act*, and Quebec’s more stringent *An Act Respecting the Protection of Personal Information in the Private Sector*. Depending on where an organization operates, more than one law can apply to a single processing activity and organizations may need to deal with more than one privacy commissioner’s office. Organizations should also review arrangements with third-party service providers that collect, store or process personal information on their behalf, as Canadian privacy laws require organizations to remain accountable for personal information even when processing functions are outsourced.

b. Breach reporting obligations

Cyber incidents frequently become regulatory issues in Canada. Organizations that experience certain privacy or cybersecurity incidents may have only a short period to assess whether notification obligations are triggered. Missing a mandatory notification deadline is itself an offence.

PIPEDA requires the reporting to the Office of the Privacy Commissioner (the “OPC”) of all breaches of security safeguards that could lead to a “real risk of significant harm” for affected individuals. All impacted individuals must also be notified. The real risk of significant harm assessment must be conducted as soon as reasonably possible after the breach is discovered. Organizations should begin assessing their notification obligations promptly and should not delay that assessment while waiting for every aspect of a forensic investigation to be completed.

Indirect notification is possible but only under certain circumstances. Alberta has a similar notification requirement, but the primary obligation is to notify the Commissioner, who may then order individual notification. However, Quebec’s private sector privacy legislation includes mandatory breach notification to the Commission d’accès à l’information for breaches of security safeguards that could lead to a “risk of serious injury”. Currently, notification in British Columbia is encouraged but not legally required. We assist businesses in developing incident response protocols before an incident occurs and provide immediate advice during cyber incidents, including assessing reporting obligations, preparing regulator notifications and managing communications with affected individuals.

Financial institutions and other federally regulated entities face cybersecurity reporting obligations that extend beyond traditional privacy compliance. The Office of the Superintendent of Financial Institutions (“OSFI”) establishes technology, cyber and operational resilience requirements for federally regulated financial institutions, including banks, federal credit unions, insurance companies, and loan and trust companies. In particular, Guideline B-13: Technology and Cyber Risk Management establishes comprehensive expectations relating to technology governance, cyber risk management, third-party service provider oversight, incident response, and operational resilience. In addition, OSFI released an advisory that expects federally regulated financial institutions to report technology and cyber security incidents meeting specified reporting thresholds within 72 hours of determining that an incident is reportable. Importantly, these reporting obligations extend beyond incidents involving personal information and may apply to broader operational or technology events that could affect the institution’s operations, customers or financial sector stability. Businesses entering Canada’s regulated financial sector should ensure that their global incident response, technology governance and third-party risk management frameworks are aligned with OSFI’s expectations before commencing operations.

c. Enforcement

The general enforcement framework under PIPEDA tracks the following stages:

1. a complaint is made or an issue is identified by a regulator;
2. the OPC conducts an investigation;
3. enforcement steps are taken either through obtaining a court order, disclosing information to the public, auditing the personal information management practices of an organization, entering into a compliance agreement, or reporting offences to relevant authorities.

The OPC is also able to pursue fines for non-compliance with data breach notification requirements but not for other violations of PIPEDA. At this stage, the OPC does not have order-making authority. However, the proposed Bill C-36 would give the regulator broader enforcement powers as well as introducing a private right of action. We assist organizations responding to privacy investigations, managing regulator communications and strengthening compliance programs following regulatory inquiries.

d. Future developments and industry specific guidance

PIPEDA has been undergoing reform efforts since 2020. The most recent attempt is Bill C-36. On June 15, 2026, Bill C-36: An Act to enact the Protecting Privacy and Consumer Data Act, to amend the Personal Information Protection and Electronic Documents Act and to make amendments to other Acts was introduced to Parliament and passed its first reading. If passed, Bill C-36 would replace the privacy provisions of PIPEDA with the Protecting Privacy and Consumer Data Act, introducing stronger enforcement powers, administrative monetary penalties, more prescriptive accountability requirements, a private right of action, and new rules governing anonymized and de-identified information and legitimate interests. Although the Bill is expected to undergo further revisions before being enacted, businesses should monitor its progress and consider whether existing privacy programs will remain fit for purpose if the reforms proceed.

Businesses that store or process electronic communications should also monitor proposed reforms to Canada's lawful access framework. Bill C-22 would modernize Canada's lawful access regime by expanding investigative powers and introducing new obligations relating to access to electronic information. If enacted, technology companies, telecommunications providers and other organizations holding electronic data may face new compliance, record-keeping and response obligations.

Key changes under Bill C-36 that foreign companies should begin planning for

- Organizations will be required to implement and maintain a privacy management program, including policies, practices and procedures governing the protection of personal information, the handling of access requests and complaints, employee training, and materials explaining the organization's privacy policies and practices.
- Consent requirements become more prescriptive, with detailed statutory requirements for obtaining valid consent. Bill C-36 also introduces several new exceptions to consent, including a legitimate interest exception in prescribed circumstances.
- Individual rights are expanded, including rights to data portability and stronger deletion rights.
- Organizations using automated decision systems would be subject to Bill C-36's transparency and access requirements, including an obligation, on request, to provide individuals with an explanation of automated decisions that have significant effects on them.
- A new statutory private right of action would permit individuals, in prescribed circumstances, to seek damages following certain findings or decisions by the Commissioner or Tribunal, creating litigation exposure that does not exist under PIPEDA.

02.

Artificial intelligence

While Canada has not yet enacted comprehensive artificial intelligence ("AI") legislation, organizations deploying AI are already subject to a growing patchwork of privacy, employment and sector-specific legal requirements, together with increasing regulatory guidance regarding responsible AI governance. Businesses deploying AI into their operations, including the use of generative AI in customer-facing services, should therefore monitor Canada's evolving legal landscape, even in the absence of a comprehensive AI statute.

On June 4, 2026, the Government of Canada released *AI for All*, its long-anticipated national artificial intelligence strategy (the "Strategy"). The Strategy advances substantial economic initiatives and provides important signals regarding the government's approach to AI governance. However, it does not introduce comprehensive AI legislation and confirms that such legislation is not currently contemplated. The previously tabled Artificial Intelligence and Data Act ("AIDA") is therefore unlikely to be revived in its original form. While the Strategy establishes important priorities for future AI policy, it does not create binding legal obligations for private organizations.

Nevertheless, Canadian regulators are increasingly setting expectations for responsible AI governance through non-binding guidance. For example, in 2026, the Information and Privacy Commissioner of Ontario and the Ontario Human Rights Commission jointly issued principles for the responsible development, deployment and use of AI. The guidance emphasizes that AI systems should be valid and reliable, safe, privacy-protective, human rights affirming, transparent and accountable throughout their life cycle. It also encourages organizations to implement governance frameworks, conduct risk assessments, maintain appropriate human oversight, and continuously monitor AI systems to help protect privacy, prevent discrimination, and maintain public trust. While not legally binding, this guidance reflects the direction Canadian regulators are taking and provides a useful benchmark for organizations implementing AI technologies.

Parliament is also considering legislative proposals that would impose new digital safety obligations. Bill C-34, the proposed *Safe and Secure Digital Platforms Act*, would enact the *Safe Social Media Act*, creating new obligations for designated social media platforms and AI chatbot services, together with a new Digital Safety Commission of Canada to oversee compliance. Although the legislation has not yet been enacted, businesses offering user-generated content platforms or AI conversational services should monitor its progress closely, as compliance planning may require significant operational changes.

Quebec has also introduced statutory transparency requirements for certain automated decision-making processes. Under Quebec's private sector privacy legislation, organizations that make decisions based exclusively on the automated processing of personal information must notify individuals accordingly. Upon request, individuals must be informed of the personal information used, the reasons and principal factors that led to the decision, and their right to have the personal information corrected, where appropriate. Organizations must also provide individuals with an opportunity to submit observations to a member of the organization's personnel who is able to review the decision. Businesses using AI or other automated decision-making tools should ensure appropriate transparency, governance and review mechanisms are in place, particularly where such decisions affect individuals in Quebec.

Even in the absence of comprehensive AI legislation, sector-specific AI requirements are beginning to emerge. For example, Ontario's Bill 149 amended the *Employment Standards Act, 2000* to require employers with 25 or more employees to disclose in publicly advertised job postings whether artificial intelligence is used to screen, assess or select applicants, once the relevant provisions are proclaimed into force.

Businesses that begin implementing AI governance measures now, including mapping data flows, documenting AI decision-making processes, conducting risk assessments, establishing oversight mechanisms and monitoring AI systems throughout their life cycle, will be better positioned to respond as Canada's AI regulatory framework continues to evolve. We work with organizations to assess AI-related legal risks, develop governance frameworks, and align AI deployment with Canada's evolving privacy, human rights and digital governance expectations.



03.

