

# Doing Business in Québec :

*Your gateway to  
North America*



## About Lavery

Any foreign company wishing to do business in Québec should be able to rely on a reputable law firm to help it get established and give it advice on all Québec and Canadian legal and regulatory matters.

Whether in the area of business law, labour and employment law, tax law, business finance or directors' and officers' liability, the Lavery team can assist you at every stage in the process of setting up your business in Québec by providing you with the

best advice to help you successfully navigate through the Québec and Canadian legal environments.

Aside from the specific legal considerations, Lavery works with a network of business partners, such as Investissement Québec, Montréal International, and the French Chamber of Commerce in Canada, that we can introduce you to in order to expand your network and ensure the smooth transition of your business to Québec.

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# Québec's advantages and particularities

## Business environment

- > Québec enjoys privileged access to over 950 million consumers thanks to trade agreements such as the North American Free Trade Agreement (NAFTA) and the Comprehensive Economic and Trade Agreement (CETA);
- > Québec is a gateway between Europe and North America and is a 90-minute flight from New York, Boston, Philadelphia, Detroit and Toronto;
- > Operating costs in Québec are approximately 15% to 50% lower than in the other G7 nations;
- > Close to 60% of the population in Montréal is bilingual and 20% is trilingual;
- > Canada has one of the most advantageous tax systems in the world for business, with a tax rate of 26.6%. Overall tax costs for businesses in Canada are by far the lowest among the G7 nations.
- > Canada has the most educated labour force among the Organisation for Economic Co-Operation and Development (OECD) members, with half of the active Canadian population having completed post-secondary studies.

## Legal system

Canada is a federation with two levels of government, each one sovereign within the limits set out under the Canadian Constitution. For example, the federal government has jurisdiction over banks, intellectual property and criminal law across Canada, while provincial governments have jurisdiction over healthcare, education, trade and commerce and property and civil rights in their respective province.

# Creating an entity in Québec

Québec is an exception to the rest of the country, which is governed by legal systems founded on the English common law. Québec's legal system is much closer to the French civil law system. As such, the province has a *Civil Code* and a *Code of Civil Procedure*.

A business that establishes itself in Québec must first determine the legal form under which it will operate. A foreign business can decide to operate (i) directly as a branch of the parent company, without creating a new separate legal entity, or as a subsidiary of the parent company in the form of (ii) a business corporation (the "BC") or (iii) a partnership.

A number of tax and legal factors should be considered before deciding on the most appropriate option, which is why it is important to seek professional advice before establishing any business on Canadian territory.

## **Branch**

First, a foreign company can decide to do business in Québec through a branch, rather than a new legal vehicle. In such a case, the foreign entity remains liable for the debts and obligations of the branch it operates in Québec. A branch is also subject to the same legal obligations as the subsidiary, with the necessary adaptations.

## **Business corporation**

In Québec, a BC is the legal form of choice for creating a business due to its many advantages. In the eyes of the law, it is a distinct person with full enjoyment of its civil rights and has no incapacities other than those which may result from its nature or from an express provision of law.





A BC exists forever, and will continue to exist as long as the shareholders do not decide to dissolve it. Shareholder liability for the BC's debts is limited to the value of their shares (which means that their only risk is losing the value of their investment in the BC), and the BC itself remains liable for its debts, liabilities and obligations. Shareholders have no ownership rights in the BC's property, but can receive dividends from any profits realized as well as the remainder of the value of its assets.

In Canada, a BC can be incorporated federally under the *Canada Business Corporations Act* ("CBCA") or provincially under the *Québec Business Corporations Act* ("BCA"). The BCA is advantageous for a foreign entity wanting to establish a subsidiary in Québec because there is no residence requirement for the BC's directors. Under the CBCA, a minimum of 25% of the BC's directors must be Canadian residents (or at least one director if they number three or less).

Neither the BCA nor the CBCA require any minimum capitalization or share ownership, as is the case for certain French legal vehicles.

