

Introduction to Business Law

October 28, 2016

Introduction to Business Law



What you will learn today:

- The Legal System in Canada
- Examples of How the Law Applies to Businesses
 - Choosing a business structure
 - Dealing with employees
 - Operating and advertising your business
 - Resolving disputes

Introduction to Business Law



The law in Canada comes from two main sources:

1. The Government

- Federal
- Provincial
- Municipal



2. The Courts

- “Judge-made law” / “Precedents”
- Supreme Court binds all other courts



Introduction to Business Law



1. Choosing a business structure [MARIA]

- Before starting a business, you must decide what the business structure will be. There are three forms that a businesses can take:
 1. Sole Proprietorships
 2. Partnerships
 3. Corporations
- The business structure you choose will depend on your situation, and will have important consequences for how you manage your business

Introduction to Business Law



1. Choosing a business structure

Sole Proprietorships

- What are they
 - Simplest way to operate a business. Carries on business in his or her personal capacity, with or without the assistance of employees
- How to set one up
 - Operate the business under your personal name or register a trade/business name
 - Searching business names in Ontario costs between \$8 - \$26 (and registration costs \$60)
 - Need to complete the registration of business by submitting the *Registration Form – Sole Proprietorship/Partnership Form 1* to the Ministry of Government and Consumer Services
 - Business identification number (BIN) may be needed for obtaining licenses and permits, depending on the type of business

Introduction to Business Law



1. Choosing a business structure

Sole Proprietorships

Pros	Cons
You make all the business decisions	You are personally responsible for the business and its debts
You receive all of the business profits directly	Income is taxed at the personal tax rate instead of the corporate rate (which might be lower)
Lower startup costs	More difficult to raise money
Simple business structure	Business Name Registration must be renewed every 5 years

Introduction to Business Law



1. Choosing a business structure

Partnerships

- What are they
 - Two or more individuals combining resources and operating a business in common with a view to making a profit
- How to set one up
 - Search your business name and register your partnership using the same links and forms outlined in the sole proprietorship section
 - Generally advisable to prepare and sign a formal partnership agreement
 - The *Partnerships Act (Ontario)* outlines the requirements for forming a partnership agreement

Introduction to Business Law



1. Choosing a business structure

Partnerships

Pros	Cons
Relatively easy to set up and dissolve	Can be difficult to reach decisions
Start-up costs may be shared by all partners	Partners are personally responsible for the business and its debts
Partners receive their share of the business profits directly [Note: Not a benefit for profits to be on one's individual tax return.]	You may be held financially responsible for business decisions made by your partner(s)
Equal share in management, business decisions and profits	Potential conflicts between you and your partner(s)
Cost of registering your business is low	You may be bound by your partners and their actions/commitments

Introduction to Business Law



1. Choosing a business structure

Corporations

- What are they
 - A corporation is recognized as a legal entity, separate from the individual owners of the corporation
 - It has all the rights of a natural person: it may enter into contracts, own property, and may sue or be sued
- How to set one up
 - A corporation can be created (or “incorporated”) online. The specific requirements depend on whether you incorporate your company federally or provincially
 - Need governing documents of your corporation (articles of incorporation and corporate by-laws) and a list of the officers and directors of the corporation to complete incorporation
 - Must register your business in each province in which it operates

Introduction to Business Law



1. Choosing a business structure

Corporations

Pros	Cons
No personal liability of the owners [Note: "Limited" implies that there is still some liability.]	Financial statements, and corporate filings and records are required
Transfer of ownership of a corporation's shares is relatively simple	Start-up and ongoing costs are significantly higher
The business may qualify for lower income tax rates and other tax advantages	Registration is more complicated and takes longer

