Lex Mundi
World Ready

Guide to Doing Business

Canada, Prince Edward Island

Prepared by Lex Mundi member firm, McInnes Cooper

This guide is part of the Lex Mundi Guides to Doing Business series which provides general information about legal and business infrastructures in jurisdictions around the world. View the complete series at: www.lexmundi.com/GuidestoDoingBusiness.

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A GUIDE TO DOING BUSINESS IN ATLANTIC CANADA

Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador

Atlantic Canada's Law Firm
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ABOUT McINNES COOPER

McInnes Cooper is Atlantic Canada's Law Firm. With 200 lawyers, we are one of the 20 largest law firms in Canada. We serve our clients as a single law firm, from six offices across the region—Halifax, Moncton, Fredericton, Saint John, Charlottetown and St. John's.

Our clients are leaders in their industries—regionally, nationally and internationally. While our roots run deep in the Atlantic region, many of our lawyers are qualified to practice in other jurisdictions across Canada.

We are relentlessly focused on our clients' success, and this is reflected in all of our activities. Our unique team approach means that regardless of size or location, our clients receive the attention, service and professionalism they should expect from a firm that has been helping clients succeed for over 150 years.

Our Guide to Doing Business in Atlantic Canada is a general introduction to the conduct of business in Atlantic Canada. ***The Guide is designed to provide information of a general nature only and is not intended as a substitute for professional consultation or legal advice.***

Canada

Canada is the second largest country in the world and is located in the upper portion of North America. Canada is a federation of ten provinces and three territories with a population of approximately 32 million people. The four most easterly provinces in Canada are known as Atlantic Canada. These provinces are: Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador.

NOVA SCOTIA

INTRODUCTION

Geography

The province of Nova Scotia is located on the eastern-most coast of the Canadian mainland. Connected to the rest of Canada by only a small strip of land, Nova Scotia is almost entirely surrounded by the Atlantic Ocean. As a result, you can travel anywhere in Nova Scotia and never be more than 56 kilometres (35 miles) from the ocean. The province boasts 7,500 kilometres (4,700 miles) of breathtaking ocean shoreline.

Just off Nova Scotia's northeastern shore lies Cape Breton Island, a major yet distinct part of Nova Scotia. Cape Breton Island is connected to Mainland Nova Scotia by a constructed causeway at Canso, NS. Home to the province's highest altitudes, Cape Breton is a magnificent combination of rocky shores, coastal vistas, rolling farmland, valleys, forests and plateaus.

Nova Scotia and its neighbouring provinces, New Brunswick and Prince Edward Island, collectively form Canada's "Maritime" Provinces.

Nova Scotia is accessible by car, air, train, bus and ferry. The capital city and largest commercial centre in the Maritime Provinces, is Halifax Regional Municipality (HRM). By car, HRM is 1757 km (1092 mi) from Toronto, 1042 km (647 mi) from Boston and 1830 km (1137 mi) from New York City. By air, Nova Scotia's Robert L. Stanfield International Airport is 4560 km (2850 mi) from London, 4893 km (3058 mi) from Paris and 6958 km (4349 mi) from Athens. The closest American cities are Bar Harbour and Portland, Maine, both of which offer ferry service to Nova Scotia.

Topographically, Nova Scotia is a mosaic. Much of the province is layered with forests and thousands of lakes. The rocky highland plateaus in the higher altitudes are reminiscent of Scotland, the country from which Nova Scotia takes its name. The lowest points of the province lie below sea level and are found on the mainland in the Annapolis Valley. This area boasts rich soils productive farmland, and is home to North America's oldest apple orchard and the world's highest tides. The Bay of Fundy produces the greatest difference in water level between its high and low tide than anywhere else in the world.

Lifestyle

Nova Scotia has a lot to offer, including the natural beauty of the unspoiled coast, inexpensive real estate, a low cost of living, fresh air, moderately seasonal climate, friendly people, and lifestyle opportunities for every taste.

The merger of traditional European culture with a modern Nova Scotia flare produces a unique and exciting cultural blend. Its eclectic History and the abundance of Visual, Musical and Performance Art are infused into the everyday lives of the people of Nova Scotia. The result is a community rich with events and performances that can be enjoyed by all at the Neptune Theatre, the Art Gallery of Nova Scotia, the East Coast Music Awards, The Apple Blossom Festival, The Busker Festival, The Tall Ship Festival, just to name a few.

Weather

Nova Scotia boasts mild winters, thanks to its proximity to the Gulf Stream, which flows on a winding path from the Gulf of Mexico to a point just South of Sable Island off Nova Scotia's Eastern Shore. Winter temperatures usually range from -15°C to +4°C (+5° to +40°F). Snowfall amounts in Nova Scotia are customarily less than those encountered by neighbouring citizens of Maine and New Brunswick. Spring in Nova Scotia is pleasant, with average temperatures falling between 6°C and 25°C range (42° to 60°F). Summers are mild in Nova Scotia, with temperatures falling in the 16°C to 25°C range (60° to 80°F). Autumn is pleasant with the changing of the leaves annually creating an extraordinary display of colours.

Population

Based on data from the most recent Canadian census, Statistics Canada estimates that the population of Nova Scotia was approximately 938,000 people in January 2007, with 381,000 Nova Scotians' living in HRM.

Infrastructure

Nova Scotia's established and growing ice-free, deep-water port, international airport, comprehensive road and rail links, coupled with being the closest mainland link to Europe and the United States, as well as Asia and India via the Suez Canal, makes the province the ideal location. A recent Atlantic Provinces Economic Council (APEC) report confirms that Halifax is currently the best positioned port in Eastern Canada to take advantage of Asian traffic.

The report also states that Halifax's port and transportation infrastructure are not yet at full capacity. The APEC report, entitled The Changing Global Economy: The Implications and Opportunities for Transportation in Atlantic Canada is available at apec-econ.ca.

Government

Nova Scotia is one of Canada's four original provinces. Nova Scotia was part of the former British Colony and Britain's first overseas responsible government was developed here.

Canada is a parliamentary democracy. The highest level of government is the federal Parliament, which is constitutionally required to govern national issues including money, banks, national parks, and defence. The legislatures of each Canadian province make laws governing provincial issues such as highways, education and hospitals. A third level of government, the municipal government enacts laws pertaining to cities and towns.

Before coming into force, all provincial legislation in Nova Scotia is passed by the Legislative Assembly and receives royal assent from the Lieutenant-Governor acting in the name of the Queen.

The Progressive Conservative Party currently holds a minority government in Nova Scotia. The leader of the Progressive Conservatives, Rodney MacDonald, is the premier of the province.

East Coast Naval Operations

Nova Scotia houses the headquarters of Maritime Forces Atlantic (MARLANT), one of three primary formations of the Canadian Navy and the largest naval presence in Canada. The headquarters is found in Halifax at the HMC Dockyard, along with the headquarters of Canadian Fleet Atlantic, the Formation Supply facility and the Fleet Maintenance Facility Cape Scott. Also located in Halifax, at the Canadian Forces (CF) Base Stadacona, are the CF Naval Engineering School, the CF Naval Operations School, the base hospital, and the CF Warfare Centre.

MARLANT employs 7,500 people. Approximately 5,350 of those employees are members of the Canadian Forces, including 5,000 regular force members, and 350 reservists. The remaining employees are civilians.

Natural Resources

Nova Scotia boasts a wealth of natural resources. Fishing, a staple in Nova Scotia for 400 years, brings in substantial catches of lobster, scallop, haddock, halibut, flounder and herring. Aquaculture farms growing salmon, mussels and oysters are also found in the province. Nova Scotia is proud to be the world's largest exporter of lobster.

Nova Scotia has several small agricultural regions. The province produces crops of many kinds of fruit and vegetables, and is the largest producer of blueberries in the world.

Forestry is another staple of Nova Scotia's economy. Home to both softwood and hardwood trees, Nova Scotia hosts three major pulp and paper mills and dozens of sawmills. In addition, Nova Scotia is North America's largest producer of high-grade gypsum, a mineral used to made plasterboard, chalk, and toothpaste, among other things. Valuable deposits of salt and clay are also found in Nova Scotia. Another significant resource, natural gas, is distributed via pipeline from gas fields near Sable Island, Nova Scotia to other parts of the continent.

With a competitive fiscal regime, proximity to North American markets and potential for viable commercial reserves, Nova Scotia offers a competitive advantage in offshore gas exploration and development.

All types of renewable energy sources - including biomass, biofuels, geothermal, mini-hydro, tidal, solar and wind are being developed in Nova Scotia with the goal of energy sustainability and economic growth in mind. To encourage the use and development of renewable resources, the government is in the process of amending its regulatory environment and promoting programs to educate the public about the benefits and efficient use of renewable energy sources.

Nova Scotia's wealth of resources culminates in the skills, energy and initiative of its people. Our wealth is further reflected in the unique and contagious Maritime culture that is deeply embedded in all facets of Nova Scotia life.

Currency, Language, Business Hours

The currency used in Nova Scotia is the Canadian dollar.

Canada has two official languages: English and French. English is the mother tongue of the majority of Nova Scotians and is the language commonly used for business.

Businesses and government offices are open Monday to Friday from 9 am to 5 pm and are closed on Saturday, Sunday and holidays. Most retail businesses are also open on evenings and weekends, with limited Sunday hours from noon until 6 pm. Statutory holidays in Nova Scotia are: New Year's Day, Good Friday, Canada Day (July 1), Civic Holiday (first Monday in August – not celebrated in all areas), Labour Day (first Monday in September), Remembrance Day (November 11) and Christmas Day. Many employers provide the following additional holidays: Easter Monday, Victoria Day (3rd Monday in May), Thanksgiving (2nd Monday in October) and Boxing Day (December 26).

Nova Scotia is in the Atlantic Time Zone and observes Daylight Savings Time.

Customs and Immigration

Citizenship and Immigration Canada, Canada Revenue Agency and Canadian Border Services Agency, all federal government departments, have jurisdiction over customs, immigration, citizenship, refugees and border issues.

Legal System and Court Structure

(1) *The Charter of Rights and Freedoms*

The *Canadian Charter of Rights and Freedoms*, passed into law as part of the *Constitution Act*, 1982, constitutionally protects and guarantees basic human rights for all Canadians. All Canadian laws must conform to the *Charter*.

(2) *The Court Structure*

The following levels of court exist in Nova Scotia:

Court of Appeal

The Nova Scotia Court of Appeal is the province's highest court. It sits in the capital city of Halifax and hears appeals in civil matters from the Supreme Court of Nova Scotia and criminal matters from the Supreme Court, Provincial Court and Youth Court. Cases of national importance may be granted leave to appeal to the Supreme Court of Canada.

Supreme Court of Nova Scotia

The Supreme Court has jurisdiction over certain criminal trials, lawsuits, divorces and property disputes. The Supreme Court of Nova Scotia is the highest level of trial court in the province. It has broad authority to hear a wide range of civil and criminal matters, exclusive authority to hold jury trials and to hear appeals from summary convictions and certain tribunal decisions, to try murder cases (except for Young Offenders) and to grant divorce and divide

matrimonial property.

The Supreme Court sits as an appeal court on Provincial Court matters, Small Claims Court matters, Residential Tenancies Board matters and certain Provincial Tribunal decision.

Provincial Court

The Provincial Court deals exclusively with criminal matters. All criminal proceedings dealing with offenders aged sixteen or over commence in Provincial Court.

Provincial Court has jurisdiction to try almost all indictable offence charges under the Canadian Criminal Code and has exclusive jurisdiction over all summary offence charges under provincial and federal statutes and regulations.

Provincial Court judges may also preside over inquiries under the *Fatality Investigations Act*, conduct recounts under the *Municipal Elections Act*, and are empowered to issue orders for the detention and examination of persons under the *Hospitals Act* and *Health Act*.

Courts of Probate, Bankruptcy, Small Claims and Family Court

The Court of Probate adjudicates estate matters. The Court has the authority to appoint executors, administrators, appraisers and guardians of estates. In addition, the Probate Court supervises the management and distribution of estate assets, approves payment of legal fees and sets executors' and administrators' commissions and expenses. Each district in Nova Scotia has a Court of Probate consisting of a Judge and Registrar of Probate.

Bankruptcy is dealt with pursuant to Federal legislation and is essentially a process whereby an insolvent debtor deals with or restructures his or her debts by filing an assignment or proposal in bankruptcy. In a bankruptcy the bankrupt's property vests in the Trustee in Bankruptcy, who realizes upon it and distributes any proceeds among the bankrupt's creditors.

Small Claims Court is a quick, informal and cost-effective route for deciding claims up to $25,000, excluding interest. Parties may represent themselves and the rules of procedure are relaxed, so neither party is required to have a lawyer.

Family Court hears family-related issues such as requests for spousal and child maintenance, child custody or access, domestic violence complaints, and child protection matters. The Family Court also serves as a Youth Court hearing matters that involve young persons aged 12-15 charged under Canada's *Youth Criminal Justice Act*.

Education

Nova Scotia has more than 450 public (tuition free) schools offering Primary (also called kindergarten) to Grade 12. Children are legally required to attend school from age 6 to 16 although most children commence school at age 5 and continue well past age 16. The public school system is commonly taught in English; however, instruction in French immersion is available in many schools on either full or part-time basis.

Nova Scotia is home a number of well recognized post-secondary educational institutions. Nova Scotia boasts 10 universities, including Dalhousie University, University of King's College,

Saint Mary's University, Mount Saint Vincent University, Nova Scotia College of Art and Design (NSCAD), Acadia University, St. Francis Xavier University, the Nova Scotia Agricultural College, Université Sainte-Anne, and Cape Breton University.

In addition, the Nova Scotia Community College, with 13 campuses province-wide, and the College de l'Acadie provide instruction in the trades, technical, technological and applied arts fields in both English and French.

Health Care

Health care in Nova Scotia is publicly funded. Medical Services Insurance (MSI) insures eligible residents of Nova Scotia for all medically required physicians' services. Also insured are all necessary surgical services, obstetrical care, treatment of fractures and dislocations, referred specialist services, all diagnostic services and certain dental-surgical procedures performed in a hospital.

Private medical plans (such as Blue Cross) are available to supplement the provincial health plan.

BUSINESS IN NOVA SCOTIA

The *Companies Act*

The *Companies Act* (Nova Scotia) is the legislation pursuant to which companies are incorporated in the province. It is the primary statute governing businesses in Nova Scotia. Other provincial statutes relevant to establishing a business in Nova Scotia are: the *Corporations Registration Act*, the *Partnerships and Business Names Registration Act*, the *Partnerships Act*, the *Societies Act*, the *Limited Partnerships Act*, the *Co-operative Associations Act* and the *Securities Act*.

A business in Nova Scotia may be structured as: a company limited by shares, a company limited by guarantee, an unlimited company, a general or limited partnership, a sole proprietorship, a society or a co-operative.

All businesses operating in Nova Scotia must register their business name with the Registry of Joint Stock Companies. Registration must be renewed annually. The procedure for registration depends on the type of business. Regardless of the business structure, the first step to registering a business in Nova Scotia is to reserve a business name. This is done by requesting a name search for either Atlantic Canada or Canada wide to ensure the name is not currently in use. Both services require a fee. The business may then complete their registration with the Registry of Joint stocks, which must be renewed annually.

Registration is not required for the following businesses: New Brunswick corporations, partnerships and business names registered in New Brunswick, individuals or partners using only their personal names without any descriptive element or attachment, partnerships whose sole purpose is farming or fishing and grist or saw mills.

A recognized agent must be appointed for limited companies, partnerships, sole proprietorships (if the sole proprietor is not a Nova Scotia resident) and extra-provincial companies. The recognized agent receives official correspondence for the business and may be served on behalf of the company with a writ, summons, process or other legal notice. The agent acts as the contact for the Registry of Joint Stock Companies. The agent must reside in Nova Scotia. Companies registered under the *Act* must also provide the address for a registered office in the province.

Companies Limited by Shares

A company limited by shares, often called a company, corporation or limited company, is a business with one or more shareholders. Under the law, a company is a separate legal identity from its shareholders. A shareholder's personal liability is therefore limited to the amount of capital that shareholder contributes.

Incorporation of a company limited by shares requires the members of the company to subscribe to a memorandum of association and register the memorandum, along with a list of directors, at the Registry of Joint Stock Companies. The *Companies Act* regulates the content of the memorandum of association. Regulations for the company may be prescribed by registering articles of association; however, this is not mandatory.

A company may have any number of directors. Each director must consent to act as such. Registration of a director who has not given consent carries a monetary penalty. The directors of a Nova Scotia company need not be Canadian residents.

Upon registration, the company receives a certificate of incorporation confirming that the company is a legal entity and a certificate of registration.

A limited company incorporated in a province other than Nova Scotia or outside of Canada that wishes to operate in Nova Scotia must register in Nova Scotia as an extra-provincial company.

Limited companies are advantageous because of its characteristics of: limited liability, specialized management, transferability of ownership, status as a separate legal entity, ease of raising capital by selling shares, and there are possible tax advantages. On the other hand, limited companies are closely regulated, expensive to organize, doubly taxed on profits, require extensive record keeping, may be difficult to dissolve and have the potential to create conflict between shareholders and executives.

Companies Limited by Guarantees

A company limited by guarantee may be incorporated under the *Companies Act* if one or more persons are associated for a lawful purpose and the liability of the company's members is limited to the amount that each member undertakes to contribute to the assets of the company in the event of its being wound up.

Incorporation of a company limited by guarantee requires the members of the company to subscribe to a memorandum of association and prescribe regulations for the company in articles of association. The *Companies Act* regulates the content of both the memorandum and articles, which must be registered with the Registry of Joint Stock Companies along with a list of directors. Upon registration, the company receives a certificate of incorporation confirming that the company is a legal entity and a certificate of registration.

Nova Scotia Unlimited Companies

An unlimited company, also known as an unlimited liability company, ULC or NSULC, is a body corporate formed under the *Companies Act* in approximately the same manner as a limited company. Unlike a limited company, the liability of the members of an NSULC is unlimited. If the NSULC is wound-up or goes bankrupt, a liquidator will require the members of the NSULC to contribute to the payment of the NSULC's debts and the costs of winding up.

ULC's have become very popular because of the ability to characterize it as a flow-through entity for United States' tax purposes. A ULC is treated as a body corporate for Canadian tax purposes and as a partnership or disregarded entity for American tax purposes. This hybrid treatment currently provides businesses with a variety of cross-border tax planning options. Furthermore, ULC directors are not restricted by residency or citizenship requirements. The Fifth Protocol to the Canada – United States Tax Treaty signed on September 21, 2007, will affect the taxation of payments made by a ULC to a resident of the United States commencing in 2010.

Until recently, Nova Scotia was the sole jurisdiction that provided for the incorporation of ULC's. However, Alberta's *Business Corporations Act* now permits the formation of ULC's in Alberta. There are significant differences between Nova Scotia's ULC legislative regime and that of Alberta's. One substantial distinction is that Shareholders of NSULC's are liable only for the debts and liabilities of the NSULC upon termination insofar as the NSULC is unable to meet these. Whereas Shareholders of an Alberta ULC (AULC) are liable for an unlimited amount, including actions commenced up to two years after the dissolution of the AULC.

To create an NSULC a memorandum of association, articles of association, solicitor's declaration and a list of directors must be registered at the Registry of Joint Stock Companies.

Partnerships

A partnership is a business formed by one or more people or corporations carrying on business in Nova Scotia. There are 2 two forms of partnerships:

(1) *General Partnerships*

The *Partnership Act* defines a partnership as the carrying on of a business by persons in common with a view of profit. In a general partnership all members share the management of the business. Each member is personally liable for all the debts and obligations of the business.

It is recommended that Partners draft a partnership agreement to establish the terms of the partnership. Such an agreement may protect the partners should disagreement or dissolution of the partnership later occur.

Some of the advantages of forming a partnership are the relative ease of formation and dissolution, relatively low start up costs, possible tax advantages, limited regulation, broad management base and financial and moral support among the partners. Possible disadvantages of a partnership are: unlimited personal liability for debts of the partnership, divided authority, difficulty finding additional partners, and possible development of conflict between partners.

(2) *Limited Partnerships*

A limited partnership is designed to allow investors to invest in a specified project without becoming subject to the unlimited liability of a general partner. The limited partners are the investors.

A limited partnership must have both general and limited partners. The general partners control and manage the business and may be entitled to a greater share of the profits, while the limited partners contribute only capital. Limited partners take no part in control or management and are liable for debts to a specified extent only.

A limited partnership may only be formed by filing a certificate setting the name, character of business and other items specified in the *Limited Partnership Act*. Any partnership not registered as a limited partnership is considered a general partnership.

Sole Proprietorship

A sole proprietorship, registered as a "partnership of one", is not incorporated and has no legal partners. The liability of a sole proprietor is unlimited. The proprietor is responsible for all debts and obligations related to his or her business. If the proprietor carries on business under a name other than his or her own name then the business must be registered with the province. Registration is not required if the business is established in the proprietor's own name.

Some advantages of a sole proprietorship are: relatively low start-up costs, freedom from extensive regulation, owner's sole control over decision-making, tax benefits for the owner and no requirements for profit sharing! However, the primary disadvantage of a sole proprietorship is the burden of unlimited liability is placed solely on the owner. Sole proprietorships may also run into problems raising capital.

Societies

A society is a non-profit organization incorporated under the *Societies Act*. Incorporation is not mandatory for societies but is necessary if the society wishes to own real property. In order to incorporate a society, a group of five or more persons must register with the Registry of Joint Stock Companies a memorandum (the content of which is governed by the *Societies Act*), the by-laws of the society, a list of the directors and address of the registered office, and the address where the Society's activities will be chiefly carried out. The *Societies Act* governs to some extent the content of the by-laws.

Co-operatives

A group of three or more persons may incorporate a co-operative to carry on any business, enterprise or service. A co-operative is a business that operates according to certain statutorily protected principles. In a co-operative decisions are made democratically, with each member having one vote that cannot be communicated by proxy. The interest or dividends on capital must be limited to the percentage fixed in the by-laws. The co-operative must operate as close to cost as possible and any surplus is distributed among the members in proportion to the amount of work the member has contributed to the organization.

A co-operative may be incorporated as an association limited by shares whereby the liability of the members is limited to the amount unpaid on the shares held by each member, or an association limited by membership, whereby the liability of the members is limited by the amount unpaid on the membership fee which each member contributes to the association. In order to incorporate, a co-operative must have its articles of incorporation approved by the Inspector of Co-operative Associations, under the Ministry of Service Nova Scotia and Municipal Relations, and registered, along with the co-operative's by-laws, at the Registry of Joint Stock Companies.

Forming a cooperative is potentially advantageous because it is owned and controlled by its members, is democratic and profit distribution and limited liability to its members. Possible disadvantages include the potential for conflict between members, longer decision-making process, and extensive record keeping. The success of a co-operative largely depends on the participation of its members.

Federal Corporations

Businesses operating nationally or in several provinces may find it advantageous to incorporate federally under the *Canada Business Corporations Act*. A federally incorporated business must register in each province in which it operates.

Federal incorporation is handled by the Corporations Directorate of Industry Canada in Ottawa. A federally incorporated company may carry on business in any location across Canada.

The *Securities Act*

The *Securities Act* (Nova Scotia) protects investors from practices and activities that tend to undermine investor confidence in the fairness and efficiency of capital markets. The *Act* also fosters the process of capital formation in situations where doing so would not be inconsistent with adequate investor protection. National securities transactions require compliance by all affected provincial regulatory bodies.

