



Constitution, Government and Legal System

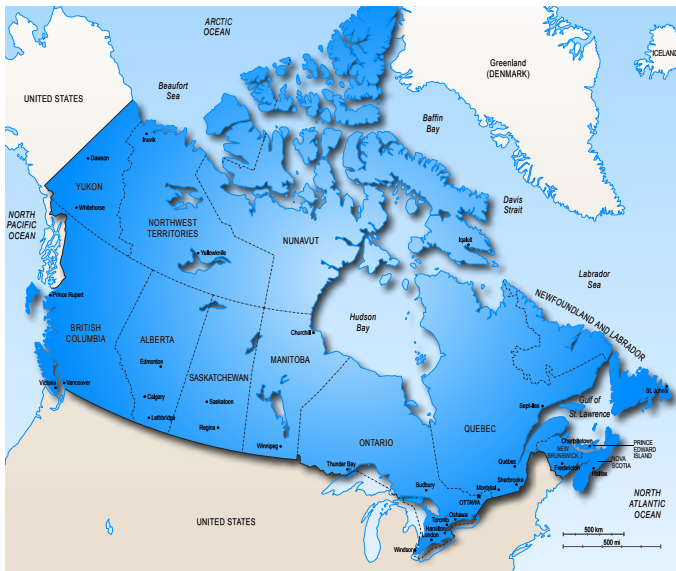


Doing Business in Canada

AIRD BERLIS

2024
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Canada was created in 1867 and currently consists of 10 provinces and three territories. Canada is a parliamentary democracy and constitutional monarchy with King Charles III as its head of state. The Governor General, to whom the King has delegated all of his powers over Canada (except the power to appoint or dismiss the Governor General), is obliged to follow the wishes of Canada's elected representatives. As the King's representative in Canada, the Governor General's role is largely ceremonial. Canada's two official languages are English and French and both have equal status in federal courts, Parliament and in all federal institutions.



[Image: Map of Canada, Source: Encarta]

GOVERNMENT AND POLITICS

Canada is a federal state in which legislative power is constitutionally divided between the federal government and the provincial governments. A third level of government, municipal or local government, has only the powers granted to it by the applicable provincial government. The federal and the provincial governments have exclusive jurisdiction and legislative powers over specified matters. The federal government also has “residual” jurisdiction over matters not specifically assigned to the provinces. In addition, while Canada's three territories (Yukon, Northwest Territories and Nunavut) have legislatures and govern themselves on local matters, their constitutional responsibilities are fewer than those of the provinces.

The federal government has control over matters of national interest, such as trade and commerce, transportation and communication, banking, currency, customs and excise, external

relations, defence and criminal law. The provincial governments have power over matters of a local nature, such as property and civil rights within the province, municipal institutions, education, health and welfare, and the administration of justice. Since coming into force more than three decades ago, the *Canadian Charter of Rights and Freedoms*, has imposed limitations on government powers in order to protect civil liberties.

Canada has a parliamentary government. The legislative power of the federal government is vested in the Parliament of Canada, which consists of the Crown, an upper house, known as the Senate, and a lower house, known as the House of Commons. The members of the House of Commons (known as Members of Parliament, or MPs) are chosen in a general election held on the third Monday of October in the fourth calendar year following the last general election, though there is no prohibition on a general election being called on another date, when, on the advice of the Prime Minister, the Governor General dissolves Parliament. The federal government is headed by the Prime Minister, who is normally the leader of the political party that has the most members in the House of Commons. The members of the Senate are currently appointed by the Governor General on the recommendation of the Prime Minister, and appointments are distributed on a regional basis.

Canada's provinces have systems of government which parallel that of the federal government in several ways. A premier leads each provincial government by virtue of being the leader of the political party with the most support in the provincial legislature, and forms a cabinet from the elected members of the governing party. As the federal and the provincial governments are elected separately, there may be different political parties in power at each level. There are no provincial bodies that are equivalent to the Senate.

Those seeking to do business and/or develop a project in Canada need to be mindful of the fact that various Indigenous groups in Canada have their own governments and jurisdictions of authority that may overlap with provincial or federal regimes. Canada's Constitution also enshrines the Indigenous and treaty rights of the Indigenous Peoples of Canada. At present, the scope and nature of these Indigenous and treaty rights are not clearly defined in Canadian law and, in turn, they have not been addressed and accommodated within all the various aspects of Canada's governance and legal frameworks. However, with the passing of the *United Nations Declaration on the Rights of Indigenous*

Peoples Act in 2021, the federal government took a significant step forward in Canada's implementation of the United Nations Declaration on the Rights of Indigenous Peoples ("**UNDRIP**") which requires the federal government to take all measures necessary to ensure that federal laws are consistent with UNDRIP, and to do so in consultation and co-operation with Indigenous Peoples. As a result, those doing business or developing a project in a particular region of Canada will want to identify and understand the dynamic and issues between the local Indigenous groups and the various local and provincial governments and regulators, as well as the federal government, to fully understand all of the implications of doing business in that particular region.

LEGAL SYSTEM

There are two legal systems in Canada: British-based common law and European-style civil law. Civil law predominately applies in the province of Quebec, while common law applies in all other provinces and territories. Both legal systems are subject to the Constitution of Canada.

The Supreme Court of Canada is Canada's highest court. It is the final court of appeal having jurisdiction to hear appeals from the courts of appeal of each province, as well as from the Federal Court of Appeal, which has jurisdiction over a relatively small range of specialized areas under the jurisdiction of the federal government, such as intellectual property. The Supreme Court of Canada consists of nine judges, three of whom must be from the province of Quebec. The judges of the Supreme Court, the Federal Court and certain provincial courts (so-called "**Superior Courts**") are appointed by the Governor General on the advice of the Prime Minister and cabinet.

May 2024

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