Introduction to Business Law



1. Choosing a business structure

Practical Tips

When choosing a business name, keep the following rules in mind:	
Don't use words or expressions that are obscene or objectionable in any language	Business names must use characters from the alphabet (and may contain numerals)
The words "college", "institute", or "university" generally cannot be used unless you are actually a college, institute or university	Names of individuals must not be used unless they have or had a significant interest in the business activity and have given their written permission
Don't use words that imply the business is a different type of organization than it is. For example, don't imply that a sole proprietorship is a corporation by adding wording such as Limited, Ltd., Corp., to the name being used	Don't use words that imply the business is connected with any of the following: <ul style="list-style-type: none">• the Crown,• the Government (federal, provincial, territorial, municipal)• an agency of the Crown, Government or Municipality

Introduction to Business Law



2. Dealing with employees [LAAS]

- Interviewing, hiring and firing employees are all activities that are regulated by laws, including:
 - The Human Rights Code
 - Employment Standards laws
 - Common law
 - Labour laws
 - Canada Labour Code - Federally regulated employees
 - Human Rights Act = Canada (as opposed to Human Rights Code = Ontario)

These laws are in place to protect employers and employees

Introduction to Business Law



2. Dealing with employees (Employment Applications and Interview Process)

The Human Rights Code

- What is it?
 - Equitable treatment of people throughout society
 - Applies in the workplace and during the employment application and interview process
- What it covers
 - 5. (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability

Introduction to Business Law



2. Dealing with employees (Employment Applications and Interview Process)

Protection under the Code: Disability

Avoid Asking:

- If the applicant has a disability or any health problems
- Whether the applicant drinks or uses drugs
- Whether the applicant has received psychiatric care or been hospitalized for emotional problems
- Whether the applicant has ever received worker's compensation

Preferred Approach:

- Is there anything that may prevent you from doing the essential duties of the job as we have described to you?
- Is there any accommodation you may require?
- Duty to accommodate disabilities up to the point of undue hardship

Introduction to Business Law



2. Dealing with employees (Employment Applications and Interview Process)

Protection under the Code: Age

Avoid Asking:

- How old are you?
- For birth certificates, baptismal records, driver's license or about age in general

Preferred Approach:

- Ask applicants if they are eligible to work under Canadian laws regarding age restrictions
- If age is required for benefit plans or otherwise, can obtain evidence of age after offering conditional employment

Introduction to Business Law



2. Dealing with employees (Employment Applications and Interview Process)

Protection under the Code: National or Ethnic Origin

Avoid Asking:

- About birthplace, nationality of ancestors, spouse, or other relatives
- Whether the applicant was born in Canada
- For proof of citizenship

Preferred Approach:

- To be entitled to work in Canada, must be citizens, permanent residents or holders of valid work permits. Therefore, applicants can be asked whether they are legally entitled to work in Canada
- Documentation of eligibility to work (e.g. work permits) can be requested after the selection process

Introduction to Business Law



2. Dealing with employees (Employment Applications and Interview Process)

Protection under the Code: Race or Colour

Avoid Asking:

- Questions related to race or colour, including the colour of eyes, skin or hair

Introduction to Business Law



2. Dealing with employees (Employment Applications and Interview Process)

Protection under the Code: Record of Offences

Avoid Asking:

- Has the applicant ever been arrested
- If the applicant has ever been convicted of a crime or whether the applicant has a criminal record

Preferred Approach:

- Has the applicant ever been convicted of an offence under the *Criminal Code* which has not been pardoned
- Inquiries about convictions are generally discouraged unless related to job duties



2. Dealing with employees (Employment Applications and Interview Process)

Protection under the Code: Religion

Avoid Asking:

- If the applicant will work on specific religious holidays
- About religious affiliations, church memberships, frequency of church attendance etc.
- For references from priest, clergy or other religious leader

Preferred Approach:

- Explain required work shifts and ask whether such a schedule poses any problems for the applicant
- Duty to accommodate an employee's religious beliefs up to the point of undue hardship

Introduction to Business Law



2. Dealing with employees (Employment Applications and Interview Process)

Protection under the Code: Sex

Avoid Asking:

- Is applicant planning to get pregnant in the near future?
- Any questions about pregnancy, child bearing plans, or child care arrangements