The *Securities Act* establishes the Securities Commission of Nova Scotia, an administrative tribunal and agency of the Province of Nova Scotia. The Commission is responsible for administering the *Securities Act* and ensuring compliance with its provisions. Further, the Commission serves as a statutory tribunal with quasi-judicial powers at both the original and appellate levels. Pursuant to the *Act*, the Commission has the authority to enact rules that have the force of law and to publish policy guidelines for the regulated community. The Commission also has investigative powers and may compel the production of evidence in its investigations and proceedings.

TAXATION AND INSURANCE

HST

In Nova Scotia, the federal goods and services tax ("GST") is harmonized with the provincial sales tax into one blended tax (known as "harmonized sales tax" or "HST") at the rate of 14%, which is scheduled to be reduced to 13% effective for transactions that occur after January 1, 2008. Subject to certain limited exceptions, any person in the business of goods and services is required to be registered with Canada Revenue Agency and is required to collect and remit to Canada Revenue Agency HST on all taxable supplies.

Registering for HST requires a Business Number. This is automatically assigned upon registration of a company name at the Registry of Joint Stock Companies. A business number can also be obtained from the Canada Revenue Agency Business Window.

Income Tax

Corporate and personal income tax is levied in Canada by both the federal and provincial governments. The applicable rates of corporate income tax vary based on the size of the business and the nature of the business conducted. The applicable rates of both federal and provincial personal income tax increase at specified income thresholds.

Capital Tax

The federal government taxes the capital of all financial institutions (Financial Institutions Capital Tax). The Financial Institutions Capital Tax acts as a minimum tax and ensures that large financial institutions pay tax annually. All Canadian provinces levy capital taxes on financial institutions and six provinces, including Nova Scotia, levy a capital tax on other large corporations. Most of these provinces, including Nova Scotia, have announced plans to reduce or eliminate capital tax on corporations other than financial institutions.

Nova Scotia has a Corporate Capital Tax of 0.225 percentage points on taxable capital. This tax does not apply to businesses with less than $5 million in financial capital. Nova Scotia's capital taxes are deductible in determining federal and provincial taxable income.

Municipal Tax

Tenants and property owners who occupy or use commercial space or operate a home-based business will be assessed for business occupancy tax. Each of the fifty-five municipal units in Nova Scotia has an individual tax rate. The Business Occupancy Tax depends on an assessment made by Service Nova Scotia and Municipal Relations, computed by multiplying the occupancy tax rate by a percentage of the assessed value of the portion of real property used. If you are occupying commercial premises, you are required to contact the Regional Manager of Assessment at Service Nova Scotia and Municipal Relations within one week of opening your business. A phase out of the Business Occupancy Tax began in 2006, which will see the Business Occupancy Tax eliminated for most businesses by 2010 and for businesses in the financial sector by 2012.

If you occupy property for any non-profit community, charitable, fraternal, educational, religious, cultural or sporting organization or institution, you are exempt from Business Occupancy Assessment.

Business Insurance

A wide variety of insurance products are available to protect businesses from loss. Standard insurance policies covering fire, theft, or vandalism may offset a potentially serious loss of buildings, equipment or inventory. Property insurance may be required as a condition for a business loan. Life insurance is often carried on a key individual in an organization to minimize the impact of the absence of that individual. Business liability insurance may be obtained to help protect business operations against legal action. As well, important pieces of equipment may be specifically insured against loss or damage. Other available types of insurance include business interruption, crime coverage, employee dishonesty, robbery, stock burglary, safe burglary and broad form money and securities insurance.

SALE OF GOODS AND CONSUMER PROTECTION

The *Sale of Goods Act* (Nova Scotia) governs contracts for the sale of goods within the Province of Nova Scotia. The *Sale of Goods Act* (Nova Scotia) is relatively uniform with sale of goods legislation in other Canadian provinces. It implies various conditions and warranties in a contract of sale, including an implied condition that the seller has a right to sell the goods, an implied warranty that the buyer will enjoy quiet possession of the goods, and an implied warranty that the goods will be free from any charge or encumbrance in favour of a third party unknown to the buyer at or before the time the contract is made. Implied terms as to fitness and quality of goods also apply in certain circumstances. Pursuant to the *Consumer Protection Act* (Nova Scotia) these implied conditions and warranties cannot be contracted out of in a consumer sale.

The *Consumer Protection Act* (Nova Scotia) also regulates the extension of consumer credit and requires persons extending such credit to be licensed and to comply with prescribed cost of credit disclosure requirements.

The *Consumer Creditors' Conduct Act* (Nova Scotia) regulates the conduct of creditors in attempting to collect debts in Nova Scotia. The *Consumer Reporting Act* (Nova Scotia) regulates persons who furnish consumer credit reports and the procurement and use of consumer credit reports.

LABOUR RELATIONS

Employee Benefits

If a business hires any employees, the employer is responsible for deducting personal income tax, Employment Insurance (EI) premiums and Canada Pension Plan (CPP) contributions from the wages of each employee. These deductions must be remitted, along with the employer's share of CPP contributions and EI premiums, to Canada Revenue Agency. The employer matches an employee's CPP premiums and pays 1.4 times an employee's EI premiums. These are additional expenses for an employer beyond the base salary provided to employees. The Nova Scotia *Pension Benefits Act* governs the registration and administration of pension plans in Nova Scotia.

Workers' Compensation

The Workers' Compensation Board (WCB) is a workplace accident insurance agency established by the provincial government to administer the *Workers' Compensation Act*. The *Workers' Compensation Act* is designed to protect workers and employers from financial loss due to workplace accidents. The WCB is a no-fault agency, meaning that coverage is not dependant on whether the worker or employer was at fault in an accident.

The benefits and services provided by the WCB are paid for by employers through premiums. In return, the *Workers' Compensation Act* states that the workers and their families have no right to sue the employer for the impact of work-related accidents.

The majority of businesses are required to carry Workers' Compensation insurance. Employers not legally required to contribute may obtain special protection or voluntary coverage. A business in an industry where Workers' Compensation insurance is mandatory, as stipulated in the *Workers' Compensation Act*, must register with the Workers' Compensation Board of Nova Scotia, through the Nova Scotia Business Registry, within ten days of becoming an employer. A business with less than three employees need not register.

A business may register on-line at Nova Scotia Business Registry (NSBR), gov.ns.ca/snsmr/nsbr/default.asp, a web-based data management system designed to make doing business with the government more user-friendly. This site provides access to Workers' Compensation information and forms as well as some of the other licences, permits, and registrations that may be needed to operate a business.

Labour Standards

The Nova Scotia Labour Standards Code governs the minimum terms of employment for employees in Nova Scotia. It also governs some of the record-keeping practices of employers.

In Nova Scotia, the minimum wage rates vary according to an employee's experience. Since May 1, 2007, the minimum wage for an inexperienced worker is $7.15. An inexperienced worker is one who has performed a type of work for less than 3 months. The minimum wage for an experienced worker (a worker who has performed a type of work for more than 3 months) is $7.60.

An employer must grant employees a rest period of at least 24 hours in every 7 day period. An employer may apply to be exempt from this rule if the employer and the majority of the employees agree. An employee is entitled to overtime pay at a rate of 1.5 times the regular wage for every hour worked past 48 hours in one week. There are exemptions to this provision for particular classes of employees.

Employees in businesses previously required to be closed on Sunday have the right to refuse Sunday work. If such an employee is terminated for refusing Sunday work, the employee should contact the Labour Standards Division. Employees in businesses that were never required to be closed on Sundays, such as gas stations, convenience stores and restaurants, do not have the right to refuse to work on Sundays.

Under the Labour Standards Code, an employee must receive written notice of employment termination. The requisite notice period ranges from one to eight weeks depending on the employee's length of employment. If the employer does not wish to give notice, the terminated employee must receive pay in lieu of notice. An employer is prohibited from discharging an employee with more than ten years of service without just cause.

An employer is relieved of the obligation to give notice in the following circumstances: the employee has been employed at the establishment for less than 3 months; the employment was for a set term of less than 12 months; there was an unexpected and unavoidable lack of work; the employee has reached the age of retirement or a person is laid off or suspended for 6 days or less.

A wrongfully terminated employee may also be entitled to recover damages for pay in lieu of notice pursuant to the common law. Employers may restrict this right by having employees sign employment contracts.

Where ten or more employees are discharged or laid off within a period of four weeks or less, the employer must provide eight to sixteen weeks notice dependent on the number of employees involved. There are exceptions to this provision.

Employee Leaves

The Labour Standards Code provides for both pregnancy leave and parental leave. Pregnancy leave is taken immediately preceding and following the birth of a child. It can last up to seventeen weeks. The leave can start up to sixteen weeks before, but no later than, the expected date of delivery. The employee must also take at least one week after the date of delivery. Employees who have worked for an employer for at least one year qualify for this type of leave. Parental Leave is designed to allow parents to care for their new children. This unpaid leave lasts up to fifty-two weeks. To qualify for the leave, an employee must have worked for the employer for at least one year and must have become a parent to a child as a result of its birth or adoption. The maximum combined pregnancy and parental leave to which an employee is entitled is fifty-two weeks.

An employee is entitled to unpaid leave of up to three consecutive working days upon the death of a spouse, parent, guardian, child, or ward, and one calendar day's leave without pay in the event of the death of a grandparent, grandchild, sister, brother, mother-in-law, father-in-law, daughter-in-law, son-in-law, sister-in-law, or brother-in-law.

An employee may take unpaid leave to serve on a jury or if the employee is subpoenaed to attend Court as a witness.

An employee is entitled to up to eight weeks of Compassionate Care leave to tend to an ill family member. When requesting such leave, the employee must provide the employer with a copy of the medical certificate.

In 2003 the Labour Standards Code was amended to allow three (3) unpaid sick leave days per year to attend to a sick family member or medical appointments.

Human Rights

The Nova Scotia *Human Rights Act* protects against discrimination and harassment on the basis of personal characteristics. Discrimination occurs when someone makes a distinction, either intentionally or unintentionally, based on a real or perceived characteristic that imposes burdens or limits opportunities available to other individuals. Discrimination on the basis of age, race, colour, religion, creed, sex, sexual orientation, physical or mental disability, an irrational fear of contracting an illness or disease, ethnic, national or aboriginal origin, family status, marital status, source of income, political belief, affiliation or activity is expressly prohibited by law. Sexual harassment is also prohibited.

It is specifically prohibited for an employer to use an employment application, publish an advertisement or make an inquiry in connection with employment that, directly or indirectly, expresses a limitation, specification or preference or invites information relating to one of the prohibited grounds of discrimination.

The Human Rights Commission, an independent government agency, investigates and prosecutes human rights complaints which may be brought against the provincial government or private enterprises.

Occupational Health and Safety

Both employers and employees have a duty to pro-actively prevent accidents, injuries and disease in the workplace by complying with occupational health and safety standards. The *Occupational Health and Safety Act* of Nova Scotia mandates the promotion, co-ordination, administration and enforcement of occupational health and safety. The *Act* relies on an Internal Responsibility System that is premised on the idea that everyone connected with the workplace (eg. employers, employees, contractors, owners and suppliers) shares the primary responsibility for occupational health and safety.

UNIONS

The Nova Scotia *Trade Union Act* governs the certification of unions and the regulation of unionized workplaces. In Nova Scotia, unionization can occur by certification or voluntary recognition. Certification is the process whereby, as a result of the expression by employees of interest in unionization, the Nova Scotia Labour Relations Board (the "Board") "certifies" that a union will have exclusive bargaining rights on behalf of certain employees.

The *Trade Union Act* expressly preserves an employer's freedom to express its views so long as it does not use coercion, intimidation, threats or undue influence. Employer violations of the *Trade Union Act* may result in automatic certification of the union.

There are also specific restrictions on permissible union activities, for example, unions are not allowed to solicit employee support in their workplace during working hours unless the employer consents.

LICENSING

Many types of business require a license to carry on business. Business owners must contact the relevant provincial or municipal government department to determine if a license is required and how it is obtained. The Provincial government of Nova Scotia provides a permit directory at gov.ns.ca/snsmr/paal/.

INTERESTS IN REAL PROPERTY

Real Property

There are several types of interest in land recognized in Nova Scotia, including full ownership ("freehold"), and an interest for a specified period ("leasehold"). Special legislation also permits condominium ownership, under which owners have title to their individual units and a right to use the "common elements" of the condominium project.

There are two systems of landholdings recording in the Province of Nova Scotia at the present time, a "registry system" in which the individual is responsible for the determination of the quality of title based primarily on priority in time of registration and a "land titles system" where the quality of the title is determined by the recording authority with an indemnity supporting that determination. Nova Scotia is currently in the process of converting from the registry system to a land title system on a county by county basis. HRM became a designated county with respect to the *Land Registration Act* on December 1, 2004. The land titles system recognizes notices of lease on a more formal basis than is possible under the registry system.

Nova Scotia does not have commercial tenancy legislation, although there are statutory provisions dealing with rights of landlords to distrain for rent in commercial tenancy situations.

Deed transfer tax is payable in most jurisdictions of Nova Scotia (including HRM) on any transfer of title to land. The tax is based on a percentage of the fair market value of the property and the rate varies from jurisdiction to jurisdiction to a 1.5% maximum. The deed transfer tax rate in HRM is currently 1.5%.

Personal Property

The *Personal Property Security Act* (Nova Scotia) governs secured interests in personal property and offers protection for consumers and secured parties. The PPSA establishes a system for the registration of notices in relation to agreements creating a security interest in tangible or intangible personal property. The PPSA also provides rules for the perfection and priority of such security interests as well as the mechanism for enforcement of such security interests.

ZONING

Under the *Municipal Government Act*, municipalities in Nova Scotia have the authority to enact zoning by-laws, which may restrict where businesses can be located. Prior to starting a business, it is important to ensure that the land is properly zoned.

ENVIRONMENTAL CONCERNS

Environmental issues in the province are governed by; i*nter alia*, the *Environment Act* (Nova Scotia) and its accompanying regulations. In relation to environmental issues, the Nova Scotia Department of Environment and Labour has a mandate to protect and promote the safety of people, property and a healthy environment. The Environmental Monitoring and Compliance Division is responsible for the majority of field operations relating to environmental protection, including processing applications, inspection and monitoring of approvals, enforcement activities and response to public issues and complaints. This division is also in charge of solid waste resource management. The Environmental and Natural Areas Management Division is in charge of environment assessment, environmental education, environmental industries, innovations, protected areas and water and wastewater management.

IMPORT/EXPORT REGULATIONS

Importing and exporting goods and services fall under federal jurisdiction. The Canadian Revenue Agency and Canadian Border Services Agency enact guidelines and regulations on international trade.

INTELLECTUAL PROPERTY

The federal government has jurisdiction over the protection of intellectual property. A special operating agency associated with Industry Canada called The Canadian Intellectual Property Office (CIPO) is responsible for the administration and processing of intellectual property in Canada. CIPO is in charge of patents, trade-marks, copyrights, industrial designs and integrated circuit topographies.

The Canadian Food Inspection Agency manages plant breeders rights established under the *Plant Breeders' Rights Act*. Plant breeders' rights protect breeders of varieties of plants that are new, different, uniform and stable. An established breeder is entitled to control the multiplication and sale of the protected seeds for up to 18 years. Others may be granted permission to breed and grow the protected seeds.

PRIVACY LAW

In Nova Scotia, individual privacy is protected by two pieces of legislation. The first is a provincial statute that regulates the collection and use of personal information by the provincial government: the *Freedom of Information and Protection of Privacy Act* ("FOIPOP"). This statute applies to the provincial government and certain other "local public bodies" such as municipalities, universities and school boards.

In the private sector, personal information is protected by the new federal *Personal Information Protection and Electronic Documents Act* ("PIPEDA"). This statute regulates the collection, use and disclosure of personal information in the course of "commercial activities". It places significant obligations on businesses including the mandatory appointment of a privacy officer, providing consumers with information on how their information is proposed to be used, obtaining consent, publishing a privacy policy and putting in place a mechanism to receive and respond to queries and complaints. The statute does not apply to information about incorporated businesses, nor does it apply to information about employees that is collected in the course of the operation of a "provincially regulated" organization.

ELECTRONIC COMMERCE

In Nova Scotia, electronic contracts (including contracts by email and using websites) are governed by the *Electronic Commerce Act* (Nova Scotia). This law is substantially based on the federal *Uniform Electronic Commerce Act* that is, in turn, based on the United Nations model law on electronic commerce. The hallmark of the legislation is that electronic documents and contracts will not be denied legal effect simply because they are in electronic form. In addition, binding electronic contracts can be entered into by electronic agents, such as E-commerce web servers and other automated retail systems. The legislation does not set standards for secure electronic signatures, therefore facsimile signatures and simple typed names can have legal effect. Of course, they remain subject to laws of evidence and authentication. The *Electronic Commerce Act* does not extend to certain classes of documents in electronic form, such as wills, trusts and contracts involving the sale of real property.

CLOSING A BUSINESS

Under the *Industry Standards Code*, when an employer who employs 50 or more employees is about to close down, discontinue or abandon the company or any portion thereof which could affect fifty or more employees of the company, it must first give notice of the closing down, discontinuance or abandonment to the Minister of Environment and Labour. The notice must be given at least three months before the closing down, discontinuance or abandonment and must be in the prescribed form.

On the recommendation of the Minister, the Governor in Council has the power to conduct an inquiry or examination into the proposed closing down, discontinuance or abandonment. If it is determined that the company has not complied with the provisions of the legislation, the Minister can order the company to be reopened at the expense of the employer for up to three months. The penalty for contravening these provisions can result in fines of up to $100 per day.

FINANCING AND GOVERNMENT RESOURCES

The Canada/Nova Scotia Business Service Centre website provides the following list of government programs, services and regulations that are designed to facilitate the formation and financing of businesses in Nova Scotia. This list is not exhaustive. More information, and answers to specific inquiries can be obtained from the Canada/Nova Scotia Business Service Centre at 902.426.8604 or 800.668.1010 or by visiting the website cbsc.org/ns.

Aboriginal Business Canada

Aboriginal Business Canada provides support to Aboriginal entrepreneurs seeking to start or expand their own businesses or to improve existing ones by giving them access to financing and information that will help them enhance their management skills. Canadian Status Indians and Non-Status Indians, Métis and Inuit entrepreneurs are eligible for this program, as are partnerships, for-profit and non-profit groups, and other entities that are majority-owned or controlled by aboriginal persons.

For further information: Please call 902.426.2018 or visit the website: ic.gc.ca/epic/site/abc-eac.nsf/en/home.

Atlantic Innovation Fund - Atlantic Canada Opportunities Agency (ACOA)

The Atlantic Innovation Fund (AIF) finances research and development and related initiatives in the areas of natural and applied sciences, and social sciences and humanities linked explicitly to the development of technology-based products, processes or services or their commercialization. The AIF strives to strengthen the region's system of innovation.

For further information: Please call a Business Information Officer at the Canada/Nova Scotia Business Service Centre at 902.426.8604 or 800.668.1010 (Press 1 and 2) or visit the website: acoa-apeca.gc.ca.

Atlantic Investment Partnership (AIP) - Entrepreneurship and Business Skills Development - Atlantic Canada Opportunities Agency (ACOA)

The Entrepreneurship and Business Skills Development (EBSD) component of the AIP will respond to the challenges facing the Atlantic Canadian economy by providing more entrepreneurial opportunities and services for young people and women, by helping small business owners and their staff acquire the latest in business and technological skills, and by helping to provide career opportunities for youth within the region. The EBSD includes three key elements:

(1) *Innovation Skills Development Initiative*

The purpose of the ISDI is to help SMEs incorporate enhanced innovation management and technical skills into their firms in order to make them more productive and globally competitive.

(2) *Women in Business Initiative*

The purpose of the Women in Business Initiative is improved growth and competitiveness of women-owned businesses and their greater representation in Atlantic Canada's emerging

growth sectors.

(3) *Young Entrepreneur Development Initiative*

The objective of YEDI is to create jobs and wealth in Atlantic Canada by enabling more young entrepreneurs to start and grow businesses. More specifically, it will provide more young Atlantic Canadians with opportunities to develop the attitudes and business skills needed to identify business opportunities and successfully launch and grow a business.

For further information on the above programs:

ACOA Nova Scotia at 800.565.1228
Enterprise Cape Breton Corporation at 800.705.3926
Visit the Website: acoa-apeca.gc.ca/e/financial/aip/index.shtml

Black Business Initiative (BBI)

This organization offers loans of up to $25,000 and business training, guidance and assistance to African-Canadian entrepreneurs in Nova Scotia. BBI has representatives for all regions of Nova Scotia.

For further information:
Please call: 902.426.2224 ext. 0 or Toll free 800.668.1010 (Press 1 and 4)
Email: bbi@bbi.ns.ca
Visit the Website: bbi.ns.ca

Business Development Program (BDP) - Atlantic Canada Opportunities Agency (ACOA)

Through its Business Development Program, ACOA provides interest-free, unsecured business loans to certain business types: information technology and knowledge-based businesses, manufacturing and processing, aquaculture, tourism and businesses that provide a service to business. It does not finance retail, wholesale, purchase of an existing business, services of a personal nature, real estate or government services. Representatives are located throughout the Province.

For the representative nearest you:
Please call a Business Information Officer at the Canada/Nova Scotia Business Service Centre at 902.426.8604 or 800.668.1010 (Press 1 and 2)
Visit the Website: cbsc.org/ns/

Business Development Bank of Canada (BDC)

The Business Development Bank of Canada (BDC) is Canada's small business bank. BDC plays a leadership role in delivering timely and relevant financial and management services, with a particular focus on the emerging and exporting sectors of the economy.

BDC offers flexible term financing for a variety of commercially viable projects, including expansion projects, plant overhauls, the purchase of existing businesses and the acquisition of fixed assets. In some cases, financing may be used to reconstitute working capital depleted by capital expenditures or to finance sales growth.

There are four locations in Nova Scotia.
For the BDC nearest you, please call: 877.232.2269.
Visit the website: bdc.ca

Canada Small Business Financing Act

This act provides government guarantees to business loans obtained from chartered banks, caisses populaires, most credit unions and many trust, loan and insurance companies authorized to make loans directly to small business owners. Most small business starting up or operating in Canada are eligible. Loan proceeds may be used to finance the purchase of land, buildings & equipment and for the renovation/construction of buildings. Contact the C/NSBSC or the lender of your choice to find out more about the CSBFP.

For further information:
Please call: 613.954.5540 or 866.959.1699
Visit the Website: strategis.ic.gc.ca/epic/site/csbfp-pfpec.nsf/en/Home

Cape Breton Growth Fund

Financial assistance may be in the form of contributions, loans, or equity. Generally funding for commercial projects will be repayable, while assistance for non-profit groups is usually not repayable. Funding will only be available in priority areas which include; oil and gas, tourism development, environmental remediation, arts and culture development, infrastructure, and knowledge based sectors.

For further information:
Please call: 902.564.3600
Visit the Website: cbgf.ca

Capital Leasing Pilot Project

The Capital Leasing Pilot Project, under the *Canada Small Business Financing Act* (CSBFA) assists small businesses in obtaining capital leasing up to $250 000 for new or used equipment. Capital leases are made directly by participating leasing companies (lessors). Most small businesses starting up or operating in Canada -- excluding farming, charitable and religious enterprises -- are eligible as long as their estimated annual gross revenues do not exceed $5 million during the fiscal year in which they apply for a capital lease. Businesses may be operated as sole proprietorships, partnerships or incorporated companies. Contact participating lessors to find out more about the capital leasing pilot project. (The list of participating leasing companies will be available in the near future.)

