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Establishing a Business in Québec: Practical Considerations

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1. Introduction

CHOICE DESTINATION FOR BUSINESS

Canada is a federation composed of 10 provinces and 3 territories. The capital is Ottawa, located in the province of Ontario. Québec is one of the country's key provinces, along with Ontario, Alberta, and British Columbia.

Canada is a choice destination for businesses due to its stable government, independent judiciary, effective customs system, qualified and diverse labour force and its high standard of living.

	Canada	Québec
Capital	• Ottawa	• Québec City
Largest city	• Toronto	• Montréal
GDP (expenditures)	• $2,036 billion	• $395 billion
Population	• 36.9 million	• 8.4 million

Source: Statistics Canada (April 2018).

LEGAL AND CONSTITUTIONAL FRAMEWORK

Canada benefits from two legal traditions: civil law applies in the province of Québec and common law applies at the federal level and in the other provinces and territories.

The Canadian Constitution divides legislative jurisdiction between the federal parliament and the provincial and territorial assemblies. Some jurisdictions are shared, such as taxation, the environment, and immigration.

Legal persons in Canada are therefore subject to laws enacted by both the federal parliament and the competent provincial or territorial authority.

Main areas of **federal** jurisdiction	Main areas of **provincial** jurisdiction	Main areas of **shared** jurisdiction
• Banks - Postal service	• Property and civil rights	• Taxation
• Patents	• Administration of justice	• Environment
• Employment insurance	• Intraprovincial trade	• Public works
• Bankruptcy	• Municipal institutions	• Immigration
• National defence	• Health	• Agriculture
• Criminal law	• Education	• Transportation and communications

2. Creating a Business

DIFFERENT TYPES OF ENTERPRISES

A business can be created using one of the different legal forms available, including a sole proprietorship, a partnership or a corporation (also called a company or legal person). The most common form used is a corporation.

CORPORATION

Depending on your specific circumstances, you can decide to incorporate under the provincial or federal system when creating a corporation in Canada.

In Québec, corporations are created and governed by the Québec *Business Corporations Act* (QBCA), while they are created and governed under the federal system by the *Canada Business Corporations Act* (CBCA). A corporation can do business anywhere in Canada, whether federally or provincially incorporated, as long as the provincially incorporated company registers in each province where it does business according to the local rules on the registration of corporations that are not incorporated pursuant to the local law. Registration is a simple formality and does not cost much.

The two acts share several similarities. For example, regardless of the system chosen, corporations can decide not to hold physical shareholders' or directors' meetings and a written resolution signed by all the shareholders or directors can replace a meeting. Governance rules, described more fully below, are also nearly identical between the different legislative systems. Shareholders of both types of corporations can also decide not to have their annual financial statements audited and the two systems have harmonized their rules on the protection of minority shareholders.

The table below illustrates some of the differences between the two systems. Note that the Québec system applicable to the two first items is particularly appreciated by foreign investors.

	CBCA (Canada)	QBCA (Québec)
1. Residency of directors	• At least 25% of directors (or if less than three directors, at least one of them) must be Canadian residents	• No Canadian residency requirement
2. Shareholders' meetings	• In Canada	• Can be held outside Québec if permitted by the articles or if all the shareholders agree
3. Head office	• In Canada	• In Québec
4. Financial tests applicable to distributions and return of capital	• Must pass a solvency test and balance sheet test	• Several cases where only the solvency test is required

Finally, the QBCA is generally considered a more favourable system for small and medium size enterprises due to specific rules, such as the possibility of issuing unpaid shares as a way of financing the corporation and more flexible rules in terms of governance. On this point, it is worth mentioning that a QBCA corporation owned by a single shareholder may choose to avoid establishing a board of directors if it has signed a declaration removing all powers from the board of directors.