Preferred Approach:

- Ask applicant if attendance requirements of the job can be met
- Duty to accommodate pregnancy-related needs up to the point of undue hardship

Introduction to Business Law



2. Dealing with employees (Employment Applications and Interview Process)

Protection under the Code: Marital Status

Avoid Asking:

- Are you married?
- Does your husband/wife mind you working?
- Whether the applicant's spouse may be transferred
- About the applicant's spouse's employment
- Any questions about whether the applicant is single, married, divorced, engaged, separated, widowed, or living common-law

Preferred Approach:

- If transfer or travel is part of the job, the applicant can be asked whether s/he can meet these requirements
- Information on dependants can be determined after hire if necessary (for example, for benefits plans)

Introduction to Business Law



2. Dealing with employees

Employment Standards Legislation

- What is it?
 - The Ontario *Employment Standards Act (ESA)* sets out the minimum employment standards for employees of most businesses
- What the *ESA* covers
 - Includes:
 - Minimum wage
 - Overtime pay
 - Breaks and eating periods
 - Leave of absence
 - Termination notice and pay
 - Vacation and public holidays

Introduction to Business Law



2. Dealing with employees (Minimum Standards)

Employment Standards – Quiz

- After how many consecutive hours of work are most employees entitled to a lunch break? Do employers need to pay employees for lunch breaks under the *ESA*?
 - Must not work longer than five hours in a row without getting a 30-minute eating period. If employer & employee agree, 30-minute eating period may be taken as two 15-minute breaks within each five-consecutive-hour work period.
 - Meal breaks are unpaid unless employee's employment contract requires payment. Employers don't have to give employees "coffee" breaks or any other kind of break other than eating period
- What is the vacation entitlement under the *ESA*?
 - Most employees are entitled to a minimum of two weeks of vacation with pay after each 12 months of employment, starting from date hired

Introduction to Business Law



2. Dealing with employees (Minimum Standards)

Employment Standards – Quiz

- What is the current general minimum wage rate and the student minimum wage rate?
 - Minimum wage is the lowest hourly wage an employer can pay employees, whether they are full-time or part-time. **General minimum wage** rate that applies to most employees is \$14.00/hour and **student minimum wage** rate that applies to many students under the age of 18 is \$13.15/hour
- After how many hours of work does overtime pay begin for eligible employees? And what is the rate of overtime pay?
 - For most employees, overtime is paid at one and a half times employee's regular rate of pay for each hour of work over 44 hours/week

Introduction to Business Law



2. Dealing with employees (Minimum Standards)

Employment Standards – Notice

Length of Employment	Notice Entitlement
3 months or more but less than 12 months	1 week
1 year or more but less than 3 years	2 weeks
3 years or more but less than 4 years	3 weeks
4 years or more but less than 5 years	4 weeks
5 years or more but less than 6 years	5 weeks
6 years or more but less than 7 years	6 weeks
7 years or more but less than 8 years	7 weeks
8 years or more	8 weeks



2. Dealing with employees (Minimum Standards)

Employment Standards – Severance

- Statutory Severance:
 - Applies to employers with an annual payroll of \$2.5 million or more
 - In addition to notice (or pay in lieu of notice), employees who work five years or more are entitled to one week of regular wages for each completed (or part) year of employment to a maximum of 26 weeks

Introduction to Business Law



2. Dealing with employees

Employment Standards – Common Law Reasonable Notice

- Common law does not define what is “reasonable” notice. It depends on various factors such as employee's age, length of service, salary, position held at the date of termination and availability of alternative employment
- Example: a 60-year old employee in a senior management position, who has worked for the same company for 20 years, is fired
 - What is the employee entitled to as notice/severance under Ontario's ESA?
 - 8 weeks notice
 - 20 weeks of severance
 - Total: 28 weeks or 6.5 months
 - What is the employee entitled to under common law?
 - Not an exact science
 - 66 weeks or 15 months