For further information:
Please call: 613.954.5540 or Toll free: 866.959.1699
Visit the Website: strategis.ic.gc.ca/epic/internet/incsbfp-pfpec.nsf/en/la00068e.html

Community Business Development Corporations (CBDC)

These organizations are found in rural areas of Nova Scotia. CBDC's provide technical services and financial assistance in the form of loans, loan guarantees and equity assistance to a maximum of $75,000 or $125,000 (depending on location) per business. CBDCs are located

in Bridgetown, Sheet Harbour Sydney, Amherst, Digby, Church Point, Guysborough, Canso, St. Mary's, Mulgrave, Kentville, Windsor, Inverness, Louisdale, Port Hawkesbury, New Glasgow, Antigonish, Truro, Sydney Mines, Shelburne, Barrington, Clarks Harbour, Lockeport, Bridgewater, Liverpool and Yarmouth.

For the CBDC nearest you:
Please call: 888.303.CBDC (2232)
Visit the Website: cbdc.ca

Enterprise Cape Breton Corporation

Enterprise Cape Breton Corporation (ECBC) assists in the financing and development of industry on Cape Breton Island and a portion of mainland Nova Scotia in and around the town of Mulgrave. The Corporation is charged with the responsibility for promoting and assisting the financing and development of industry in the region, providing employment outside the coal-producing sector and broadening the base of the local economy.

For further information:
Please call: 902.564.3600, Toll free: 800.705.3926 or Fax: 902.564.3825
Visit the office: 15 Dorchester Street, P.O. Box 1750, Sydney, NS B1P 6T7
Visit the Website: ecbc.ca

Industrial Research Assistance Program (IRAP)

The Industrial Research Assistance Program (IRAP) is designed to help small and medium-sized enterprises (SMEs) meet the unique challenges they face in the research and development of new products, processes and services. IRAP offers a range of services designed to help SMEs access key resources, expert advice, new technologies, testing facilities, and financial assistance at the right time and in the right place. Canadian small or medium-sized enterprises (500 employees or less).

For further information, please call: 877.994.4727
Visit the Website: nrc-cnrc.gc.ca/main_e.html

Nova Scotia Business Inc.

This organization provides loans and loan guarantees mainly to manufacturing, processing and technology based industries, although businesses in many other sectors are also eligible. Not eligible are: charitable clubs and organizations; residential or rental accommodation, except for tourist facilities; lending, financial and insurance businesses; real estate development; retail, wholesale and construction; taverns, lounges, billiard halls and similar establishments.

For further information
Please call: 902.424.6650
Toll free within Nova Scotia: 877.297.2124
Toll free within North America: 800.260.6682 (NOVA)
Email: nsbi@gov.ns.ca
Visit the Website: novascotiabusiness.com/en/home/default.aspx

Resource Recovery Fund Board Inc. (RRFB)

The Resource Recovery Fund Board provides responsible management for Nova Scotia's Solid Waste-Resource Management Strategy. RRFB initiatives are to protect the long-term environmental and economic good of Nova Scotia and do this by providing financial assistance as listed in the programs mentioned below:

Municipal Approved Programs

Provides financial support towards the cost of the implementation of waste reduction and diversion initiatives.

Value-Added Manufacturing Program

Provides funding towards the cost of commercializing and marketing new and innovative products, services and equipment from the waste stream.

For further information on these three programs: please call Toll free: 877.313.7732 or 902.895.7732 or visit the website: rrfb.com.

Self-Employment (SE) Program
Human Resources and Skills Development Canada

The Self-employment (SE) benefit provides eligible individuals with financial support for a fixed period, and supports clients interested in starting a business with coaching, and technical and other forms of assistance. (Participation in the program is subject to the availability of resources at the local level). For further information, contact a Human Resources Development Centre (see Blue Pages of your telephone book).

For further information:
Visit the Website: hrsdc.gc.ca/en/epb/sid/cia/grants/self-emp/desc_self-emp.shtml

Small Business Financing Program

The Small Business Financing Program provides financing for start-up and expansion for all types of business, except residential and commercial real estate, beverage rooms, taverns and any other venture of a questionable ethical or legal nature. This program is delivered exclusively through credit unions in Nova Scotia and offers financing up to $150,000. Terms of the loan will be negotiated between you and your credit union.

For further information: Contact the Credit Union nearest you or call: 902.453.0680.
Website: ns-credit-unions.com

Venture Capital

If you need information on sources of venture capital, please refer to ACOA's publication entitled "Venture Capital".

For further information:
Please call: 902.426.8604 or 800.668.1010 (in Atlantic region only)

Visit the websites: cbsc.org/ns or acoa.ca/e/financial/venture_capital.shtml

Nova Scotia Film Industry Tax Credit

The Nova Scotia Film Industry Tax Credit is a fully refundable corporate income tax credit administered by the Nova Scotia Film Development Corporation for the Nova Scotia Department of Finance. The Tax Credit is a labour-based credit that encourages the development, training and hiring of Nova Scotia film personnel in all disciplines, which grows the film and video industry in the province.

The Tax Credit is available to qualifying productions and co-productions produced and/or shot in Nova Scotia. Production companies applying for the Tax Credit must have a permanent establishment in Nova Scotia (a fixed place of business, a production office, a branch etc.) and must be incorporated under the laws of Nova Scotia, another province of Canada, or Canada.

There is no limit on the size of the production budget, no corporate or asset cap, and no Canadian content or copyright ownership requirements associated with this Tax Credit. The Tax Credit is not reduced by any other tax credits that the production may receive.

The Tax Credit is calculated as the lesser of 35% of eligible Nova Scotia labour or 17.5% of the total production costs for productions that occur in the Halifax region ("Metro Halifax") or the lesser of 40% of eligible Nova Scotia labour or 20% of total production costs for productions that occur in other regions ("Regional Zones") of the province.

For more information:
Please call: 902.424.0617 or visit the website: film.ns.ca

AFTERWARD

The lawyers at McInnes Cooper would be pleased to provide professional advice and legal services to those undertaking to do business in Nova Scotia, Canada or any of Canada's Atlantic Provinces. Please find more information about McInnes Cooper at mcinnescooper.com.

Please feel free to contact us directly or by mail:

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NEW BRUNSWICK

INTRODUCTION

Geography & Population

New Brunswick covers 73,400 square kilometres and is located under Québec's Gaspé Peninsula and also shares a boarder with the State of Maine and the Province of Nova Scotia. The Province is connected to the Province of Prince Edward Island via the Confederation Bridge which is one of the world's longest bridges at 13 kilometres in length which was built in 1997. The Province features seemingly endless coastlines including the Northumberland Strait to the East with warm, sandy beaches featuring the warmest salt water north of Virginia.

Canada borders the United States, and New Brunswick is in close proximity to Toronto, Montreal, Boston, and New York City. The Province is approximately 500 miles (800 km) northeast of Boston, MA, 680 miles (1,100 km) east of Toronto, and 340 miles (550km) east of Montréal.

The Province's population is approximately 730,000. The Province's three largest cities are Saint John, with a population of approximately 68,000, Moncton, with a population of nearly 65,000, and Fredericton, the Province's capital city, with a population of over 50,000.

Climate

There are four seasons in New Brunswick. The average high temperatures are -9.2°C (15.4°F) during January (the middle of winter), 10.8°C (51.4°F) during May (the middle of spring), 26°C (78.8°F) during July (the middle of summer), and 7.5°C (45.5°F) during October (the middle of fall).

Aboriginal Population of New Brunswick

New Brunswick is home to 6 Maliseet communities and 9 Mi'kmaq communities. In total, there are approximately 12,000 Aboriginal people living in New Brunswick, both on and off reserve. For information on provincial initiatives for developing Aboriginal-oriented and Aboriginal run businesses please refer to the provincial Aboriginal Affairs Secretariat.

Currency

The currency used in New Brunswick is the Canadian dollar. Many retailers also accept the American dollar, although not always at the official exchange rates. Currency can be exchanged at local banks. For current exchange rates, refer to the Bank of Canada website.

Government

Canada is a parliamentary system of democratic government. Because it was a former colony of Great Britain, Canada is still a constitutional monarchy and accordingly shares the Queen as head of state along with Britain, Australia, New Zealand and other former British Colonies. Under the Constitution, powers and responsibilities are divided between the federal government and the provinces. The federal Parliament has exclusive jurisdiction

over those subject areas that tend to be of a more national interest such as banking, currency and taxation, inter-provincial and international trade and commerce, criminal law and procedure, national defence and other areas that transcend provincial boundaries. The provincial Legislatures are given exclusive jurisdiction over those matters which are of a more local character, such as trade within the province, the administration of justice, property and civil rights, education and the overseeing of municipal institutions. There are also areas of concurrent federal and provincial jurisdiction; these include healthcare, the environment, agriculture and immigration. Municipal governments enact laws pertaining to cities and towns.

In New Brunswick, as in the other provinces in Canada, a provincial government is elected for a term of up to 5 years, although an election writ is often "dropped" within 4 years. Provincial legislation comes into force when it is passed by the Legislative Assembly and receives royal assent from the Lieutenant- Governor, who is the Queen's representative. New Brunswick has 55 electoral districts, each with one representative. On September 18, 2006, Shawn Graham, the leader of the provincial Liberal party, was elected New Brunswick's 31st Premier.

Economy & Transportation

New Brunswick's economy is closely tied to the wealth of natural resources found in the Province such as agriculture, fisheries and aquaculture, forestry and mining. New Brunswick also has vibrant manufacturing, tourism, transportation and energy industries.

The Province is accessible via roadway, rail, ship or airplane. The Province's largest seaport is located in the City of Saint John and handles an average of 25 million metric tones of cargo annually. There are airports in all three of the Province's major cities, Moncton, Fredericton and Saint John, with the Moncton airport holding an international airport status.

Natural Resources

The wide variation of New Brunswick's natural resources can be attributed to its diversity in elevation and in coastal exposure. The forestry industry, for instance, harvests both hardwood and softwood lumber. The fisheries primarily target snow crab, lobster and herring. In farming, the main crop is potato, but the Province's farms also produce vegetables, grains, dairy products and various meats.

The subterranean resources of New Brunswick also contribute to an important mining industry, which recovers lead, zinc and bismuth, as well as peat, coal and structural materials. With one third of the Province underlain by Carboniferous rocks, there is also significant potential for oil and gas exploration.

The Legal System

(1) The *Canadian Charter of Rights and Freedoms*

One important element of the Canadian legal system is the *Canadian Charter of Rights and Freedoms* which was incorporated into the *Constitution Act 1867* in 1982. The *Charter* guarantees a list of rights and freedoms to all people living within Canadian borders. The *Charter* is significant because, unlike other human rights legislation, it is entrenched in the Canadian Constitution, which is the supreme law of Canada. All Canadian laws must conform to the *Charter.*

(2) *The Court Structure*

New Brunswick's judicial system, although defined as a 3rd branch of government, is independent of government and impartial. There are also various methods of alternate dispute resolution available in New Brunswick. In fact very few of the total cases initiated in any year actually proceed to a full trial. Cases may be settled at any point before trial, they may be submitted to arbitration, mediation, or may not be resolved at all. The length of time to resolve a dispute depends on the resolution method chosen, the complexity of the case, and various other factors.

Criminal law matters and civil law matters in New Brunswick proceed through the Province's court system by two slightly different routes. Criminal matters first go to Provincial Court and then to The Court of Queen's Bench (depending on the charge). The highest court in the Province is The Court of Appeal which hears appeals in criminal and civil matters. In civil proceedings, any claim up to a maximum of $6,000 must go to Small Claims Court. All claims above that threshold proceed through The Court of Queen's Bench.

Proceedings in the New Brunswick court system are governed by the Rules of Court. These rules provide for two types of proceedings: an "Application" where facts are not substantially in dispute between the parties and an "Action" where facts are in dispute. Absent settlement, an action eventually results in a "trial" with witnesses, evidence and argument. Applications are usually decided based on affidavit evidence and argument of law.

Customs & Immigration

The Canadian Constitution establishes that the federal government has exclusive jurisdiction over citizenship and immigration including customs, refugees and border issues. Canada Revenue Agency, Citizenship and Immigration and Canadian Border Services are all federal departments.

Language

New Brunswick is officially a bilingual Province, which means that government services and legislation must be available in both official languages. This is a reflection of the large number of francophone communities in New Brunswick which translates to a fluently bilingual workforce.

Telecommunications

New Brunswick has a modern telecommunications system. Users have access to telephone (including cellular, paging, PCS, GPS), facsimile, computer-related communications, cable, satellite, high-speed broadband internet, etc. The City of Fredericton, the Province's capital city, has taken the lead in this area and integrated traditional and wireless technologies to create "Fred-eZone" which is a free community-wide Wi-Fi network providing mobile broadband access to residents, visitors and businesses from virtually anywhere within the city.

Statutory Holidays

New Brunswick recognizes the following as statutory holidays: New Year's Day, Good Friday, Victoria Day, Canada Day, New Brunswick Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day. Most businesses are required to be closed on these days. The New Brunswick provincial government has delegated the decision as to whether business may open on Sundays to the various municipalities around the Province. Consequently, certain municipalities such as Moncton, Dieppe and Fredericton now allow businesses to open on Sundays, albeit generally during reduced hours.

Education

New Brunswick offers publicly funded education from kindergarten through grade twelve. Most children start school when they are 5 years old in kindergarten although there are some privately run pre-schools and Montessori schools. Grades 1-6 are the elementary grades, 7-9 are the intermediate grades, and 10-12 the senior high grades.

A full school program is available in both the English language and the French language. There are also three programs (Core French Program, Late French Immersion Program and the Early French Immersion Program) offered in the English school system which provide Anglophone children the opportunity to learn French as early as the first grade.

New Brunswick is home to several major universities such as the University of New Brunswick, St. Thomas University, Mount Alison University and the Province's French-language Université de Moncton. The Province also boasts numerous provincial community colleges and several private colleges.

Healthcare

The Ministry of Health is comprised of the Department of Health and eight Community Hospital Boards. Together, the Ministry and the Hospital Boards are responsible for providing quality health care to the citizens of New Brunswick. Residents of New Brunswick have access to essential medical services, such as doctor and hospital visits, maternity care, operative care and therapeutic procedures free of charge.

Public Services

Clean water supplies are readily available throughout the Province. Outside city or town limits, homes or businesses are connected to private wells, whereas users within city or town limits access a public water supply operated by the municipality. Electricity is provided by a private sector provider, although rates are regulated. The Province is also linked to natural gas reserves.

BUSINESS STRUCTURES

There are four main ways to structure a business in New Brunswick: Sole proprietorships, partnerships, corporations and co-operatives.

Sole Proprietorships

A sole proprietorship is the simplest form of business enterprise. All functions of the business are performed by one person, and that person assumes all risks and liability associated thereto. The sole proprietor is exposed to unlimited liability as all business and personal assets of a proprietor may be used to satisfy liabilities.

A sole proprietorship must register its business name with the Corporate Affairs Registry of New Brunswick if it uses its business name for trading, mining or manufacturing.

Often a person starting in business for the first time will operate as a sole proprietorship because there are fewer costs involved in organizing under this business structure. Later if the business proves to be successful, the sole proprietor can incorporate a company and have the business continue as a corporation. There can also be tax benefits related to sole proprietorships such as applying losses from the business against income from other sources, which may prove particularly noteworthy during the start-up phase of the sole proprietorship when tax losses are more common.

Partnerships

A partnership is the relation that subsists between persons carrying on a business in common in New Brunswick, with a view of profit. A partnership allows persons to pool resources and divide management responsibilities with a proportional sharing of profits and losses between them. There are two principal types of partnerships in New Brunswick: general partnerships which are governed by the *Partnership Act* and limited partnerships which are governed by the *Limited Partnership Act*. The two types of partnerships are similar and can carry on the same type of business; however the extent of the liability of the individual partners differs between these two types of partnerships. Partnerships offer relative ease of formation and dissolution, relatively low start-up costs and potential tax advantages due to their flow-through nature.

Before establishing a partnership, a partnership agreement should be drawn up outlining rights, interests and responsibilities of each partner. Where a partnership agreement has been prepared, it will take priority over the applicable legislation. However, if there is no partnership agreement between the parties, then the default rules set-out in the *Partnership Act* and *Limited Partnership Act* will govern, despite the contrary intentions of the partners. A standard partnership agreement should cover such items as contributions to the partnership, banking, division of profits, accounting and bearing of expenses. The agreement may also restrict the rights of partners to assign or pledge their partnership interest and prescribes a very simple buy-sell arrangement in the event one partner wishes to leave the partnership. There should also be a clause outlining the disposition of a partner's interest on death or insolvency. The division of assets on the dissolution of the partnership should also be addressed in the partnership agreement.

(1) *General Partnerships*

A Partnership under the *Partnership Act* is defined as "the relation that subsists between persons carrying on a business in common, with a view of profit". Joint tenancy, co-ownership of property and the sharing of gross returns do not individually create a partnership. However, receiving a share of business profits is *prima facie* evidence of a partnership but is not in itself conclusive.

In a general partnership, one of the disadvantages is that each partner will be responsible for any liabilities incurred by any other partner acting in the ordinary course of the business of the firm. There is joint and several liability for all contractual and debt obligations of the partnership.

A Certificate of Partnership must be registered with the Corporate Affairs branch of Service New Brunswick within two months of commencing business in New Brunswick. The filing fee for registration is $112. An electronic name search of the proposed partnership name is also required prior to registration. Such an electronic name search typically costs $50.

(2) *Limited Partnerships*

A limited partnership is a partnership with a least one general partner and at least one limited partner. A limited partnership may be formed to carry on any business that a partnership without limited partners may carry on. The partnership is formed in the same way as a general partnership, albeit pursuant to a different act, once a declaration signed by all of the partners desiring to form a limited partnership is filed along with a fee of $212. The declaration shall state the firm name under which the limited partnership is to be conducted, the general nature of the business, the names of the partners, generals and limited partners being respectively designated, the value of money and other property contributed or to be contributed by each limited partner, the principal place of business in the Province and any other information as is required by the regulations made under the *Act.* Every declaration expires five years after its date of filing unless the declaration is cancelled by filing a declaration of dissolution or the declaration is replaced by filing a new declaration before the expiry date. The *Act* sets out the powers of the limited and general partners.

In a limited partnership there is a separation between managing partners and "silent" partners, or those who only contribute capital. A limited partnership is a lower risk partnership endeavour because, unlike general partnerships, a limited partner is liable only to the extent of his/her capital contribution and not for the liabilities incurred by another partner. However, the limited liability of limited partners can be lost if a limited partner takes part in the control of the business.

(3) *Extra-Provincial Limited Partnerships*

With the exceptions of limited partnerships from Nova Scotia, extra-provincial limited partnerships must register as such in New Brunswick under the *Limited Partnerships Act* if they carry on business in New Brunswick. For the purposes of this requirement, carrying on business in the Province would include, among other things, having a resident agent or representative or a warehouse, office or place of business in New Brunswick, soliciting

business in New Brunswick or owning an interest in land in New Brunswick. The cost for filing a declaration of extra-provincial limited partnership is the same as for a resident limited partnership.

Corporations

A corporation is a more complex type of business structure and often involves higher legal and accounting fees then proprietorships or partnerships. However, after incorporation there is generally a greater source of capital available. A corporation is a legal entity distinct from its owners, the shareholders, which is one of the most beneficial aspects of incorporation. Because of the separate legal entity, no shareholder or director is personally liable for the debts, obligations or legitimate acts of the corporation. A shareholder's liability for debts and obligations is limited to the amount the shareholder has paid or agreed to pay for their shares. Other benefits include greater flexibility concerning taxation (see taxation section below) and the ability to transfer shares without disturbing the management of the business. A corporation does not cease to exist upon the death of a shareholder.

The shareholders have ultimate control over management of the corporation through the election of directors. The directors are responsible for the day to day operation and management of the business and affairs of the corporation. They have a duty to act honestly and in good faith and to always act in the best interests of the corporation.

Each province has its own corporate legislation, but there is also federal corporate legislation, namely the *Canada Business Corporations Act*. A corporation may be incorporated under one of the provincial statutes or under the CBCA. Generally speaking, there is little practical difference between incorporating under federal or provincial jurisdiction. A corporation which incorporates under a provincial statute is entitled to carry on business in that province, and generally it will be required to register in the other provinces in which it may wish to do business. A corporation incorporated under federal legislation can do business in any province in Canada. However, NB requires federally incorporated companies to register in the province if they wish to carry on business.

(1) *Provincial Incorporation*

The incorporation of a for-profit corporation in New Brunswick is done pursuant to the *Business Corporations Act* (New Brunswick). One very important advantage related to incorporations in New Brunswick is the absence of residency requirements for the directors of the company. Therefore, all of the directors may be non-residents of Canada. Corporations are incorporated in New Brunswick by filing Articles of Incorporation, a Notice of Registered Office and a Notice of Directors with the Corporate Affairs branch of Service New Brunswick. These forms may be filed electronically in which case a simple incorporation can be done in as little as 24 hours of receiving instructions in typical cases.

A person wishing to incorporate must conduct a computerized name search of the proposed corporate name. This name search costs $50. The cost to file incorporation documents electronically is $262 and the cost to file hard copies of the incorporation documents is $312. Other costs of incorporating include lawyers' fees, corporate seal, minute book, etc. A corporation incorporated under the New Brunswick legislation must file an annual return with the Corporate Affairs branch of Service New Brunswick, which

includes the name of the corporation, date of incorporation, fiscal year end and a description of the business carried on by the corporation as well as the names and addresses of the directors of the corporation together with an annual filing fee, presently 80$ for an annual return that is submitted in paper form and $60 for an annual return that is submitted in electronic form.

Non-profit organizations may also be incorporated under the *Companies Act* without share capital by letters patent. Most of the regulations that follow a corporation follow a non-profit corporation and, generally speaking, non-profit organizations have the same rights and responsibilities as for-profit companies. Non-profit organizations often seek a charitable organization tax number from Canada Revenue Agency.

(2) *Federal Incorporation*

Businesses operating nationally or in several provinces may find it more convenient to incorporate under the *Canada Business Corporations Act.* A federally incorporated corporation will legally be able to carry on business anywhere in Canada but will still need to register in each province in which is does business.

Federal incorporation is handled by Corporations Canada, a division of Industry Canada in Ottawa, Ontario.

(3) *Extra-provincial Corporations*

With the exception of corporations incorporated pursuant to the laws of Nova Scotia, an extra-provincial corporation carrying on business in New Brunswick must register as such pursuant to the *Business Corporations Act*. For the purposes of this requirement, carrying on business in the province would include, among other things, having a resident agent or representative or a warehouse, office or place of business in New Brunswick, soliciting business in New Brunswick or owning an interest in land in New Brunswick. The cost for registering a corporation as an extra-provincial corporation in New Brunswick is $212.

Co-operatives

A Co-operative is a body corporate, but is a separate legal entity created under the *Co-operative Associations Act.* Each member of a cooperative has one vote and no member is personally liable for the debts, obligations or acts of the co-operative except to the amount of their shares. There are many active co-ops in New Brunswick. They are a popular form of doing business, especially in Acadian areas of the Province.