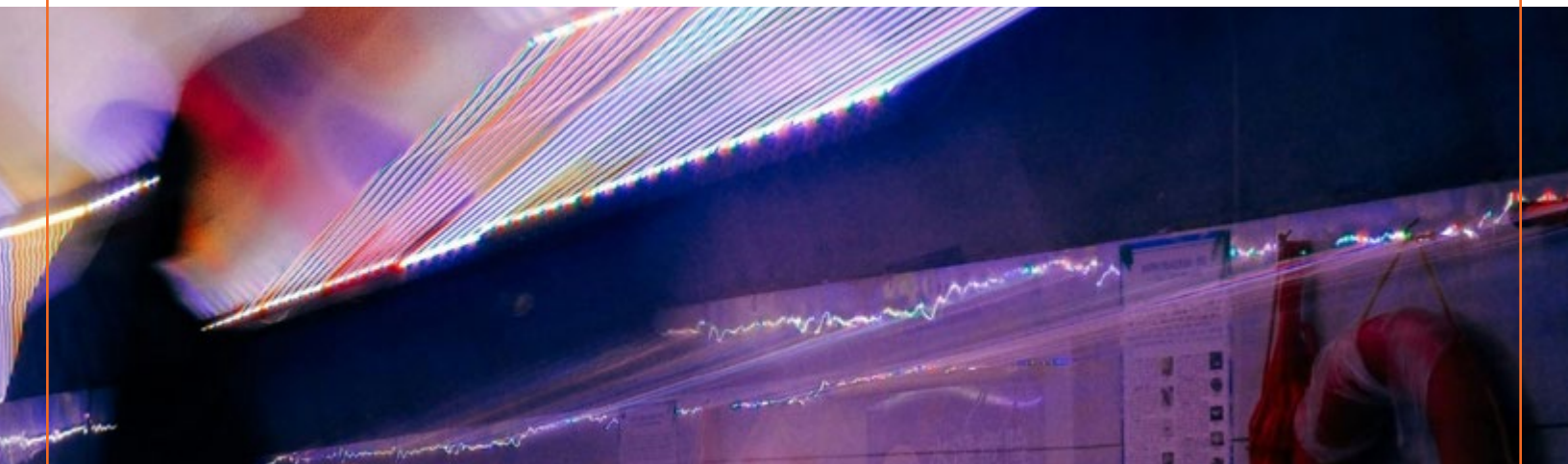
Canada's Anti-Spam legislation

When employing new marketing practices in Canada, organizations need to ensure that their activities are compliant with Canada's Anti-Spam Legislation ("CASL"). Companies expanding into Canada often discover that existing marketing automation, customer onboarding, or email campaigns must be modified before launch.

CASL regulates, among other things, the transmission of "commercial electronic messages" ("CEMs") by any person to a recipient in Canada. CASL is enforced by the Competition Bureau, the Canadian Radio-television and Telecommunications Commission, and the OPC. CASL applies to CEMs, with some exceptions. If CASL is found to apply, the legislation contains three major obligations: (i) the sender has obtained the recipient's consent or another statutory basis for sending the message applies; (ii) the sender has been identified; and (iii) there is an unsubscribe feature included in the electronic message that is prominent and can be readily performed. Organizations that fail to comply with CASL may be subject to significant penalties.

What to do before your first Canadian marketing campaign

- Audit your contact database to identify Canadian recipients and determine the applicable CASL consent basis for each.
- Review consent collection mechanisms, web forms, checkout flows and event registrations to ensure they support the intended CASL consent basis.
- Implement processes to track the expiry of implied consent, where relied upon, including within your marketing automation system where appropriate.
- Ensure all commercial electronic messages to Canadian recipients include proper sender identification and a functional, prominent unsubscribe mechanism.
- Train marketing and customer success teams on CASL's requirements before any Canadian-facing campaign is launched.



04.

Compliance checklist for businesses entering Canada

Before launching products or services in Canada, businesses should:

- Consider which Canadian privacy laws apply to their operations, including whether provincial privacy legislation in British Columbia, Alberta or Quebec applies in addition to PIPEDA.
- Review existing privacy policies, consent mechanisms and internal privacy practices to ensure they comply with Canadian legal requirements.
- Review procedures for identifying, assessing and reporting privacy and cybersecurity incidents, including mandatory breach notification obligations.
- Assess whether sector-specific requirements apply, such as OSFI obligations for federally regulated financial institutions.
- Review contracts with third-party service providers to ensure appropriate privacy, security and incident response obligations are addressed.
- Implement governance measures for the use of artificial intelligence, including documenting AI use cases, conducting risk assessments, establishing oversight processes and monitoring AI systems throughout their life cycle.
- Determine whether any AI-specific transparency obligations apply, including Quebec requirements related to automated decision making based on personal information and emerging requirements relating to AI-assisted hiring processes.
- Review marketing, customer onboarding and electronic communications to ensure compliance with CASL.

Canada's privacy, cybersecurity and AI landscape continues to evolve, with significant legislative reforms and regulatory guidance expected in the coming years. Businesses entering or expanding into the Canadian market should regularly review their privacy, cybersecurity and AI governance practices to ensure they remain compliant as new requirements emerge.

How Miller Thomson can help

Miller Thomson's Privacy and Cybersecurity team advises foreign companies entering Canada on the full spectrum of privacy and technology compliance, from initial privacy law mapping and program gap analysis through breach response, regulator engagement, CASL compliance, AI governance, and Bill C-36 readiness planning.

Speak with a Miller Thomson [Privacy & Cybersecurity lawyer](#) about your Canadian compliance program







Intellectual Property in Canada

Protecting and enforcing your IP assets

Intellectual Property in Canada

Protecting and Enforcing your IP assets

WHO THIS IS FOR:

GCs, CTOs, brand managers, and IP counsel at foreign companies entering the Canadian market, licensing technology into or out of Canada, acquiring Canadian businesses with IP portfolios, or filing patents, trademarks, or copyright registrations in Canada.

The assumption that costs foreign IP owners the most

Foreign companies entering Canada most commonly make three IP mistakes: they assume their U.S. or European trademark registrations protect them in Canada. They do not, as Canada requires a separate filing and the registration system changed significantly in 2019; they assume their U.S. patent portfolio covers their Canadian operations. It does not, as Canadian patents must be obtained separately, claim construction differs, and the 2026 Canadian Intellectual Property Office (“CIPO”) guidance on software and AI patentability diverges materially from U.S. practice); and they assume copyright works the same way as at home. It largely does, but moral rights, which cannot be assigned, only waived, create obligations in every content licence and assignment that are routinely overlooked by foreign companies using U.S.-style documentation).

Canada’s IP landscape is also moving faster than at any point in the past decade. The April 2025 trademark amendments, the March 2026 CIPO patent guidance on software and AI, and the introduction of AI disclosure requirements before the Trademarks Opposition Board (“TMOB”) have all changed the practical landscape for IP owners operating in Canada. This article addresses both the foundational framework and the current developments that affect strategy right now.



01.

Introduction

Intellectual property rights are indispensable business assets and often represent a significant portion of corporate value. Intellectual property assets are now central to financing, mergers and acquisitions, licensing, franchising, technology commercialization, brand expansion and cross-border transactions. Businesses entering or operating in Canada should therefore understand the principal categories of intellectual property protection available under Canadian law and the ways in which these rights are created, registered, licensed, enforced and transferred.

This chapter introduces three key types of intellectual property rights of particular importance to doing business in Canada: copyright, trademarks and patents. Other forms of intellectual property protection in Canada include industrial designs, plant breeders' rights, trade secrets, confidential information and integrated circuit topography rights. Each type of intellectual property right has a distinct purpose, scope and term. One form of intellectual property protection should not be used to improperly extend the life or scope of another right after that right has expired.

02.

Key recent developments: 2025–2026

Foreign companies with existing IP portfolios and those planning to file in Canada need to be aware of several recent developments that have materially changed Canadian IP practice.

Trademarks — April 1, 2025 amendments

Canada's most significant IP reforms during 2025–2026 focused on trademarks, modernization of dispute procedures, and adapting IP systems to AI and emerging technologies.

i) Trademarks (April 1, 2025)

New trademark owners must generally prove use in Canada (or special circumstances excusing non-use) before obtaining court remedies during the first three years after registration.

Parties appealing TMOB decisions must obtain leave to introduce new evidence in the Federal Court. The TMOB gained powers to award costs, issue confidentiality orders, and case-manage proceedings. New procedures allow challenges to certain obsolete official marks.

ii) AI disclosure before the TMOB — June 4, 2025

The TMOB introduced a requirement to disclose the use of generative AI in certain submissions and confirm that AI-generated content and authorities have been reviewed and verified.

iii) Patents — CIP0 Practice Notice, March 24, 2026

CIP0 issued updated guidance on the patentability of software, AI, and computer-implemented inventions, revising how patentable subject matter is assessed. Canadian IP law is increasingly focused on actual use, procedural efficiency, transparency, and the treatment of AI-related issues, while providing stronger tools for legitimate rights holders to protect and enforce their IP. The 2026 guidance introduces a two-step test: purposive construction of claims followed by a physicality requirement. The “actual invention” analysis that featured in the 2020 guidance has been eliminated and folded into purposive construction. For software and AI inventions, the physicality requirement is now the central battleground: where a computer is the only physical element, CIP0 examiners apply the Schlumberger question, whether the claimed contribution extends beyond the mere use of a computer. Claims to software per se remain non-patentable. For the first time, CIP0 has included a worked example addressing machine learning. Foreign companies with software, AI, or computer-implemented inventions should have their Canadian patent strategy reviewed against the 2026 guidance before filing or requesting examination.

03.

Copyright

Rights and obligations with respect to copyright in Canada are governed by the *Copyright Act* and related regulations. Copyright protects the expression of ideas, not ideas themselves. Copyright may subsist in literary, dramatic, musical and artistic works, as well as computer programs, compilations, cinematographic works, performer’s performances, sound recordings and communication signals.

Under Canadian law, copyright protection arises automatically when an original copyright-protected work or other subject matter is created, provided the statutory requirements are met. Registration is not required for copyright to subsist, although registration can provide procedural and evidentiary advantages.

i) Copyright test

Canadian copyright requires originality. The Supreme Court of Canada has held that an original work must be more than a mere copy and must result from an exercise of skill and judgment involving intellectual effort. Canadian law therefore rejects a pure “sweat of the brow” standard based only on labour or industriousness. The European Union’s approach is whether the work is the “author’s own intellectual creation”. The United Kingdom is following the European Union standard for determining originality. The United States applies the “independent creation plus a modicum of creativity” standard. The difference between the “skill and judgment” and “author’s own intellectual creation” standard for originality is subtle but important. Although the two tests often produce similar outcomes, they reflect different conceptions of originality. In Canada, the focus is on whether intellectual effort was applied, not whether the work reflects the author’s personality or creative expression.