Introduction to Business Law



3. Operating and advertising your business [DINO]

- When it comes to operating your business and advertising it to the public, several areas of law come into play, including:
 - Marketing and advertising laws
 - Competition law
 - Privacy laws
 - Other consumer protection laws

Generally, these laws are in place to protect consumers

Introduction to Business Law



3. Operating and advertising your business

Marketing, Advertising and Consumer Protection Laws

- What are they?
 - In place to protect consumers from unfair, deceptive and misleading practices by businesses. Penalties for breaking these laws can be severe for the business and business owner
- What they cover
 - Sending of spam email and SMS
 - Food and health products labelling requirements
 - Mass marketing
 - Accessibility
 - Misleading advertising
 - Protection of consumers' personal information

Introduction to Business Law



3. Operating and advertising your business

Key Marketing, Advertising and Consumer Protection Principles to Know

1. **Anti-Spam:** Emails with a business purpose cannot be sent to people without consent
 - Canada's Anti-Spam Legislation (CASL) describes the requirements for sending promotional emails to consumers:
 - Must have 'opt-in' consent
 - Email must contain certain information like identification of the sender and sender's mailing address
 - Email must include an 'unsubscribe' button
 - If a consumer unsubscribes, they must be removed from mailing list within 10 business days
 - Penalties for businesses can be up to \$10,000 per day



3. Operating and advertising your business

Key Marketing, Advertising and Consumer Protection Principles to Know

2. Anti-Spam: Practical Tips

- CASL does not apply to broadcast messaging, including tweets and posts. Posting on a business's Facebook page does not contravene CASL
- Each social media platform has its own terms and conditions. If you are promoting a business, you will fall under the terms that apply for "Commercial Use". Review these carefully to understand what you can and cannot do as a business advertising on social media platforms

Introduction to Business Law



3. Operating and advertising your business

Key Marketing, Advertising and Consumer Protection Principles to Know

3. **Misleading advertising:** Under the Canadian Competition Act, you cannot make false or misleading claims or guarantees in advertisements. Here are some practical tips

Do's	Don'ts
Use terms which are clear and meaningful to the average person and ensure every aspect of your ad and its general impression is true.	Don't use disclaimers to contradict or correct the message of your ad. Disclaimers can only be used to clarify your ad, not fix an otherwise misleading ad.
When conducting a contest, disclose all important details required by the law before potential participants are committed to it.	Don't unfairly compare your product to competitors, criticize competitors' products, or reference competitors' trademarks in advertising.
Ensure the customer's attention is drawn to any disclaimers through the use of an asterisk or other symbol. Disclaimers must be clearly legible.	Don't make claims about your product's attributes or performance unless you can prove them scientifically or through formal consumer research.

Introduction to Business Law



3. Operating and advertising your business

Key Marketing, Advertising and Consumer Protection Principles to Know

4. The “Cooling-Off Period”: Certain types of contracts can be cancelled by a consumer without reason or penalty

- For example, under the *Payday Loans Act*, a customer has 2 business days to cancel a contract for a payday loan
- This is known as the “cooling-off period”
- Other examples of cooling-off periods under the *Consumer Protection Act* include:
 - For a product or service purchased from a door-to-door salesperson – 10 days
 - For advance payment to join a fitness club or gym – 10 days

Introduction to Business Law



3. Operating and advertising your business

Key Marketing, Advertising and Consumer Protection Principles to Know

5. Estimates: If your business gives written price estimates, there are rules that apply under the Ontario Consumer Protection Act

- You can only bill a customer up to 10% more than the estimated amount, unless the customer agrees in writing to extra charges
- Make every effort to ensure the estimate is as accurate as possible and, if the project changes in a major way, make sure to provide the customer with a revised written estimate, and both parties sign off on new price