### Partnership

The *Civil Code of Québec* recognizes three types of partnership:

- > General partnership (similar to a general partnership or *société en nom collectif* under French law),
- > Limited partnership (similar to a limited partnership or *société en commandite simple* under French law),
- > Joint venture (or undeclared partnership) (similar to an unregistered partnership or *société en participation* under French law).

In the business sector, the most common objective of a partnership agreement, which must be signed between at least two partners (natural or legal persons or other partnerships), is to operate a business. Each partner must personally contribute to the partnership in the form of property,





knowledge or activities, and the partners share the profits realized from operating the business.

A general partnership is the most common type of partnership in Québec. The *Civil Code of Québec* provisions on general partnership serve as the basic rules governing any partnership.

Liability of partners in a partnership is generally not limited to the amount of their respective contribution, as is the case for BC shareholders. Partnerships are, however, limited in time.

## Financing

A business can finance operations in Québec by way of a loan or issuing shares. In this regard, there are two aspects that are particularly important to note.

First, the interest payable on any BC debt is generally deductible from its income for tax purposes, contrary to the payment of dividends. This deduction is, however, limited to a certain percentage by the thin capitalization rules in the *Income Tax Act* on interest paid by a subsidiary to its non-resident parent for tax purposes.

Second, to avoid having to comply with the *Securities Act* requirements on issuing and transferring shares, a BC (like a limited partnership) must qualify as a “private issuer”, meaning it must satisfy the requirements of *Regulation 45-106 respecting Prospectus Exemptions*. Its securities must be subject to restrictions on their transfer, they cannot be owned by

more than 50 persons, not including employees of the corporation or its affiliates, and may only be distributed to certain categories of persons specifically described in the regulation.

### ***The Act respecting the legal publicity of enterprises***

Regardless of its legal form, every business operating in Québec must register with the *Registraire des entreprises* and declare information that must be updated at least annually.

Moreover, under the *Act respecting the legal publicity of enterprises*, every business must have a French name that complies with the *Charter of the French Language* at the time of its registration.

# Conducting a merger/acquisition in Québec

In the event you decide, like many European companies, to establish your business in Québec through a merger or acquisition, know that the success of such a transaction is due to careful planning. In North America, it is common to surround yourself with professional advisors (lawyers, accountants, bankers, etc.) at the outset of discussions. These professionals can maximize your chances of success by limiting any risks and complications. They often participate in developing acquisition/merger strategies, even before a letter of intention has been signed, specifically by taking any tax consequences into account in order to optimize the strategy adopted.

A letter of intent is a non-binding agreement in which the parties agree on the outline of the merger/acquisition. It is often accompanied by a confidentiality agreement that protects the confidentiality of discussions and the information shared during such discussions.

The next step in the merger/acquisition process is the preliminary investigation of your target's legal position, books and registers, commercial agreements and finances. While it is very quick in some cases, this investigation can take several weeks depending on the size of the transaction and the parties involved.



The preliminary investigation allows negotiations to continue on more solid ground. It offers the parties a clearer picture of the situation so that they can negotiate the terms of the transaction accordingly. For example, a lower acquisition price can be negotiated where a risk of litigation is discovered or additional guarantees can be demanded where the documentation provided does not support the projected revenues.

Negotiations are often held while the merger/acquisition agreement that will complete the transaction is being prepared. In Québec, such an agreement is usually mid-way between the voluminous US-style agreement and the generally much more succinct agreement found in France.





# Tax considerations

In Canada, both the federal and provincial governments have the power to tax. The respective systems of each level of government are, however, largely harmonized. Four tax aspects are especially relevant to operating a business in Québec:

- > Income tax
- > Employer costs
- > Consumption taxes (GST and QST)
- > Tax incentives

## Income tax

A business' income tax treatment can vary greatly depending on its legal form.

First, a branch is taxed on business income earned in Canada at the same rate as a BC. An additional tax is also payable on any income earned in Canada that is not reinvested (the equivalent of a dividend paid

to the parent if the business was operated through a subsidiary). Once again, the tax rate will normally be the same as the tax rate on dividends paid to non-resident shareholders of a BC.