INCORPORATION PROCESSING TIMES AND FEES

Creating a corporation is simple and easy in Canada. Corporations Canada is responsible for the federal incorporation of corporations. In Québec, the *Registraire des entreprises du Québec* is the competent authority. At both levels of jurisdiction, the processing time varies from one to five days from the date the application is filed. There is an additional charge for accelerated service. Below are some of the fees charged by the competent authorities:

<table>
<tr><th></th><th>Canada</th><th>Québec</th></tr>
<tr><td colspan="3">Incorporation fees</td></tr>
<tr><td>• Regular service</td><td>$200</td><td>$331</td></tr>
<tr><td>• Priority service</td><td>None</td><td>$496.50</td></tr>
<tr><td colspan="3">Registration fees in Québec</td></tr>
<tr><td>• Regular service</td><td>$331</td><td rowspan="2">None</td></tr>
<tr><td>• Priority service</td><td>$496.50</td></tr>
<tr><td colspan="3">Registering for sales tax</td></tr>
<tr><td>• Regular service</td><td colspan="2">$93.20</td></tr>
<tr><td>• Priority service</td><td colspan="2">$144.40</td></tr>
<tr><td>Annual declaration/report</td><td>$20 (online)/$40</td><td>$88</td></tr>
</table>

You will receive a Québec Business Number (NEQ) after incorporating under the QBCA or registering a federal corporation in Québec. The NEQ is the official identification number of each enterprise doing business in Québec. The NEQ is a 10-digit reference number that simplifies dealings between a business and Québec government institutions. A federal corporation will also receive a business number (BN) from Corporations Canada once it has been created. The NEQ and the BN are also used to identify corporations by the federal and Québec tax authorities for taxation purposes.

Every operating corporation (as opposed to a holding company) must register with the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST) to obtain an employer number, and with the competent government agencies to obtain goods and sales tax and sales tax numbers (GST & QST).

Note that corporations must file an annual declaration within the time prescribed by regulation confirming that the information held by the government authorities is accurate or needs to be updated. Federal corporations file an annual return with Corporations Canada while Québec corporations, and any other corporation registered in Québec, file an annual updating declaration with the *Registraire des entreprises*.

MAIN FEATURES AND GOVERNANCE OF CORPORATIONS

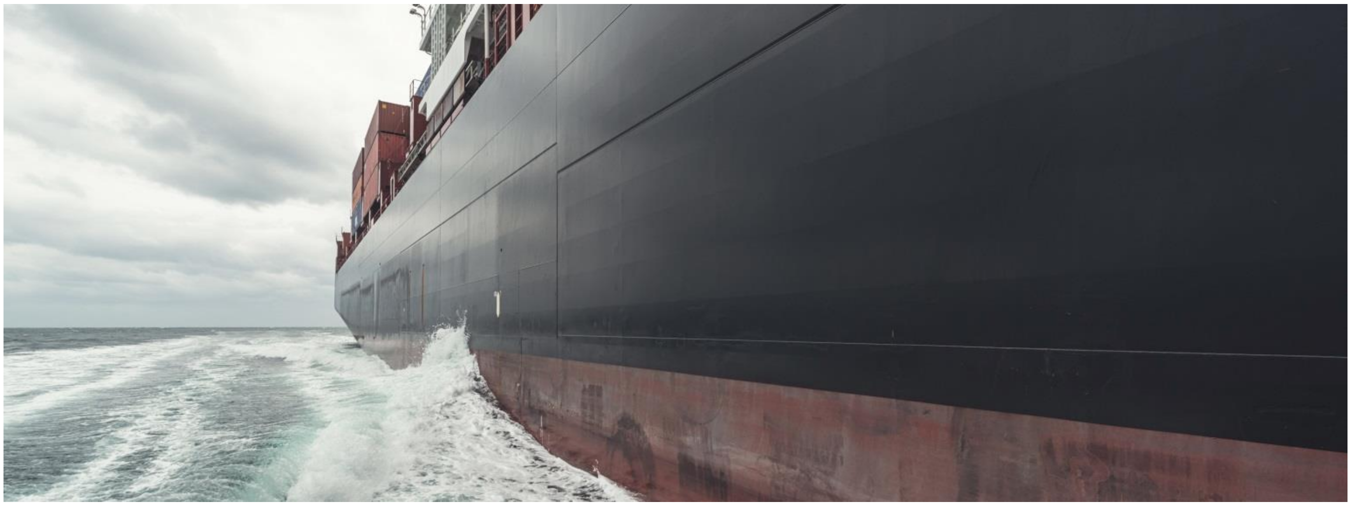
Both federal and Québec corporations normally have unlimited capital. A corporation receives subscriptions from its shareholders and issues shares as needed.

