



# Canada

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## General

### 1 How can the government's attitude and approach to internet issues best be described?

The Canadian government recognises that Canada is a small country in a global economy and pursues a general policy to improve a connected Canada. Broadband internet access is essential infrastructure in the country and significant amounts of money have been spent to ensure that the urban and rural divide in access is bridged. Having said that, the government appears to have slowed its development goal of high-speed internet access for Canadians in the most difficult-to-access areas. The Canadian government's approach to regulation of the internet has been relatively laissez-faire until more recently when it introduced Canada's anti-spam legislation (CASL), which governs commercial electronic messages and has been somewhat controversial in its breadth and approach. The federal government has also become interventionist in privacy matters in the name of security. Bill C-51 is a controversial piece of legislation that will allow, for example, federal departments to share highly sensitive personal information if that information is used by other departments in the enforcement against security threats.

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## Legislation

### 2 What legislation governs business on the internet?

There are a number of statutes that govern the internet in Canada, both federal and provincial. Most provincial legislation is focused on electronic transactions (governing the use of electronic signatures and documents), and, where provinces have introduced such legislation, on privacy. Federal legislation governs telecommunications carriers, intellectual property laws, criminal or regulatory laws (such as competition) and privacy. More recently, the federal government introduced CASL. The legislation, officially known as 'An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act' came into effect on 1 July 2014.

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## Regulatory bodies

### 3 Which regulatory bodies are responsible for the regulation of e-commerce, data protection and internet access tariffs and charges?

Privacy is regulated federally by the Office of the Privacy Commissioner of Canada and by provincial or territorial privacy commissions. The CASL has three regulatory bodies tasked with various aspects of enforcement. The Canadian Radio-television and Telecommunications Commission (CRTC) may impose monetary penalties for violations of CASL; the Competition Bureau may impose monetary penalties or, where applicable, criminal sanctions under the Competition Act; and the Office of the Privacy Commissioner has new powers under the Personal Information Protection and Electronic Documents Act, (PIPEDA). In addition, Canada's top level domain .ca is governed by the Canadian Internet Registration Authority (the CIRA), which has a domain name dispute resolution mechanism.

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## Jurisdiction

### 4 What tests or rules are applied by the courts to determine the jurisdiction for internet-related transactions (or disputes) in cases where the defendant is resident or provides goods or services from outside the jurisdiction?

Jurisdictional issues are a challenge. Case law has generally supported exclusive jurisdiction clauses unless there is a specific reason to overrule them. The burden of establishing a specific reason rests with the plaintiff and the threshold to be surpassed is beyond the mere 'balance of convenience'.

Otherwise, traditional common law principles have been used by the courts to determine jurisdictional issues, which, in an online environment have proved more challenging to apply. For example, factors such as the 'substantial connection' test will look to the location of the vendor, the intermediaries and the end user.

Legislation, such as consumer protection legislation, may also be applied to determine whether certain aspects of online commerce are in compliance. For example, depending upon the wording of the provincial legislation, the courts may be willing to apply such laws both where the consumer is located in the province even if the vendor is not, or where the vendor is located in the province and the end-user is not.

In two recent British Columbia Court of Appeal cases, online terms and conditions setting a specific jurisdiction for dispute resolution outside of the country were determined to be, on the one hand, enforceable (*Douez v Facebook, Inc*) overturning a BC Supreme Court decision which had concluded that the Privacy Act (BC) confers exclusive jurisdiction to the BC Courts to the exclusion of courts worldwide. The BC Court of Appeal disagreed, stating that the provisions of the Privacy Act grant exclusive jurisdiction over other courts in BC. However, in *Equustek Solutions Inc v Google Inc*, the BC Court of Appeal upheld an injunction against Google requiring Google to remove a website from its global search engine. In the underlying case, Google was a third party in a case between a network hardware manufacturer that claimed another company had improperly used proprietary information to compete. The basis of the Court of Appeal's decision in upholding the trial decision was that Google in fact carried on business in BC (notwithstanding having not presence there) on the basis that 'the gathering of information through proprietary web crawler software ("Googlebot") takes place in British Columbia. This active process of obtaining data that resides in the Province or is the property of individuals in British Columbia is a key part of Google's business.'

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## Contracting on the internet

### 5 Is it possible to form and conclude contracts electronically? If so, how are contracts formed on the internet? Explain whether 'click wrap' contracts are enforceable, and if so, what requirements need to be met?