Second, a BC is taxed on its worldwide source income, including its business income earned in Canada. In the case of a Québec BC, ultimately controlled by non-residents of Canada, the current combined federal and provincial income tax rate will be 26.6%. A Québec resident, shareholder in a Canadian corporation receiving a taxable dividend from that corporation, shall pay a tax whose maximum combined rate will vary, depending on the type of dividend received, between 40% and 46.25%. On the other hand, if a shareholder of that same corporation is a French parent company holding 10% or more of the voting stock of a Canadian resident BC, the corporation will be required to withhold a tax amount, as tax on the dividend, at a rate of 5%.



Finally, a partnership is a transparent entity for income tax purposes, and its partners will be personally taxed on their share of the partnership income, at their applicable personal rate.

### Employer costs

A business that has employees in Canada, regardless of its legal form, must register as an employer for the purpose of source deductions and withhold income tax and contributions for the various programs.

Employers in France pay over 40% of the employee's gross salary as employer costs. By contrast, these same costs in Québec amount to approximately 12%<sup>1</sup> of the employee's gross salary.

### Consumption taxes

Whether it operates as a branch or a subsidiary, a business must register for taxes, collect taxes from clients for "taxable supplies" sold, and remit them to the tax authorities. Each province is free to enact its own provincial tax, to which is added a set federal tax. As a result, the combined sales tax applicable in each province varies from 5% to 15%. The combined rate in Québec is 14.975%.

A business can generally ask for a refund of taxes paid to purchase goods and services needed to operate.

### Tax incentives

There are a number of tax measures related to investment and employment creation available in Québec. As a general rule, any business that operates in Québec, including foreign corporate subsidiaries and branches, can take advantage of these tax measures; only some provisions are reserved exclusively for Canadian-controlled corporations.

These tax measures can be grouped into seven categories:

- > Scientific research and experimental development
- > Manufacturing sector
- > Natural resources
- > E-business development
- > Cultural industry and multimedia
- > Financial services sector
- > Other tax measures

<sup>1</sup> Excluding the vacation pay, which varies according to the employee's length of service.



# Labour and immigration

In Québec, the field of labour relations is largely governed by the provincial government under the Civil Code of Québec and various related laws.

## Employment contracts

Under the *Civil Code of Québec*, any employment relationship gives rise to a contractual relationship between an employer and an employee. An employment contract may be tacit or formal, and its term is presumed to be indefinite.

Under such a contract, the employer is required to (i) allow the performance of the work, (ii) pay the remuneration fixed and (iii) take appropriate measures to protect the employee's health, safety and dignity. Of course, the parties may specify the terms in writing and add, for example, non-competition and non-solicitation undertakings and define their duration, as well as undertakings not to disparage the employer and to protect the personal information held by that employer in the course of activities.

## Minimum rights guaranteed

The *Act respecting labour standards* (the "ALS") establishes the minimum requirements from which no employment contract may derogate. These standards apply to all workers other than senior executives and other senior management members, and stipulate that:

- > A worker is entitled to a minimum wage of \$12.50 per hour (revised annually)
- > The standard work week is 40 hours, after which each hour of overtime must be paid at a higher rate
- > A worker accumulates the right to a minimum annual leave ranging from one day to three weeks and the right to an annual leave indemnity equivalent to 4% or 6% of his or her gross wages during the year, determined on the basis of months or years of service with the employer
- > A worker is entitled to maternity, paternity, parental or adoption leave, as well as to absences owing to sickness, an accident, violence, a criminal offence, family or parental matters, etc.
- > A worker is entitled to a workplace free from psychological harassment (including sexual harassment), with an obligation on the employer to prevent and put a stop to such harassment

Similarly, the ALS provides that a worker dismissed “without good and sufficient cause” is entitled to 1 to 8 weeks’ notice (or a compensatory indemnity in lieu of notice), depending on years of service with the employer. The *Civil Code of Québec* likewise states that notice of termination of an employment contract (or compensation in lieu of notice) must be given to the employee “in reasonable time,” unless the contract is terminated for a serious reason.