The EU test asks whether the work is the author's own intellectual creation, meaning the author made free and creative choices in producing the work. The inquiry is less concerned with effort and more concerned with creativity. The work must reflect choices that were not dictated by technical constraints, functional requirements, external rules, or inevitability. The distinction becomes most visible in compilations, databases, and technical materials. Those are precisely the categories where Canada's skill and judgment standard may provide somewhat broader protection than a strict author's own intellectual creation analysis.

ii) Scope and term of copyright

In general, copyright in a work lasts for the life of the author plus 70 years. Canada extended the general term from life plus 50 years to life plus 70 years effective December 30, 2022. Different rules may apply to certain subject matter, including sound recordings, performer's performances and communication signals.

iii) Copyright ownership and infringement

The first owner of copyright is generally the author of the work, subject to statutory exceptions and agreements. Where a work is created by an employee in the course of employment, copyright will generally vest in the employer unless there is an agreement to the contrary. Canada does not recognize the same broad "work made for hire" doctrine that exists in the United States, and assignments and waivers should be documented carefully.

Canada does not recognize the same broad "work made for hire" doctrine that exists in the United States. In the United States, a commissioning party can, in certain circumstances, be deemed the author and first owner of copyright from the moment the work is created. In Canada, an independent contractor is generally both the author and first owner of copyright, and ownership passes to the client only through a valid assignment. Canada does not recognize a broad work-for-hire doctrine for independent contractors. This is one of the most significant differences for foreign companies using U.S.-style IP agreements in Canada. Foreign companies that rely on their standard U.S. independent contractor agreements, which typically include a work-for-hire clause, need Canadian-specific IP assignment provisions to ensure that IP created by Canadian contractors vests in the company. Assignments and waivers must be documented carefully.

The copyright owner has the sole right to produce or reproduce the work or any substantial part of it, to perform or communicate the work in public, and to publish the work where applicable. Unauthorized exercise of these rights may constitute infringement. The *Copyright Act* also contains exceptions and user rights, including fair dealing for purposes such as research, private study, education, parody or satire, criticism or review and news reporting, as well as other statutory exceptions.

iv) Copyright registration

Copyright registration in Canada can generally be completed online. Registration requires basic information such as the title, category of work or subject matter, names of owners and authors, publication status and the applicable fee. Registration is not determinative, but it provides prima facie evidence that copyright subsists and that the registrant is the owner. For foreign companies with significant content assets deployed in Canada, registration is a low-cost step that provides meaningful evidentiary and procedural advantages in enforcement proceedings.

v) Moral rights

Moral rights are the area of Canadian copyright law that most consistently surprises foreign companies using U.S. content agreements. Under Canadian copyright law, moral rights are the personal rights that protect an author's connection to their work and preserve the author's reputation and the integrity of the work. They are separate from the economic copyright rights that govern reproduction, distribution, and licensing. Critically, moral rights cannot be assigned, they can only be waived. A copyright assignment should therefore include an express moral rights waiver where appropriate. The *Copyrights Act* provides that the author of a work has: (i) the right to the integrity of the work; (ii) the right of attribution (to be associated with the work by name or pseudonym); and (iii) the right to remain anonymous, where reasonable in the circumstances.

vi) Collective societies

A number of Canadian collective societies administer copyright licensing and royalty collection in particular sectors. Participation may assist owners and users where collective licensing is available or commercially practical. Foreign companies distributing content in Canada should assess whether collective licensing applies to their specific use case, mandatory tariffs administered by collective societies may apply to certain reproductions, performances, and broadcasts regardless of whether the foreign company has a direct licensing relationship with the rights holder.

04.

Trademarks

In Canada, trademarks are governed by the *Trademarks Act*. A trademark is generally a sign or combination of signs used or proposed to be used by a person for the purpose of distinguishing that person's goods or services from those of others. A trademark creates an association in the minds of consumers between the mark and a particular source of goods or services. The value of a trademark lies principally in the goodwill generated through use, reputation and consumer recognition.

Foreign companies should not assume that U.S., EU, or other international trademark registrations provide any protection in Canada. Canada requires a separate trademark filing. A mark that has been used and registered in the U.S. for decades has no legal protection in Canada until it is filed and registered here, or until sufficient Canadian use and reputation has been established to support common law rights. Companies entering Canada should file trademark applications as early as possible in their market entry planning, not after launch.

i) Types of trademarks

Traditional trademarks include words, names, letters, numbers, designs, symbols and combinations of these elements. Canadian law also recognizes non-traditional trademarks, including three-dimensional shapes, modes of packaging, sounds, scents, tastes, textures, colours, moving images, holograms and other signs capable of functioning as trademarks. Certification marks may also be registered to indicate that goods or services meet a defined standard.

ii) Modern registration practice: what changed in 2019 and why it still matters

Canadian trademark registration practice changed significantly on June 17, 2019. Applicants generally no longer need to identify a filing basis, provide dates of first use or file a declaration of use before registration. This lowered the procedural threshold for obtaining registration, but it did not eliminate the importance of use in Canadian trademark law.

Use remains important because it supports goodwill, priority, distinctiveness, enforcement and resistance to non-use cancellation. A registration that issues before the mark has been used in Canada may still face practical and legal limitations, particularly in enforcement proceedings, opposition or invalidity proceedings, and non-use cancellation proceedings under section 45 of the *Trademarks Act*.

Registration Issue	Pre-modernization practice	Current practice	Business impact
Filing basis	Use, proposed use, making known or foreign registration/ use often mattered at filing.	No filing basis is generally required.	Easier filing, but more watch, clearance and opposition risk.
Use before registration	Proposed-use applications required a declaration of use.	No declaration of use is required before registration.	Unused registrations may still be vulnerable in practice.
Classification	Nice Classification was not mandatory in the same way.	Goods and services must be classified under the Nice Classification.	Class-based fees affect filing and renewal budgets.
International filings	Canada was outside the Madrid Protocol.	Canada participates in the Madrid Protocol.	Canadian applicants and foreign applicants can use Madrid strategically.
Term	Older registrations had 15-year terms.	Registrations now have 10-year renewable terms.	Renewal docketing and portfolio budgeting must be updated.

iii) Nice Classification and Madrid Protocol

Goods and services in Canadian trademark applications must be grouped according to the Nice Classification. The Nice Classification (NCL) is the international system used to classify the goods and services covered by trademark applications and registrations into 45 categories or classes of goods and services. It is administered by WIPO under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. The Nice Classification is closely tied to the Madrid Protocol. An international application filed through the Madrid Protocol must classify all goods and services according to the Nice Classification. WIPO reviews the classification before forwarding the application to designated countries. Filing and renewal fees are class-based, so careful drafting of goods and services is important. The Madrid Protocol is an international treaty administered by the World Intellectual Property Organization (WIPO) that allows a trademark owner to seek protection for a trademark in multiple countries through a single international application. Canada is also a member of the Madrid Protocol. Madrid designations are still examined under Canadian registrability requirements.

Foreign companies with international trademark portfolios should assess whether extending a Madrid Protocol application to Canada is more cost-effective than a direct Canadian national application, but should be aware that Madrid designations are still examined under Canadian registrability requirements, and a Canadian objection will need to be addressed through Canadian trademark prosecution regardless of how the application was filed.

iv) Trademark examination

In Canada, the trademark examination process by the Canadian Intellectual Property Office is generally divided into two stages: (i) formality examination and (ii) substantive examination.

The purpose of formality examination is to determine whether the application complies with the procedural and filing requirements of the *Trademarks Act* and *Trademarks Regulations*, for procedural compliance. The Formalities Section reviews matters such as: the applicant identity and address; Representation of the trademark; correct classification of goods and services under the Nice Classification; payment of required fees; whether the application satisfies the minimum filing requirements necessary to obtain a filing date; and compliance with technical filing requirements.

Substantive examination addresses whether the trademark is legally entitled to registration under the *Trademarks Act*. Examiners conduct searches and review the application for registrability issues such as: (i) distinctiveness; (ii) descriptiveness; (iii) likelihood of confusion with earlier trademarks, potentially relevant official marks or prohibited marks; and (iv) requirement to describe the goods and services with specificity and in ordinary commercial terms, i.e. using words or phrases that are commonly used in trade or commerce to describe: (i) the nature of the goods or services; and (ii) their quality, characteristics, function, purpose, or intended use.

i. *Distinctiveness*

Distinctiveness is central to Canadian trademark registration and enforcement. A trademark is distinctive when consumers understand it as identifying a single commercial source rather than merely describing the goods or services, their quality, geographic origin, features, function or other ordinary characteristics. A mark may be inherently distinctive because of its nature, or it may acquire distinctiveness through use and promotion in the Canadian marketplace. CIPO may object

where a mark appears not to be inherently distinctive. Marks that commonly attract distinctiveness scrutiny include descriptive or laudatory wording, geographic terms, names or surnames, letters or numbers, colours, product shapes, packaging configurations, textures, scents, tastes, moving images, holograms and common industry designs. Applicants may need to provide evidence that the mark had acquired distinctiveness in Canada as of the relevant date.

ii. Descriptiveness

Descriptiveness refers to a trademark that directly describes a characteristic, quality, feature, function, purpose, or geographic origin of the goods or services. Under the Trademarks Act, a trademark is generally not registrable if it is clearly descriptive or deceptively misdescriptive of the character or quality of the goods or services. A mark is clearly descriptive if the average consumer would immediately understand something about the goods or services from the mark itself. A mark is deceptively misdescriptive if it describes a feature or characteristic that the goods or services do not possess. Trademark law aims to distinguish one trader's goods or services from those of others. If a business could monopolize ordinary descriptive words, competitors would have difficulty accurately describing their own products.

iii. Confusion

The Examiner searches the Trademarks Register and pending applications to determine whether the applied-for mark is confusing with: (i) earlier registered trademarks; (ii) earlier-filed trademark applications; and (iii) potentially relevant official marks or prohibited marks.