Although Credit Unions operate on a co-operative basis, they are governed by the *Credit Unions Act.*

Joint Ventures

Parties may form a joint venture when agreeing to work together on a project. The joint venture is formed by agreement between the parties and normally lasts until completion of the project or a predetermined date. A joint venture is neither a partnership nor a separate legal entity, although the parties may agree to incorporate a new

corporation whose member companies form a consortium. Because joint ventures strongly resemble partnerships, it is important for parties who wish to enter into a joint venture to have a written agreement which explicitly states that they do not wish to be associated as partners and that neither party is an agent of the other. If this is not done and a disagreement arises, the parties run the risk of being deemed to have been acting in partnership and the *Partnership Act* may be applied to settle things, despite the intentions of the parties.

Cessation or Termination of a Business

(1) *Receivership*

The appointment of a receiver is a remedy frequently invoked by a secured creditor which holds security over the assets of the debtor, particularly where the continued operation of the debtor's business after the enforcement of the security is desired. The receiver is given the authority to deal with the debtor's assets, including authority to operate and manage the business in the place of the existing management.

A receiver may be appointed by a single secured creditor or by the court. When a receiver is privately appointed, the appointment is made pursuant to the security document. The scope of the receiver's authority is derived from the powers listed in the document. If these powers are not sufficient, the secured creditor may be able to apply for a court appointed receiver.

To obtain a court-appointed receiver, the creditor applies to the court. The court can appoint a receiver where it is satisfied that it is just and equitable to do so. The security documents held by a secured creditor commonly provide that a receiver may be appointed or other enforcement action taken immediately following default.

(2) *Enforcement of Security*

In many cases, secured creditors take enforcement action against the debtor by the exercise of private contract remedies granted in the security document. The secured creditor is required to give notice to the debtor and any other party holding security in the same asset. In Canada, the required notice is 10 days pursuant to the federal *Bankruptcy and Insolvency Act.* If the assets involved are farm assets, there is a 15 day requirement pursuant to the *Farm Debt Mediation Act.*

INVESTMENT

Investment and competition law is primarily under the jurisdiction of the Canadian Federal Government.

Why Invest in New Brunswick?

In its 2006 report: *Competitive Alternatives: KPMG's Guide to International Business Costs,* KPMG cites Canada as the most cost effective place to do business compared to all other G7 Countries. Despite the rising dollar, the cost of doing business in Canada is still 5.5% lower then the US. Moncton was cited as having an 8.9% cost advantage relative to the US. New Brunswick and the Canadian Federal Government have several incentive programs for businesses establishing themselves in New Brunswick aimed at assisting business development from start up through to international commerce. Further information on the New Brunswick economic climate can be found at the Business New Brunswick website.

Real estate investment in New Brunswick

New Brunswick employs a system for registration of title called Land Titles, which is governed by the *Land Titles Act*. The Land Titles system provides a mechanism for the permanent guarantee of the validity of title. The Land Title system has three important principles: (1) the mirror principle: the title register is a mirror which reflects accurately and completely the status of the title of a certain property; (2) the curtain principle: the title register is the sole source of information for a property and interested parties need not concern themselves with equities which lie behind the curtain; and (3) the assurance principle: if, through human error, the mirror fails to give an accurate reflection of the title, anyone who thereby suffers a loss will be put in the same position, so far as money can do it, as if the reflection had been accurate. Real estate investors in New Brunswick may acquire several types of interests in land including full ownership (freehold estate), an interest for a specified period (leasehold interest) or a partial interest in a freehold or leasehold interest as co-owners under a joint venture.

(1) *Real Estate Transactions in New Brunswick*

Most real property acquisitions begin with an agreement of purchase and sale. The transfer of title usually takes place upon the "closing" of the transaction. Most real estate transactions involve the services of an agent licensed under the *Real Estate Agents Act* (New Brunswick). Before signing an offer to purchase, a purchaser should obtain legal advice to ensure the offer contains appropriate representations, conditions and other provisions. The lawyer for the purchaser will conduct a search to ensure the vendor has good title to the property. If a vendor does not have good title and a proper search is not done to notify the buyer of this, the buyer runs the risk of paying for a property that they do not actually have title to or a property which is subject to rights of other parties opposable to the vendor's interest. Many purchasers will have a survey prepared by a land surveyor showing the outline of the property and buildings situated on it. This will confirm the identity and physical attributes of the land. It will show whether the property is subject to or benefited by any easements, whether structures encroach upon another property or if neighbouring structures are encroaching upon the property, and whether the buildings are placed in accordance with zoning requirements.

Where a vendor breaches his/her obligations in the purchase and sale agreement, the purchaser may proceed with the transaction and apply to the court for an order for "specific performance" to compel completion of the transaction. The purchaser may also terminate the contract, have the deposit returned and sue the vendor for damages as a result of the breach. Where a purchaser breaches obligations under the contract, the vendor may proceed with the transaction, seek specific performance and damages, or terminate the contract and retain the deposit.

(2) *Restrictions on the Sale and use of Land in New Brunswick*

New Brunswick does not have general restrictions with respect to land ownership within the Province by non-residents.

The *Securities Act*

Securities regulation in New Brunswick is governed by the relatively new *Securities Act* which is administered by the New Brunswick Securities Commission. Brokers, advisors and salespeople must be registered as such under the *Act.*

The *Securities Act* provides that no person or corporation may trade in a security unless a preliminary prospectus and a final prospectus have been filed and receipts obtained from the Commission and unless such a person is registered under the act as a type of securities dealer. A prospectus is a lengthy document which must contain "full, true, and plain" disclosure regarding the affairs of the corporation and the securities to be offered. Generally speaking, once a corporation issues securities to the public pursuant to a prospectus, it becomes a reporting issuer. Being a reporting issuer triggers many fairly onerous continuous disclosure obligations such as filing Annual Information Forms, Management Discussion and Analysis statements, filing audited financial statements and the filing of press releases and Material Change Reports in the event of an important change in the business, operations or capital of the corporation. The *Securities Act* also imparts civil liability against issuers, underwriters, directors and every person or corporation who signed the prospectus where such prospectus contains a misrepresentation.

There are several exceptions to the prospectus and registration requirements for issuers wishing to raise capital in New Brunswick without being subject to the onerous obligations of reporting issuers. This method of raising capital is referred to as private placements. The majority of the exemptions are found in the Canadian Securities Administrators National Instrument 45-106 – *Prospectus and Registration Exemptions*. The five most common prospectus and registration exemptions are: (i) the accredited investor exemption, pursuant to which an issuer may issue securities to large institutional investors or investors with significant net worth; (ii) the private issuer exemption, pursuant to which an issuer may issue securities so long as there are no more than 50 investors and restrictions on share transfers; (iii) the family, friends and business associates exemption, pursuant to which an issuer may issue securities to certain family members, friends and business associates; (iv) the minimum amount investment exemption, pursuant to which investors may purchase securities for an acquisition cost of not less than $150,000 paid in cash; and (v) the offering memorandum exemption, pursuant to which an issuer prepares a document containing certain prescribed information about the company and the securities being offered, but not in as much detail as a prospectus, which must also be filed with the New Brunswick Securities Commission for a fee of $350. A report of exempt distribution must be filed when

an issuer sells securities pursuant to certain exemptions. The filing fee associated with a report of exempt distribution is $100 regardless of the amount of capital raised through the private placement offering.

Secured Financing

Secured interests in personal property are governed by the *Personal Property Security Act* in New Brunswick. The *Personal Property Security Act* establishes a system for the registration of notices in relation to agreements purporting to create a security interest in tangible or intangible personal property. The *Act* also sets out various rules pertaining to the attachment, perfection and priority of security interests. It also sets out a mechanism for the enforcement of such security.

The notice and search system allows users to determine what registered interests are attached to any borrower's personal property. One important point is that the *Act* does not cover all competing claims and property interests; for example, most statutory or common law liens, most interests in real property, deemed trusts, some assignments of accounts and rights of buyers and sellers of goods are not governed by the *Act*.

The *Franchises Act*

Bill 32, the proposed New Brunswick *Franchises Act*, was introduced into the New Brunswick legislature on February 23, 2007. Similar to other franchise legislation already enacted in other provinces, the proposed *Franchises Act* would provide for a duty of fair dealing, a right of association among franchisees and the obligation for franchisors to provide pre-sale disclosure. However, unlike similar legislation in other provinces, the proposed *Franchises Act* would impose a mandatory mediation process to deal with disputes among franchisees and franchisors. It is still unclear what changes will be made to the Bill as it continues through the legislative process and it is equally difficult to predict when the Bill might become law.

TAXATION

Under the Canadian Constitution, the federal and provincial governments are given almost unlimited powers of taxation. Under the *British North America Act*, the immediate predecessor of the Canadian Constitution, the federal parliament has the power to raise money by any mode or system of taxation while the provinces are limited to collecting taxes that are paid directly by the person being taxed – so-called direct taxes.

Income Tax

It is the responsibility of all New Brunswick businesses to collect federal and provincial income taxes, Canada Pension Plan (CPP) contributions and Employment Insurance (EI) premiums.

The Canadian Federal Government generally taxes income earned globally by residents and income earned locally in Canada by non-residents under the *Income Tax Act* (Canada). The Government of New Brunswick taxes corporate income earned in New Brunswick under the *Income Tax Act* (New Brunswick).

HST

In New Brunswick, the federal goods and services tax ("GST") is harmonized with the provincial sales tax into one blended tax known as the "harmonized sales tax" or the "HST". The HST applies at a rate of 14% and, subject to certain limited exceptions, any person in the business of goods and services is required to be registered with Canada Revenue Agency and is required to collect and remit to Canada Revenue Agency HST on all taxable supplies. HST does not apply to basic groceries, prescription drugs and medical services.

Real Property Taxes

Subject to a few limited exceptions, all real property in New Brunswick is subject to provincial and municipal taxes based on the assessed value of the real property in question. The rates of real property taxes in the Province vary depending on the municipality in which the subject property is located. Furthermore, upon a transfer of real property, the Province of New Brunswick levies a 0.25% real property transfer tax based on the greater of the value of the transaction and the assessed value of the subject property.

INSURANCE

Insurance is an important part of any business. Where personal liability can be imposed on individuals while operating a business, it is important to have the proper insurance coverage. Businesses want to protect their assets in the event of a lawsuit so that the business will not be forced into bankruptcy in the event of negligence or in case something happens to the business such as a fire or flood. Insurance is available to cover personal and product liability, fire, vehicles, disability, business interruptions, and corporations can even insure the lives of directors and other employees. Comprehensive insurance policies should be obtained to suit the particular business needs. In some industries, liability insurance is mandated by statute. See the *Insurance Act* (New Brunswick) for more information.

LABOUR STANDARDS

Employment and labour law in New Brunswick is governed by the *Employment Standards Act* and the *Industrial Relations Act.* The *Employment Standards Act* prescribes conditions of employment concerning such things as wages, hours of work, holiday and vacation periods, rest periods, leave, termination, etc. The *Industrial Relations Act* establishes rights of employees to join unions and prescribes rules and fair practices that employers must follow when dealing with unions and collective agreements. The *Labour and Employment Board Act* establishes a board to deal with labour disputes and employment standards issues.

The standard work week in New Brunswick is 44 hours although the board may exempt certain employers or industries from standard work week provisions. Overtime at a rate of 1 and ½ times the rate of regular pay is payable to an employee for hours worked over and above the standard work week. Employers must provide employees with at least 24 consecutive hours of off in a 7 day period to be taken, if possible, through Sunday. Employers must provide employees with at least a half an hour rest or eating period every 5 hours of consecutive working time.

Effective July 1, 2007, the minimum wage is $7.25 per hour.

Employee Leave

(1) *Maternity Leave*

An employer shall, at any time from a day eleven weeks before the specified date of delivery to the actual delivery, grant the employee leave of absence without pay for seventeen (17) weeks or such shorter period as the employee requests. The pregnant employee must request such a leave of absence and must provide a certificate by a medical practitioner or nurse practitioner stating that the employee is pregnant and specifying the date upon which delivery is expected.

If the performance of the work of the employee is affected by the pregnancy, and where no alternative employment is available, the employer may require the employee to commence a leave of absence when the duties of her position cannot reasonably be performed.

The employee who intends to take a maternity leave must advise her employer four (4) months before the projected date of delivery or as soon as her pregnancy is confirmed, whichever is the later. The employee must inform the employer of her intent to take leave and the anticipated commencement date in the absence of emergency. In the absence of emergency, the employee must also give the employer two week's notice of the commencement date of the leave.

At the conclusion of the leave, the employer shall permit the employee to resume work in the position the employee held immediately before the commencement of the leave or an equivalent position with no decrease in pay and with no less benefits accrued up to the commencement of the leave.

(2) *Family Leave*

An employee is entitled to a leave of absence without pay of up to three (3) days during a twelve calendar month period to meet responsibilities related to the health, care or education of a person in a close family relationship with the employee.

The employee shall advise the employer of his/her intention to take the leave, the anticipated commencement of the leave and the anticipated duration of the leave.

Occupational Health and Safety

Workplace safety is governed by New Brunswick's *Occupational Health and Safety Act*. The *Act* prescribes rules and regulations that employers must follow such as posting health and safety information in the workplace, not subjecting workers to dangerous or hazardous materials and provisions regarding dangerous work. The *Workplace Health, Safety and Compensation Commission Act* establishes the Workplace Health, Safety and Compensation Commission which monitors workplace safety. Rules for entering and inspecting workplaces as well as consulting employees are set out in the *Occupational Health and Safety Act*.

Termination

Under the New Brunswick *Employment Standards Act,* where an employer terminates employment without just cause that employer must provide the employee with a minimum period of notice upon termination of employment. An employee who is employed for a continuous period greater than 6 months but less than 5 years is entitled to two weeks notice. An employee who is employed for a continuous period of 5 years or more is entitled to four weeks notice.

Workers' Compensation

Workers' compensation legislation provides non-taxable disability and death benefits for work-related accidents and replaces a worker's right to take legal action against an employer. It is funded by employer contributions based on industry and associated risk.

Under the *Workers' Compensation Act,* workers and their dependants are given financial protection, medical benefits, and rehabilitation services in the event of death or injury. Employers are protected from legal action if workers are hurt. The workers compensation "accident fund" is entirely funded by employers. Employers must register with the Workplace Health, Safety and Compensation Commission, upon hiring three or more part-time or full-time employees. Employers' contributions depend on their industry group, the size of their payroll and the cost of the claims. Workers receive benefits for work-related injuries at a rate of 85% of net earnings not to exceed the maximum compensation allowable for the year of the injury.

Human Rights

The New Brunswick *Human Rights Act* prohibits discrimination with respect to employment or accommodation on a number of grounds, such as race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition or political belief or activity. The *Act* establishes the Human Rights Commission which investigates and attempts to resolve human rights disputes.

LABOUR RELATIONS

The New Brunswick *Industrial Relations Act* regulates collective bargaining in the Province. Labour legislation is designed to separate management and employees for the purposes of collective bargaining. Managerial employees and other employees employed in confidential matters relating to labour relations, are excluded from participating in collective bargaining.

Employers are prohibited from participating in or interfering with the formation of a trade union. Employers have a limited right to express their opinions, but cannot use undue influence, threats, coercion, intimidation or promises to affect employee's support for a union. Where employers violate this rule, certification may be granted even if the required membership support is not obtained by the union. Employers must accordingly be extremely careful when responding to an organizing campaign. Employers cannot refuse to employ or discriminate against employees because they are involved in a trade union.

A union may seek certification for a unit of employees in a geographic area. The appropriate bargaining unit is determined by the New Brunswick Labour and Employment Board. The main consideration is that employees must have a community of interest. The employer has a right to contest the bargaining unit proposed by the union. An employer may have an interest in minimizing repetitive bargaining by preventing a proliferation of bargaining units and inappropriate groupings of employees.

With certification the union has exclusive jurisdiction to bargain collectively on behalf of the bargaining unit. The employer must meet and bargain in good faith with the bargaining agent. Strikes or lockouts are illegal during the life of a collective agreement. They can be implemented only after the expiration of the agreement and after the parties have failed to reach an agreement through collective bargaining and attempts at conciliation have failed.

In New Brunswick, the purchaser of all or part of a business is bound by existing collective agreements and must recognize the certified union until the Labour Board rules otherwise. The Board will not usually interfere with a certified union after a sale unless there has been an intermingling of employees and the bargaining unit is no longer appropriate.

INTERESTS IN PROPERTY

Interests in Personal Property

Individuals and businesses in New Brunswick can record their financial interest in personal property in the Personal Property Registry created pursuant to the *Personal Property Security Act* (New Brunswick). Refer to chapter 3, section 3.4 for a discussion on secured financing of personal property.

Interests in Real Property

New Brunswick has some unique rules and regulations when it comes to acquiring an interest in real property. Refer to Chapter 3, section 3.2 for a discussion of the rules and regulations respecting interests in real property on New Brunswick.

ELECTRONIC COMMERCE

Electronic commerce enables individuals and businesses to buy and sell goods and services over networks. These networks can be used to communicate, sell, promote, advertise, and provide customer support and information. They also serve to reduce the cost and impact of paper transactions and increase efficiency with higher transaction speed. Electronic commerce allows firms located in New Brunswick the opportunity to compete and do business globally.

Electronic commerce, like other commerce is generally governed by the regular rules of contract law. Laws pertaining to incorporation (such as name registration), taxation, consumer protection, importing and exporting and intellectual property apply equally to electronic commerce.

Additionally, New Brunswick has an *Electronic Transactions Act* which establishes rules and regulations specific to this type of commerce.

GOODS AND SERVICES & CONSUMER PROTECTION

Product Standards

The *Sale of Goods Act* (New Brunswick) and the *Consumer Product Warranty and Liability Act* imply various conditions and warranties in a contract of sale, including a sellers right to sell goods, a buyers right to enjoy quiet possession of goods, and that those goods are free from any encumbrance in favour of a third party unknown to the buyer of goods at the time the contract is made. The *Act* mandates that goods be of merchantable quality and that goods sold by description actually match that description.

The *Cost of Credit Disclosure Act* regulates credit and identifies the manner in which the cost of credit must be disclosed. It also prohibits certain practices such as prepayment penalties, except when a loan is secured by a mortgage of land. It also imposes certain registration requirements for prescribed types of businesses.

Product Liability

A person suffering loss due to an unsafe or defective product may bring an action for damages against the manufacturer, vendor, or distributor of the product depending on his/her relationship with the prospective defendant. A party to a purchase or supply contract is entitled to sue for damage for breach of contract if the quality, fitness or performance of the product is not in compliance with the express or implied terms of the contract. Implied terms may be found by reference to common trade practice, and New Brunswick's legislation which contains implied terms and conditions as to the fitness and quality of goods sold. An injured purchaser or user of a product may also claim damages in negligence. A duty of care is owed to all persons who might foreseeably be injured by such a product. There are certain defences to such an action, but a vendor, manufacturer or distributor of a product must be certain not to make any false statements concerning safety or utility features of a product.

International Sale of Goods

New Brunswick has jurisdiction over contracts and sales of goods. The provincial *International Sale of Goods Act* implementing the International Sale of Goods Treaty is applicable to international transactions occurring in New Brunswick. The Convention governs all aspects of the sale of goods between parties from different countries and applies automatically unless specifically excluded. Parties to these contracts are able to structure appropriate arbitration agreements under the *International Commercial Arbitration Act.*

INTELLECTUAL PROPERTY

In Canada, the protection of intellectual property is the responsibility of the federal government. The Canadian Intellectual Property Office (CIPO), a Special Operating Agency associated with Industry Canada is responsible for the administration and processing of intellectual property in Canada. CIPO manages patents, trade marks, copyrights, industrial designs and integrated circuit topographies. For more information on intellectual property visit the CIPO website.

The Canadian Food Inspection Agency manages plant breeders rights established under the *Plant Breeders' Rights Act.* Plant breeders' rights protect breeders of varieties of plants that are new, different, uniform and stable. An established breeder is entitled to control the multiplication and sale of the protected seeds for up to 18 years. With permission, others may be able to breed and grow the protected seeds.

PRIVACY LAW

In New Brunswick, individual privacy is protected by both provincial and federal legislation. New Brunswick's *Right to Information Act* provides for the public's right to request and receive information relating to the public business of the Province. There are some specific limited exceptions to this right which can arise when the privacy of the information is absolutely necessary for the operation of the provincial government or when it is absolutely necessary for the protection personal privacy.

The federal statute, the *Personal Information Protection and Electronic Documents Act* (PIPEDA), regulates the collection, use and disclosure of personal information in the course of "commercial activities". Businesses must comply with mandatory appointment of a privacy officer; they must provide consumers with information on how their personal information is proposed to be used; and they must respond to queries and complaints. The legislation is applicable to private individuals and does not pertain to information about incorporated businesses, nor does it apply to information collected about employees in the course of the operation of a "provincially regulated" organization. For more information visit the website for the office of the Privacy Commissioner of Canada.

IMPORT / EXPORT REGULATIONS

The provincial legislatures only have jurisdiction under the Canadian Constitution to deal with exclusively local trade. Inter-provincial and International trade fall under the jurisdiction of the Parliament of Canada. The Canada Revenue Agency and Canadian Border Services Agency enact guidelines and regulations on international trade.

LICENSING

Many industries require that licenses or permits be obtained prior to the commencement of operation of a business. Some industries which require licenses in New Brunswick include real estate, insurance, collection agencies, aquaculture, commercial cutting, securities dealers, etc. For more information visit the Service New Brunswick website.

THE ENVIRONMENT

The primary legislative controls for air, water and land pollution in New Brunswick are the *Clean Water Act*, the *Clean Environment Act*, and the *Clean Air Act*, all of which require approvals from the Minister of the Environment for discharging contaminants and immediate notification of the Minister in the event of a non-approved discharge. In addition, the framework under these Acts allows for ministerial orders to control or stop the discharge of contaminants and to require clean-up of contaminated sites. The regulations under these acts also provide for commissions and boards to manage tire recycling, solid waste, water, and sewage.

Being the newest of the three Acts, the *Clean Air Act* provides for greater public participation with regard to approvals, an administrative framework of monetary penalties for minor offences, and duties for the Minister of the Environment to investigate suspected offences and to report to the legislature on the Province's air quality.

Environmental assessments of projects in New Brunswick may trigger both federal and provincial rules. Undertakings that are listed in the *Environmental Impact Assessment Regulation* under the *Clean Environment Act* must be registered with the Minister of the Environment. For new projects, the Minister will decide whether an environmental impact assessment and its resulting recommendations are necessary for an undertaking to proceed.

Construction and operating activities for industrial operations are further controlled by systems of ministerial approval under the *Water Quality Regulation* of the *Clean Environment Act* and the *Air Quality Regulation* of the *Clean Air Act*. Environmental reviews are conducted by the Department of Environment to ascertain whether approvals should be granted. The fees for these approvals are established by the regulations.

Alterations of watercourses and topsoil are subject to the receipt of a permit from the Minister of the Environment, as required by the *Watercourse Alteration Regulation* of the *Clean Water Act* and the *Topsoil Preservation Act*. Watercourses are defined broadly, but do not include areas where large rivers meet the ocean. Wetlands and coastal areas in New Brunswick may be specifically protected from alteration or certain activities by ministerial Wetland Designation Orders or Coastal Designation Orders under the *Clean Environment Act*.

The Province's supply of drinking water is protected on several fronts under the *Clean Water Act*. First, the *Potable Water Regulation* ensures potability of water by setting procedures for well drilling and requirements for regular testing of public water supplies. Standards and permit requirements for water well construction, aquifer protection and well testing are further elaborated in the *Water Well Regulation*. The *Clean Water Act* also provides for ministerial designation orders to restrict certain activities and land use within a "setback" from surface water that is used for public drinking water supplies.