### **Indemnity for industrial accidents and occupational diseases**

The *Act respecting industrial accidents and occupational diseases* (the “AIAOD”) establishes a mandatory set of rules for all employers. The AIAOD defines what constitutes industrial accidents and occupational diseases subject to the Act, as well as the income replacement indemnity payable, the terms and conditions of medical assistance, compensation, rehabilitation and return to work, and the various possible remedies. These rules are administered by the *Commission des normes, de l’équité, de la santé et de la sécurité du travail* (“CNESST”)

and financed by contributions collected from employers according to their respective classification, as established by the activities they perform.

### **Trade union relations**

In Québec, the Labour Code protects the right of workers to associate in order to form negotiating groups. This law governs the period for negotiating collective agreements and limits the use of the right to strike or lockout during bargaining periods. Managers, superintendents, foremen, officers and directors of companies are not considered “workers” within the meaning of the law.

### **Immigration considerations**

The right to work in Canada is restricted for workers who are neither citizens nor permanent residents. As such, a Canadian business that wants to temporarily employ a foreign national generally must obtain a positive Labour Market Impact Assessment (LMIA) before the worker can apply for a temporary Canadian work permit. The purpose of the LMIA is to confirm the need for a temporary foreign worker and to demonstrate

that no Canadian citizen or permanent resident is available to do the job. Note that a foreign national who wants to work in Québec must also obtain a Québec Certificat d’acceptation (CAQ) for temporary work before applying for a work permit.

There are, however, exemptions to the LMIA and CAQ requirement, particularly for intra-company transferees (executives, senior management or specialized knowledge workers), specific professionals and French-speaking applicants who want to settle in a province or territory other than Québec.

In most cases, married and de facto spouses of temporary foreign workers with a valid Canadian work permit of six months or longer can also obtain a valid open work permit for the same period as their spouse and their children can attend primary or secondary school in Canada.

Also note that the Comprehensive and Economic Trade Agreement between Canada and the European Union facilitates labour mobility between France and Canada. The work permit requirements, however, must still be satisfied.





# Intellectual property

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In Canada, intellectual property protection is administered at the federal level by the Canadian Intellectual Property Office (CIPO), an agency responsible for enforcing the *Patent Act*, the *Trademarks Act*, the *Copyright Act* and the *Industrial Design Act*. It is also administered by the Canadian Food Inspection Agency, which enforces the *Plant Breeders' Rights Act*.

Given that the various forms of intellectual property legislation fall under federal jurisdiction, registering intellectual property with CIPO provides protection in each of the Canadian provinces. Moreover, unlike French law, Canadian law confers protection on certain forms of intellectual property without registration. Though not mandatory, registration is still advantageous.

The various forms of intellectual property that can be protected in Canada include:

**Trademarks:** They protect the combination of letters, words and signs that distinguish the products or services of one company from those of another, for renewable periods of 10 years. Provincial laws also provide protection for trademarks that are used but not registered. This protection is very limited geographically and greatly depends on the ability to demonstrate proof of use. It is prudent not to rely on this type of protection and to register trademarks, as mentioned above.

**Patents:** They protect the exclusive right to make, construct, use and sell an invention (new and useful process/machine/manufacture/composition of matter) for a period of 20 years from the date the patent application is filed.

**Copyrights:** They protect the right to produce, publish or perform an original work of a literary, artistic, dramatic or musical nature for the life of the author and 50 years following his or her death.

**Industrial Designs:** They protect the visual characteristics of a defined article with a distinctive appearance for a period of either 10 years from the date of registration or 15 years from the date the industrial design application is filed—whichever is longest.

**Plant breeders' rights:** They protect the right to produce, reproduce, condition, sell, export and stock propagating material of a new plant variety for a period of 20 or 25 years from the grant of plant breeders' rights, depending on the plant species.