Electronic contracts are enforceable in Canada. Almost all jurisdictions in Canada have passed specific legislation conferring upon electronic transactions the same legal status as paper-based contracts. All the common law requirements for the formation of a contract, including offer, acceptance and consideration apply. In Quebec, contracts require compliance with the Quebec Civil Code.

Click wrap agreements have generally been found to be enforceable in Canada. Notice plays a part in the determination of enforceability, as does the 'accessibility' of the terms of contract. The Supreme Court of

Canada upheld an arbitration clause in an online contract where the contractual terms and conditions were only reached by hyperlink. In its finding, the Court stated that as long as the terms were 'reasonably accessible' they were enforceable, and determined that a document accessed only by hyperlink was sufficient to meet that test.

#### **6 Are there any particular laws that govern contracting on the internet? Do these distinguish between business-to-consumer and business-to-business contracts?**

The provinces and territories in Canada have generally adopted their own specific legislation dealing with electronic commerce. Each Act deals primarily with confirming the legal status of electronic-based records or signatures (other than certain specific types of contracts, such as wills) as well as records retention and confirming the formation and operation of contracts by means of electronic record or activity in electronic form (eg, clicking on some form of icon indicating acceptance of an offer).

In addition, most provinces and territories also have their own consumer protection laws and many have passed regulations in respect of internet agreements or contracting. Such regulations deal with required disclosure of a vendor with respect to itself and the goods and contract in question, as well as providing for rules surrounding the ability of a consumer to cancel an internet contract (see the Internet Sales Contract Regulation to the Alberta Fair Trading Act).

As mentioned above, the introduction of CASL has also required compliance by any business intending to communicate via the internet with any 'commercial electronic message' including with respect to content and permission.

#### **7 How does the law recognise or define digital or e-signatures?**

At both the federal and provincial level, legislation is in place to specifically recognise electronic transactions, including the requirement of execution. Generally speaking, Canadian law is enabling and 'technology-neutral'. Rather than requiring evidence of the reliability of individual signatures or electronic signature certification, the legislation presumes reliability when the system that produces or stores the signature is reliable.

Under PIPEDA, the federal legislation, an electronic signature is defined as a 'signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with an electronic document. The PIPEDA further defines 'secure electronic signature' as an electronic signature that results from the application of a technology or process that meets certain tests prescribed by regulation, which tests relate to reliability attributes of the technology to identify the individual. The PIPEDA then stipulates that if there is a requirement under federal law for a signature, it is satisfied by an electronic signature.

At the provincial level, most provinces and territories have passed enabling legislation that confirms the efficacy of electronic contracts, including the fulfilment of execution of that contract by way of digital signature. In British Columbia, the Electronic Transactions Act defines an 'electronic signature' as 'information in electronic form that a person has created or adopted in order to sign a record and that is in, attached to or associated with the record.' There are certain records that will not recognise such electronic signatures, such as wills, powers of attorney or documents that create or transfer an interest in land.

#### **8 Are there any data retention or software legacy requirements in relation to the formation of electronic contracts?**

Record or data retention in Canada is prescribed by a number of different statutes. Federally, the PIPEDA provides specifically for retention of electronic contracts. If there is a requirement under a provision of a federal law to retain a document, that requirement is satisfied by the retention of an electronic document if the document is retained for the period required by such federal law in the format in which it was made, sent or received or in a format that does not change the information contained in the document, and that the record is capable of being read by anyone entitled to access. Finally, if the electronic document was sent or received, then information identifying the origin of the document and destination of the document must also be retained. Similar requirements are contained in provincial legislation. For example, the British Columbia Electronic Transactions Act contains provisions that require the retained record to be in the format it was created in, accessible and readable and that identifies the origin and destination of the record.

Examples of federal laws requiring document retention: the Income Tax Act, the Customs Act and the Canada Business Corporations Act.

### **Security**

#### **9 What measures must be taken by companies or ISPs to guarantee the security of internet transactions?**

Compliance with provincial electronic transactions legislation and applicable consumer protection legislation must be adhered to. There are no legislative requirements, other than:

- ensuring safeguards in the collection;
- using and disclosing personal information pursuant to privacy laws;
- ensuring collection only of personal information that is necessary;
- using such information only for the purpose it was collected for;
- disclosing it only on consent;
- keeping such information only for so long as is necessary for the purpose for which it is collected; and
- keeping the information safe from data breach.

