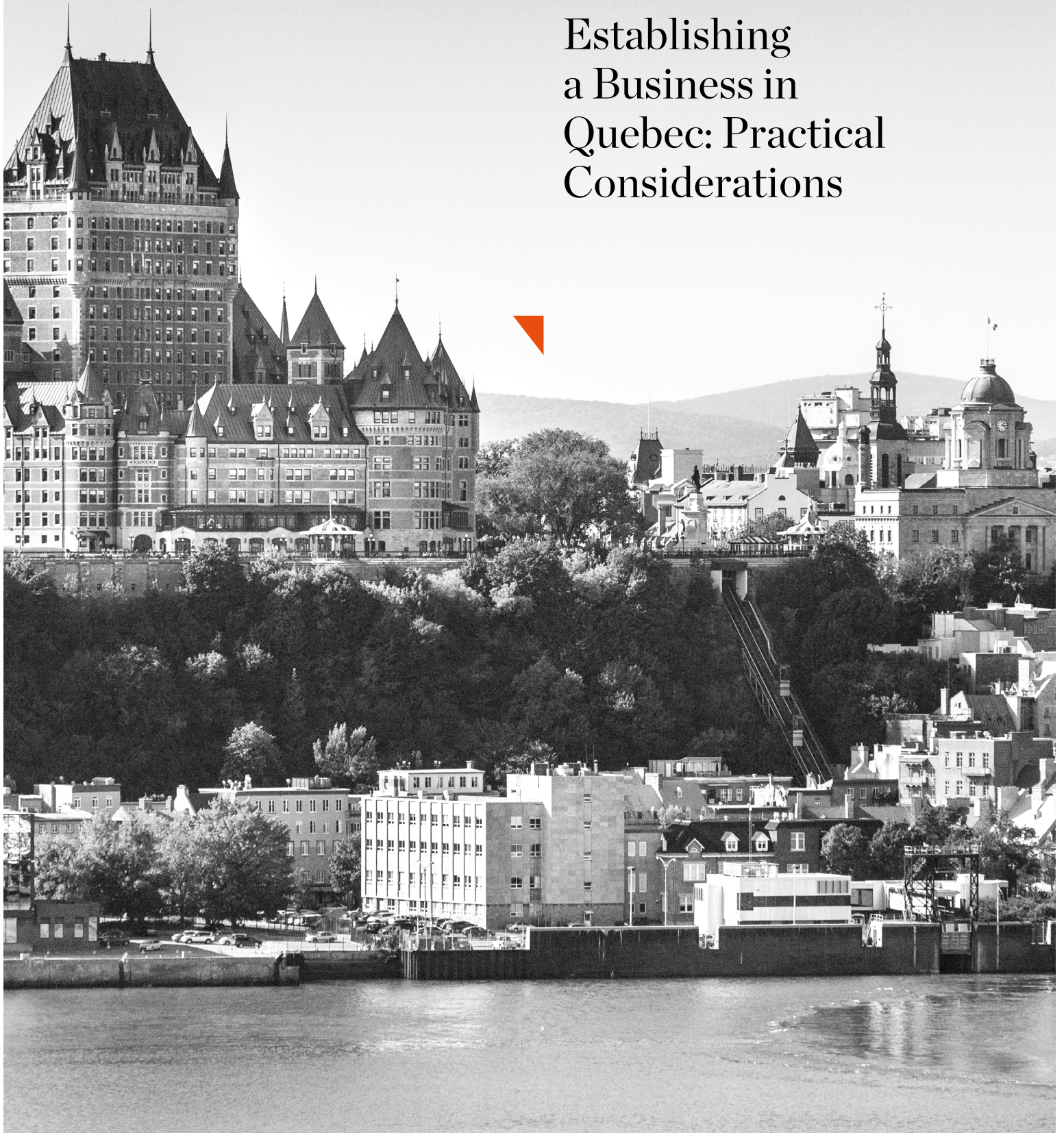


16.

Establishing a Business in Quebec: Practical Considerations



A. Introduction

Choice Destination for Business

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

	Canada	Quebec
Capital	Ottawa	Quebec City
Largest city	Toronto	Montreal
GDP (expenditures)	\$2,077 billion	\$406.8 billion
Population	38.1 million	8.58 million

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.