Introduction to Business Law



3. Operating and advertising your business

Key Marketing, Advertising and Consumer Protection Principles to Know

6. **Privacy:** Personal information of your customers cannot be used, collected or shared without their consent, as set out in the *Canadian Personal Information Protection and Electronic Documents Act*
 - Personal information includes home address, date of birth, Social Insurance Number, etc.
 - Businesses must have clear privacy policies that detail how personal information will be used, collected and stored
 - Personal information collected must be stored with adequate safeguards in place
 - Collect only as much information as is absolutely necessary
 - Increased risk with personal health or financial information

Introduction to Business Law



4. Protecting your business assets

Key Marketing, Advertising and Consumer Protection Principles to Know

1. **Trademarks:** You can trademark your brand logo for additional protections. What is a trademark?
 - A word, symbol, slogan, logo, shape, design (or combination)
 - Purpose is to distinguish goods or services of one person from those of another
 - Registration under Canadian Trademarks Act lasts 15 years and can be renewed
 - Gives trademark owner the exclusive right to use the trademark in association with goods and/or services covered under the registration
 - Gives the trademark owner a corresponding right to stop others from using a confusingly similar trademark

Introduction to Business Law



4. Protecting your business assets

Key Marketing, Advertising and Consumer Protection Principles to Know

2. Trademarks: Registering a Trademark

- Visit the Canadian Intellectual Property Office (CIPO) website and download the application form
- Complete and submit the application form
- Application fee is \$250-300
- Application must include:
 - name and address of the applicant
 - a drawing of the trademark (unless the trademark is just words)
 - goods or services that the trademark will be used for
 - first date that you used/will use the trademark

Introduction to Business Law



4. Protecting your business assets

Key Marketing, Advertising and Consumer Protection Principles to Know

3. **Trademarks:** What are some of your favourite brands and trademarks?



Introduction to Business Law



4. Protecting your business assets

Key Marketing, Advertising and Consumer Protection Principles to Know

4. Trademarks:

®	International symbol for registered trademarks. To be used only when a trademark is registered.
MD	French symbol for registered trademark. To be used only when a trademark is registered.
TM	North American symbol for unregistered trademarks.
MC	French symbol for unregistered trademarks.

Introduction to Business Law



5. Resolving disputes [LAAS]

- There are several ways of resolving disputes in Ontario:
 - Small Claims Court
 - Provincial and Federal Courts
 - Alternative forms of dispute resolution

The dispute resolution mechanisms available in the Canadian legal system preserve and protect the rights all people

Introduction to Business Law



5. Resolving disputes

Small Claims Court

- What is it
 - Ontario's Small Claims Court is a branch of the Superior Court of Justice with simplified procedures for smaller civil claims
- What it covers
 - Civil disputes of a monetary value of up to \$25,000
 - Examples include claims for money owed under an agreement (such as unpaid rent or cost of goods/services) and claims for damages (such as property damage or personal injury)

Introduction to Business Law



5. Resolving disputes

Small Claims Court – Making a Claim

- First, choose the Court location for filing your documents
 - Where the problem occurred or the Court nearest to the defendant's place of residence or place of business
- To file your claim, go to www.ontario.ca/smallclaims to fill out the form, pay the court fee and file online (you may file in person)
- Make a copy of the claim and supporting documents and serve them on the defendant – who will have 20 days to file a defense
- Participate in a settlement conference. The settlement conference is a required pre-trial conference presided over by a judge to help the parties resolve the issue before trial
- If no settlement is reached, there will be a trial before a different judge

Note: there are fees associated with each of the above steps



5. Resolving disputes

Small Claims Court - Practical Tips

- You can represent yourself at Small Claims Court – it isn't necessary to have a lawyer
- Be neat when submitting forms to the Court. It can cause delays if your forms cannot be read
- Disputes often arise when parties doing business with each other disagree about what was agreed to in the past. Having a clear, detailed, written contract can help prevent these types of disputes
- The website www.ontario.ca/smallclaims contains a lot of valuable information in plain English

Introduction to Business Law



What have we learned?

- Laws are created and enforced by all levels of government
- Laws are also created by judges
- Some laws are designed to protect businesses, others protect employees, and others protect consumers