ISPs do, however, also comply with standards of data protection, such as certification under the International Standards Organization (the ISO) and maintaining best practices in accordance with industry standards and expectations. Such commitments are often contained in contracts and RFPs.

#### **10 As regards encrypted communications, can any authorities require private keys to be made available? Are certification authorities permitted? Are they regulated and are there any laws as to their liability?**

At present, there is no governmental oversight over encryption, certification or authorisation operations. The government, through law enforcement agencies, does have various search and seizure rights under the Criminal Code, the Competition Act and other legislation and, subject to the general requirements for the application of warrants, which could include the requirement for disclosure of encryption keys.

The federal government through Industry Canada (the government department responsible for fostering industry and economic growth) published the Principles for Electronic Authentication, a set of guidelines developed by various public and private entities. These principles are not law. The principles focus on the participants in the authentication process, in particular in connection with risk management, privacy and disclosure management.

### **Domain names**

#### **11 What procedures are in place to regulate the licensing of domain names? Is it possible to register a country-specific domain name without being a resident in the country?**

Canada's internet country code top-level domain name is operated by the Canadian Internet Registration Authority (the CIRA), a not-for-profit Canadian corporation. The CIRA develops and implements domain name policy, facilitates dispute resolution and licenses domain name registrars. The CIRA also represents Canada as a member of the Internet Corporation for Assigned Names and Numbers (ICANN).

To register for a .ca domain name, the registrant must have a Canadian presence (ie, the registrant must be a Canadian citizen, permanent resident, Canadian corporation, partnership, trust or society or other association with Canadian owners, members, directors etc, or the owner of a registered Canadian trademark).

#### **12 Do domain names confer any additional rights (for instance in relation to trademarks or passing off) beyond the rights that naturally vest in the domain name?**

Beyond the right to use the .ca domain name, the granting of the domain name does not confer any additional rights in connection with a trademark or otherwise in terms of common law marks. Under the Canadian Dispute Resolution Policy (the CDRP) administered by the CIRA, a registrant must submit to a proceeding if a complainant submits that the registrant's dot-ca domain name is confusingly similar to a registered Canadian trademark in which: the complainant had rights prior to the date of registration of the domain name and continues to have such rights; the registrant has no legitimate interest in the domain name; and the registrant has registered the

domain name in bad faith. The terms 'marks', 'rights', 'confusingly similar' and 'legitimate interests' are all prescribed by the policy.

### 13 Will ownership of a trademark assist in challenging a 'pirate' registration of a similar domain name?

Registration in Canada of a trademark will assist in challenging certain domain name registrations. In order for a party to use the CIRA's CDRP mechanism to force the transfer of a registration that is confusingly similar to a trademark and where the registrant has no legitimate interest in the domain name or has registered in bad faith, the complainant must have a Canadian registered trademark.

## Advertising

### 14 What rules govern advertising on the internet?

Advertising generally is governed by both federal and provincial laws. Federally, advertising laws are contained within, principally, the Competition Act, which falls under the responsibility of the federally appointed agency, the Competition Bureau. The Competition Act is the general legislation that applies to all advertising, regardless of the platform or method of delivery and whether or not advertising is made to consumers or business customers. Although not law, certain advertising standards and practices in connection with advertising, including online advertising, are administered by a national not-for-profit self-regulatory body called Advertising Standards Canada (the ASC). The ASC's members include consumer packaged goods companies, advertising agencies and advertisers.

In addition to the above, CASL regulates all commercial electronic messages (CEM) including those by electronic mail, portals and social networking sites. Businesses are prohibited from sending CEMs without consent. The entity sending the CEM must adequately identify itself and provide an 'unsubscribe' option in addition to ensuring that it has consent.

Provincially, legislation revolves around consumer protection statutes that address such things as misleading communications aimed at a consumer. Such statutes may require the disclosure of certain information, an express ability to accept or decline the agreement in favour of the consumer and the requirement for delivery of a written copy of the agreement within a stipulated time frame.

### 15 Are there any products or services that may not be advertised or types of content that are not permitted on the internet?

In addition to the general compliance requirements under the Competition Act and other more specific legislation cited above, any advertising of illegal substances, or anything that contains other illegal materials such as child pornography or hate literature or anything that leads to a determination that such advertising contravenes human rights legislation will be subject to the sanctions in applicable law, including under the Criminal Code.

## Financial services

### 16 Is the advertising or selling of financial services products to consumers or to businesses via the internet regulated, and, if so, by whom and how?