The confusion analysis is conducted under the Trademarks Act and considers the following statutory factors regarding the marks at issue: (i) distinctiveness; (ii) extent known; (iii) length of use; (iv) nature of the goods/services; (v) channels of trade; and (6) degree of resemblance.

v) Approval and advertisement and opposition

If all objections are overcome, the examiner approves the application. The application is then: advertised in the Trademarks Journal; and opened for opposition by third parties.

A trademark opposition is an administrative proceeding before the Trademarks Opposition Board (TMOB) in which a third party seeks to prevent a trademark application from proceeding to registration. The opposition occurs after the application has been approved by a CIPO examiner and advertised in the Trademarks Journal. Trademark opposition serves as a mechanism for parties whose rights may be affected by a pending application to challenge registration before the mark is registered on the basis that the applied-for mark is confusing with the opponent's: (i) registered trademark; (ii) pending trademark application; or (iii) previously used trademark or trade name.

vi) Bad faith

Bad faith in trademark law generally refers to the filing, prosecution, or use of a trademark application for an improper purpose that is inconsistent with honest commercial practices. Bad faith is an express ground of opposition and invalidity. The Trademark Act does not define "bad faith." Canadian courts and the Trademarks Opposition Board have treated it as a flexible concept that depends on the particular facts and the applicant's conduct and intentions.

It may be relevant where an application appears to have been filed for an improper purpose, such as trademark squatting, blocking a competitor without a legitimate commercial rationale, or appropriating another party's mark or reputation.

vii) Official marks and prohibited marks

Canadian law prohibits adoption and use of certain official marks and prohibited marks, including certain arms, crests, flags, emblems and marks whose use could suggest a connection with public authorities or the Crown. Official marks remain broad, but recent amendments introduced a mechanism for the Registrar, on request or on the Registrar's own initiative, to give public notice that the statutory prohibition no longer applies where the holder is not a public authority or no longer exists. Businesses should therefore assess official mark barriers carefully but should not assume every historical official mark is practically unchallengeable. April 2025 amendments introduced a mechanism for the Registrar to give public notice that an official mark's prohibition no longer applies where the holder is not a public authority or no longer exists. Businesses facing official mark barriers should assess whether the holder still qualifies as a public authority before assuming the mark is unchallengeable.

viii) Trademark opposition proceeding

A trademark opposition is an administrative proceeding that allows a third party to challenge a trademark application before it becomes a registered trademark in Canada. Opposition proceedings are heard by the Trademarks Opposition Board (TMOB), a specialized tribunal within the Canadian Intellectual Property Office (CIPO).

Once a trademark application has been examined and approved by CIPO, it is published in the Trademarks Journal. Any person who believes the trademark should not proceed to registration may file an opposition within the prescribed opposition period.

Trademark applications are commonly opposed on grounds such as:

- Confusion with an existing trademark or trade name;
- Lack of distinctiveness;
- The mark being descriptive or otherwise unregistrable;
- The applicant is not entitled to register the mark; or
- The application having been filed in bad faith

The opposition process generally follows these steps:

1. **Statement of Opposition** – The opponent files its objections to the application.
2. **Counter Statement** – The applicant responds and confirms its intention to defend the application.
3. **Evidence Stage** – Both parties submit evidence, which may include affidavits, declarations, sales figures, marketing materials and evidence of use and reputation.
4. **Written Arguments** – The parties provide legal submissions supporting their positions.
5. **Oral Hearing (Optional)** – Either party may request a hearing before the TMOB.
6. **Decision** – The TMOB issues a written decision determining whether the application may proceed to registration.

Opposition proceedings provide trademark owners with an effective mechanism to protect their brands before a conflicting trademark reaches registration. They are generally more efficient and less costly than court proceedings and are an important component of a comprehensive trademark enforcement strategy.

ix) New AI disclosure requirement before the Trademarks Opposition Board

Effective June 4, 2025, the Trademarks Opposition Board (TMOB) requires parties to disclose when generative artificial intelligence (AI) has been used to create content in documents filed in opposition proceedings, section 45 non-use proceedings, and geographical indication objection proceedings. [ised-isde.canada.ca]

Where AI has been used to generate content, the filing party must include a declaration at the beginning of the document confirming that AI was used and that all AI-generated content and cited authorities have been reviewed and verified by the party or its trademark agent.

The requirement applies to materials such as AI-drafted written submissions and legal authorities identified through generative AI tools. However, it generally does not apply to routine technology-assisted functions such as voice-to-text software, document editing tools, or objective database searches.

x) Registered trademarks

If no opposition is filed (or any opposition is unsuccessful), the mark proceeds to registration. The owner of a registered trademark is granted the exclusive right to use the trademark throughout Canada in association with the goods and services listed in the registration. A registered trademark provides rights across all of Canada, even in areas where the owner has not yet commenced business operations. A registration also serves as prima facie evidence that: (i) the owner owns the mark; (ii) the mark is validly registered; and the owner has exclusive rights to the mark in connection with the registered goods and services.

Registrations are renewable for successive 10-year terms. Trademarks may be refused registration if, among other things, they are likely confusing with prior marks, clearly descriptive or deceptively misdescriptive, primarily merely names or surnames, prohibited or official marks, not distinctive, or filed in bad faith. For Canadian trademark prosecution, opposition, and infringement matters, confusion is generally understood as the likelihood that an ordinary consumer, with an imperfect recollection of a prior trademark, would infer from a first impression that the parties' goods or services originate from the same source or are otherwise commercially associated. The essence of confusion is therefore source confusion—whether consumers would infer a common source, sponsor, owner, or business connection between the parties' goods or services.

xi) Common law trademarks

Registration is not strictly required for trademark protection in Canada. Rights may arise through use and reputation. A common law trademark is an unregistered trademark that acquires legal protection through use in the marketplace, rather than through registration under the *Trademarks Act*.

In Canada, trademark rights can arise both through registration and through actual use of a mark in association with goods or services. Common law rights develop when a business uses a trademark and the mark becomes known to consumers as identifying the source of particular goods or services. Protection is based on the goodwill and reputation established through use. Unlike a registered trademark, common law rights are not automatically national in scope. They are generally limited to: (i) the geographic area where reputation has been established; and (ii) the goods and services with which the mark has become known. The proprietor of a common law trademark may enforce those rights through an action for passing off, provided it can establish reputation, confusion, and resulting damage.

For foreign companies with significant Canadian sales but no Canadian trademark registration, common law rights provide some protection, but the geographic limitation means that enforcement outside established markets is uncertain. Registration should be the goal for any company with ongoing Canadian operations.

xii) Trademark infringement, depreciation of goodwill and passing off

Trademark infringement is the unauthorized use of a trademark or trade name that is identical or confusingly similar to a registered trademark in a manner that interferes with the trademark owner's exclusive right to use the mark and is likely to cause confusion among consumers regarding the source, sponsorship, or affiliation of goods or services. To establish infringement, the plaintiff generally must show: (i) ownership of a registered trademark; (ii) use by the defendant of a trademark or trade name; (iii) a likelihood of confusion between the marks; and (iv) damages.

Only the owner of a registered trademark can sue for statutory trademark infringement under sections 19 and 20 of the Trademarks Act. Owners of unregistered trademarks generally rely on a passing off claim instead. Under section 19 of the Trademarks Act, registration gives the owner the exclusive right to use the trademark throughout Canada in association with the registered goods and services. Section 20 provides that infringement occurs where a person who is not entitled to use the trademark sells, advertises, distributes, imports, exports, manufactures, or otherwise deals in goods or services in association with a confusing trademark or trade name.

Section 22 of the Trademarks Act creates a distinct cause of action separate from infringement. It prohibits the use of another person's registered trademark in a manner likely to depreciate the value of the goodwill attached to that mark, even where there is no likelihood of confusion.

A successful trademark owner may obtain: (i) injunctions; (ii) damages; (iii) accounting of profits; (iv) delivery up or destruction of infringing goods; and (v) a cost award.

Passing off is a common law cause of action that protects the goodwill and reputation associated with an unregistered or common law trademark, trade name, business name, or other distinctive indicia. It prevents one trader from misrepresenting its goods, services, or business as those of another. In Canada, passing off exists both at common law and is partially codified in section 7(b) of the Trademarks Act. To establish passing off, the plaintiff must prove goodwill, a misrepresentation causing confusion, and actual or likely damage.

xiii) Amendments affecting contentious trademark proceedings

Amendments in force April 1, 2025 added important procedural tools before the Trademarks Opposition Board ("TMOB"), including authority to award costs in prescribed circumstances, issue confidentiality orders and case-manage proceedings. These amendments are intended to improve efficiency, protect confidential information and discourage undesirable conduct such as undue delay or unnecessary expense. The practical result is that TMOB proceedings are becoming more similar to court litigation, with greater emphasis on proportionality, procedural efficiency, and consequences for abusive conduct. From a brand owner's perspective, the changes are generally favourable because they provide additional tools to enforce rights, discourage abusive conduct, protect sensitive evidence, and streamline contentious proceedings before the Trademarks Opposition Board.

i. Power to award costs

The Registrar may now award costs in: (A) Trademark opposition proceedings; (B) Section 45 non-use expungement proceedings; and (C) Geographical indication proceedings. In addition, where an application is refused on the ground that it was filed in bad faith, costs may be awarded against the applicant. Costs may be imposed for conduct causing undue delay or expense, such as: (A) frivolous positions; (B) procedural abuse; (C) failure to participate properly in proceedings; or (D) other unreasonable litigation conduct.)

ii. Confidentiality orders

The Registrar now has authority to issue confidentiality orders protecting confidential evidence from public disclosure. Opponents and applicants may now be more willing to submit detailed commercial evidence relevant to acquired distinctiveness, goodwill, reputation and confusion.