**Trade secrets:** Trade secrets may be protected through contract law. The agreement that legally binds the signatories to such obligations will set out the terms and conditions.

Canada is also a signatory to various multilateral agreements related to intellectual property, including the Paris Convention for the Protection of Intellectual Property, the Patent Cooperation Treaty, the Patent Law Treaty, the Madrid Protocol and the Hague Agreement Concerning the International Registration of Industrial Designs.





# Other business considerations

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In addition to the above-mentioned legal aspects, an entrepreneur who wants to operate a business in Québec must take into account the following legal considerations:

## French language

The *Charter of the French Language* makes French the official language of Québec. It protects the right of every consumer to be served and informed in French and that of every employee to work in that language. It also provides that the French on any commercial sign is “markedly predominant” and that specific contracts must be drafted in French. The *Office québécois de la langue française* is responsible for its enforcement.

## Consumer protection

The *Consumer Protection Act* applies to contracts entered into between merchants and consumers and provides certain basic warranties and protections in favour of consumers in different types of contracts.

The law also provides that merchants must hold a permit to conduct business in specific areas, such as operating a travel agency, road vehicle dealership, money lending, physical fitness studios (physical fitness or weight loss centres, for example), etc.

## Protection of personal information

The Québec *Act respecting the Protection of Personal Information* and its federal counterpart protect the collection, use and disclosure of personal information by businesses. Personal information is that which allows a natural person to be identified and which is confidential. Added to these legal obligations are those in the *Civil Code of Québec*, the *Charter of Human Rights and Freedoms*, etc.

## Canada's anti-spam legislation

*Canada's anti-spam legislation* restricts the ability of businesses to solicit participation in a commercial activity or to promote sales to consumers using electronic messages without first having obtained their express consent. While certain provisions only apply to electronic messages, the law also circumscribes the use of several other forms of telecommunications, including emails, text messages, instant messaging, social media, etc.

## Doing business in Québec Québec at a glance

### Interesting statistics:

75.4%	Employment rate of 15- to 64-year-olds (2018)
5.5%	Unemployment rate (2018)
9.975%	QST (Québec sales tax)
\$ 12.50	Minimum wage (2019)
38.4%	Union presence (2018)
US \$37,888	GDP per capita (PPP 2016)

### Key points

Capital: City of Québec (Algonquin word meaning “where the river narrows”)

Provincial holiday: June 24

Currency: CAN\$

National sport: Ice hockey

Premier: François Legault

Made in Québec: Bombardier, CGI, Cirque du Soleil, Moment Factory, Power Corporation, Couche-Tard, CAE, SNC Lavalin, Caisse de dépôt et placement du Québec, and more.

Creativity and artificial intelligence hub: Element AI, Stradigi AI, Ubisoft, EA Sports, and more.

### Mother tongue (2016)

Official language: French  
Languages spoken: 80+  
French: 79.1%  
English: 4.6%  
More than one language: 2%  
Non-official language: 12.3%

### Education

87.2% High school diploma  
30.9% University certificate, diploma or degree

### Main Industries

Aerospace, agri-food, aluminium, biotechnology, construction, industrial design, energy, environment, life sciences, fashion and clothing, ICT, land and maritime transport, mining.

## ABOUT LAVERY LAWYERS

With a team of over 250 professionals based in Montréal, Québec City, Sherbrooke and Trois-Rivières, Lavery is committed to delivering a 360° approach by offering organizations personalized and innovative legal solutions in corporate law, labour and employment law, litigation and conflict resolution, public and administrative law and intellectual property.

Lavery is the leading independent law firm in Québec, ranked Number 1 of the Top 10 Québec Regional Law Firms by the Canadian Lawyer. Our team is also ranked among the Top 10 Patent filers in Canada in 2018 (based on the number of applications filed).

The firm is also a member of the World Services Group (WSG), an international network of law firms and other professional service providers in more than 145 jurisdictions and throughout the United States and Canada.

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