Both types of corporations hold shareholders' meeting for the purpose of appointing or removing the corporation's directors. Unless they have signed a unanimous shareholders' agreement that removes some or all of the powers of the board of directors, the corporation's shareholders do not directly participate in the management of the corporation's affairs. A corporation is therefore generally administered by one or more directors who make up the board of directors. The board of directors in turn appoints the corporation's officers, including the "president", who manages the company's daily affairs, and a "secretary", who often has to attest to resolutions adopted by the directors or the shareholders. A corporation can have just one director who can also be the sole officer (under the QBCA, this person does not have to be a Canadian resident).

The corporation's directors have a duty to be prudent and diligent, as well as honest and loyal. They must act in the interests of the corporation and may be held civilly liable if they breach any of their duties. Under both the QBCA and the CBCA, directors can be held liable civilly (for example, for wages for services rendered for the corporation up to six months, the illegal declaration or payment of dividends, or even the corporation's failure to withhold deductions at source and remit tax from employee wages), or criminally, under various laws, namely with regards to polluting the environment.

OTHER TYPES OF ENTERPRISES	**Sole proprietorship -** A form of enterprise with a single proprietor who often does business under his or her own name and who is also called a self-employed worker.
	Partnership - Has no legal personality and comes in three forms: general partnership (G.P.), limited partnership (LP), and joint venture (or undeclared partnership).
	Trust - Has no legal personality and is created under the *Civil Code of Québec*.
	Cooperative - A group of members who use goods or services and want to pool resources to satisfy a common need.
	Non-profit organization - A group of members who collect resources to accomplish a mission that is often charitable.

3. International Trade



The Canada and European Union Comprehensive Economic and Trade Agreement (CETA) entered into force at the end of 2017, opening the way to an impressive series of business opportunities for European companies. More specifically, the CETA:

- eliminated tariffs on over 95% of goods entering Canada from Europe;
- offers significant opportunities to European service providers, including in financial services;
- opened Canada's government procurement market, including in the federal, provincial, territorial, regional and municipal sectors, to European companies offering goods and services;
- relaxed the rules on employee, owner and investor mobility from Europe to Canada.

The CETA is a very ambitious agreement, and given Canada's privileged relationship with the United States under the North American Free Trade Agreement, investing in Canada can be a major springboard into the US market.

4. Taxation

In Canada, personal and corporate income taxes are collected by both the federal and provincial governments.

Non-residents of Canada are subject to Canadian tax on income from Canadian sources.

PERSONAL INCOME TAX IN QUÉBEC AND CANADA

Personal income tax is based on residency in Canada. A non-resident Canadian who remains in Canada for 183 or more days during a calendar year is deemed to be resident of Canada throughout the entire year for tax purposes.

The applicable tax rates for 2018 are as follows:

Québec:

Income tax brackets	Rate
• $43,055 or less	15%
• From $43,056 to $86,105	20%
• From $86,106 to $104,765	24%
• Over $104,766	25.75%

Source: Revenu Québec, March 3, 2018.

Federal

Income tax brackets	Rate
• On the first bracket of taxable income of $46,605 +	12.53%
• On the following bracket of $46,605 of taxable income (on the taxable income between $46,606 and $93,208), +	17.12%
• On the following bracket of $51,281 of taxable income (on the taxable income between $93,208 and $144,489), +	21.71%
• On the following bracket of $61,353 of taxable income (on the taxable income between $144,489 and $205,842), +	24.22%
• On the taxable income over $205,842	27.56%

CORPORATE INCOME TAX IN QUÉBEC AND CANADA

Federal and Québec corporate income tax rates vary depending on sector of activity and type of corporation. Corporations resident in Canada must pay federal tax on their worldwide income. The rates differ for income from business, manufacturing and processing, and investment income, depending on whether the corporations are Canadian-controlled private corporations (CCPC) or controlled by non-residents.

Combined federal and provincial tax rates on non-CCPC corporate income for 2018:

	Business income	Investment income
Québec	26.7%	26.7%
Ontario	26.5%	26.5%
Alberta	27%	27%
British Columbia	27%	27%

Generally, a business is subject to provincial tax only if it has an establishment in that province. An establishment can be an office, a branch, a plant, a warehouse or a workshop.

GOODS AND SERVICES TAX (FEDERAL) AND SALES TAX (QUÉBEC)

In Québec, there are two types of consumption taxes: the goods and services tax (GST) and the Québec sales tax (QST).

Tax	Rate
GST	5%
QST	9.975%
Total	14.975%

In other provinces, the GST and the provincial or territorial sales tax have been harmonized into the harmonized sales tax (HST). This is the case for Prince Edward Island, New Brunswick, Nova Scotia, Ontario, and Newfoundland and Labrador.