Regulations under the *Clean Environment Act*, the *Clean Air Act*, and the *Pesticides Control Act* provide specifications and permitting requirements with regard to the storage and handling of petroleum products, the use of ozone depleting substances, and the use and disposal of pesticides in New Brunswick.

Finally, a fund, established under the *Environmental Trust Fund Act*, is designed to cover the costs of environmental protection and restoration, promotion of sustainable development, conservation of natural resources, environmental education, and maintenance and enhancement of the visual environment.

RESOURCES AND CONTACT INFORMATION

The following list of contacts may prove useful to persons intending to carry on business in New Brunswick:

Aboriginal Business Procurement Strategy – Indian and Northern Affairs Canada
ainc-inac.gc.ca/saea-psab

Aboriginal Business Service Network
cbsc.org/absn

Atlantic Canada Opportunities Agency
Blue Cross Centre, 3rd Floor
644 Main Street, P.O. Box 6051
Moncton, NB E1C 9J8
Tel: 506.851.2271
Toll free: 800.561.7862
acoa.ca

Better Business Bureau of the Maritime Provinces Inc.
1888 Brunswick Street, Suite 805
Halifax, NS B3J 3J8
Tel: 902.422.6581
bbbmp.ca

Business New Brunswick
Centennial Building, 670 King Street
P.O. Box 6000
Fredericton, NB E3B 1G1
Tel: 506.444.5228
gnb.ca/0398/index-e.asp

Canada Border Services Agency
Mr. Alain Jolicoeur
President of the CBSA
Ottawa, ON K1A 0L8
Toll free: 800.461.9999
cbsa-asfc.gc.ca

Canadian Heritage
Atlantic Regional Office
1045 Main Street, Unit 106, 3rd Floor
Moncton, NB E1C 1H1
Tel: 506.851.7066
canadianheritage.gc.ca

Canadian International Development Agency
New Brunswick Regional Office
Bill Gunn, Regional Director
1045 Main Street, Unit 103, 4th Floor
Moncton, NB E1C 1H1
Tel: 819.997.5006
Toll free: 800.230.6349
acdi-cida.gc.ca

Canada/New Brunswick Business Service Centre
Ground Floor, Barker House
570 Queen Street
Fredericton, NB E3B 6Z6
Tel: 506.444.6140
Toll free: 800.668.1010
canadabusiness.ca/nb/

Canada Revenue Agency
Moncton Tax Service Office
50 King Street
P.O. Box 1070
Moncton, NB E1C 4M2
cra-arc.gc.ca

Environment Canada
Atlantic Office
45 Alderney Drive
Dartmouth, NS B2Y 2N6
Tel: 902.426.7231
Toll free: 800.668.6767
ec.gc.ca

Fisheries and Oceans Canada
Maritimes Region
P.O. Box 1035
Dartmouth, NS B2Y 4T3
Tel: 902.426.3760
dfo-mpo.gc.ca

Foreign Affairs and International Trade Canada
Enquiries Service (BCI)
125 Sussex Drive
Ottawa, ON K1A 0G2
Toll free: 800.267.8376
international.gc.ca

Indian and Northern Affairs Canada
Atlantic Regional Office
P.O. Box 160
40 Havelock Street
Amherst, NS B4H 3Z3
Tel: 902.661.6200
ainc-inac.gc.ca

Industry Canada
New Brunswick Office
1045 Main Street, 4th Floor, Unit 103
Moncton, NB E1C 1H1
Tel: 506.851.6521
ic.gc.ca

New Brunswick Association of CBDC's (Community Business Development Corporations)
360 Parkside Drive, 1st Floor
Bathurst, NB E2A 1N4
Tel: 506.548.2406
Toll free: 888.303.2232
cbdc.ca/index.php?rid=2

New Brunswick Human Rights Commission
751 Brunswick Street
P.O. Box 6000
Fredericton, NB E3B 5H1
Tel: 506.453.2301
gnb.ca/hrc-cdp

New Brunswick Securities Commission
85 Charlotte Street, Suite 300
Saint John, NB E2L 2J2
Tel: 506.658.3060
Toll free: 866.933.2222
nbsc-cvmnb.ca

Office of the Premier
Centennial Building
70 King Street
P.O. Box 6000
Fredericton, NB E3B 1G1
Tel: 506.453.2144
gnb.ca/0089/index-e.asp

Government of New Brunswick
gnb.ca

Service New Brunswick: Corporate Affairs Branch
City Centre, 432 Queen Street
P.O. Box 1998
Fredericton, NB E3B 1B6
Tel: 506.453.2703
snb.ca/e

Workplace Health, Safety and Compensation Commission
1 Portland Street
P.O. Box 160
Saint John, NB E2L 3X9
Tel: 506.632.2200
Toll free: 800.222.9775
whscc.nb.ca

PRINCE EDWARD ISLAND

INTRODUCTION

Geography & Population

Prince Edward Island is an island in the Gulf of St. Lawrence, located on Canada's east coast. It is Canada's smallest province. It became connected to the other mainland provinces in 1997 with the construction of the Confederation Bridge which is one of the world's largest bridges at 13 kilometres in length.

The Province is also accessible via air and a seasonal car ferry connecting Nova Scotia and Prince Edward Island. Canada borders the United States, and Prince Edward Island is in close proximity to Toronto, Montreal, Boston, and New York City. The Province is 304 miles (490 km) east of the US (Maine) border, 684 miles (1,100 km) northeast of Boston, MA, 1,019 miles (1,640 km) east of Toronto, and 625 miles (1000 km) from Montréal.

The province's capital city, Charlottetown is located 144 miles (231 km) north of Halifax International Airport. The last official census which was released in 2004 by Statistics Canada lists the population of Prince Edward Island as 135,851, and that of Charlottetown as 32,174. Statistics Canada estimates the population of PEI as of January 2007 to be 138,632.

Aboriginal Population of Prince Edward Island

PEI has the smallest percentage of aboriginal people per capita in Canada. Only 1 % (about 1,345) of the Islanders identify themselves as aboriginal. The Abegweit First Nation is a small Mi'kmaq band which consists of 3 reserves all within close proximity to Charlottetown.

Another small Mi'kmaq community called Lennox Island is located in the Malpeque Bay and is home to approximately 400 inhabitants. For information on provincial initiatives for developing Aboriginal-oriented and Aboriginal run businesses please see infoPEI at http://www.gov.pe.ca/infopei/index.php3?lang=E.

Climate

There are four seasons in Prince Edward Island. Spring temperatures usually range from 2 to 8°C (46 to 71°F). Summer temperatures are usually in the mid to high 20°C range (approximately 70 to 85°F) and can go as high as 35°C (90°F). Autumn temperatures range from 8 to 22°C (46 to 71°F). Winter temperatures usually range from -3 to -11°C (26 to 11°F).

Currency and Exchange Rate

The currency used in PEI is the Canadian dollar. Many retailers also accept the American dollar, although not always at the official exchange rates. Currency can be exchanged at local banks; for current exchange rates, refer to the Bank of Canada website at bankofcanada.ca.

Government

Canada is a parliamentary system of democratic government. Because it was a former colony of Great Britain, Canada is still a constitutional monarchy and accordingly shares the Queen as head of state along with Britain, Australia, New Zealand and other former British Colonies. Under the Constitution, powers and responsibilities are divided between the federal government and the provinces. The federal Parliament has exclusive jurisdiction over those subject areas that tend to be of a more national interest such as banking, currency and taxation, inter-provincial and international trade and commerce, criminal law and procedure, national defence and other areas that transcend provincial boundaries. The provincial Legislatures are given exclusive jurisdiction over those matters which are of a more local character, such as trade within the province, the administration of justice, property and civil rights, education and the overseeing of municipal institutions. There are also areas of concurrent federal and provincial jurisdiction; these include healthcare, the environment, agriculture and immigration. Municipal governments, enact laws pertaining to cities and towns.

In Prince Edward Island, as in the other provinces in Canada, a provincial government is elected for a term of up to 5 years, although an election writ is often "dropped" within 4 years. The leader of government is the Premier who appoints 6-9 individuals as departmental ministers. Provincial legislation comes into force when it is passed by the Legislative Assembly and receives royal assent from the Lieutenant Governor, who is the Queen's representative. The most recent election was held September 29, 2003 where the Conservative party was elected for a 3rd straight term. The Conservative party headed by Premier Pat Binns has been in power since 1996. Prince Edward Island has 27 electoral districts, each with one representative. On June 28, 2006, the Legislative Assembly approved Bill No. 49 - An Act to Amend the Electoral Boundaries Act creating new electoral boundaries. A Provincial Election has been called for May 28, 2007 and will be the first election following the new boundary change.

Economy & Transportation

The major industries in Prince Edward Island have traditionally been agri-food products/services, fishing/aquaculture, and tourism and these continue to be the largest contributors to the Province's economy. Emerging industries include equipment/machinery manufacturing, health/education, and shared services/call centres.

There are full service industrial parks in the top two industrial areas on Prince Edward Island: Summerside and Charlottetown. West Royalty Industrial Park, on the northern perimeter of Charlottetown, is about 5 minutes from the Charlottetown Airport. Facilities ranging from 1700-30,000 square feet are available for lease. It also offers a day-care service, free on-site parking for over 1000 cars with expansion capabilities, and the landlord assumes responsibility for all maintenance to the exterior of the facility.

The 38 acre Summerside Business Park is located 5 minutes from the town's airport. Lease space ranges from 2000-7500 square feet. Both industrial parks also offer fully serviced land for sale. Commercial construction costs range from $40 to $45 per square foot. The Charlottetown Airport Authority and the City of Charlottetown have recently opened a business park at the Charlottetown Airport providing excellent industrial sites with ready airport access. The recently constructed Souris Food Park in eastern Prince Edward Island is a 52 acre food

park overlooking Souris Harbour. It is fully serviced and has capacity for up to five additional food processing tenants.

Charlottetown hosts the only commercial airport in the province, although Summerside is the site of a former Armed Forces base, which now operates under Slemon Park Corporation. Slemon Park is 1500 acres with 70 buildings including warehouse space, offices and hangars. It also hosts Summerside airport, with daily commuter service to Maritime centres and connections to the world. It is also the site of Summerside Aerospace Centre with 150,000 square feet of hangar space.

The Confederation Bridge opened on May 30, 1997 and became the main link between Prince Edward Island and New Brunswick (mainland North America). It offers 24-hour access between Prince Edward Island and New Brunswick including services such as traffic control, wind monitoring, snow and ice removal, and a pedestrian and cyclist shuttle service. It is 12.9 km in length and 11 metres in width, including one lane and one emergency shoulder in each direction. There is a ferry which operates seasonally between Wood Islands and Caribou, Nova Scotia. A second ferry service provided by CTMA operates seasonally between Souris and Cap-aux-Meules, Quebec and connects with Quebec's Magdalen Islands.

There are no longer any railway systems in the Province. Most goods are carried into and out of the province by transport truck or by sea carriage. The Province has a modern highway transportation system, although there are weight restrictions imposed during the early Spring. The Province also hosts 4 major ports at Summerside, Charlottetown, Georgetown and Souris which accommodate vessels carrying pulpwood, gravel, oil, potatoes, and other products.

Natural Resources

PEI has a vast range of natural resources. The rich red soil is famous around the world and so are PEI's beautiful oceans. PEI has a large fishing industry; shellfish, especially lobster, oysters and muscles are harvested from PEI's oceans. PEI is also famous for its fertile farm land and is responsible for the production of one third of all potatoes grown in Canada.

Wind energy has recently become one of PEI's most important natural resources. PEI is the site of the Atlantic Wind Test Site (AWTS). The AWTS facilitates the evaluation, development and demonstration of wind energy systems and equipment. AWTS is an integral part of Canada's wind energy development program.

The Legal System

(1) *The Canadian Charter of Rights and Freedoms*

One important element of the Canadian legal system is the *Canadian Charter of Rights and* Freedoms which was incorporated into the *Constitution Act 1867* in 1982. The Charter guarantees a list of rights and freedoms to all people living within Canadian borders. The Charter is significant because, unlike other human rights legislation, it is entrenched in the Canadian Constitution, which is the supreme law of Canada. All Canadian laws must conform to the Charter.

(2) The Court Structure

Prince Edward Island's judicial system, although defined as a 3rd branch of government, is independent of government and impartial. There are various methods of alternate dispute resolution available in Prince Edward Island, in fact very few of the total cases actually proceed to a full trial. Cases may be settled at any point before trial, they may be submitted to arbitration, mediation, or may not be resolved at all. The length of time to resolve a dispute depends on the resolution method chosen, the complexity of the case, and various other factors.

Criminal law and civil law in Prince Edward Island proceed through the Province's court system by two slightly different routes. Criminal matters first go to Provincial Court and then to the PEI Supreme Court (depending on the charge). The Supreme Court has a trial division and an appeal division, after which cases may proceed to the Supreme Court of Canada. In civil proceedings, any claims up to $8000 go to Small Claims Court. All other claims go to the Prince Edward Island Supreme Court, beginning at the Trial level.

Proceedings in the Prince Edward Island Supreme Court are governed by the Rules of Civil Procedure. These rules provide for two types of proceedings, an "Application" where facts are not substantially in dispute between the parties and an "Action" where facts are in dispute between the parties. Absent settlement, an action eventually results in a "trial" with witnesses, evidence and argument. Applications are usually decided based on Affidavit evidence and argument of law.

Customs & Immigration

The Canadian Constitution establishes that the federal government have exclusive jurisdiction over citizenship and immigration including customs, refugees and border issues. Canada Revenue Agency, Citizenship and Immigration and Canadian Border Services are all federal departments.

Language

English is the predominant language spoken in Prince Edward Island. French is also widely spoken, especially in the Evangeline Region of the Province, west of Summerside.

Telecommunications

Prince Edward Island has a modern telecommunications system. Users have access to telephone (including cellular, paging, PCS, GPS), facsimile, computer-related communications, cable, satellite, etc. There are two local telephone companies, Aliant and Eastlink. PEI's telephone system is now 100% digital. Aliant Mobility, Telus and Rogers Communications provide cellular telephone services from any point on PEI.

The Province operates on a new high-speed Broadband Communications Network (BCN). All PEI schools and post secondary institutions are connected to the system, as are most government offices, libraries, hospitals and health care facilities, private businesses and home users. Like the Confederation Bridge, the provincial broadband network uses technology to provide Prince Edward Island with a competitive edge in the business world. Video conferences are possible from any location in the Province. Commuting to global networks is a lot easier for people who want to 'tele-work' from PEI.

Statutory Holidays

PEI recognizes the following as statutory holidays; New Year's Day, Good Friday, Canada Day, Labour Day, Remembrance Day and Christmas Day. Most business are closed on these days. Some other observed holidays include; Victoria Day, Gold Cup and Saucer Day, Thanksgiving Day and Boxing Day. These are not statutory holidays but most businesses will be closed on these days. In addition, PEI has a long tradition of strictly observing Sunday as a Sabbath day and generally, most shops are closed on Sundays.

Education

PEI offers publicly funded education from kindergarten through to grade twelve. Most children start school when they are 5 in kindergarten although there are some privately run pre-schools and Montessori schools. Grades 1-6 are the elementary grades, 7-9 are the intermediate grades, and 10-12 the senior high grades. The program is taught in schools which are organized within the Western School Board, the Eastern School District and La Commission Scolaire de Langue Française.

A full school program is available for both English language and French language education. The schools of La Commission Scolaire de Langue Française operate in the French language. Second language courses are available in all schools, with instruction beginning not later than grade four. Early French Immersion and late French Immersion programs are available in some English language schools.

Prince Edward Island is home to one provincial university, the University of Prince Edward Island (UPEI), located in Charlottetown. The university was formed from the merger of Prince of Wales College and St. Dunstan's University. UPEI is home to the Atlantic Veterinary College, which offers the region's only veterinary medicine program. Holland College is the provincial community college, with campuses across the province, including specialized facilities such as the Atlantic Police Academy, Marine Training Centre, and the Culinary Institute of Canada. The College of Piping and Celtic Performing Arts of Canada, located in Summerside, specializes in the instruction of bagpipe and other traditional Scottish and Irish performance art such as highland dance.

Healthcare

The Ministry of Health is comprised of the Department of Health and five Community Hospital Boards: Souris, Montague, Tyne Valley/East Prince, O'Leary and Alberton. Together, the Ministry and the Hospital Boards are responsible for providing quality health care to the citizens of Prince Edward Island. Residents of PEI have access to essential medical services, such as doctor and hospital visits, maternity care, operative care and therapeutic procedures free of charge.

Public Services

Clean water supplies are readily available throughout the Province. Outside city or town limits, homes or businesses are connected to a private well, whereas users within city or town limits access a public supply operated by the municipality. Electricity is provided by a private sector provider, although rates are regulated. The Province is not yet linked to natural gas reserves, although this may be available in the future.

BUSINESS STRUCTURES

There are four main ways to structure a business in PEI: Sole proprietorships, partnerships, corporations and co-operatives.

In Prince Edward Island, every proprietorship and partnership must be registered under the *Partnership Act*, and all corporations must be registered under the *Companies Act*. An unregistered business cannot maintain a proceeding in court in Prince Edward Island in connection with that business unless it has leave of the court. Prior to establishing a partnership, proprietorship or corporation, the business owner must have the Consumer, Corporate & Insurance Services Division of the Office of the Attorney General perform a name search. Name searches are done prior to establishing a business to prevent duplication of names and avoid confusion.

A corporation, partnership or proprietorship that has been established elsewhere may carry on business in Prince Edward Island but must register under the *Extra-Provincial Corporations Registration Act*. Application forms and information on prescribed fees may be obtained from Consumer, Corporate & Insurance Services Division of the Office of the Attorney General.

Sole Proprietorships

A sole proprietorship is the simplest form of business enterprise. It must be registered under the *Partnership Act*. All functions of the business are performed by one person, and that person assumes all risks and liability. Unlimited liability applies as all business and personal assets of a proprietor may be used to satisfy liabilities.

If a sole proprietorship must be registered with the Consumer, Corporate & Insurance Services Division of the Office of the Attorney General. Registration serves to prevent confusion as it does not allow someone to register a business name which is already in use by another business. A person wishing to register a sole proprietorship is required to have the Consumer, Corporate & Insurance Services Division conduct a computerized name search of the proposed name prior to registration. The fee is $40.

The benefits of proprietorships are the low cost of organization. The registration costs only $65 and remains valid for three years, at which time it must be renewed. Often a person starting in business for the first time will operate as a sole proprietorship because there are fewer costs involved in organizing. Later if the business proves to be successful; the sole proprietor can incorporate a company and have the business carried on by a corporation. There are also tax benefits; losses from the business may be offset against sole proprietor's income from another source.

Partnerships

A partnership is formed by one of more persons carrying on business in PEI. Partnership allows persons to pool resources and divide management responsibilities with a proportional sharing of profits and losses between them. There are two types of partnerships; general partnerships and limited partnerships and these are governed respectively by the *Partnership Act* and the *Limited Partnership Act*. The two types of partnerships are similar and can carry on the same type of business. Differences lie in the amount of liability of individual partners.

Before establishing a partnership, a partnership agreement should be drawn up, outlining rights, interests and responsibilities of each partner. Where a partnership agreement has been drawn up, it will take priority over the *Act*. However, if there is no partnership agreement (contract) between the parties then the default rules found in the *Partnership Act* and *Limited Partnership Act* will govern, despite the mutual intentions of the partners. A standard partnership agreement should cover such items as contribution to the partnership, banking, division of profits, accounting and bearing of expenses. The agreement also restricts the rights of partners to assign or pledge their partnership interest and prescribes a very simple buy-sell arrangement in the event one partner wishes to leave the partnership. There should be a clause outlining the disposition of a partner's interest on death or insolvency. For example one partner should take out life insurance and leave the other partner as the beneficiary and in the event that one partner goes bankrupt the other partner should be able to buy out the shares of the other partner. The division of assets on the dissolution of the partnership should also be addressed.

Within three months of the formation of a partnership, a statutory declaration of the partnership must be registered under the *Partnership Act*, at a cost of $65. This can be done through the Consumer, Corporate & Insurance Services Division of the Office of the Attorney General. The statutory declaration must be signed by all partners. Persons wishing to register a partnership are required to have the Consumer, Corporate & Insurance Services Division conduct a computerized name search of the proposed partnership name prior to registration. The fee for this search is $40. A person carrying on business by himself or a corporation carrying on business under a different name should then register the name under the *Act*. A declaration ceases to be valid three years after its filing, unless a renewal has been filed extending the validity of registration for a further three year period. The Registrar must publish in the Royal Gazette and a newspaper the list of names to be dissolved. In practice, a substantial period of grace is given by the Registrar before a name is actually dissolved by this process. Further, on application of a partnership, the court may adjudge a dissolution of the partnership.

(1) General Partnerships

A Partnership under the *Partnership Act* is defined as "carrying on business by persons in common with a view to profit". In PEI, a relationship that exists between members of any incorporated company or association is not a partnership under the *Partnership Act*. Joint tenancy, co-ownership of property and the sharing of gross returns do not individually create a partnership. However, receiving a share of business profits is evidence of a partnership unless evidence exists to the contrary.

In a general partnership, one of the disadvantages is that each partner in a partnership will be responsible for any liabilities incurred by any other partner acting in the ordinary course of the business of the firm. There is joint and several liability for all contractual and debt obligations of the partnership.

(2) Limited Partnerships

A limited partnership is a partnership with a least one general partner and at least one limited partner. A limited partnership may be formed to carry on any business that a partnership without limited partners may carry on. The Partnership is formed in the same way as a general partnership: a declaration signed by al of the partners desiring to form a limited partnership is

filed. The declaration shall state the firm name under which the limited partnership is to be conducted; the general nature of the business; the names of the partners, generals and limited partners being respectively designated; the value of money and other property contributed or to be contributed by each limited partner; the principal place of business in the province; and any other information as is required by the regulations made under the *Act*. Every declaration expires five years after its date of filing unless the declaration is cancelled by filing a declaration of dissolution or the declaration is replaced by filing a new declaration before the expiry date. The *Act* sets out the powers of the limited and general partners.

In a limited partnership there is a separation between managing partners and "silent" partners, or those who only contribute capital. A limited partnership is a lower risk partnership endeavour because, unlike general partnerships, a limited partner is liable only to the extent of his/her capital contribution and not for the liabilities incurred by another partner.

An extra-provincial limited partnership offering its units for sale in the province must be registered under the *Act*.

Corporations

A corporation is a more complex type of business structure and often involves higher legal and accounting fees then proprietorships or partnerships. However, after incorporation there is generally a greater source of capital available.

A corporation is a legal entity distinct from its owners, the shareholders; this is one of the most beneficial aspects of incorporation. Because of the separate legal entity, no shareholder or director is personally liable for the debts, obligations or legitimate acts of the company. A shareholder's liability for debts and obligations is limited to the amount the shareholder has paid or agreed to pay for their shares. Other benefits include; greater flexibility concerning taxation (see taxation section below) and the ability to transfer shares without disturbing the management of the business. A corporation does not cease to exist upon the death of a shareholder.

The shareholders have ultimate control over management of the company through the election of directors. The directors are responsible for the day to day operation and management of the business and affairs of the company. They have a duty to act honestly and in good faith and to always act in the best interests of the corporation.

