



TOP 10 LIST FOR RETAILERS EXPANDING INTO CANADA

ABOUT STIKEMAN ELLIOTT

Stikeman Elliott's Retail Group is well placed to offer a wide range of services to clients in both their Canadian expansion initiatives and their subsequent ongoing operations.

With offices in Canada's principal markets drawing on the firm's breadth of experience across all areas of business law, Stikeman Elliott has a history of helping major national and international retailers navigate legal issues to ensure their success in the Canadian retail landscape.

"We wouldn't get business done without them. They're that good."

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As more retailers prepare to expand beyond local markets, many are considering the outstanding opportunities in Canada's retail environment. Canadian consumers spent over \$438 billion in retail stores in 2010, and the growth in this sector has been robust. A stable overall economy and close proximity to the United States make Canada a destination of choice for retail businesses from abroad. In pursuing Canadian expansion, however, a number of factors must be considered. The mode of entry will affect the timing and cost of establishing a business, and decisions regarding whether to pursue "greenfield" expansion as opposed to the acquisition of an existing business will impact whether, among other things, Canadian securities, anti-trust or foreign investment rules are triggered. Although the nature and extent of such considerations will vary depending on the manner of entry and the nature of the retailer and products, retailers should be mindful of the applicable legal requirements, some of which are unique to Canada.

1 Foreign Investment Rules

Notifications and/or governmental approvals may be required in the case of a foreign retailer establishing or acquiring a Canadian business, where certain financial thresholds are exceeded. If the business engages, or will engage, in the sale of "cultural" products such as books, magazines, CDs or DVDs, a much lower threshold will initiate a review.

2 Canadian Cultural Issues

French is an official language of Canada and the dominant language of the province of Quebec. In the retail context, the use of French is legislated with respect to signage, advertising, packaging and labelling in Quebec. As noted below, federal requirements are more limited, although, as a practical matter, almost all consumer packaging and labelling in Canada is bilingual. Further, social and political considerations as well as cultural diversity may impact store location, marketing and merchandising choices.

3 Employment and Labour Laws

Canada does not have U.S. "employment-at-will" concepts. Canadian employment legislation regulates the employer-employee relationship to a greater degree than in most U.S. jurisdictions and labour law concepts also differ in many material respects. Further, provincial human rights legislation protects against workplace discrimination on the basis of a number of enumerated characteristics and regulates background checks and drug testing at both the pre-employment and employment stages.

4 Real Estate

The purchase, leasing and development of real estate do not vary greatly from province to province, with the exception of Quebec, which is a "civil code" rather than a common law jurisdiction. With limited exceptions, there are no longer foreign ownership restrictions on acquiring interests in real property. Acquiring real property will attract a land transfer or recording tax in most provinces. The site selection process is one of the most critical issues in developing the retailer's expansion strategy, especially in the case of greenfield expansions. Municipalities regulate the development and construction of retail locations in the form of zoning and building by-laws. The readiness of a site from a land use planning perspective is a

significant consideration affecting the timing of the rollout of one's retail locations. Leasing retail space in Canada, meanwhile, is generally similar in nature to that of many foreign jurisdictions. The most notable difference, however, is the significant leverage landlords currently possess in Canada given the consolidation of the commercial retail real estate market.

5 Privacy and Data Collection

Legislative initiatives at both the federal and provincial levels have created a more stringent landscape for retailers with respect to collecting, storing and using the personal information of customers and employees. For example, the previously common practice of recording and storing a customer's driver's licence number as part of a cheque acceptance or product return procedure is no longer permissible. More generally, businesses must be mindful of the impact of privacy laws in relation to the cost and time of developing compliant IT systems and protocols.

6 Intellectual Property

The retailer should ensure that, well in advance of any public announcement of its intention to expand into Canada, it has commenced the process of protecting its rights to trademarks in Canada and reserved a Canadian domain name, if required, before "squatters" have an opportunity to act. In the case of material trademarks, advance searches should be conducted to determine whether any potential problems can be expected.

7 Packaging and Labelling

The federal Consumer Packaging and Labelling Act requires, among other things, that, unless exempt, (i) certain minimum information must be contained on the product label; and (ii) aspects of such information must be displayed in both English and French. While there is no federal legislation that requires fully bilingual labelling on products, as a practical matter, almost all consumer packaging and labelling in Canada is fully bilingual. Further, as noted above, Quebec legislation requires products distributed in that province to have all information on labels, together with accompanying materials, in French.

8 Consumer Protection and Product Safety Legislation

Most provinces have enacted legislation that regulates sales to consumers, requires certain mandatory disclosure depending upon the nature of the consumer agreement and restricts the retailer's ability to exclude certain statutorily implied warranties. More recently, consumer protection legislation has been amended in a number of provinces to regulate gift cards, particularly by prohibiting expiry dates and by regulating fees. Consumer product safety is regulated in Canada in ways similar to the U.S. and the E.U. but there are specific obligations on retailers in Canada including mandatory incident reporting and document retention.

9 Immigration

As part of the exploratory and set-up work, foreign retailers will often send employees to Canada either on a temporary or fixed-term basis. Retailers should ensure that the arrangements are properly structured so that any requisite visas and/or work permits are applied for and obtained in advance.

10 Taxes and Duties

Sales taxes are levied by federal and provincial governments in Canada (but not by municipalities). Retailers are generally required to charge the federal Goods and Services Tax (GST), a value added tax, generally applying at the rate of 5%, on sales in Canada. All provinces except Alberta also impose a provincial sales tax on most goods and certain taxable services within their respective provinces. In Quebec, Nova Scotia, New Brunswick, Newfoundland & Labrador, British Columbia and Ontario, the provincial tax is generally imposed on the same range of goods and services as the GST (and in the last five of these provinces is formally combined with it, however British Columbia has stated that they will be resorting to their old provincial sales tax regime in approximately 18 months). Customs duties may also apply to goods imported by the retailer into Canada. The amount of duty payable, if any, depends on the nature of the good, and whether it originated in a country that has a free-trade agreement with Canada.