PLAN YOUR TAX STRUCTURE

Capital invested in a Canadian corporation through share subscription or financing in the form of a loan or current account can always be repatriated free of Canadian tax. There is therefore no disadvantage, as in some other jurisdictions, in capitalizing a Canadian corporation as opposed to financing it by way of intragroup debt. Contributing capital to a wholly-owned Canadian subsidiary and the return of capital to shareholders are simple transactions that do not require a valuation of the Canadian corporation. The Canadian thin cap rules, however, do require a minimum of $1.00 of capital for each $1.50 of interest bearing intragroup debt. Contributing capital to a wholly-owned Canadian subsidiary is a simple transaction that does not require a valuation of the Canadian corporation.

Subject to compliance with the transfer pricing rules, a Canadian corporation can pay the head office services and costs invoiced by the parent company and deduct these amounts from its income. However, any payment for services rendered in Canada by a non-resident person is subject to a Canadian withholding tax of 15% plus a Québec withholding tax of 9% if the services are rendered in Québec. A non-resident service provider can be refunded any withholdings at the end of its fiscal year by filing Canadian and Québec income tax returns, establishing that the service provider was protected under a tax treaty between Canada and the provider's country of residence, and establishing to the tax authority's satisfaction that it had no permanent establishment in Canada/Québec during the year.

License royalty payments are generally subject to a Canadian statutory withholding tax of 25% that is reduced to 15%, 10%, or even 0%, depending on the terms of the different tax treaties signed by Canada. Similarly, the statutory withholding tax rate of 25% for interest paid to a non-resident with whom the Canadian payer is not dealing at arm's length is generally reduced to 15% or 10%, depending on the applicable tax treaty. Finally, the rate of deductions withheld on dividends paid to a non-resident corporate shareholder holding 10% or more of the voting rights in a Canadian corporation is generally reduced to 5% if there is a tax treaty.

5. Human Resources

LEGAL FRAMEWORK IN QUÉBEC

Québec's labour and employment laws are basically the same as those found in the rest of Canada. They include laws on labour standards, occupational health and safety, pay equity, the protection of personal information, human rights legislation prohibiting discrimination, and a labour code for unionized workplaces.

MINIMUM WAGE

In Québec, the *Act respecting labour standards* determines the minimum employment conditions, such as wages. The general minimum wage rate in Québec is currently $12.00 per hour worked.

NORMAL WORK HOURS

The normal work week in Québec is 40 hours and overtime is paid at time-and-a-half the rate for hours worked during the normal work week.

STATUTORY HOLIDAYS

Québec workers are entitled to eight paid statutory holidays per year. Employees with at least one year of service are entitled to two weeks paid vacation, while employees with five years of service are entitled to three weeks paid vacation.

NOTICE OF TERMINATION OF EMPLOYMENT

Under the *Civil Code of Québec*, both the employee and the employer must give reasonable notice when terminating employment. Under the Québec *Act respecting labour standards,* employers must provide a minimum notice of termination of employment that varies from one week (for 3 to 12 months of service) to eight weeks (for 10 or more years of service). Higher level employees often negotiate more generous compensation before signing their employment contract.

OCCUPATIONAL HEALTH AND SAFETY

One of the fundamental principles in occupational health and safety legislation throughout Canada is that employers are ultimately responsible for workplace health and safety, but that both workers and employers must strive to identify risks and develop strategies to protect workers. The competent Provincial government departments or bodies are responsible for inspecting and monitoring workplace safety. In Québec, this body is called the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST).

Every province has adopted worker's compensation legislation establishing a no-fault compensation system for injuries resulting from a workplace accident. These plans cover the costs of compensation and medical treatment and generally deprive employees of the right to sue employers in the civil courts. The system is financed by employer contributions that are calculated and set for the most part according to the employer's industry classification (established based on risk) and history of accidents and claims.

PRIVACY PROTECTION

It is recommended that businesses implement a policy and procedures on the protection of personal information in order to satisfy the requirements prescribed by the *Personal Information Protection and Electronic Documents Act* (federal), the *Act respecting the protection of personal information in the private sector* (Québec), and similar laws in certain provinces that protect information on a business' employees, or people applying for a position within that business, that is collected, used or communicated by the business. These laws protect personal information, meaning information that can be used to identify an individual.