Each province has its own companies legislation, but there is also federal companies legislation, namely the *Canada Business Corporations Act*. A company may be incorporated under one of the provincial statutes or under the CBCA. There is little practical difference between incorporating under federal or provincial jurisdiction. A company which incorporates under a provincial statute is entitled to carry on business in that province, and generally it will be required to register in the other provinces in which it may wish to do business. A company incorporated under federal legislation can do business in any province in Canada. However, PEI requires federally incorporated companies to register in the province if they wish to carry on business.

(1) Provincial Incorporation

To incorporate in Prince Edward Island, one must do so under the *Companies Act*. Companies are incorporated in Prince Edward Island under the *Companies Act* by letters patent, issued under the authority of the Crown's representative. Letters patent is the incorporating document issued by the Consumer, Corporate & Insurance Division of the Office of the Attorney General. The actual letters patent for corporations incorporated under the *Companies Act* are usually available within 24 to 48 hours after incorporation.

A person wishing to incorporate must have Consumer, Corporate & Insurance Services Division conduct a computerized name search of the proposed corporate name. This name search costs $45. The cost of incorporation payable to the provincial treasurer is $265. Other costs of incorporating include lawyers' fees, corporate seal, minute book, etc. A corporation incorporated under the Prince Edward Island legislation must file an annual return with the Consumer, Corporate & Insurance Services Division, which includes the name of the company, date of incorporation, fiscal year end, and a description of the business carried on in Prince Edward Island and outside the Province, as well as disclosure of the authorized and issued share capital and names and addresses of officers, directors, and shareholders. The Prince Edward Island *Companies Act* requires disclosure of all shareholders having more than 5% of the issued and outstanding shares of the company both at the time of incorporation and subsequently on an annual basis. This provision is driven by historic concern in PEI over non-resident land ownership. Until 1875, the entire Island was largely owned by non-resident English landlords.

Non-profit organizations may also be incorporated under Part II of the *Companies Act*. Such are incorporated without share capital by letters patent. Most of the regulations that follow a corporation follow a non-profit corporation, however there are some differences. A non-profit corporation's application must be made by three individuals rather than just one. These individuals must be over the age of 18. The by-laws are more flexible, usually the quorum for non-profit organizations is lower than in regular corporations. The directors of non-profit organizations may be less liable than the directors of for-profit corporations because these directors may be seen as doing a community service and will be held less liable for their actions in this regard. On the whole, non-profit organizations have the same rights and responsibilities as a regular corporation. Non-profit organizations often seek a charitable organization tax number from Canada Revenue Agency.

(2) Federal Incorporation

Businesses operating nationally or in several provinces may find it more convenient to incorporate under the *Canada Business Corporations Act*. A federally incorporated company will legally be able to carry on business anywhere in Canada but will still need to register in each province in which is does business.

Federal incorporation is handled by Corporations Canada, a division of Industry Canada in Ottawa, Ontario.

Co-operatives

A Co-operative is a body corporate, but is a separate legal entity created under the *Co-operative Associations Act*. Each member of a cooperative has one vote and no member is personally liable for the debts, obligations or acts of the co-operative except to the amount of their shares. There are many active co-ops in Prince Edward Island. They are a popular form of doing business, especially in Acadian areas of the Province.

Credit Unions operate on a co-operative basis but are governed by the *Credit Unions Act*.

Joint Ventures

Parties may form a joint venture when agreeing to work together on a project. The joint venture is formed by agreement between the parties and normally lasts until completion of the project. A joint venture is neither a partnership nor a separate legal entity; although the parties may agree to incorporate a new company whose member companies form a consortium. Because joint ventures strongly resemble partnerships, it is important for parties who wish to enter into a joint venture to have a written agreement which explicitly states that they do not wish to be associated as partners and that neither party is an agent of the other. If this is not done and a disagreement arises, the parties run the risk of being deemed to have been acting in partnership and the *Partnership Act* may be applied to settle things, despite the intentions of the parties.

Cessation or Termination of a Business

(1) *Receivership*

The appointment of a receiver is a remedy frequently invoked by a secured creditor which holds security over the assets of the debtor, particularly where the continued operation of the debtor's business after the enforcement of the security is desired. The receiver is given the authority to deal with the debtor's assets, including authority to operate and manage the business in the place of the existing management.

A receiver may be appointed by a single secured creditor or by the court. When a receiver is privately appointed, the appointment is made pursuant to the security document. The scope of the receiver's authority is derived from the powers listed in the document. If these powers are not sufficient, the secured creditor may be able to apply for a court appointed receiver.

In the case of a court appointment, the creditor begins with an action for payment of a debt, and the creditor applies to the court for the appointment of a receiver as part of the relief requested. The court can then appoint a receiver where it is satisfied that it is just and equitable to do so. The security documents held by a secured creditor commonly provide that a receiver may be appointed or other enforcement action taken immediately following default.

(2) Enforcement of Security

In many cases, secured creditors take enforcement action against the debtor by the exercise of private contract remedies granted in the security document. The secured creditor is required to give notice to the debtor and any other party holding security in the same asset. In Canada, the required notice is 10 days pursuant to the federal *Bankruptcy and Insolvency Act*. If the assets involved are farm assets, there is a 15 day requirement pursuant to the *Farm Debt Mediation Act.*

INVESTMENT

Investment and competition law is primarily under the jurisdiction of the Canadian Federal Government; however, there are certain unique Prince Edward Island reporting requirements for the purchase of real property by non-residents (see Real Estate section).

Why Invest in PEI?

In its 2006 report: Competitive Alternatives: KPMG's Guide to International Business Costs, KPMG cites Canada as the most cost effective place to do business compared to all other G7 Countries. Despite the rising dollar, the cost of doing business in Canada is still 5.5% lower then the U.S. Charlottetown was cited as having a 12% cost advantage relative to the U.S and is the second most cost effective city in Canada for doing business. PEI Business Development Inc. has several incentive programs for businesses establishing themselves in PEI. It assists businesses development from start up through to international marketing. Programs are available to manufacturers and processors for capital costs and marketing costs focusing on the provincial market. There are also programs available for export development. Further information on the Prince Edward Island economic climate can be found at the PEI Business Development Inc website at peibusinessdevelopment.com.

Real estate investment in PEI

PEI is a unique place in terms of its rules and regulations for non-residents wishing to invest in real property and in its system of land registry. Prince Edward Island employs a registry system of land recording where one must determine the quality of his or her title based primarily on priority at time of registration. Real estate investors in Prince Edward Island may acquire several types of interests in land including full ownership (freehold estate), an interest for a specified period (leasehold interest) or a partial interest in a freehold or leasehold interest as co-owners under a joint venture. Further, Prince Edward Island is the only province in Canada that has not abolished fee tails (estate with a fixed line of inheritable succession).

(1) *Real Estate Transactions in PEI*

Most real property acquisitions begin with an agreement of purchase and sale. The transfer of title usually takes place upon the "closing" of the transaction. Most real estate transactions involve the services of an agent licensed under the *Real Estate Trading Act.* Before signing an offer to purchase, a purchaser should obtain legal advice to ensure the offer contains appropriate representations, conditions and other provisions. The lawyer will conduct a search to ensure the vendor has good title to the property. If a vendor does not have good title and a proper search is not done to notify the buyer of this, the buyer runs the risk of paying for a property that they do not actually have title to. Many purchasers will have a survey prepared by a land surveyor showing the outline of the property and buildings situated on it. This will confirm the identity of the land. It will show whether the property is subject to or benefited by any easements, whether it encroaches or is encroached on by adjoining property, and where the buildings are placed in accordance with zoning requirements.

Where a vendor breaches his/her obligations in the purchase and sale agreement, the purchaser may proceed with the transaction and apply to the court for an order for "specific performance" to compel completion of the transaction. The purchaser may also terminate the contract, have the deposit returned and sue the vendor for damages as a result of the breach.

Where a purchaser breaches obligations under the contract, the vendor may proceed with the transaction, seek specific performance and damages, or terminate the contract and retain the deposit.

(2) *Restrictions on the Sale and use of Land in PEI*

Pursuant to Prince Edward Island's *Lands Protection Act* non-residents are restricted to acquisition of no more than five (5) acres of land or 165 feet of shore frontage without the approval of Cabinet. Corporations are restricted to no more than five (5) acres or 165 feet of shore frontage. Most applications to hold more than five (5) acres of land or 165' of shoreline are approved, provided the purpose of the acquisition is personal use or business development and not land speculation. Farm corporations (with approval from Cabinet) and residents can acquire land, but limits of 1000 acres are placed on individuals and 3000 acres on corporations. An excellent summary of the rationale for these restrictions and for the process to obtain approval may be found at the Island Regulatory and Appeals Commission website.

The *Securities Act*

Securities regulation in Prince Edward Island is governed by the *Securities Act*. Brokers and salespeople must be registered as such under the *Act*. Brokers are any persons engaged in the business of trading in securities whereas salespeople are any persons authorized by a broker to trade in securities.

The *Securities Act* provides that no person or company may trade in a security unless a preliminary prospectus and a prospectus have been filed and receipts obtained from the Registrar. A prospectus must contain "full, true, and plain" disclosure regarding the affairs of the company and the securities to be offered. Certain exemptions from the requirement to file a prospectus when distributing a security include trades where the purchasers are certain regulated financial institutions or insurance companies and trades where a purchaser acquires securities with an aggregate acquisition cost of at least $97,000.

Where material changes have occurred in the affairs of a reporting issuer, it must immediately issue and file an amendment disclosing the nature and substance of the change. The *Securities Act* also imparts civil liability against issuers, underwriters, directors and every person or company who signed the prospectus where such prospectus contains a misrepresentation.

Secured Financing

Secured interests in personal property are governed by the *Personal Property Security Act* in Prince Edward Island. The *Personal Property Security Act* establishes a system for the registration of notices in relation to agreements purporting to create a security interest in tangible or intangible personal property. The *Act* also sets out various rules pertaining to the attachment, perfection and priority of security interests. It also sets out a mechanism for the enforcement of such security.

The notice and search system allows users to determine what registered interests are attached to any borrower's personal property. One important point is that the *Act* does not cover all competing claims and property interests, for example, most statutory or common law

liens, most interests in real property, deemed trusts, some assignments of accounts and rights of buyers and sellers of goods.

The *Franchise Act*

Prince Edward Island has adopted a new *Franchise Act* which imposes a duty of fair dealing on franchisors and establishes a list of rights for franchisees operating within the province such as the right to associate with other franchisees. The statute imposes obligations on franchisors with respect to disclosure; franchisees have a right to disclosure of all material facts as well as financial statements and they have a right of rescission if these obligations are not met.

TAXATION

Under the Canadian Constitution, the federal and provincial governments are given almost unlimited powers of taxation. Under the *British North America Act*, the immediate predecessor of the Canadian Constitution, the federal parliament has the power to raise money by any mode or system of taxation while the provinces are limited to collecting taxes that are paid directly by the person being taxed—so-called direct taxes.

The Progressive Tax Rebate Program, which was announced in the Prince Edward Island Legislative Assembly on December 9, 2004, provides a suite of measures to counter specific structural impediments in the economy. The four individual tax rebates: promote the development of intellectual property and the production of innovative products and services for export to the world; assist firms to increase productivity and competitiveness; encourage Islanders to invest in Island companies; and help attract new expertise to accelerate the Island's participation in emerging, global opportunities.

By focusing on key industrial sectors, the program will create synergies and promote the development of well-defined educational supports; this is a continuation of the approach that has led to Prince Edward Island's recent economic advancement. Strategic sectors include:

- aerospace,
- bio-science,
- export-focused manufacturing and processing,
- renewable energy,
- financial services (except with regard to the Share Purchase Tax Credit)
- interactive, information & communication technologies (including film and television).

For more detailed information, please review: gov.pe.ca/photos/original/ptrp_intro.pdf.

Innovation and Development Tax Credit

One-page Summary: gov.pe.ca/photos/original/ptrp_idtc.pdf
Detailed User Guide: gov.pe.ca/photos/original/ptrp_idtc_guide.pdf

Enriched Investment Tax Credit

One-page Summary: gov.pe.ca/photos/original/ptrp_eitc.pdf
Detailed User Guide: gov.pe.ca/photos/original/ptrp_eitc_guide.pdf

Share Purchase Tax Credit

One-page Summary: gov.pe.ca/photos/original/ptrp_sptc.pdf
Detailed User Guide: gov.pe.ca/photos/original/ptrp_sptc_guide.pdf

Specialized Labour Tax Credit

One-page Summary: gov.pe.ca/photos/original/ptrp_sltc.pdf
Detailed User Guide: gov.pe.ca/photos/original/ptrp_sltc_guide.pdf

With these new tax incentives Prince Edward Island offers a favourable business tax climate to new business developments in the province.

Income Tax

It is the responsibility of all Prince Edward Island businesses to collect federal and provincial income taxes, Canada Pension Plan (CPP) contributions and Employment Insurance (EI) premiums.

Prince Edward Island taxes corporate income allocated to PEI under the *Income Tax Act* (Prince Edward Island). Corporate tax is assessed on corporate income at the general rate for regular income, a small business rate, and a manufacturing and processing rate. Further, the Province has a scientific research investment tax credit (ITC), an ITC on machinery and equipment for manufacturers and processors, and a capital property ITC.

The Province of Prince Edward Island imposes a personal tax on income as a percentage of income. Surtaxes are also assessed on basic income tax payable for certain levels of income. An annual study entitled Tax Facts 14 published by the Fraser Institute in 2006, rates total taxes as a percentage of cash income for Canadian families. The overall tax burden of the average Canadian family (two or more individuals) as a percentage of income in 2005 was 44.9% in PEI, compared with 44.6% in Ontario, 49.1% in British Columbia and 45% in Nova Scotia, and a national average of 48%. When comparing ratios of taxes to total income before taxes for an average family (two or more individuals), PEI had the second lowest percentage at 28.5%, second to Alberta's which was 28.3%. The national average was 30.9%.

Tax Freedom Day, is the day of the year when the average family has earned enough income to pay the total tax bill imposed on it by all levels of government. In 1961, Tax Freedom Day fell on May 3. Since then, it has advanced 54 days, so that in 2005 it fell on June 26. In the 2003 Tax Facts 13 report, the Fraser Institute cited PEI as having the 2nd earliest tax freedom in Canada estimating it to be 1 day behind Newfoundland. It is approximately 3 weeks earlier than the national average. With lower taxes, employees can achieve a higher standard of living on PEI than in many other parts of Canada and the U.S.

Federal Taxes

The Canadian government imposes a 6% tax on certain goods and services. GST is assessed on fair value of goods excluding PST. For more information on the Goods and Services Tax, visit the Government of Canada website at canada.gc.ca.

Provincial Taxes

PEI like other maritime provinces relies farely heavily on provincial sales tax to support its infrastructure. Real commercial property and non-commercial property is taxed at a percentage of market value. Residents of Prince Edward Island are eligible to receive a tax credit depending on location within the province.

The Prince Edward Island government also collects provincial consumption tax by way of a sales tax (PST) through the Provincial Treasury. Before selling goods, a vendor must obtain a registration certificate (per the *Revenue Tax Act*).

The PST rate in the Province is 10% on retail sales. A Vendor Registration Number can be used to purchase various goods free of tax. All goods consumed in the province and imported for consumption in Prince Edward Island are subject to the 10% sales tax at the retail level. PST is charged on goods plus GST. As well, there are various goods exempt from provincial sales tax. (In the result, total federal and provincial consumption tax is 17.7%)

Other Taxes

There is no capital tax imposed or real property transfer tax. Prince Edward Island has no payroll tax, corporation minimum tax, corporate capital or franchise tax, gross receipts tax, or business and occupation tax. Further, there is no PST on inbound 800 number calls, no PST on outbound long distance telephone usage in excess of 250,000 minutes per year, and no provincial taxes for certain aviation and aerospace related companies in Slemon Park and the Charlottetown Airport Business Park.

The closure of Canadian forces base Summerside provided a unique opportunity to open a tax-free zone for companies in aviation and aerospace. Companies locating in Slemon Park (site of the former Canadian Forces Base) have access to excellent facilities and other benefits. For more information refer to PEI Business Development at peibusinessdevelopment.com.

INSURANCE

Insurance is an important part of any business. Where personal liability can be imposed on individuals while operating a business, it is important to have the proper insurance coverage. Businesses want to protect their assets in the event of a lawsuit so that the business will not be forced into bankruptcy in the event of negligence or in case something happens to the business such as a fire or flood. Insurance is available to cover personal and product liability, fire, vehicles, disability, business interruptions, and corporations can even insure the lives of its directors and other employees. Comprehensive insurance policies should be obtained to suit the particular business needs. In some industries, liability insurance is mandated by statute. See the *Insurance Act* (Prince Edward Island) for more information.

LABOUR STANDARDS

Employment and labour law in Prince Edward Island is governed by the PEI *Employment Standards Act* and the PEI *Labour Act*. The *Employment Standards Act* prescribes conditions of employment concerning such things as wages, hours of work, holiday and vacation periods, rest periods, leave, sexual harassment, termination, etc. The *Labour Act* establishes rights of employees to join unions and proscribes rules and fair practices that employers must follow when dealing with unions and collective agreements. The *Labour Act* establishes a board to deal with labour disputes.

The standard work week in PEI is 48 hours although the board may exempt certain employers or industries from standard work week provisions. Overtime at a rate of 1 and ½ times the rate of regular pay is payable to an employee for hours worked over and above the standard work week. Employers must provide employees with at least 24 consecutive hours of off in a 7 day period. Employers must provide employees with at least a half an hour rest or eating period every 5 hours of working time.

The minimum wage in PEI effective April 1, 2007 is $7.50 per hour. Employers and employees each contribute a percentage of gross earnings to the Canada Pension Plan, to an annual maximum. Employers pay 1.4 times the employee's share of Employment Insurance premiums to a given maximum.

Employee Leave

(1) *Maternity Leave*

It is unlawful for an employer to dismiss, lay off or suspend an employee by reason only of the fact that the employee is pregnant, is temporarily disabled because of pregnancy or has applied for maternity leave. An employee who has been in continuous employment for at least 20 weeks is entitled to maternity leave. Maternity leave in PEI shall not exceed 17 weeks commencing any time during the period of 11 weeks immediately prior to expected date of birth. Employees are entitled to return to their previous position when leave has finished; if that position no longer exists then they must be given a comparable position where the pay is not less then it was in the position they held before their leave.

There are also similar positions for parental and adoptive leave. Employees who have been in continuous employment for a period of at least 20 weeks and become either the natural mother or father of a child or become an adoptive mother or father will be entitled to up to 35 weeks of parental leave without pay provided they comply with the notice requirements in s. 22 of the *Employment Standards Act*.

(2) *Family Leave*

Employees employed for 6 months will be entitled to up to three days leave in a 12 month-calendar year to attend to the health and care of persons within their immediate family.

(3) *Sick Leave*

Employees employed for at least 6 months may take up to 3 sick days in a calendar year without pay.

Occupational Health and Safety

Workplace safety is governed by Prince Edward Island's *Occupational Health and Safety Act*. The *Act* proscribes rules and regulations that employers must follow such as posting health and safety information in the workplace, not subjecting workers to dangerous or hazardous materials and provisions regarding dangerous work. The *Act* establishes the Occupational Health and Safety Board which monitors workplace safety. Rules for entering and inspecting workplaces as well as consulting employees are set out in the *Act*.

Termination

Under the PEI *Employment Standards Act*, where an employer terminates employment without just cause that employer must provide the employee with a minimum period of notice upon termination of employment. An employee who is employed greater than 6 months but less than 5 years is entitled to two weeks notice. An employee who is employed for 5 years or more is entitled to four weeks notice. An employee who has been employed for 10 years or more is entitled to 6 weeks notice and those employed for 15 years or more are entitled to 8 weeks notice on termination. Additionally, the *Act* provides that an employee who wishes to leave their employment must provide his or her employer with one week notice for employment of 6 months to 5 years, and 2 weeks notice for employment of 5 years or greater.

Workers' Compensation

Workers' Compensation Legislation provides non-taxable disability and death benefits for work-related accidents and replaces a worker's right to take legal action against an employer. It is funded by employer contributions based on accident frequency within an industry.

Under the *Workers' Compensation Act*, workers and their dependants are given financial protection, medical benefits, and rehabilitation services in the event of death or injury. Employers are protected from legal action if workers are hurt. The workers compensation "accident fund" is entirely funded by employers. Employers must register with the Workers' Compensation Board, upon hiring one person whether full-time, part-time, casual, or temporary. Employers' contribution depends on their industry group, the size of their payroll and the cost of the claims. Workers receive benefits for work-related injuries, which range from 80-85% of net earning capacity; (benefits are tax free).

Human Rights

The Prince Edward Island *Human Rights Act* prohibits discrimination with respect to employment or accommodation on a number of grounds, such as relation to age, colour, creed, ethnic or national origin, family status, marital status, physical or mental handicap, political belief, race, religion, sex, sexual orientation, or source of income of any individual or class of individuals. The *Act* establishes the Human Rights Commission which arbitrates human rights disputes.

LABOUR RELATIONS

The Prince Edward Island *Labour Act* regulates collective bargaining in the province. Labour legislation is designed to separate management and employees for the purposes of collective bargaining. Managerial employees and other employees employed in confidential matters relating to labour relations, are excluded from participating in collective bargaining.

Employers are prohibited from participating in or interfering with the formation of a trade union. Employers have a limited right to express their opinions, but cannot use undue influence, threats, coercion, intimidation or promises to affect employee's support for a union. Where employers violate this rule, certification may be granted even if the required membership support is not obtained by the union. Employers must accordingly be extremely careful when responding to an organizing campaign. Employers cannot refuse to employ or discriminate against employees because they are involved in a trade union.

A union may seek certification for a unit of employees in a geographic area. The appropriate bargaining unit is determined by the Prince Edward Island Labour Board. The main consideration is that employees must have a community of interest. The employer has a right to contest the bargaining unit proposed by the union. An employer may have an interest in minimizing repetitive bargaining by preventing a proliferation of bargaining units and inappropriate groupings of employees.

With certification the union has exclusive jurisdiction to bargain collectively on behalf of the bargaining unit. The employer must meet and bargain in good faith with the bargaining agent. Strikes or lockouts are illegal during the life of a collective agreement. They can be implemented only after the expiration of the agreement and after the parties have failed to reach an agreement through collective bargaining and attempts at conciliation have failed.

In Prince Edward Island, the purchaser of all or part of a business is bound by existing collective agreements and must recognize the certified union until the Labour Board rules otherwise. The Board will not usually interfere with a certified union after a sale unless there has been an intermingling of employees and the bargaining unit is no longer appropriate.

Keeping these factors in mind it is important to note that the labour movement in Prince Edward Island has a history of being less “aggressive” than in other geographic areas.

INTERESTS IN PROPERTY

Interests in Personal Property

Individuals and businesses in PEI can record their financial interest in personal property in the Personal Property Registry created pursuant to the *Personal Property Security Act* (PEI). Refer to chapter 3, section 3.4 for a discussion on secured financing of personal property.

Interests in Real Property

PEI has some unique rules and regulations when it comes to acquiring an interest in real property. Refer to Chapter 3, section 3.2 for a discussion of the rules and regulations respecting interests in real property on PEI.

ELECTRONIC COMMERCE

Electronic commerce enables individuals and businesses to buy and sell goods and services over networks. These networks can be used to communicate, sell, promote, advertise, and provide customer support and information. They also serve to reduce the cost and impact of paper transactions and increase efficiency with higher transaction speed. Electronic commerce allows firms located in PEI the opportunity to compete globally.

Electronic commerce, like other commerce is generally governed by the regular rules of contract law. Laws pertaining to incorporation (such as name registration), taxation, consumer protection, importing and exporting and intellectually property apply equally to electronic commerce.