iii. Case management

The Registrar now has explicit authority to manage the proceedings before the TMOB. These powers allow the Registrar to: (A) set schedules; (B) coordinate related proceedings; (C) manage evidence deadlines; (d) Streamline procedural disputes; and (E) reduce unnecessary delay.

iv. Official marks reform

A significant contentious change is the new ability to seek removal or limitation of certain official marks through procedures administered by the Registrar. An official mark is a mark adopted and used by a Canadian public authority, such as: Government departments; Municipalities; Crown agencies; Universities; Certain regulatory bodies; and other qualifying public authorities. Unlike ordinary trademarks, official marks historically enjoyed broad protection because they did not need to be renewed; They were not vulnerable to non-use cancellation proceedings; they could block registration of similar marks across virtually all goods and services; and they could remain in force indefinitely. The most important reform is the creation of a procedure allowing the Registrar to give public notice that the prohibition associated with an official mark no longer applies in certain circumstances. If the entity that owned the official mark has ceased to exist, the Registrar may effectively remove the barrier created by the official mark. If the organization no longer qualifies as a public authority under Canadian law, the official mark protection may be terminated.

v. *Enforcement of a trademark within 3 years of registration*

Effective April 1, 2025, owners of trademark registrations that are less than three years old must generally demonstrate use of the registered trademark in Canada, or establish special circumstances excusing non-use, before obtaining relief in court for infringement or other specified violations of the Trademarks Act. The amendment is intended to prevent enforcement of unused registrations and underscore the continuing importance of trademark use in Canada.

The April 1, 2025, amendments introduced s. 53.2(1.1) of the Trademarks Act. Which provided that “If, within a period of three years beginning on the date of registration of a trademark, the owner of the registered trademark makes an application claiming that an act has been done contrary to section 19, 20 or 22, the owner is not entitled to relief unless the trademark was in use in Canada at any time during that period or special circumstances exist that excuse the absence of use in Canada during that period.”

vi. *Appeals to the Federal Court*

Effective April 1, 2025, parties appealing a decision of the Trademarks Opposition Board (TMOB) to the Federal Court no longer have an automatic right to file new evidence. Instead, they must first obtain the Court’s permission (leave) before additional evidence can be introduced on appeal. Under the new section 56(5) of the Trademarks Act, a party wishing to submit new evidence must first persuade the Federal Court that the evidence should be admitted. The amendment is intended to improve the efficiency and finality of trademark proceedings. It encourages parties to present their strongest evidence during the TMOB proceeding rather than treating an appeal as an opportunity to supplement the record or effectively re-litigate the dispute.



05.

Patents

Patents in Canada are governed by the Patent Act and Patent Rules. A patent grants the owner an exclusive right, privilege and liberty to make, construct, use and sell the claimed invention for a limited term. For most patents filed on or after October 1, 1989, the patent term is 20 years from the filing date, subject to applicable maintenance requirements and limited statutory exceptions or extensions where available.

Foreign companies with U.S. or international patent portfolios should confirm that their Canadian coverage is in place before Canadian operations begin. U.S. patents provide no protection in Canada. A product or process that is patented in the US can be freely copied, used, and sold in Canada by competitors unless a separate Canadian patent has been obtained. Canadian patent prosecution involves its own examination process, claim construction standards, and, as of March 2026, a materially different approach to software and AI patentability than the USPTO.

i) Patentability test

To be patentable, an invention must generally be novel, useful, non-obvious and directed to patentable subject matter. If one of these elements is missing, a patent may not issue or may later be declared invalid.

ii) Patentable subject matter

Patent rights may protect physical products, machines, manufactures, compositions of matter, processes and improvements. Canadian law excludes certain subject matter, including mere scientific principles and abstract theorems. Case law and CIPO practice also address complex issues involving methods of medical treatment, higher life forms, business methods, diagnostic methods, computer-implemented inventions and artificial intelligence-related inventions. Patentability in these areas is fact-specific and often depends on whether the claimed invention provides a practical application or technical solution rather than an abstract idea or disembodied scheme.

iii) Patent prosecution in Canada

Patent prosecution in Canada requires active deadline, claim-count and response management. Examination is not automatic. For most applications, examination must be requested within four years of the filing date. Failing to request examination by the deadline may result in a notice and, if not addressed, abandonment consequences.

For applications where examination is requested on or after October 3, 2022, excess claim fees apply to claims over 20 at the request-for-examination stage and may also be payable at final fee based on the highest number of claims pending during examination for which excess claim fees were not already paid. This has made claim-count management more important in Canadian prosecution strategy.

Canada now also has a request for continued examination framework for applications subject to the amended rules. After prescribed numbers of examiner's reports, an applicant may be required to request continued examination and pay the prescribed fee to continue prosecution. CIPO may issue a conditional notice of allowance where only minor defects remain, allowing the applicant to correct those defects or provide argument and pay the final fee within the prescribed period. For applications filed on or after July 1, 2022, nucleotide or amino acid sequence listings must comply with WIPO Standard ST.26 where required.

Business implication

Canadian patent applications should be reviewed before requesting examination to manage claim count, align the claim set with commercial objectives, avoid unnecessary fees and ensure prosecution arguments do not create avoidable litigation risk.

iv) Patent rights and validity challenges

An issued patent enjoys a presumption of validity, but validity may be challenged on grounds such as anticipation, obviousness, lack of utility, non-patentable subject matter, ambiguity, improper inventorship, abandonment, failure to reinstate and material misrepresentation. Patent rights are subject to statutory exceptions, including specific exceptions for temporary presence of foreign vessels, aircraft and vehicles, and other limited exceptions under the *Patent Act*.

v) Patent infringement and claim construction

Patent infringement analysis begins with construction of the patent claims. Canadian courts apply purposive construction to identify the essential and non-essential elements of each claim through the eyes of the skilled person, having regard to the common general knowledge and the patent specification. Claim construction is undertaken before considering infringement or validity.

Canadian claim construction remains grounded in the patent specification. However, the historical statement that prosecution history or file wrapper evidence is categorically unavailable must now be qualified. Section 53.1 of the Patent Act permits written Canadian prosecution communications to be admitted in limited circumstances to rebut a representation made by the patentee regarding claim construction. Patent applicants should therefore avoid unnecessary admissions or overstatements during prosecution.

Infringement will generally not be found if an essential element of a claim is omitted or substituted in the allegedly infringing product or process. If only non-essential elements are varied, infringement may still be found. Remedies for patent infringement may include damages, an accounting of profits, injunctive relief, delivery up or destruction and pre-judgment or post-judgment interest, depending on the circumstances.

vi) Patent licenses, transfers and assignments

A patent owner may license patent rights in whole or in part. Patent licences are generally governed by contract, subject to applicable statutory requirements, competition law considerations and any compulsory licensing regimes that may apply in limited circumstances.

Patent rights and patent applications may also be transferred. Current CIPO practice distinguishes between recording the fact of a transfer, recording a change of name and registering related documents. A request to record a transfer should identify the application or patent, the transferee and the required information, and should be accompanied by the prescribed fee. Supporting evidence may be required depending on who makes the request, but the older blanket statement that an assignment must be registered with an affidavit of a subscribing witness should be removed from modern guidance.

06.

Confidential information and trade secrets

When businesses think about intellectual property, patents, trademarks, and copyright often come to mind first. However, some of a company's most valuable assets may never be registered with any government office. Customer lists, pricing strategies, proprietary processes, source code, manufacturing methods, research data, product roadmaps, and business know-how can all be protected as confidential information or trade secrets.

Confidential information is information that is not publicly available and that has value because it is kept secret. It can include technical, commercial, financial, operational, or strategic information that provides a business with an advantage over competitors. Examples include customer and supplier lists; pricing information and profit margins; business plans and growth strategies; market research and product development data; proprietary software and source code; manufacturing processes and technical know-how; research and development information; and internal policies, procedures, and methodologies.

A trade secret is generally considered a particularly valuable form of confidential information that derives economic value from its secrecy. Well-known examples include secret formulas, specialized manufacturing techniques, proprietary algorithms, and unique business processes.

Unlike patents, trade secrets do not require registration and can potentially last indefinitely. As long as the information remains secret and reasonable steps are taken to protect it, legal protection may continue without a fixed expiration date.

In Canada, trade secrets and confidential information are primarily protected by common law, equitable obligations of confidence, contractual obligations (NDAs and confidentiality clauses), employment law duties, and, in Quebec, the Civil Code. Unlike the U.S., the EU, or the UK, Canada has no comprehensive federal Trade Secrets Act. Protection arises from the circumstances of disclosure and the steps taken to maintain secrecy, which means that a foreign company that does not actively implement confidentiality protections in Canada may find that its trade secrets are unprotected even if they would be protected under a statutory regime at home.

Canadian courts have long recognized that businesses should be able to protect confidential commercial information from misuse by employees, former employees, contractors, business partners, competitors, and other recipients of confidential disclosures. Canadian courts generally apply a three-part test: (i) the information must be confidential; (ii) it must have been communicated in confidence; and (iii) the recipient must have misused it to the plaintiff's detriment.

Former employees remain free to use the knowledge and expertise they have acquired throughout their careers. They cannot, however, generally take and use an employer's trade secrets, customer databases, proprietary pricing information, source code, or other confidential materials for competitive purposes. Businesses should ensure that employment agreements clearly address confidentiality obligations, intellectual property ownership, and post-employment responsibilities.

Businesses should use confidentiality agreements, invention assignment agreements, access controls, cybersecurity measures and exit protocols to protect proprietary information, source code, algorithms, customer lists, pricing data, know-how and technical processes.