In addition to the general application of such laws as the Competition Act referred to above, institutions that are governed by federal legislation (such as banks) are subject to federal legislation, and provincial institutions such as credit unions operating in a specific province are subject to specific provincial legislation. Other financial products may be governed by applicable securities laws in Canada. Federally, oversight of financial institutions broadly described as 'deposit-taking institutions', 'insurance companies' and pension plans is by the Office of Superintendent of Financial Institutions (the OSFI). The OSFI's mandate is to supervise such institutions and to ensure that sound financial practices are in place and exercise their powers to intervene to protect the rights and interests of depositors, policyholders and pension plan members.

As well, certain provincial legislation addresses consumer credit issues including disclosure of terms of credit arrangements and rights and obligations of borrowers and guarantors.

## Defamation

### 17 Are ISPs liable for content displayed on their sites?

Canada relies on common law principles to determine liability. There are no statutory provisions in Canada either imposing liability on ISPs

or exempting ISPs from liability for content on the internet. Generally speaking the courts have found that it is the person posting the content, not the ISP, that is responsible and liable for that content. In particular, the Supreme Court of Canada in a case brought by the Society of Composers, Authors and Music Publishers of Canada (known as the *Tariff 22* case), found that ISPs simply provide the means for the telecommunication of published materials, and, accordingly are shielded from liability under section 2.4(1)(b) of the Copyright Act, which provides that 'a person whose only act in respect of the communication of a work or other subject-matter to the public consists of providing the means of telecommunication necessary for another person to so communicate the work or other subject-matter does not communicate that work or other subject-matter to the public.'

### 18 Can an ISP shut down a web page containing defamatory material without court authorisation?

While ISPs in Canada have generally successfully argued 'innocent dissemination' of content, and therefore that they are not liable for having defamatory material posted; there is a 'chill' effect to not having any specific statutory provisions that exempt the ISP from liability, therefore, the threat of litigation will often result in the ISP removing content that is alleged to be defamatory, and the ISP can generally do so under its contractual terms of service with customers. As such, an ISP on notification of such material should remove it. In addition, there is no certainty that an ISP will not be found liable either on the grounds that the ISP did not meet the test of innocent disseminator or because it was effectively negligent in failing to know about the defamation. In order to preserve its defence, an ISP may remove content on notice that it is defamatory lest it becomes liable for being made aware of such content and not taking prudent steps to eliminate the continued dissemination of that content to third parties. In *Carter v BC Federation of Foster Parents Assn*, the British Columbia Court of Appeal held that if a content provider exercises a degree of control over, or knowledge of, defamatory material, then it may be held liable for defamation.

## Intellectual property

### 19 Can a website owner link to third-party websites without permission?

There is no requirement for permission to link to another's website. The website link itself is simply to an address. However, see question 20.

### 20 Can a website owner use third-party content on its website without permission from the third-party content provider?

A website owner will be subject to applicable Copyright Act requirements and will not be able to simply use content that has been developed and is owned by others on its site. All work that qualifies as such under the Copyright Act including work that is written for display via the internet, is covered by the protection of the Copyright Act.

### 21 Can a website owner exploit the software used for a website by licensing the software to third parties?

If the website owner owns, or otherwise licenses and has the right to sublicense the software, then it may license or otherwise exploit that software through agreements governed generally by contract.

### 22 Are any liabilities incurred by links to third-party websites?

If a link to a website results in the further publication of a copyrighted work, the party linking may be found to be liable under the Copyright Act. If infringement is found, the infringing party may be required to pay damages, statutory damages, injunctive relief and payment of profits attributable to the infringing use.

## Data protection and privacy

### 23 How does the law in your jurisdiction define 'personal data'?

The PIPEDA defines 'personal information' as information about an identifiable individual, but that does not include the name, title or business address or telephone number of an employee of an organisation. Provincial legislation similarly describes 'personal information'.

The Privacy Act, which is legislation for the purpose of extending the present laws of Canada to protect the privacy of individuals with respect to personal information about themselves held by a government institution, defines 'personal information' as 'information about an identifiable individual that is recorded in any form', and includes information relating

### Update and trends

The federal government has just introduced an update to PIPEDA which now, through an amendment to the Act, provides for mandatory notification to the Privacy Commissioner as soon as feasible where there is a real risk of significant harm to an individual. The organisation should also notify the individual to allow them to take steps if possible, to reduce or mitigate the harm caused by the breach.