Legal and Constitutional Framework

Canada benefits from two legal traditions: civil law applies in the province of Quebec 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	Interprovincial trade	Public works
Bankruptcy	Municipal institutions	Immigration
National defence	Health	Agriculture
Criminal law	Education	Transportation and communications
Telecommunications	Real estate	Corporate law

B. 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 Quebec, corporations are created and governed by the Quebec Business Corporations Act (QBCA). Under the federal system, they are created and governed by the *Canada Business Corporations Act* (CBCA).

A corporation can do business anywhere in Canada, whether federally or provincially incorporated. However, the provincially incorporated company must register in each province where it does business pursuant to local rules and those governing the registration of corporations. 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 Quebec system applicable to the two first items is particularly appreciated by foreign investors.

	CBCA (Canada)	QBCA (Quebec)
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
Shareholders’ meetings	In Canada	Can be held outside Quebec if permitted by the articles or if all the shareholders agree
Head office	In Canada	In Quebec
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 certain 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.

	Canada	Quebec
	Incorporation Fees	
Regular Service	\$200	\$347
Priority Service	\$100	\$520.50
	Registration Fees in Quebec	
Regular Service	\$347	None
Priority Service	\$520.50	
	Registering for Sales Tax	
Regular Service	\$100.00	
Priority Service	\$170.00	
	\$20 (online)/\$40	\$93

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 Quebec, the Registraire des entreprises du Quebec 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 services. Below are some of the fees charged by the competent authorities:

You will receive a Quebec Enterprise Number (NEQ) after incorporating under the QBCA or registering a federal corporation in Quebec. The NEQ is the official identification number of each enterprise doing business in Quebec and the 10-digit reference number helps simplify dealings between a business and Quebec 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 Quebec 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 Quebec corporations, and any other corporation registered in Quebec, file an annual updating declaration with the Registre des entreprises.

Main Features and Governance of Corporations

Both federal and Quebec 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 the illegal declaration or payment of dividends, for wages for services rendered for the corporation up to six months, or even for 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 Quebec*.

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.

C. International Trade

The Canada and European Union *Comprehensive Economic and Trade Agreement* (CETA) entered into force on a provisional basis at the end of 2017 and opened the door to an impressive series of business opportunities for European companies. Among its benefits the CETA:

- Eliminated tariffs on over 95% of goods entering Canada from Europe
- Offers significant Canadian opportunities to European service providers, including in financial services
- Opened Canada's government procurement market to European companies offering goods and services. These companies can now bid on public sector procurement by the federal, provincial, territorial, regional and municipal sectors governments and authorities
- Relaxed the rules on employee, owner and investor mobility from Europe to Canada

Following the UK's exit from the European Union, the Canada-United Kingdom Trade Continuity Agreement entered into force on April 1, 2021. That agreement preserved preferential market access for both Canadian and UK businesses while the two countries negotiated a permanent trade agreement. The *Comprehensive Economic and Trade Agreement* (CETA) is an ambitious agreement that offers significant opportunities for European Union and United Kingdom businesses.

In addition, given Canada's privileged relationship with the United States and Mexico under the Canada-United States-Mexico Agreement, investing in Canada can be a major springboard into the US and Mexican markets.

D. 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 their income from Canadian sources.

Personal Income Tax in Quebec and Canada

Personal income tax is based on residency in Canada. Subject to a tax agreement to the contrary, a non-resident Canadian who remains in Canada for 183 or more days during a calendar year is deemed to be a resident of Canada throughout that entire year for tax purposes. Residents of Canada are subject to Canadian tax on their worldwide source of income.

The applicable tax rates for 2021 are as follows:

Quebec

Income tax brackets	Rate
\$45,105 or less	15%
From \$45,105 to \$90,200	20%
From \$90,200 to \$109,755	24%
Over \$109,755	25.75%

Federal

Income tax brackets	Rate
On the first bracket of taxable income of \$49,020 +	15%
On the following bracket of \$49,020 of taxable income (on the taxable income between \$49,020 and \$98,040), +	20.5%
On the following bracket of \$53,939 of taxable income (on the taxable income between \$98,040 and \$151,978), +	26%
On the following bracket of \$64,533 of taxable income (on the taxable income between \$151,978 and \$216,511), +	29%
On the taxable income over \$216,511	33%

Corporate Tax In Quebec and Canada

Federal and Quebec corporate income tax rates vary depending on the sector of activity and type of corporation. Corporations that reside 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 2021:

	Business Income	Investment Income
Quebec	26.5%	26.5%
Ontario	26.5%	26.5%
Alberta	23%	23%
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 (Quebec)

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

The GST and QST are value-added taxes and an input mechanism is available for registrants to reclaim the GST and QST paid on their expenses incurred in the course of their business activities.