What to do before your first Canadian hire or contractor engagement

- Ensure employment agreements expressly address confidentiality obligations, IP ownership, and post-employment responsibilities, Canadian employment law does not imply the same IP assignment and non-compete protections that exist in some US states.
- Use NDAs, invention assignment agreements, access controls, cybersecurity measures, and exit protocols to protect proprietary information from the outset of Canadian operations.
- In Quebec, trade secret and confidentiality protections are governed by the Civil Code, ensure agreements are reviewed for Quebec-law enforceability if employees or contractors are based in Quebec.



KEY TAKEAWAYS:

- **Trademarks:** Use is no longer generally required before registration, but remains critical to enforcement and portfolio strength. File strategically, monitor the register, preserve use evidence and oppose problematic filings early.
 - **Distinctiveness:** CIPO may object to marks that do not appear inherently distinctive. Choose stronger marks where possible and collect Canadian evidence of acquired distinctiveness.
 - **Patent Prosecution:** Request-for-examination deadlines, excess claim fees and RCE rules affect cost and strategy. Review claims before examination, manage claim count and draft prosecution responses with litigation in mind.
 - **Patent Transfers:** Modern CIPO recordal practice should replace older affidavit-focused language. Record transfers promptly and distinguish transaction validity from CIPO recordal.
 - **Trade Secrets:** Unregistered information assets may be mission critical. Use contracts, access controls and employee/offboarding protocols.
-

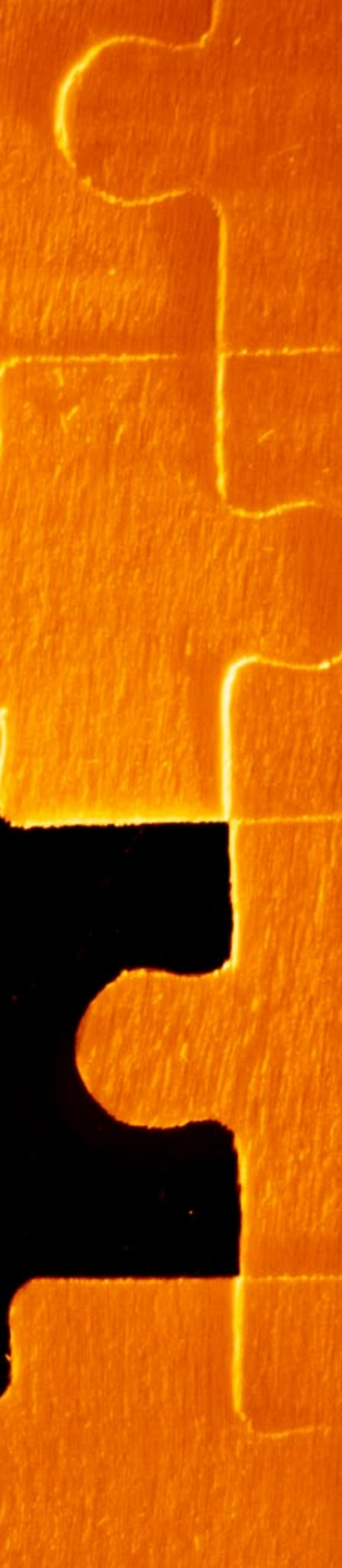
How Miller Thomson can help

Protecting and enforcing intellectual property in Canada requires navigating a framework that shares features with U.S. and European systems but diverges in ways that affect filing strategy, ownership documentation, enforcement rights, and portfolio value. The April 2025 trademark amendments, the March 2026 CIPO patent guidance on software and AI, and the continuing evolution of Canadian trade secret and confidential information law mean that IP strategies built even two years ago may need to be revisited.

Miller Thomson's intellectual property group advises foreign companies across the full spectrum of Canadian IP, from trademark filing and prosecution through opposition and enforcement proceedings, patent prosecution and validity challenges, copyright and moral rights analysis, licensing and technology transfer, and trade secret protection and enforcement. Our national presence includes Quebec practitioners who advise on the civil law dimension of IP protection for companies with Quebec employees, contractors, or operations.

Speak with a [Miller Thomson IP lawyer](#) about your Canadian intellectual property strategy.





Patents in Canada

A practical guide for foreign businesses

Patents in Canada

A practical guide for foreign businesses

WHO THIS IS FOR:

Patent counsel, CTOs, and IP managers at foreign companies with technology, life sciences, clean tech, software, or AI innovations who need Canadian patent protection as part of their North American or global IP strategy. While the Canadian patent regime is broadly familiar to foreign practitioners, several aspects of Canadian law and practice differ materially from the U.S. and European frameworks. These differences can affect patentable subject matter, prosecution strategy, claim drafting, deadline management, patent term adjustment, enforcement, and overall portfolio costs. As a result, decisions that are appropriate in other jurisdictions may not always produce the desired outcome in Canada.

The assumption that costs foreign patent owners the most

Most foreign patent owners understand that patent protection must be obtained separately in Canada. The more common and costly assumption is that a filing and prosecution strategy developed for the United States, Europe, or the PCT process can be implemented in Canada with little or no modification.

In practice, Canadian patent law contains a number of distinct procedural and substantive requirements that can significantly affect claim scope, prosecution costs, patent term, and enforceability. Decisions regarding claim drafting, examination timing, portfolio management, and responses to office actions often require a Canadian-specific analysis to achieve the desired commercial outcome.

At the same time, these differences are not merely compliance considerations. Canadian patent procedure can also provide strategic opportunities that may enhance a broader North American or global patent portfolio. Depending on the circumstances, Canadian practice may offer additional flexibility in prosecution, claim management, and portfolio planning that can be leveraged to support overall patent objectives and cost-management strategies.

Canada is therefore best viewed not as a routine extension of a foreign filing program, but as a jurisdiction that warrants its own strategic consideration. Early attention to Canadian-specific requirements and opportunities can help avoid unnecessary costs, preserve flexibility during prosecution, and strengthen the value of the resulting patent rights both in Canada and as part of an overall international patent strategy.

Canada has a strong innovation economy with significant activity in software, artificial intelligence, telecommunications, clean technology, life sciences, pharmaceuticals, agriculture, advanced manufacturing and natural resources. Patent protection is often a critical component of a company's Canadian market strategy, particularly where technological innovation represents a significant competitive advantage.

Patents in Canada are governed by the [*Patent Act*](#) and [*Patent Rules*](#). Canada is a member of the [*Paris Convention*](#), the [*Patent Cooperation Treaty*](#) (“PCT”), the [*Patent Law Treaty*](#) and numerous international agreements that facilitate the acquisition and management of patent rights internationally. As a result, foreign businesses will find Canada’s patent system broadly familiar, although several Canadian-specific substantive and procedural rules can significantly affect filing strategy, prosecution costs, and enforceability.

01.

Patentability requirements

A Canadian patent may be granted for any new and useful art, process, machine, manufacture, composition of matter, or any new and useful improvement thereof. To be patentable, an invention generally must be:

- novel;
- useful;
- non-obvious; and
- directed to patentable subject matter.

The *Patent Act* expressly excludes mere scientific principles and abstract theorems from patentability. Canadian courts have also developed specific jurisprudence relating to software, artificial intelligence, business methods, medical inventions, diagnostic methods and biotechnology.

i) Patentable subject matter

Software, artificial intelligence and computer-implemented inventions

Software-related inventions are not categorically excluded from patent protection in Canada, however, Canadian practice differs from that of certain other jurisdictions.

In March 2026, the Canadian Intellectual Property Office (“CIPO”) issued revised guidance regarding software, artificial intelligence and computer-implemented inventions. Under this guidance, patentability is based on purposive claim construction and a physicality requirement. In particular, the 2026 guidance places renewed emphasis on purposive construction as the starting point for patentable subject matter analysis. After identifying the essential elements of the claim through purposive construction, examiners assess whether the claimed subject matter has the requisite physicality, namely whether it forms part of a practical application that has physical existence or manifests a discernible effect or change. For computer-implemented inventions in which the computer is the only physical element, examiners are directed to consider whether the claim is distinguishable from merely programming an abstract idea, mathematical formula, scientific principle or abstract theorem on a computer, making careful claim drafting and claim-specific analysis particularly important.

As a result, Canadian filing and prosecution strategies for software and AI inventions must be reviewed independently rather than simply mirroring claim formats from the U.S. or other jurisdictions. A claim set that is allowable at the USPTO may not satisfy the Canadian physicality requirement. Foreign companies filing software or AI patent applications in Canada should have their claim sets reviewed for Canadian patentable subject matter compliance before requesting examination, when amendment is most cost-effective.

Life sciences and medical innovations

Similarly, patentability issues frequently arise in the life sciences field. Methods of medical treatment have long been treated as non-patentable subject matter in Canada.

The scope of this exclusion was recently clarified by the Supreme Court of Canada in [*Pharmascience Inc. v. Janssen Inc.*, 2026 SCC 26](#). The Court confirmed that pharmaceutical dosing regimens are not automatically unpatentable merely because they involve administration of a medicine. Rather, the focus is whether the claim seeks to monopolize professional medical skill and judgment. The Court upheld patent claims directed to a specific dosing regimen for a pharmaceutical product, providing important guidance for pharmaceutical and biotechnology companies and greater certainty regarding the patentability of dosing-related innovations. This decision is expected to influence patent drafting and prosecution strategies in Canada.

02.

Obtaining patent protection

Patent protection in Canada may be obtained either by filing a Canadian patent application directly with CIPO or by entering Canada through the PCT national phase.

Canada operates on a first-to-file system. Businesses should therefore consider patent filings early and before any public disclosure whenever possible.