As mentioned above, the federal government introduced Bill C-51 (Anti-Terrorism Act, 2015), which received royal assent in June, 2015. This is controversial legislation largely because of the concerns over the powers that it grants to federal agencies to exchange personal information of any Canadian, as well as the more expansive powers given to the Canadian Security Intelligence Service. The trigger for information sharing amongst federal departments is broadly worded to encompass 'threat' including anything relevant to the protection of the Canadian economy.

to the race, national or ethnic origin, colour, religion, age or marital status of the individual and information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved.

#### 24 Does a website owner have to register with any regulator to process personal data? May a website provider sell personal data about website users to third parties?

The processing of personal data is subject to applicable privacy laws, either federally under the PIPEDA or under provincial legislation such as the Personal Information Privacy Act, British Columbia. There is no registration process, nor any controlling body. There are national and, for provinces with privacy legislation, provincial privacy commissioners, but their role is to advocate for privacy issues. For example, the Privacy Commissioner of Canada is an officer of Parliament and reports to the House and the Senate. The mandate of the Commissioner is to investigate complaints, conduct audits, pursue court actions under federal laws, report on personal information handling practices and support and promote public awareness and understanding of privacy issues.

A website provider may sell personal data about website users to third parties but only in strict compliance with the applicable privacy laws, which provide for a requirement of informed consent from the individual to whom the personal information applies, obtained and not withdrawn prior to the sale of such information.

#### 25 If a website owner is intending to profile its customer base to target advertising on its website, is this regulated in your jurisdiction? In particular, is there an opt-out or opt-in approach to the use of cookies or similar technologies?

Subject to the comments below regarding CASL, as long as information is generalised and does not constitute personal information under applicable privacy laws, there is no prohibition on such profiling. The use of cookies that help track a website user's preferences is not prohibited in Canada, but again, must comply with privacy legislation and with CASL. Where a program is installed on a computer that causes a message to be sent through cookies or similar technologies, such messages are CEMs and subject to CASL, meaning in order to do so, the sender must have obtained consent. In addition, if cookies are actually installed or executable computer programs then consent will be required under CASL.

#### 26 If an internet company's server is located outside the jurisdiction, are any legal problems created when transferring and processing personal data?

All collection of personal information in Canada is subject to applicable privacy legislation, regardless of whether it is stored inside or outside of Canada. The party collecting the information still has responsibility with respect to the collection, storage and use of that information. Certain parties such as governmental organisations and hospitals are particularly concerned about meeting their obligations under privacy legislation in Canada where the information is stored on servers in the United States because of the broad-reaching rights granted to law enforcement agencies under the Patriot Act. Entities collecting personal information are responsible for such information, and as a result, view cross-border risk as too great.

#### 27 Does your jurisdiction have data breach notification laws?

Certain provinces have included in their privacy laws breach notification provisions requiring organisations to notify affected individuals directly if their personal information has been accessed or taken in an unauthorised manner and very recently, the federal legislation was amended to include a notification requirement (see Update and trends).

#### 28 Does your jurisdiction recognise or regulate the 'right to be forgotten'?

No. The federal and provincial privacy laws deal with the collection, use and disclosure of information but not its erasure.

#### 29 Does your jurisdiction restrict the transfer of personal data outside your jurisdiction?

Canada's privacy laws do not prohibit the transfer of personal data outside the country. However, public sector privacy legislation in certain provinces imposes restrictions on public sector bodies transferring personal information across the border.

### Taxation

#### 30 Is the sale of online products subject to taxation?

All sellers are subject to federal and provincial taxes applicable to the transfer of goods and services. Under the Excise Tax Act a goods and services tax (GST) of 5 per cent is applied to all goods and services other than those specifically exempted. GST applies to intangible property such as trademarks, rights to use a patent and digitised products downloaded from the internet and paid for individually. Certain provinces harmonised their provincial sales tax with the GST to create the harmonised sales tax (HST). Those provinces that have not harmonised their provincial sales tax charge provincial sales tax (PST), which ranges from 5 to 10 per cent, other than Alberta, which currently has no provincial sales tax.

If a seller is selling downloadable software by licence to a non-resident who is also not a registrant for GST purposes then the seller does not need to collect GST.

#### 31 What tax liabilities ensue from placing servers outside operators' home jurisdictions? Does the placing of servers within a jurisdiction by a company incorporated outside the jurisdiction expose that company to local taxes?