UNIONIZATION

The right of association is protected in Québec and elsewhere in Canada. The Québec *Labour Code* then applies. The *Labour Code* sets out the requirements for forming a union in Québec and the right to negotiate a collective labour agreement, as well as the employer's obligation to negotiate with the employees' designated representatives.

CONTRIBUTIONS AND PAYROLL TAXES

Employers are not legally obliged to establish an employee pension plan anywhere in Canada, except in Québec, where employers with five or more employees must subscribe to a voluntary retirement savings plan and automatically enrol their employees. The employer does not have to contribute to the plan, but must offer the plan to employees. There are two primary government pension and supplementary retirement benefit plans for workers, funded by prescribed employer and employee contributions. They are the Canada Pension Plan and its Québec equivalent, the Québec Pension Plan, plus the Canadian Old Age Security Pension.

Even if some employers might opt to set up a supplemental private unemployment benefit plan, the most common form of employment insurance benefits remains the mandatory employment insurance plan administered by the federal government. Benefits are paid out of a fund financed by employer and employee contributions.

The other types of payroll contributions employers must make in Canada include the health services fund, workplace accidents as previously mentioned, labour standards, and parental insurance.

Note that employee plan contributions are generally deducted at source by the employer, who remits these sums to the relevant government body.

	Contributions - payroll	
	Employer	Employee
Pension (2018 maximum contribution)	• $2,829.60	• $2,829
Employment insurance (2018 maximum contribution)	• Federal: $940.94 • Québec: $567.68	• Federal: $672.10 • Québec: $405.52
Health services (contribution is a percentage of the total payroll established according to the size of the payroll and economic activity)	• Between 1.6% and 4.26%	• None

6. Intellectual Property

Intellectual property protection falls primarily within federal jurisdiction in Canada and includes the *Patent Act*, *Trade-marks Act*, *Copyright Act*, and *Industrial Design Act*. These laws are administered by the Canadian Intellectual Property Office.

Type of intellectual property	Length of protection
Copyright	• End of the calendar year in which the author dies + 50 years (for works)
Trade-mark	• 15 years, renewable
Patent	• 20 years from the date of the application (but adjustment possible for pharmaceutical patents)
Industrial design	• 10 years

7. Immigration

WORK PERMITS

Foreigners who want to work in Canada must apply and obtain a work permit. Foreign workers must submit an offer of employment from a future employer established in Canada. The general rule is that an employer who wants to bring a worker to Canada must first obtain a positive Labour Market Impact Assessment from Employment and Social Development Canada (ESDC). The notice must confirm the authenticity of the offer of employment and likelihood of its neutral or positive economic impact on the Canadian labour market. That being said, it is possible to obtain an exemption from this requirement in a number of circumstances. Without providing an exhaustive list, here are some examples. Several other possibilities can be examined depending on the specific circumstances.

INVESTORS

Investors, executives, or supervisors or officers of a company that is proposing to invest significant capital to create or develop a business in Québec may obtain a work permit exempt from the regular process under the terms of the new Comprehensive and Economic Trade Agreement between Canada and the European Union (CETA) regarding international mobility.

INTRA-COMPANY TRANSFERS

Once your subsidiary, branch, or affiliated company is incorporated in Québec, you can temporarily transfer your officers or managers and some employees with specialized knowledge about your business products or services. Those who come to Canada as part of career development can also be transferred.

IMMIGRANT ENTREPRENEURS

Canada has created the start-up visa program targeting immigrant entrepreneurs who have the skills and potential to build innovative businesses in Canada that can create jobs for Canadians and compete on a global scale.

FRENCH EMPLOYEES IN QUÉBEC

A 2008 agreement between Québec and France established a common procedure for recognizing professional competence aimed at facilitating and accelerating the acquisition of a permit to practise a profession or regulated trade in the other territory. Arrangements signed to date cover 82 professions, trades and functions, including engineers and nurses.

8. French Language Requirements in Québec

French is the main language used by a majority of the Québec population. Québec is the only province in Canada where French is the official language.

The *Charter of the French language,* also known as *Bill 101*, makes French the language of government and the law, as well as the normal daily language at work, of commerce and of business, and it includes rules on corporate names, signage and work tools. Note that businesses with 50 or more employees must complete a francization program to ensure that the use and knowledge of French is generalized within the business.

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Any questions?

Let’s talk.