The filing requirements in Canada are similar to other jurisdictions with the following notable features.

i) Grace period

Canada provides a 12-month grace period for disclosures originating from the inventor or applicant. Subject to certain limitations, an inventor's own public disclosure made within 12 months before filing will not necessarily invalidate a later Canadian patent application. Nevertheless, applicants should avoid relying on the grace period whenever possible, particularly if protection in foreign jurisdictions is contemplated.

ii) Priority claims

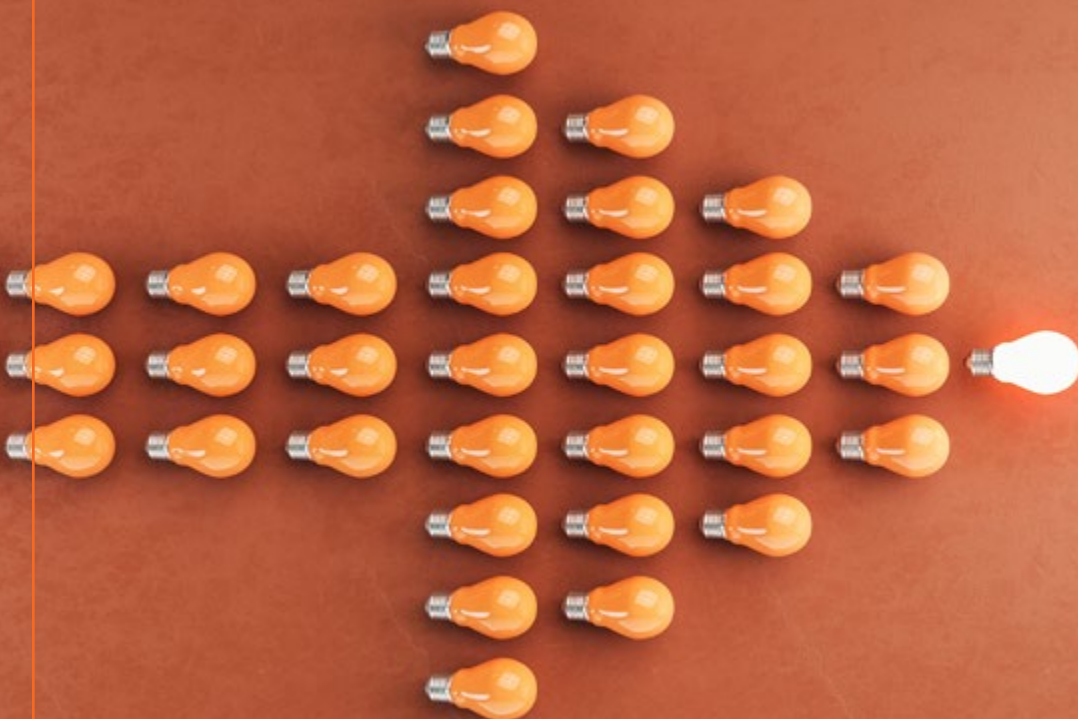
Canada recognizes priority claims under both the Paris Convention and the PCT. In general, a Canadian patent application claiming priority from an earlier application must be filed within 12-months of the filing date of the earlier application.

A feature of the Canadian system is that it provides greater flexibility for correcting and perfecting priority claims. In many circumstances, the deadline for making a priority request is the later of sixteen months from the earliest priority date and four months from the Canadian filing date, subject to certain limitations. As well, as part of Canada's implementation of the Patent Law Treaty, applicants may now be able to restore a lost priority right in certain circumstances. Where an application is filed after the normal 12-month priority period but within an additional two-month period, restoration may be available if prescribed requirements are met. This can provide an important safeguard where a priority deadline has inadvertently been missed.

iii) Small entity status: reduced fees

Canada provides reduced government fees for applicants that qualify as a "small entity". In general, a small entity includes businesses that employ 100 or fewer employees and certain universities. Qualifying applicants may benefit from reduced filing, examination, maintenance and other official patent fees.

Small entity status should be assessed carefully at the time of filing and throughout prosecution. An incorrect small entity claim may have consequences for the validity and enforceability of a patent, and businesses should ensure that their eligibility is reviewed before claiming reduced fees.



03.

Patent prosecution

Unlike some jurisdictions, examination is not automatic in Canada. An examination request must be filed within the prescribed period (4-years from the Canadian filing date) and accompanied by the required fee.

Recent amendments to the Patent Rules have made prosecution strategy increasingly important. For applications for which examination is requested on or after October 3, 2022:

- excess claim fees apply to claims exceeding twenty;
- requests for continued examination (“RCEs”) may be required after a prescribed number of examination reports;
- conditional notices of allowance may be issued where only minor deficiencies remain;
- ST.26-compliant sequence listings are required where applicable; and
- claim management has become a significant consideration in controlling prosecution costs.

Although Canada now imposes excess claim fees, the system remains relatively flexible. There is no restriction on the number of independent claims, and multiple dependent claims remain permissible. Strategic claim drafting and claim count management can significantly reduce prosecution costs while maintaining meaningful protection.

Unlike the United States, Canada does not provide continuation practice. While divisional applications are available, they must be managed carefully in view of Canada’s double patenting jurisprudence. Accordingly, decisions regarding claim strategy and divisional filings should be considered early in the prosecution process.

i) Due care standard and third-party rights

Recent amendments have also introduced a due care standard for certain missed deadlines.

In particular, where certain maintenance fee deadlines or examination request deadlines are missed, reinstatement may require a showing that the failure occurred despite the exercise of due care in the circumstances. If the required standard is not met, patent rights may be permanently lost.

The due care regime has significantly increased the importance of robust docketing and deadline management systems. Foreign applicants accustomed to more forgiving restoration procedures in other jurisdictions should be aware that Canadian rights may be lost if critical deadlines are missed and the applicable due care requirement cannot be met. In addition, third-party rights may arise during certain periods following abandonment or lapse, potentially limiting the enforceability of subsequently reinstated patent rights.

ii) Accelerated examination

Several mechanisms are available to accelerate examination of Canadian patent applications.

Patent Prosecution Highway

Canada participates in various Patent Prosecution Highway (“PPH”) programs, allowing applicants to leverage favourable examination results obtained in participating foreign patent offices. Likewise, favourable results obtained in Canada may facilitate prosecution in participating foreign jurisdictions.

Green technology applications

Patent applications relating to technologies whose commercialization would help resolve or mitigate environmental impacts or conserve natural resources may qualify for accelerated examination through a simplified procedure. Canada has become an attractive jurisdiction for many clean technology innovators seeking faster patent protection.

Special order examination

In addition, accelerated examination may be available where failure to advance examination could prejudice the applicant’s rights.

04.

Patent term and patent term adjustment

For patents filed on or after October 1, 1989, the patent term is generally 20 years from the filing date, provided maintenance fees are paid.

Canada also provides patent term adjustment (“PTA”) in certain circumstances to compensate patentees for delays attributable to CIPO during prosecution. Although the availability of PTA is subject to specific statutory requirements, it represents an important recent development for patent owners with commercially significant patent portfolios.

PTA is not automatic and is available only where the statutory requirements are satisfied. The amount of any adjustment depends on the extent to which delays are attributable to CIPO and may be reduced by certain applicant actions during prosecution. Accordingly, prosecution strategy can have a direct impact on the availability and duration of PTA.

Businesses should be aware of several practical considerations:

- Efficient prosecution may preserve PTA entitlement. Certain prosecution events, including the filing of a request for continued examination (“RCE”), may affect the calculation of PTA and should be considered as part of an overall prosecution strategy.
- The timing of examination requests may be relevant. Because PTA is linked to prescribed prosecution timelines, applicants should consider PTA implications when developing filing and examination strategies for important applications.

- Portfolio management should include PTA review. For patents covering key products or technologies, applicants should assess potential PTA entitlement as part of their broader patent lifecycle and exclusivity planning.

The Canadian PTA regime has introduced a valuable tool for patentees seeking to maximize the effective term of protection for important inventions. Businesses with significant Canadian patent portfolios should consider the potential impact of PTA when managing prosecution strategy and evaluating the overall value of their intellectual property assets.

05.

Ownership, assignments and licensing

Canadian patent applications identify both the inventors and the owner of the patent rights, referred to as the applicant. In the absence of an assignment, inventors are generally the initial owners of patent rights.

Questions concerning ownership frequently arise where inventions are developed by employees, consultants, contractors or research collaborators. Businesses should ensure that employment agreements, consulting agreements and collaboration agreements clearly address intellectual property ownership and assignment obligations.

Patent applications and patents may be assigned or licensed in whole or in part. Transfers and ownership changes may be recorded with CIPO, and businesses are generally advised to maintain accurate title records. Patent licenses may be exclusive, sole or non-exclusive and are principally governed by contract.

06.

Enforcement

Patent rights may generally be enforced before the Federal Court of Canada and, in certain circumstances, provincial superior courts.

An issued patent enjoys a presumption of validity, although it may be challenged on grounds such as anticipation, obviousness, lack of utility or non-patentable subject matter.

A notable recent development is the increased relevance of the patent prosecution record during litigation. Section 53.1 of the Patent Act permits portions of the Canadian prosecution history to be introduced in certain circumstances to rebut positions taken by patentees regarding claim interpretation. Patent applicants should therefore exercise care when making arguments during prosecution, as those statements may later affect enforcement proceedings.

Available remedies for patent infringement may include injunctions, damages, an accounting of profits, delivery up or destruction of infringing products and costs awards.

07.

Practical considerations for foreign businesses

Businesses should be aware of several practical considerations:

- separate Canadian patent protection must be obtained;
- Canada provides a 12-month inventor grace period;
- priority rights may be restored in limited circumstances after the 12-month priority deadline;
- software and AI inventions are subject to Canadian-specific examination guidance;
- pharmaceutical dosing regimens may be patentable notwithstanding the continuing exclusion for methods of medical treatment;
- excess claim fees and RCE requirements affect prosecution strategy;
- missed deadlines may trigger due care requirements and third-party rights; and
- Canada offers several mechanisms for accelerated examination.