Tax	Rate
GST	5%
QST	9.975%
Total	14.975%

In some of the other provinces (Prince Edward Island, New Brunswick, Nova Scotia, Ontario, and Newfoundland and Labrador), the GST and the provincial or territorial sales tax have been harmonized into the harmonized sales tax (HST). A person registered for GST is automatically registered for HST. There is also a provincial sales tax in British Columbia, Manitoba and Saskatchewan.

Planning 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 for the services received and costs invoiced by the parent company and deduct these amounts from its income. However, and with limited exceptions, any payment for services rendered in Canada by a non-resident person is subject to a Canadian withholding tax of 15% plus a Quebec withholding tax of 9% if the services are rendered in Quebec. A non-resident service provider can be refunded

any withholdings at the end of its fiscal year by filing Canadian and Quebec 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/Quebec 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 with 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.

E. Human Resources

Legal Framework in Quebec

Quebec'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.

The *Act Respecting Labour Standards* notably establishes the obligation for employers to provide their employees with a work environment free of psychological harassment. Employers

with a business in Quebec must notably adopt and make available to its employees a psychological harassment prevention and complaint processing policy that includes, in particular, a section on sexual harassment.

Minimum Wage

In Quebec, the *Act Respecting Labour Standards* determines the minimum employment conditions, such as wages. The general minimum wage rate in Quebec is currently \$13.50 per hour worked.

Normal Work Hours

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

Statutory Holidays and Vacation

Quebec 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 three years of service are entitled to three weeks paid vacation.

Notice of Termination of Employment

Under the *Civil Code of Quebec*, both the employee and the employer must give reasonable notice when terminating employment when the employee has been hired for an indeterminate amount of time and is not a contract or temporary worker. Under the Quebec

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 while employers are ultimately responsible for workplace health and safety, both workers and employers must strive to identify risks and develop strategies to protect workers.

Additionally, the competent provincial government departments or bodies are responsible for inspecting and monitoring workplace safety. In Quebec, 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 workers' 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 policies and procedures regarding 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* (Quebec), 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. These laws relate to personal information, namely the data that is unique to each individual and that is used for identification purposes.

Unionization

Freedom of association is protected in Quebec and elsewhere in Canada. With respect to this protected right, the *Quebec Labour Code* sets out the requirements for forming a union in Quebec 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 Quebec, 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 Quebec equivalent, the Quebec 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 (2021 maximum contribution)	\$3,137.40	\$3,137.40
Employment Insurance (2021 maximum contribution)	Federal: \$1,245.36 Quebec: \$930.08	Federal: \$889.54 Quebec: \$664.34
Health Services (contribution is a percentage of the total payroll established according to the size of the payroll and economic activity)	Between 1.65% and 4.26%	None

Reintegration - Act Respecting Labour Standards

Unlike in other provinces in Canada, Quebec employees have access to some remedies that allow them to be reinstated in their positions after dismissal under certain circumstances.

For instance, an employee with two years of continuous service at the same company who is dismissed other than for cause or an employee who is dismissed as a result of exercising a right under the *Act Respecting Labour Standards* gains access to these remedies.

F. Intellectual Property

Intellectual property protection falls primarily within federal jurisdiction in Canada and includes the *Patent Act*, *Trademarks 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). This period will be extended before the end of 2022 to 70 years after the end of the calendar year in which the author dies.
Trademark	10 years, renewable.
Patent	20 years from the date of the request (but adjustment currently possible for pharmaceutical patents). An adjustment to account for the unreasonable delays before the patent office will be implemented before January 1, 2025.
Industrial design	10 years from the date of registration or, if posterior, 15 years from the date of the application.

G. Immigration

Work Permits

Foreigners who want to work in Canada must apply and obtain a work permit. To do so, they 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

A company that is proposing to invest significant capital to create or develop a business in Quebec may obtain a work permit exempt from the regular process for its investors, executives, supervisors, or officers under the terms of the Comprehensive and Economic Trade Agreement (CETA) between Canada and

the European Union regarding international mobility.

Intra-Company Transfers

Once your subsidiary, branch, or affiliated company is incorporated in Quebec, 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 Quebec

A 2008 agreement between Quebec and France established a common procedure for recognizing professional competence aimed to facilitate and accelerate 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.

H. French Language Requirements in Quebec

French is the main language used by a majority of the Quebec population. Quebec 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.