The applicability of Canadian tax to an operator is its nexus to Canada by way of carrying on business in Canada. A non-resident person is not necessarily considered to be carrying on business in Canada for income tax purposes simply because that person is considered to be carrying on business in Canada for GST or HST purposes.

But there is a patchwork of rules governing whether tax is applicable. For example, in British Columbia, provincial sales tax will apply based on where the user is, not the server, and so tax will always apply but that is not necessarily the case in other jurisdictions. Any assessment of where to locate servers and the business model of software delivery or software services should be assessed at the relevant time as these laws tend to get refined.

#### 32 When and where should companies register for VAT or other sales taxes? How are domestic internet sales taxed?

Domestic internet sales are generally taxable, although certain exemptions will apply. There is no VAT in Canada, but sales of online products by sellers are subject to GST or HST and to the provincial sales taxes where applicable. Therefore, a seller may be required to register with the Canada Revenue Agency (which administers the GST and HST) and with provincial taxation authorities for the purposes of collecting and remitting taxes.

#### 33 If an offshore company is used to supply goods over the internet, how will returns be treated for tax purposes? What transfer-pricing problems might arise from customers returning goods to an onshore retail outlet of an offshore company set up to supply the goods?

If a good is returned, the customer is entitled to a refund of his or her tax paid including GST, HST and, where applicable, PST.

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**Gambling**


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**34 Is it permissible to operate an online betting or gaming business from the jurisdiction?**

Under the Criminal Code it is illegal to carry on unlicensed gambling activities. The code applies, however, only to sites located in Canada. A site located outside of Canada cannot be subject to prosecution under the Code.

**35 Are residents permitted to use online casinos and betting websites? Is any regulatory consent or age, credit or other verification required?**

There is limited ability to prosecute Canadians participating in online casinos and betting websites. While it is illegal to gamble if the resident is under the age of 19, in practice, it is difficult to determine age of majority online.

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**Outsourcing**


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**36 What are the key legal and tax issues relevant in considering the provision of services on an outsourced basis?**

There are a myriad of issues involved in outsourcing transactions. Various laws will apply in particular, depending upon the activity. At the least, privacy laws will be relevant as well as securities laws and employment laws and, in the case of financial institutions, the OSFI's requirements. Depending upon the size and nature of the transaction and parties to the transaction, the Competition Act and the Investment Canada Act may apply.

There are also various tax issues that must be considered, including in particular whether withholding tax requirements under the Income Tax Act are being met.

Key legal issues are primarily those contained in the contract itself including service level and performance requirements, payment structure and risk management issues.

**37 What are the rights of employees who previously carried out services that have been outsourced? Is there any right to consultation or compensation, do the rules apply to all employees within the jurisdiction?**

Employment laws are the subject of provincial jurisdiction and each has similar but not identical standards regarding employment, termination and severance. In Canada, employees who are terminated and transferred to an outsource service provider are entitled to reasonable notice or payment in lieu thereof under both statutory and common law provisions. In some provinces, the number of employees terminated and transferred may also trigger 'group termination' obligations of notice and payment. Statutory provisions deal with minimum employment standards with respect to hours of work, termination, severance pay, paid vacation and overtime pay.

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**Online publishing**


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**38 When would a website provider be liable for mistakes in information that it provides online? Can it avoid liability?**

Website providers are both responsible, and liable, for information that they post online including if that information contains errors, or if the content is otherwise contrary to law on the basis that such information was defamatory or amounted to false or misleading representations. Liability will depend on the nature of the error, but exposure could be to statutory or contractual requirements or to a civil suit. Compliance is the method of avoiding liability, although certain statutory provisions do have 'due diligence' defences that may exempt the offender notwithstanding the error.

**39 If a website provider includes databases on its site, can it stop other people from using or reproducing data from those databases?**

The Copyright Act may apply to the databases contained on a site. Technology such as software programs specifically prohibiting such copying can be deployed. As well, website providers should provide terms and conditions of use of their site, which may be used to combat improper reproduction of data on the basis of contractual breach.

**40 Are there marketing and advertising regulations affecting website providers?**

See previous questions.

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Aviation Finance & Leasing	Executive Compensation & Employee Benefits	Oil Regulation	Shipbuilding
Banking Regulation	Foreign Investment Review	Outsourcing	Shipping
Cartel Regulation	Franchise	Patents	State Aid
Climate Regulation	Fund Management	Pensions & Retirement Plans	Structured Finance & Securitisation
Construction	Gas Regulation	Pharmaceutical Antitrust	Tax Controversy
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