Foreign businesses should therefore consider these Canadian-specific issues early to improve the scope, enforceability and commercial value of patent protection in Canada.

How Miller Thomson can help

Canadian patent practice rewards early planning and Canadian-specific strategy. The March 2026 CIPO guidance on software and AI, the 2026 SCC decision on pharmaceutical dosing regimens, the PTA system, the due care standard for missed deadlines, and the file wrapper estoppel-equivalent effect of section 53.1 have all changed the Canadian patent landscape materially in the past two years. A U.S. or European prosecution strategy applied without Canadian-specific review may produce patents that are narrower, more expensive, or less enforceable than they need to be.

Miller Thomson's intellectual property team advises foreign companies on the full spectrum of Canadian patent practice, from patentable subject matter analysis and filing strategy through prosecution management, PTA assessment, divisional strategy, assignment and licensing, and enforcement before the Federal Court. Our national presence includes practitioners with deep expertise in software and AI patents, life sciences and pharmaceutical patent prosecution, and clean technology innovations.

Speak with a Miller Thomson [Intellectual Property lawyer](#) about your Canadian patent strategy.





Industrial Designs in Canada

Protecting your product's appearance

Industrial Designs in Canada

Protecting your product's appearance

WHO THIS IS FOR:

Product designers, IP counsel, and brand managers at foreign companies launching consumer products, medical devices, electronics, packaging, furniture, or other goods in Canada where visual differentiation drives purchasing decisions. Industrial design registration is one of the most cost-effective and underused forms of IP protection available in Canada, and for foreign companies focused on patent and trademark filings, it is frequently the one that gets overlooked until a competitor launches a look-alike product.

The protection gap most foreign companies discover too late

Foreign companies entering Canada often assume that copyright provides sufficient protection for the appearance of their products because the design originated with a designer. While copyright may subsist automatically in design drawings and other artistic works, Canadian law limits the extent to which copyright can be used to prevent the reproduction of designs embodied in mass-produced useful articles. In particular, where a design applied to a useful article is reproduced in quantities exceeding 50 copies, copyright protection against reproduction of that design may be significantly restricted, subject to certain statutory exceptions. As a result, industrial design registration is frequently the most important form of intellectual property protection for the visual appearance of consumer products, medical devices, packaging, furniture, electronics, and other commercially manufactured goods. Companies that delay consideration of industrial design protection may inadvertently jeopardize their rights through early product launches, marketing campaigns, trade show displays, or online disclosures. Although Canada provides a 12-month grace period for certain disclosures originating from the applicant, businesses should assess registrability as early as possible and ideally before any public disclosure of the product design.

Industrial designs are governed by the Industrial Design Act and protect the visual features of a finished article. For many businesses, industrial design protection is an important complement to patents, trademarks and copyright, particularly where a product's commercial value is driven by its appearance rather than its technical function.

Industrial design protection is commonly used for consumer products, medical devices, packaging, furniture, electronics, automotive products, graphical user interfaces and other products where visual differentiation plays a significant role in purchasing decisions.

01.

What can be protected?

An industrial design protects the visual features of a product, including:

- shape;
- configuration;
- pattern; and
- ornamentation,

or any combination of those features, provided they appeal to and are judged solely by the eye.

Industrial design protection generally covers how a product looks rather than how it works. Functional features are generally outside the scope of industrial design protection and may instead be protected, where appropriate, through patents or other forms of intellectual property protection.

As a practical matter, businesses should consider whether a product's competitive advantage lies primarily in its appearance, its technical functionality, its branding or a combination of these elements. Many successful products are protected through a combination of industrial design, patent, trademark and copyright rights.

02.

Relationship to copyright protection

Industrial design protection often complements copyright protection. While copyright may protect original artistic expression embodied in a design, Canadian law limits the extent to which copyright can be relied upon to protect the appearance of mass-produced useful articles.

Subject to certain statutory exceptions, where a design embodied in a useful article is reproduced in quantities exceeding 50 copies, copyright protection against reproduction of the design may be significantly restricted under the Copyright Act. As a result, businesses should not assume that copyright alone will adequately protect the appearance of commercial products intended for large-scale manufacture and sale.

Industrial design registration is often the preferred means of protecting product designs that will be commercially manufactured and distributed. For many products, including consumer goods, packaging, furniture, household products, medical devices and electronics, industrial design registration should be considered alongside copyright protection as part of an overall intellectual property strategy.

03.

Registration requirements

Canada operates a registration system for industrial designs. Unlike copyright, industrial design protection generally requires registration to obtain meaningful statutory rights.

To be registrable, a design must be new and must not be identical or substantially similar to a design that has previously been made available to the public.

Applications are filed with the Canadian Intellectual Property Office (“CIPO”) and typically include:

- shape;
- configuration;
- pattern; and
- ornamentation,

Careful preparation of the visual representations is important because the scope of protection is determined primarily by the design as depicted in the application.

i) Grace period

Canada provides a 12-month grace period for industrial designs. A disclosure of the design by the applicant, or by a person who obtained knowledge of the design from the applicant, within the 12-months preceding the filing date generally will not destroy the novelty of the design.

Although the grace period can provide valuable protection where a disclosure has already occurred, businesses should generally seek to file before public disclosure whenever possible. This is particularly important where protection may also be sought in foreign jurisdictions that provide no grace period or a more limited grace period than Canada.

04.

International protection

Canada is a member of the Hague Agreement Concerning the International Registration of Industrial Designs. As a result, applicants may seek protection in multiple participating jurisdictions through a single international design application.

Foreign businesses with global product launches should consider whether Canada should be included as part of a broader international industrial design filing strategy. Similarly, Canadian businesses seeking protection abroad may be able to use the Hague system to streamline international filings.

05.

Term of protection

For industrial design applications filed on or after November 5, 2018, the term of protection generally extends to the later of:

- 10 years from the date of registration; or
- 15 years from the filing date.

Only one renewal fee is payable at the fifth anniversary of registration to maintain the registration in force.

06.

Ownership and commercialization

Industrial designs may be owned, assigned and licensed.

Ownership issues can arise where designs are created by employees, consultants, industrial designers or product development firms. Businesses should ensure that agreements governing product development clearly address ownership of intellectual property rights, including industrial designs.

Industrial design registrations are frequently licensed as part of manufacturing arrangements, product distribution relationships, technology transfers and broader intellectual property transactions.



07.

Enforcement

A registered industrial design provides the owner with the exclusive right to make, import, sell, rent or otherwise commercially exploit articles embodying the registered design in Canada.

Registration can provide significant advantages in enforcement proceedings because ownership and validity are more readily established than for unregistered rights.

Available remedies may include:

- injunctions;
- damages;
- an accounting of profits;
- delivery up or destruction of infringing products; and
- costs awards.

Because industrial design protection focuses on appearance rather than technical functionality, it is often a useful enforcement tool against look-alike products and competing products that closely imitate the visual appearance of a successful design.

08.

Practical considerations for businesses

Businesses launching products in Canada should consider industrial design protection early in the product development process. In particular:

- industrial design rights protect appearance rather than functionality;
- registration is generally required to obtain meaningful protection;
- public disclosure before filing may jeopardize rights in Canada and abroad;
- Canada participates in the Hague international design registration system;
- industrial design protection can complement patents, trademarks and copyright; and
- product packaging, graphical user interfaces, consumer products and medical devices are often strong candidates for industrial design protection.

For businesses competing in markets where product appearance influences consumer purchasing decisions, industrial design registration can be a cost-effective and valuable component of an overall intellectual property strategy.

KEY TAKEAWAYS:

- Copyright protection for product appearance is significantly restricted in Canada once a design is reproduced in quantities exceeding 50 copies. Industrial design registration is the primary statutory protection for the appearance of commercially manufactured products, it is not optional for commercially important designs.
- Registration is required to obtain meaningful protection. An unregistered industrial design has very limited statutory rights in Canada. File before commercial launch whenever possible.
- Canada provides a 12-month grace period, but a disclosure safe in Canada may destroy novelty abroad. Coordinate Canadian industrial design filings with international design strategy for global product launches.
- The Hague system allows a single application to designate multiple countries including Canada, but CIPO still examines the Canadian designation under domestic law. Hague simplifies administration, not substance. Build Canadian prosecution strategy into the Hague filing from the outset.
- Product development agreements must expressly assign industrial design rights to the commissioning company. An agreement that does not address this may leave ownership with the designer.
- Term of protection is up to 15 years from the filing date with only one renewal fee at the five-year mark, one of the lowest-maintenance forms of IP protection available in Canada.
- Industrial design, patent, trademark, and copyright protection are complementary. Many successful products require all four. Assess the full IP stack at the product development stage, not at the point of enforcement.
- For products where visual appearance drives purchasing decisions, such as consumer goods, packaging, electronics, medical devices, furniture, graphical user interfaces, industrial design registration should be a standard component of the Canadian market entry IP strategy.

How Miller Thomson can help

Canadian industrial design protection is cost-effective, relatively straightforward to obtain, and frequently underused by foreign companies focused on patent and trademark filings. The gap between what copyright protects and what industrial design registration protects, particularly for mass-produced consumer products, is one of the most common IP vulnerabilities we identify in foreign companies' Canadian portfolios.

Miller Thomson's intellectual property team advises foreign companies on industrial design registration strategy, Hague international applications designating Canada, prosecution before CIPO, ownership documentation in product development agreements, and enforcement proceedings against look-alike products. Our practitioners work across industries, from consumer goods and packaging through medical devices, electronics, and automotive products, and coordinate industrial design strategy with patent, trademark, and copyright protection as part of a comprehensive Canadian IP approach.

Speak with a [Miller Thomson IP lawyer](#) about industrial design protection for your Canadian products.



MILLERTHOMSON.COM



SEPTEMBER 2026