Additionally, PEI has an *Electronic Commerce Act* which establishes rules and regulations specific to this type of commerce.

GOODS AND SERVICES & CONSUMER PROTECTION

The *Sale of Goods Act*, the *Consumer Protection Act* and the *Business Practices Act* all discuss issues relating to the sale of goods and/or services in PEI.

Product Standards

The *Sale of Goods Act* (Prince Edward Island) implies various conditions and warranties in a contract of sale, including a sellers right to sell goods, a buyers right to enjoy quiet possession of goods, and that those goods are free from any encumbrance in favour of a third party unknown to the buyer of goods at the time the contract is made. The *Act* mandates that goods be of merchantable quality and that goods sold by description actually match that description.

The *Consumer Protection Act* pertains to any person extending credit terms to buyers or borrowers. It regulates non-industrial or business credit and identifies the manner in which the cost of credit must be disclosed. It prohibits prepayment penalties, except when a loan is secured by a mortgage of land. It also regulates the conduct of creditors in attempting to collect debts.

The *Business Practices Act* outlines unfair business practices including misleading representations. It is an unfair practice to make false, misleading or deceptive consumer representations with respect to sponsorship, approval, performance characteristics, accessories, etc. of products. Further there are industry specific statutes (i.e. *Collection Agencies Act*) protecting consumers from loss or unfair treatment.

Product Liability

A person suffering loss due to an unsafe or defective product may bring an action for damages against the manufacturer, vendor, or distributor of the product depending on his/her relationship with the prospective defendant. A party to a purchase or supply contract is entitled to sue for damage for breach of contract if the quality, fitness or performance of the product is not in compliance with the express or implied terms of the contract. Implied terms may be found by reference to common trade practice, and Prince Edward Island's *Sale of Goods Act* which contains implied terms and conditions as to the fitness and quality of goods sold. These conditions cannot be excluded from contracts by agreement between the parties, according to Prince Edward Island's *Consumer Protection Act*. An injured purchaser or user of a product may also claim damages in negligence. A duty of care is owed to all persons who might foreseeably be injured by such a product. There are certain defences to such an action, but a vendor, manufacturer or distributor of a product must be certain not to make any false statements concerning safety or utility features of a product.

Advertising

The *Consumer Protection Act* and the *Business Practices Act* affect advertising in PEI. The *Business Practices Act* renders it an "unfair practice" to make false, misleading, or deceptive consumer representations with respect to sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or qualities that the products do not have.

International Sale of Goods

Prince Edward Island has jurisdiction over contracts and sales of goods. The provincial *International Sale of Goods Act* implementing the International Sale of Goods Treaty is applicable to international transactions occurring in PEI. The Convention governs all aspects of the sale of goods between parties from different countries and applies automatically unless specifically excluded. Parties to these contracts are able to structure appropriate arbitration agreements under the *International Commercial Arbitration Act.*

INTELLECTUAL PROPERTY

In Canada, the protection of intellectual property is the responsibility of the federal government. The Canadian Intellectual Property Office (CIPO), a Special Operating Agency associated with Industry Canada is responsible for the administration and processing of intellectual property in Canada. CIPO manages patents, trade marks, copyrights, industrial designs and integrated circuit topographies. For more information on intellectual property visit the CIPO website at strategis.ic.gc.ca/sc_mrksv/cipo/welcome/welcom-e.html.

The Canadian Food Inspection Agency manages plant breeders rights established under the *Plant Breeders' Rights Act*. Plant breeders' rights protect breeders of varieties of plants that are new, different, uniform and stable. An established breeder is entitled to control the multiplication and sale of the protected seeds for up to 18 years. With permission, others may be able to breed and grow the protected seeds.

PRIVACY LAW

In PEI, individual privacy is protected by both provincial and federal legislation. PEI's *Freedom of Information and Protection of Privacy Act* allows the public the right to access information that is collected and used by the provincial government and administrative boards and commissions. There are some specific limited exceptions to this right which can arise when the privacy of the information is absolutely necessary for the operation of the provincial government or when it is absolutely necessary for the protection personal privacy. The *Act* establishes that an Information and Privacy Commissioner be appointed by the Legislative Assembly.

The federal statute, the *Personal Information Protection and Electronic Documents Act* (PIPEDA), regulates the collection, use and disclosure of personal information in the course of "commercial activities". Businesses must comply with mandatory appointment of a privacy officer; they must provide consumers with information on how their personal information is proposed to be used and they must respond to queries and complaints. The legislation is applicable to private individuals and does not pertain to information about incorporated businesses, nor does it apply to information collected about employees in the course of the operation of a "provincially regulated" organization. For more information visit the Privacy Commissioner of Canada website at privcom.gc.ca/legislation/02_06_01_01_e.asp.

IMPORT/EXPORT REGULATIONS

The provincial legislatures only have jurisdiction under the Canadian Constitution to deal with exclusively local trade. Inter-provincial and International trade falls under the jurisdiction of the Parliament of Canada. The Canada Revenue Agency and Canadian Border Services Agency enact guidelines and regulations on international trade.

LICENSING

Many industries require licenses or permits to be obtained prior to the commencement of operation of a business. Some industries which do require licenses in PEI include, real estate, insurance, collections agencies, aquaculture, commercial cutting. For more information visit InfoPEI website at gov.pe.ca/feedback/index.php3?lang=E and contact general inquiries.

THE ENVIRONMENT

The *Environmental Protection Act* (PEI) provides for the control of air, water and land pollution and prohibits the emission of a broad range of contaminants which will cause or are likely to "adversely effect" the natural environment. These include harm or material discomfort to humans, impairment of the safety of persons, injury or damage to plant or animal, loss of enjoyment of use of property, and interference with conduct of business.

Where accidental spills or discharges of contaminants occur, the person(s) in control must notify the Department of Environment Energy and Forestry and do everything practicable to clean up the area and restore the natural environment.

The Prince Edward Island Department of Agriculture, Fisheries and Aquaculture exercises exclusive control over the quality, use, protection or alteration of all surface, ground and shore waters and all beaches, sand dunes, and wetlands within the provinces. The *Environmental Protection Act* also regulates any altering of a watercourse, wetland, or waterflow without a permit.

Under the Water Quality Certification Regulations, in conformance with current "Guidelines for Canadian Drinking Water Quality" set by the Environment and Workplace Health Division of Health Canada, an environment officer may, upon request and for a fee, collect and analyze water samples to determine the presence or concentration of such physical, chemical, microbiological constituents as the Department considers appropriate. If water quality is acceptable, the environmental officer may issue a certificate for that water supply. Mandatory water testing and certificates must be obtained prior to any sale of land in PEI.

Under both federal and provincial environmental assessment rules, an applicant seeking a building permit for a major cost-shared development must comply with waste water and groundwater regulations before the permit is granted. However, these assessments are limited in scope to the confines of the structure itself and do not incorporate the overall cumulative effects of development on surrounding areas. Prior to commencing operations, the EPA may require that an environmental impact assessment be done. For more information on whether an impact assessment needs to be done for a particular business please contact InfoPEI.

Under the *Natural Areas Protection Act*, areas that exhibit exceptional and diversified scenery or sensitivity, including areas with natural rivers, lakes, and brooks, may be designated as "natural areas" where human activity is subject to regulation. Regulations under the *Act* accordingly create offences or prescribe penalties with respect to unauthorized activities in these designated areas. There is much concern about land use on the shorelines of Prince Edward Island. Sand dunes and coastal areas in general are protected under the Coastal Area Regulations because of the role played by dunes and coastal areas in protecting the Island's geologically fragile landforms by preventing and prolonging the onset of shoreline erosion. The Sand Removal from Beaches Regulations restrict the traditional use of beach sand as construction material, by designating certain beach areas where sand may be removed for the manufacture of concrete and concrete products. The regulations limit amounts that may be removed and specify acceptable methods of transport.

For information on Solid Waste, Hazardous Waste and underground tanks please visit InfoPEI.

RESOURCES AND CONTACT INFORMATION

The following is a list of contact information that may be useful to anyone undertaking to carry on business in Prince Edward Island.

Aboriginal Business Procurement Strategy – Indian and Northern Affairs Canada
Atlantic Regional Office
P.O. Box 160, 40 Havelock Street
Amherst, NS B4H 3Z3
Tel: 902.661.6200
ainc-inac.gc.ca/saea-psab/index.html

Aboriginal Business Service Network
See: Canada/PEI Business Service Centre
Canada Border Services Agency
cbsa-asfc.gc.ca/menu-e.html

Canada / PEI Business Service Centre
75 Fitzroy Street, P.O. Box 40
Charlottetown, PEI C1A 7K2
Tel: 902.368.0771 or Toll free: 800.668.1010 (in the Atlantic region only)
pei@cbsc.ic.gc.ca
cbsc.org/pe

Canada Revenue Agency
cra-arc.gc.ca/tax/business/topics/bn/menu-e.html

Department of the Attorney-General
Consumer, Corporate, and Insurance Division
Responsible for incorporation of companies and registration of corporate and partnership names. Also responsible for securities regulation.
gov.pe.ca/oag/ccaid-info/index.php3

Department of Community and Cultural Affairs
Labour and Industrial Relations Division
Administers the *Employment Standards Act*
gov.pe.ca/commcul/lair-info/index.php3

Department of the Provincial Treasurer
Taxation and Property Records Division
Oversees the Registry of Deeds
gov.pe.ca/pt/tapr-info/index.php3

Government of Prince Edward Island
gov.pe.ca

Human Rights Commission
gov.pe.ca/oag/hrc-info/index.php3

Investing in Prince Edward Island
gov.pe.ca/development/peibdi-info/index.php3

Office of the Premier
P.O. Box 2000
Charlottetown, PEI C1A 7N8
Tel: 902.368.4400
gov.pe.ca/premier/index.php3

Workers' Compensation Board
wcb.pe.ca

NEWFOUNDLAND AND LABRADOR

INTRODUCTION

Geography

The majestic Province of Newfoundland and Labrador stands proudly in Canada's Northeast corner. The island of Newfoundland lies in the Gulf of the St. Lawrence, separated from Labrador, the mainland portion of the Province, by the Strait of Belle Isle. The Province lies between the 46° and 61° parallels and has historically served as a gateway between North America and Europe.

Spanning more than 405,000 square kilometres, Newfoundland and Labrador dwarfs the combined total area of Canada's three other Atlantic Provinces – New Brunswick, Nova Scotia and Prince Edward Island. Newfoundland and Labrador boast 17,000 km of scenic coastline.

The island of Newfoundland has a unique time zone; one half hour later than Atlantic Time, one and a half hours later than Eastern Time, and four and one half hours later than Pacific Time. It is the only place in Canada with a split in the set variations of one hour between time zones. Daylight Saving Time is observed from March to November after which the Province returns to Newfoundland Standard Time. Most of Labrador operates on Atlantic Time.

The island of Newfoundland is accessible by ferry and airplane. A year-round vehicle and passenger ferry service links North Sydney, in the Province of Nova Scotia, and Port aux Basques, in southwestern Newfoundland. An additional vehicle and passenger ferry service operates during the summer months between North Sydney and Argentia, Newfoundland. Argentia is about one and one half hours by car from the capital city of Newfoundland and Labrador, St. John's. Ferry service is also available connecting the island of Newfoundland to the Quebec-Labrador border, and to the French islands of Saint-Pierre and Miquelon. A variety of ferries and coastal boats operating on year-round and seasonal schedules provide service between the island and remote coastal communities on both the Newfoundland and Labrador coasts.

Air Canada, Air Canada Jazz, Westjet, Continental Airlines, Lufthansa and Astraeus offer regular air service to Newfoundland and Labrador, with connections available from all major centres across North America and select locations in Europe. Air Labrador and Provincial Airlines also offer service to communities within and surrounding Newfoundland and Labrador.

Flying time to St. John's is 3 hours from Boston, Toronto, or Montreal, 5 hours from London, England, and 4.5 hours from New York City.

Labrador is also accessible via rail. Quebec North Shore and Labrador Railway offers a 10-hour trip from Sept-Îles, in the Province of Québec, to Labrador.

Population

The population of Newfoundland and Labrador is approximately 509,677 with over 181,394 Newfoundlanders residing in the greater metro area of St. John's.

Aboriginal Population

There are four groups of Aboriginal peoples in Newfoundland and Labrador: the Innu, the Inuit, the Metis, and the Mi'Kmaq. These groups are represented by the following Aboriginal organizations: the Innu Nation, the Labrador Inuit Association, the Labrador Métis Nation, Miawpukek Mi'Kamaway Mawi'omi (Council of Conne River Micmacs), and the Federation of Newfoundland Indians.

According to the 2001 Canadian Census, approximately 20,000 people resident in Newfoundland and Labrador identify themselves as Aboriginal. The Aboriginal Business Service Network, the Department of Labrador and Aboriginal Affairs (Newfoundland and Labrador) and Indian and Northern Affairs Canada have established initiatives to develop and maintain Aboriginal-oriented and Aboriginal-run businesses.

Climate

Newfoundland offers a temperate coastal climate with mild winters and cool summers. The marine climate prevents extreme temperatures. Winter temperatures range from 0 to -10°C. The average summer temperature is around 16°C. Average annual precipitation is 1050 mm of rain and 300 cm of snow.

While short, cool summers are the norm in Labrador, extremely high temperatures can occur. Labrador's cold winters, where temperatures average -10 to -15°C during the winter months, are in stark contrast to the same season on the island.

Currency

The currency used in Newfoundland and Labrador is the Canadian dollar. Many retailers accept the American dollar, although not always at the posted exchange rate.

Government

Newfoundland is Canada's newest Province, having joined Confederation in 1949.

Canada is a parliamentary democracy. The top level of government is the federal Parliament, which is constitutionally required to govern national issues including money, banks, national parks, and defence. The government of each Canadian Province enacts laws concerning highways, schools and hospitals, and other matters with a provincial focus. A third level of government, the municipal government, enacts laws pertaining to cities and towns.

Before coming into force, all provincial legislation in Newfoundland and Labrador is passed by the Legislative Assembly and receives Royal Assent from the Lieutenant-Governor who acts in the name of the Queen of England.

Mr. Danny Williams, leader of the Progressive Conservative Party of Newfoundland and Labrador, was sworn in as the ninth Premier of Newfoundland and Labrador on November 6, 2003.

Economy

The major business sectors in Newfoundland and Labrador include mining, oil and gas, forestry, manufacturing, construction, and fisheries and aquaculture.

Over the past eight years Newfoundland and Labrador's Real Gross Domestic Product has expanded. The Province's GDP output was valued at $21.5 billion in 2005 and the economy has expanded by 47% since 1996. Growth is primarily attributable to increased exports. Goods including crude and refined oil, fish products, newsprint, iron ore and electricity account for 80 percent of provincial exports. The Newfoundland and Labrador government identifies offshore oil as the leading contributor to export growth in recent years. The small portion of exports represented by services is increasing in value due to growth in industries such as tourism, communications, business and computer services.

Predicted real GDP growth is 8.5% for 2007 and 0.8% for 2008. The 2007 growth is expected to be driven by higher oil and mineral exports.

Natural Resources

Natural resources are Newfoundland's treasure. The Province's land supports a wealth of industry in forestry, agriculture, geology, mining, electricity production, and oil and gas. The mineral industry, a significant contributor to Newfoundland and Labrador's economy, produces more than a dozen mineral commodities used locally and internationally.

The coastal waters surrounding Newfoundland and Labrador are rich with marine species, in particular lobster, crab, shrimp, cod, turbot, as well as various other groundfish, pelagics and mammal species. Marine resources are the foundation of Newfoundland and Labrador's sealing, fishery and aquaculture industries.

The Legal System

(1) *The Charter of Rights and Freedoms*

The Canadian *Charter of Rights and Freedoms*, incorporated into the Canadian *Constitution Act,* was passed into law in 1982. The *Charter* constitutionally protects and guarantees basic human rights for all Canadians. All Canadian laws must conform to the *Charter of Rights and Freedoms*.

(2) *The Court Structure*

The Supreme Court of Newfoundland and Labrador, Trial Division sits in six locations across the Province. The Trial Division hears criminal matters, civil actions, family matters other than those in areas under the jurisdiction of the Unified Family Court, criminal appeals from summary convictions in Provincial Court, and civil appeals from both Provincial Court Family Division and Provincial Court Small Claims Division.

The Supreme Court of Newfoundland and Labrador, Court of Appeal, located in St. John's, is authorized to hear appeals in both criminal and civil matters from the Supreme Court of Newfoundland and Labrador, Trial Division, the Supreme Court of Newfoundland and Labrador,

Unified Family Court, the Provincial Court (indictable offences), as well as designated boards and administrative tribunals.

The Provincial Court is the Court of first instance for all criminal and regulatory offences and serves as Youth Court and Traffic Court. The Small Claims Division of the Provincial Court hears most civil claims up to $5,000. Outside of areas under the jurisdiction of the Supreme Court of Newfoundland and Labrador, Unified Family Court, the Provincial Court hears family matters other than divorce and division of marital property.

The Court Registry provides services relating to the processing of criminal and civil cases as well as Supreme Court operations. These services include filing all pleadings, affidavits and judgments in all Supreme Court matters and signing all orders and judgments of the Court.

The Estates Division operates under the Registrar. It administers estates and may provide guardianship services.

The Office of the High Sheriff performs services related to criminal and civil process, court operations, and prisoner escort and transport.

Customs & Immigration

By the Constitutional authority regarding the division of power between federal and provincial governments, Citizenship and Immigration Canada, Canada Revenue Agency, and Canadian Border Services Agency have jurisdiction over all customs, immigration, citizenship, refugees and border issues.

Language

Canada's two official languages are English and French. According to Statistics Canada, English is the first language of 97.5% of residents of Newfoundland. Less than one percent of the population list French as their mother tongue. Four percent speak both official languages and less than one percent speak neither official language.

Statutory Holidays

Most businesses are closed on the following National holidays: New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Remembrance Day and Christmas Day. In addition, many businesses in Newfoundland and Labrador also observe St. Patrick's Day, St. George's Day, Discovery Day, Orangeman's Day and, in St. John's only, Regatta Day. Other holidays may also be observed pursuant to the *Shops Closing Act* (Newfoundland).

Education

Newfoundland and Labrador offers publicly funded education from kindergarten through grade twelve. Children generally start school at age five. There are five school districts in the Province; four correspond to different geographic areas of the Province while the fifth is the Conseil Scholaire Francophone which oversees publicly funded education to francophones throughout the entire Province. The four geographic districts establish attendance zones and

students within each zone are required to attend a corresponding zone school. School councils may charge a fee for school supplies.

There are also seven private schools in Newfoundland and Labrador.

Parents with rights to minority-language education under the Canadian *Charter of Rights and Freedoms* may opt to educate their children at a French language school and must be given the opportunity to do so. French immersion is also available starting in either kindergarten or grade seven.

Newfoundland and Labrador has several post-secondary institutions, including Memorial University, which is the largest University in Atlantic Canada and offers more than 100 degree programs to a student population of 17,000 in disciplines including science, medicine, arts, social sciences, engineering, education and business. Memorial University has two campuses in St. John's, including the Marine Institute, one campus in Corner Brook, and one in Harlow, England. Other post-secondary institutions include College of the North Atlantic and twenty-five private training institutions, some with multiple campuses.

Health Care

The Newfoundland and Labrador Medical Care Plan is a comprehensive health care insurance plan designed to provide Newfoundland and Labrador residents with free access to essential medical services, such as doctor and hospital visits, surgical and therapeutic procedures, operative care, maternity care and medically necessary dental procedures.

Private medical insurance plans are available to supplement the provincial plan.

BUSINESS STRUCTURES

There are four main ways to structure a business in Newfoundland and Labrador: sole proprietorships, partnerships, corporations and co-operatives.

The *Corporations Act* (Newfoundland) requires that all limited liability companies operating in Newfoundland and Labrador be incorporated or registered to carry on business in the Province. Once registered, the *Corporations Act* places statutory requirements on corporations to file documents notifying the Registrar and the public of any corporate changes. Business name registration for sole proprietorships or general partnerships is not required.

The Registry of Companies maintains computerized records of corporate information. It also maintains the Limited Partnership Registry for the Province.

Sole Proprietorships

A sole proprietorship is the simplest way to structure a business. The sole proprietor serves as the owner and operator of a company. A sole proprietor has unlimited liability, meaning that the individual proprietor assumes full responsibility for all debts and obligations related to his or her business. All of the sole proprietor's personal and business assets may, therefore, be subject to claims by a creditor.

Newfoundland and Labrador does not require sole proprietorships to register a business name with the provincial Registry of Companies.

Forming a sole proprietorship may be advantageous for entrepreneurs because of the relatively low start-up costs and freedom from extensive regulation. Further, a sole proprietor enjoys ultimate control over decision-making, tax benefits and all profits. The primary disadvantages of running a sole proprietorship are that the owner bears unlimited liability. A sole proprietor may also encounter difficulty in raising capital.

Partnerships

Partnerships in Newfoundland and Labrador are governed by either the *Partnership Act* (Newfoundland) or the *Limited Partnership Act* (Newfoundland); the former *Act* governs general partnerships while the latter provides for limited partnerships. A partnership refers to the relation existing between persons or entities carrying on a business in common with a view to make a profit. General partnerships and limited partnerships differ with respect to the duties and liabilities of the partners.

Before establishing a formal partnership, the parties may draft a partnership agreement to establish the terms of the partnership. Such an agreement may protect the partners in the event of disagreement or dissolution.

Partnerships offer relative ease of formation and dissolution, relatively low start up costs, possible tax advantages, limited regulation, broad management base and financial and moral support among the partners. On the other hand, partners may have unlimited liability, divided authority and the potential for conflict among partners.

(1) *General Partnership*

Under the *Partnership Act*, a partnership means, "the relation which exists between persons carrying on a business in common with a view to make a profit." Joint tenancy, co-ownership of property, or the sharing of gross returns does not necessarily create a partnership. However, receiving a share of business profits is evidence of a partnership, unless evidence exists to the contrary.

Partners in a general partnership arrangement are jointly liable for all debts and obligations of the partnership. Therefore, each partner is responsible for any wrongful acts or omissions of the other partners.

(2) *Limited Partnership*

Under the *Limited Partnership Act*, a limited partnership is a partnership with at least one general partner and at least one limited partner. The partnership is formed when a certificate, signed by all persons wishing to form the limited partnership, is filed with the Registry of Limited Partnerships which is maintained by the Registrar of Companies appointed under the *Corporations Act*. The requisite content of the certificate is listed in the *Limited Partnership Act*.

General partners typically control and manage the daily operations of the partnership's business and may be entitled to a greater share of the profits than limited partners, whose sole function is to contribute capital to the business. Liability of limited partners is proportionate to their final contribution.

Corporations

One of the major benefits of structuring a business as a corporation is that a corporation is a separate legal entity from its shareholders. The corporation's shareholders are not personally liable for the debts and obligations of the corporation.

Businesses of this type can be incorporated federally, under the *Canada Business Corporations Act,* or provincially, under the Newfoundland and Labrador *Corporations Act*.

(1) *Provincial Corporations*

Pursuant to the *Corporations Act*, one or more individuals or bodies corporate may incorporate by signing and delivering Articles of Incorporation to the Registrar of Companies. The Articles of Incorporation form the constating documents of the corporation and must include the following: the business name of the corporation, the location of its registered office, the classes and maximum number of shares the corporation is authorized to issue, the maximum and minimum number of directors, the restrictions, if any, on the right to transfer shares of the corporation, and the restrictions, if any, on the business that the corporation can carry on.

Along with the Articles, a Notice indicating the registered address of the corporation as well as a ledger of the directors must be sent to the Registrar. A corporation must have at least one director. If any of the issued securities are available to the public, the corporation must have at least three directors, at least two of which must not be officers or employees of the corporation. At least 25% of the directors must be Canadian residents.

Bodies corporate that are incorporated pursuant to the laws of a jurisdiction other than Newfoundland and Labrador may be registered extra-provincially in Newfoundland and Labrador. Registration is required before an extra-provincial company can carry on business in Newfoundland and Labrador. To register, an extra-provincial company must file with the Registrar a statement of the requisite particulars of the company, including but not limited to, the name of the company, the jurisdiction, date and manner of incorporation, full particulars of its constating documents, and the extent to which the liability of its members is limited.

The advantages of incorporating a business are: limited liability, the ability to utilize specialized management, transferability of ownership, the ease of raising capital by selling shares, and other possible tax advantages (see Section 4, Taxation). On the other hand, corporations are closely regulated, may be expensive to organize and require extensive record keeping. Corporations are sometimes difficult to dissolve and at times conflicts may arise between shareholders and executives.

(2) *Federal Corporations*

Businesses operating either nationally or in several Provinces may find it advantageous to incorporate federally under the *Canada Business Corporations Act*. A federally incorporated business is required to register in each Province in which it operates.

Federal incorporation is handled by the Corporations Directorate of Industry Canada in Ottawa, Ontario. A federally incorporated company is legally able to carry on business in any Province in Canada, so long as it is registered in that Province.

Co-operatives

A co-operative is a business that is incorporated and thereafter controlled by its members, as a democracy. Pursuant to the provincial *Co-operatives Act*, a co-operative must operate according to the following principles:

(1) each member of the co-operative has only one vote;

(2) votes cannot be entered via proxy;

(3) business is carried on primarily for the benefit of co-operative members;

(4) membership is voluntary;

(5) membership is available to any person who can use the co-operative's services and is willing to accept the responsibilities of membership;

(6) limit on the interest or dividends on share capital that the co-operative pays does not exceed the rate prescribed in the co-operative's by-laws; and

(7) surplus generated by the co-operative is used to benefit the co-operative in some way and distributed among members in proportion to their patronage.

Three or more persons may incorporate as a co-operative. Incorporation requires the following be sent to the registrar: Articles of Incorporation, the co-operative's by-laws, the name of the co-operative, the location of the co-operative's registered office, and a business plan. Similar to a corporation, the Articles of Incorporation form the constating documents of the co-operative, and their form is prescribed by the *Co-operatives Act*.

The Registrar of Companies will not incorporate a co-operative unless he or she is satisfied that the formation of the co-operative will be for the convenience, benefit and advantage of its members. The proposed co-operative must be organized and operated on a co-operative basis, and the proposed business plan of the incorporators must demonstrate viability.

Forming a co-operative may be advantageous in some circumstances because it is owned and controlled by its members, is democratic, and offers limited liability and profit distribution. Possible disadvantages include the potential for conflict between members, lengthy decision-making process, reliance on member participation, and extensive record keeping.

The *Securities Act*

The *Securities Act* (Newfoundland) protects investors from practices and activities that tend to undermine investor confidence in the fairness and efficiency of capital markets. The *Securities Act* also fosters the process of capital formation in situations where doing so is consistent with adequate investor protection.

The *Securities Act* establishes the Securities Commission of Newfoundland and Labrador, which is responsible for the administration of the *Act*. The Commission's mandate is "to protect investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets in Newfoundland and confidence in their integrity". Businesses that raise money from the public sale of securities must register with the Commission and disclose all relevant information to the investing public on a regular basis. Further, pursuant to the *Act*, the Commission requires individuals and businesses that sell securities or provide investment advising services to be licensed and closely supervised.

INVESTMENT

Why Invest in Newfoundland and Labrador?

Canada is reported as a leader in the G7 for low business costs and holds a cost advantage of 5.5% over the United States. Likewise, Newfoundland and Labrador is a competitive place to do and invest in business.

One of Newfoundland and Labrador's greatest assets is its location. The Province is Canada's most easterly, uniquely located at the eastern edge of North America. This location strategically positions it as the business portal between North America and Europe. Trading patterns with both of these continents have led to modern and extensive air, land and water transportation infrastructure so that businesses operating out of Newfoundland and Labrador are assured convenient transport schedules to all major markets.

St. John's, the capital city of Newfoundland and Labrador, ranks high in terms of cost-effectiveness among Atlantic Canadian cities, and is especially cost-effective as compared to doing business in the United States. St. John's businesses are developing world-class engineering and environmental technologies, information and communications technology, and are advancing strongly in the petrochemicals industry. Additionally, the Province has surpassed the United States' standard for competitiveness in the manufacturing sector for food processing, auto parts, metal machining, and plastic products.

The provincial Department of Innovation, Trade and Rural Development maintains a very useful website, Invest in Newfoundland and Labrador (nlbusiness.ca/index.html), which highlights many of the benefits of investing in Newfoundland and Labrador.

Competitive Tax Environment

The Newfoundland and Labrador Department of Finance offers a number of incentive programs that reinforce Newfoundland and Labrador's competitive approach to attracting investment.

Direct Equity Tax Credit

The Direct Equity Tax Credit is designed to encourage private investment in new or expanding small businesses and serves to diversify the economy. An investment credit, in the form of a provincial income tax credit, is available to arm's length corporations who invest as shareholders in eligible small business activities. A 35% rate applies to qualifying activities undertaken in the Province outside of the Northeast Avalon while a 20% rate applies to activities within the Northeast Avalon.

Manufacturing and Processing Profits Tax Credit

This credit applies to corporations that carry out manufacturing and processing from a permanent location in Newfoundland and Labrador. The credit allows a deduction from Newfoundland and Labrador corporate income tax payable of 9% on Taxable Canadian Manufacturing and Processing Profits – this results in an effective corporate income tax rate of 5% for manufacturing and processing profits.

Labour-Sponsored Venture Capital Tax Credit

This is a 15% provincial tax credit for an individual who invests in a registered labour-sponsored venture capital corporation. Investors will also be eligible for a matching 15% federal income tax credit.

There are additional incentives for investments in film and video and through the EDGE program.

Labour

Newfoundland and Labrador enjoys a workforce of over 255,000 people, with the majority being centered in the St. John's metropolitan area. The Province has a progressive labour environment and excellent educational facilities and training programs, which have resulted in a willing, skilled and talented work force. The combination of comparatively low labour rates, ample supply of available skilled workers, and a positive labour environment positions Newfoundland and Labrador as a competitor in the global marketplace.

Research and Development

Newfoundland and Labrador has established itself as a leader in research and development. The Province boasts research and development facilities that are world-class; they employ an extensive array of internationally recognized professionals and use the most advanced technology available. This combination ensures that Newfoundland and Labrador has the capacity and experience to successfully undertake any project or production. Ocean technology, environmental industries, defence, and communication technologies are all industries where research and development projects have led to new business opportunities.

Incentive for investment into research and development is further enhanced through the Scientific Research and Experimental Development Tax Credit. This is a refundable credit of 15% of eligible expenditures made with respect to scientific research and experimental development activities carried out in the Province.

Industrial Infrastructure

Newfoundland and Labrador has extensive industrial park infrastructure that interfaces with supply, communication and transportation networks. Newfoundland and Labrador Housing Corporation owns and operates 17 industrial parks in such strategic locations as St. John's, Mount Pearl, Paradise, Clarenville, Argentia, Carbonear, and Arnold's Cove. All of these parks are directly within, or located in close proximity to, the major transportation networks, labour and educational infrastructure.

Newfoundland and Labrador's Economic Diversification and Growth Enterprises program, or EDGE, referenced in Section 4 of this Guide, can make non-serviced industrial lots available for $1.

TAXATION

Newfoundland and Labrador offers a favourable business tax climate to new business developments in the Province. Corporate income tax rates are low, there is no tax on business inputs, and there is no general capital tax. While businesses must pay a 2% payroll tax, the exemption threshold relieves virtually all small businesses from this tax. Tax credits and incentives, designed to encourage economic growth in strategic areas, are also available.

Further, the Province's Economic Diversification and Growth Enterprises program, EDGE, provides long term corporate tax holidays for new and expanding businesses for up to 15 years. The provincial government lists the following benefits of EDGE:

- a 100% tax rebate on provincial corporate income tax and the payroll tax;
- a 100% tax rebate on municipal property and/or business taxes in participating municipalities; and
- a 50% tax rebate on federal corporate income tax.

Full rebates apply for 10 years within the Northeast Avalon area and are extended to 15 years outside the Northeast Avalon area. Partial rebates on these taxes are applied in both cases for an additional 5 years. Newfoundland and Labrador is the only Province to offer the 50% rebate on Federal Corporate Income Tax.

In order to reap the benefits of the EDGE program, companies must:

- display the potential to create and maintain 10 new permanent jobs in the Province;
- be prepared to make a minimum capital investment of $300,000 or generate incremental annual sales of $500,000;
- not establish or expand in the Province in the absence of the EDGE incentives;
- not receive direct competitive advantage over other existing provincial businesses because of participation in EDGE; and
- have a substantial net economic benefit to the Province.

Federal Corporate Taxes and Premiums

The Canadian government assesses all businesses for basic federal corporate tax at 28% of net income. Substantial deductions from this base rate exist for businesses in certain sectors. As mentioned above, Newfoundland and Labrador is the only Province in Canada to offer a 50% tax relief on federal corporate income taxes to companies that qualify under EDGE.

Companies must also contribute to two federal employee benefit programs: Employment Insurance and Canada Pension Plan. Employers must deduct premiums for each of these programs from their employees' pay and remit employer contributions.

Harmonized Sales Tax (HST)

Harmonized Sales Tax (HST) is a combination of Newfoundland and Labrador's Provincial Sales Tax (PST) and Canada's national Goods and Services Tax (GST). HST is applied at a rate of 14% on most goods and services.

Provincial Taxes

At the provincial level, businesses remit corporate income tax, health and post-secondary education tax and workers compensation premiums. Workplace Health, Safety and Compensation Commission premiums are paid by all businesses operating in Canada. These premiums provide income support to workers who are injured on the job and allow companies to avoid carrying independent liability insurance. Payroll tax is payable by employers whose annual remuneration in Newfoundland and Labrador exceeds the predetermined exemption threshold.

Municipal Taxes

Local governments assess property tax and business occupancy tax on businesses. Property tax rates vary across municipalities but the rates across the Province stand well below national averages. EDGE may provide municipal tax relief in a number of municipalities. Municipalities may also meter water usage and administer local waste disposal fees. However, as an abundance of fresh water exists in Newfoundland and Labrador, municipal water fees tend to be low. Similarly, landfill sites are not strained and this is reflected in waste disposal rates.

INSURANCE

Insurance is an essential part of business planning as it protects business owners from the consequences of potential disaster. Insurance may prevent a business owner from having to personally finance any business catastrophes or legal actions for or against the company. Insurance is available to cover personal and product liability, fire, vehicles, disability, business interruptions, life, and theft. It can be tailored to meet the particular needs of a business.

LABOUR STANDARDS

The *Labour Standards Act* (Newfoundland) prescribes minimum standards of employment applicable to all employees regardless of full-time or part-time status. Pursuant to the *Act*, a standard work week is 40 hours and all time worked in excess of forty hours must be paid at the minimum overtime rate. Employees must receive 24 consecutive hours off in each work week. Employees are entitled to a one hour rest period immediately following 5 consecutive working hours and can work a maximum of 14 hours per day. The current minimum wage in Newfoundland and Labrador is seven dollars per hour with a scheduled increase to eight dollars per hour on April 1, 2008.

The following may be deducted from employees' wages: Income Tax, Canadian Pension Plan contributions, Employment Insurance contributions, overpayment of wages, group benefit plan premiums and savings plan contributions.

Employees who have worked for an employer for one to fifteen years are entitled to at least 2 weeks vacation. Vacation pay is calculated at 4% of an employee's gross wages. An employee who has been continuously employed with the same employer for 15 years or more must be granted 3 weeks annual vacation. At this point, vacation pay increases to 6% of the employee's total wages.

An employee who works on a paid public holiday (New Year's Day, Good Friday, Memorial Day, Labour Day, Remembrance Day, Christmas Day or any day designated in a collective agreement) is entitled to twice his or her regular hourly wage or a day off with pay.

With few exceptions, notice of termination of employment must be in writing. The requisite notice period ranges from one to six weeks depending on the length of employment.

Employee Leave

A pregnant employee who has been employed by the same employer for at least 20 consecutive weeks is entitled to up to 17 weeks of unpaid pregnancy leave. Either new parent is entitled to a further 35 weeks of unpaid parental leave. Adoptive parents or individuals having children come into their care are also entitled to parental leave.

Bereavement leave of one paid day and two unpaid days must be given to an employee who has been employed for a continuous period of at least 30 days in the event of the death of a spouse, child, grandchild, parent, sibling, grandparent, or in-law.

An employee who has been employed with the same employer for a continuous period of 30 days is entitled to 7 days unpaid Sick or Family Responsibility Leave in a year.

Occupational Health and Safety

The provincial *Occupational Health and Safety Act* imposes minimum conditions on all employers and workplaces to ensure that work environments neither impair the health nor imperil the safety of its employees. Employers, employees, contractors and suppliers all have duties under this *Act*. An employer is required to ensure the health, safety and welfare of his or her workers. An employee is required to take reasonable care to protect his or her own health and that of other workers and employees and other persons at or near the workplace.

The provincial *Radiation Health and Safety Act* is intended to protect the health of persons who operate and use radiation equipment in their workplace.

Workplace Health, Safety and Compensation Commission

The *Workplace Health, Safety and Compensation Act* requires employers in the Province with one or more full-time, part-time or casual worker to register with the Workplace Health, Safety and Compensation Commission (WHSCC). Employers must pay assessments based upon their annual payroll.

The WHSCC administers an employer-funded, no-fault insurance system that promotes safe and healthy workplaces, provides return-to-work programs, and provides fair compensation to injured workers and their dependants.

Human Rights

The *Human Rights Code* (Newfoundland) is intended to protect individuals from discrimination and harassment and promote equality of opportunity. It applies equally to provincial government departments and private businesses. The provincial Human Rights Commission was established in 1971 pursuant to the *Human Rights Code*. The Commission is mandated to promote an understanding and acceptance of the provisions of the *Code*, as well as enforce compliance with the *Code*.

In the areas of accommodation, services, occupancy of dwelling units, employment and publications, the Code prohibits discrimination on the basis of race, religion, sex, marital status, physical disability, mental disability, political opinion, sexual orientation, colour and ethnic, national, or social origin. Age is also a protected area in employment.

The Code prohibits a person in a position of authority to confer, grant or deny a benefit or advancement or from making sexual advances towards a person where the person in authority knows or ought reasonably to know that the advance is unwelcome. A person in authority is equally prohibited from penalizing, punishing or threatening a person who rejects a sexual advance.

Human rights complaints are managed by the Human Rights Commission. Decisions of the Human Rights Commission may be appealed to the Supreme Court of Newfoundland and Labrador, Trial Division.

LABOUR RELATIONS

The provincial *Labour Relations Act* governs union activity in the Province, granting employees the right to be members in trade unions and participate in union activities. This *Act* also gives employers the right to be involved in employer organizations, establishes the Labour Relations Board and grants the Board jurisdiction over disputes arising under the *Act*. The *Act* defines unfair labour practices and prohibits employers from interfering with union organizing, including interference by threatening, coercing or intimidating employees during a union organization campaign.

INTERESTS IN PROPERTY

Personal Property

Individuals and businesses can record their financial interest in personal property in the Personal Property Registry (PPR). The PPR was established in 1998 pursuant to the *Personal Property Security Act* (Newfoundland) (PPSA). The PPR allows secured parties to give public notice of their interest in specific personal property. Secured parties establish priority over other creditors through this notice-based system. The Registry is electronically accessible and serves the entire Province of Newfoundland and Labrador.

The PPR is accessible online through the Lien Check Service. This service identifies liens on personal property, such as a motor vehicles, trailers, mobile homes, airplanes, and boats or outboard motors on boats in order to protect consumers from purchasing personal property that is subject to seizure. The PPR is searchable by serial number.

Real Property

There are several types of interest in land recognized in Newfoundland, including full ownership (freehold), and an interest for a specified period (leasehold). The *Condominium Act* also permits condominium ownership, under which owners hold title to their individual units and have a right to use the "common elements" of the condominium project.

Interests in real property in Newfoundland are recorded in a deeds registry system. The Registry of Deeds is a public registry that contains a range of information on property including property descriptions, encumbrances against property and consideration for property. The Registry of Deeds can be searched through a manual index system for dates from 1825 through 1979 and through an online searchable database from 1980 to the present.

ELECTRONIC COMMERCE

Electronic commerce allows for buying and selling over networks linking electronic devices (mainly computers). Electronic commerce can be used to communicate, promote, sell, advertise, provide customer support and information, eliminate costs of paper transactions, increase transaction speed, compete globally and conduct competitive intelligence.

In general, electronic commerce is governed by traditional commercial law. Laws pertaining to business incorporation, business name registration, taxation, consumer protection, importing and exporting, and intellectual property apply equally in the electronic environment.

The *Electronic Commerce Act* (Newfoundland) clarifies that "[i]nformation shall not be denied legal effect or enforceability by reason only that it is electronic". For this reason, offers made and accepted electronically form binding contracts. Further, electronic documents satisfy the requirement that certain contracts must be made in writing.

INTELLECTUAL PROPERTY

The Canadian Parliament has jurisdiction over the protection of intellectual property in all Provinces. The Canadian Intellectual Property Office (CIPO), a Special Operating Agency associated with Industry Canada, is responsible for the administration and processing of intellectual property in Canada. CIPO manages patents, trade-marks, copyrights, industrial designs and integrated circuit topographies.

The Canadian Food Inspection Agency manages plant breeders rights established under the *Plant Breeders' Rights Act*. Plant breeders' rights protect breeders of varieties of plants that are new, different, uniform and stable. An established breeder is entitled to control multiplication and sale of the protected seeds for up to 18 years. Others may be granted permission to breed and grow the protected seeds.

PRIVACY LAW

In Newfoundland and Labrador, individual privacy is protected by two statutes: the *Access to Information and Protection of Privacy Act* and the *Personal Information Protection and Electronic Documents Act*. The provincial *Access to Information and Protection of Privacy Act* provides a right of public access to information collected and used by public bodies, including the provincial government, administrative boards, and commissions. This right is subject only to specific and limited exceptions necessary for the operation of the provincial government and for the protection of personal privacy.

In the private sector, private personal information is protected by the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA). PIPEDA regulates the collection, use and disclosure of personal information in the course of "commercial activities". PIPEDA places significant obligations on businesses including requiring the appointment of a privacy officer, providing consumers with information on how their information is proposed to be used, obtaining consent, publishing a privacy policy, and instituting a mechanism to receive and respond to queries and complaints. The statute does not apply to information about incorporated businesses, nor does it apply to information about employees that is collected in the course of the operation of a "provincially regulated" organization.

IMPORT/EXPORT REGULATIONS

Importing and exporting goods and services inter-provincially and internationally falls under federal constitutional jurisdiction. The Canadian Revenue Agency and Canadian Border Services Agency enact guidelines and regulations on international trade.

LICENSING

Licenses and permits are required to carry on business in a wide range of sectors in Newfoundland and Labrador including aquaculture, collections, commercial cutting and milling, timber scaling and real estate.

For a more complete list see the licensing information provided online at the Newfoundland and Labrador Government Services webpage at gs.gov.nl.ca/services.stm.

THE ENVIRONMENT

In Canada, the federal government, as well as provincial, territorial and Aboriginal governments, share responsibility for protecting the environment. Federally, the *Canadian Environmental Protection Act, 1999* (CEPA) focuses on intergovernmental co-operation in order to achieve sustainable development, pollution prevention, and science-based decision making.

Provincially, environmental issues are governed by the *Environment Protection Act* (Newfoundland) (EPA), which provides a framework for environmental protection and preservation and contributes to the goal of sustainable development for Newfoundland and Labrador. The provincial Department of Environment and Conservation has a broad mandate to protect and promote a healthy and natural environment. The EPA grants the Minister of Environment and Conservation (as well as Cabinet and the courts) the legal authority to require that persons responsible for violations of the EPA prevent and/or correct any resultant adverse environmental effects.

RESOURCES & CONTACT INFORMATION

The following is a list of resources that may be useful to anyone undertaking to carry on business in Newfoundland and Labrador:

Aboriginal Business Procurement Strategy - Indian and Northern Affairs Canada
Atlantic Regional Office:
P.O. Box 160
40 Havelock Street
Amherst, NS B4H 3Z3
Tel: 902.661.6200
ainc-inac.gc.ca/saea-psab/index.html

Aboriginal Business Service Network
90 O'Leary Avenue
P.O. Box 8687, Station A
St. John's, NL A1B 3T1
Tel: 709.772.6022
Toll free: 800.668.1010 (Atlantic region only)
cbsc.org/english/absn

Canadian Border Services Agency
cbsa-asfc.gc.ca

Canada-Newfoundland and Labrador Business Service Network
90 O'Leary Avenue
St. John's NL
Tel: 800.668.1010
canadabusiness.ca

Canada Revenue Agency – Canada Business Services for Entrepreneurs
cra-arc.gc.ca/tax/business/topics/bn/menu-e.html

Department of Government Services
This Department oversees the Registry of Companies, the Registry of Deeds and the Personal Property Registry. Information about each of these registries can be found at:
gov.nl.ca/gs/cca/cr/

Economic Diversification and Growth Enterprises Program (EDGE)
intrd.gov.nl.ca/intrd/edge_page.htm

Government of Newfoundland and Labrador
gov.nl.ca

Investing in Newfoundland and Labrador
nlbusiness.ca

Labour Relations Agency
4th Floor, West Block, Confederation Building
P.O. Box 8700
St. John's, NL A1B 4J6
Tel: 709.729.7420
hrle.gov.nl.ca/lra/

Office of the Premier
Confederation Building, East Block
P.O. Box 8700
St. John's, NL A1B 4J6
Tel: 709.729.3570
premier.gov.nl.ca/premier/

Registry of Companies
Commercial Registrations Division
Ground Floor, East Block,
Confederation Building
P.O. Box 8700
St. John's, NL A1B 4J6
Tel: 709.729.3317
gs.gov.nl.ca/cca/cr/

Securities Commission of Newfoundland and Labrador
gs.gov.nl.ca/cca/scon/

Workplace Health, Safety and Compensation Commission
whscc.nl.ca

St. John's
146-148 Forest Rd., P.O. Box 9000
St. John's, NL A1A 3B8
Tel: 709.778.1000
Toll free: 800.563.9000

Grand Falls – Windsor
26 High Street, P.O. Box 850
Grand Falls-Windsor, NL A2A 2P7
Tel: 709.489.1600
Toll free: 800.563.3448

Corner Brook
Suite 201, Fortis Towers
4 Herald Avenue, P.O. Box 474
Corner Brook, NL A2H 6E6
Tel: 709.637.2700
Toll free: 800.563.2772

Human Rights Commission
P.O. Box 8700,
St. John's, NL A1B 4J6
Tel: 709.729.2709
Toll free: 800.563.5808
justice.gov.nl.ca/hrc/