



Fintech in Canada

The following Q&A, with responses by [Martin Langlois](#), [Alix d'Anglejan-Chatillon](#), [Léa Bénitah-Bouchard](#), [Laura Levine](#), [David Elder](#), [Vanessa Coiteux](#), [Eveline Poirier](#) and [Éric Lévesque](#) of Stikeman Elliott LLP, is a republication, with minor changes, of an article that originally appeared on the Lexology Navigator website.

General climate and trends

General innovation climate

Q | What is the general state of fintech innovation in your jurisdiction, including any notable trends, innovations, innovators and future prospects?

A | The traditional strength of Canada's financial services sector has incentivised fintech innovation, particularly in artificial intelligence (AI), digital payments and robo-advising. Early seeding of fintech start-ups and in-house 'labs' by leading Canadian financial institutions, the build-out by US tech giants of beachheads in Canada and research support by leading Canadian universities have further accelerated the pace of innovation. The cryptocurrency sector – with a significant number of cryptocurrency miners attracted by the country's stable regulatory market and low-cost energy – is poised for explosive growth. Future prospects include major investments in AI-driven fintech solutions, blockchain, reg-tech and, in the insurance industry where Canada is a significant global player, insurtech. Canadian financial institutions are leading the charge in many cases, but fintech start-ups are a key part of the ecosystem as well.

Canadian governments, major financial market stakeholders and key regulators clearly recognise the importance of fintech and, as detailed below, are actively encouraging investment and innovation in the sector. Regulatory initiatives to date include:

- crowdfunding and regulatory sandbox, launchpad and hackathon programmes;
- fintech cooperation agreements with several foreign jurisdictions and clarification of securities; and
- where applicable, derivatives law requirements in the cryptocurrency sector.

Significant tax incentives, including incentives aimed at the development of regional fintech innovation hubs, are also offered at both the federal and provincial levels.

Overall, the adoption rate of fintech in Canada continues to rise. Money transfers and payments are still leading the way with savings and investments, insurance, financial planning and borrowing becoming more prevalent.

About Stikeman Elliott

Stikeman Elliott's mission has always been to deliver only the highest quality counsel as well as the most pragmatic and creative services in order to steadily advance client goals.

As the firm has grown in prominence worldwide, we have remained true to our core values of: partnering with our clients to ensure mutual success, finding novel solutions grounded in business realities, providing clear, proactive counsel, and recognizing that individual passion drives collective results.

Follow us



Key technologies

Q | Have there been any particular developments – regulatory or commercial – in any of the following fintech sectors:

a) Distributed ledger technology and digital currencies (eg, blockchain, smart contracts and Bitcoin)?

A | In late 2017, the Canadian Securities Administrators (CSA) issued Staff Notice 46-307 'Cryptocurrency Offerings' providing guidance with respect to the applicability of Canadian securities laws to:

- cryptocurrency exchanges;
- cryptocurrency offerings, including initial coin offerings (ICOs) and initial token offerings; and
- cryptocurrency investment funds.

The notice stated that cryptocurrency offerings, in which coins or tokens are offered in exchange for ordinary currency (or other forms of cryptocurrency), are in many cases similar to ordinary initial public offerings and will be regulated as offerings of securities. In making the necessary determination, the CSA will consider substance rather than form. The CSA provide the examples of a sale of coins that allow a customer to play a video game (probably not determined to be a security) versus a sale of coins the value of which is tied to future profits or success of a business (which is likely to be determined to be a security, given that an expectation of profit is a defining characteristic of a security).

Other developments include the following:

- In September 2017, the Bank of Canada issued its findings on its review of the viability of distributed ledger technology as the basis for a wholesale payment system.
- With cryptocurrency futures contracts beginning to trade on certain futures exchanges in December 2017, the Investment Industry Regulatory Organization of Canada published greater margin requirements for cryptocurrency contracts traded on commodity futures exchanges.
- In December 2017, the CSA also released a warning reminding dealers and investors of the risks associated with products linked to cryptocurrencies. In February 2018, the British Columbia Securities Commission released BC Notice 2018/1 – Notice and Request for Comment – Consulting on the Securities Law framework for Fintech.

There have been several developments relating to the registration of dealers, advisers and ICOs, including the following:

- In August 2015, the Impak Finance ICO was approved by Quebec's Autorité des marchés financiers.
- In September 2017, the British Columbia Securities Commission registered Canada's first investment fund manager dedicated to cryptocurrency investments.
- In October 2017, the Ontario Securities Commission approved the TokenFunder Inc ICO – the first ICO in Canada available to retail investors.

From a commercial perspective, Canada has welcomed a significant number of cryptocurrency miners. Given its stable legal regime, climate and energy costs, the Canadian environment is considered an extremely attractive for miners to operate.

b) Alternative lending platforms?

A | No recent securities law developments have specifically affected alternative lending platforms. Depending on how its loan-funding operations are structured, an online lender may be considered to be in the business of trading and, if applicable, subject to dealer registration and platform-related recognition requirements, unless statutory or discretionary exemptions are available.

c) Digital payments, remittances and foreign exchange?

A | In July 2017 the federal Department of Finance published a consultation paper entitled 'A New Retail Payments Oversight Framework'. As the paper noted, the retail payment sector was one of the first areas in which fintech businesses became active in Canada. The paper's proposals would affect many types of fintech business in the payment space. The result of the ensuing consultation process has yet to be announced.

d) Alternative financing (including crowdfunding)?

A | Securities regulators in Canadian provinces adopted a crowdfunding prospectus exemption in 2016. The exemption permits investors to invest certain limited amounts in early-stage companies via crowdfunding platforms. Both public and non-public companies are permitted to rely on the prospectus exemption. Securities must be

distributed through a single funding portal, on which an offering document and certain other materials must be posted. To be eligible for the exemption, issuers must meet Canadian residency requirements and may distribute only non-complex securities that investors can easily understand (eg, common shares, non-convertible preference shares and limited partnership units). Issuers are limited to raising an aggregate of C\$1.5 million per 12-month period.

Certain Canadian jurisdictions have also adopted a start-up crowdfunding exemption to the prospectus requirement which permits start-ups and early stage businesses with head offices in those jurisdictions to raise small amounts of capital from a large number of people, typically through the Internet.

Where securities crowdfunding offerings are facilitated through a funding portal, the funding portal generally must be registered with the applicable securities regulators as this type of activity is considered to be 'in the business of trading' unless an exemption is available (eg, via British Columbia's start-up registration exemption).

e) Investment, asset and wealth management?

A | As in other jurisdictions, Canada is seeing a surge of institutional interest in fintech-driven asset management products, including investments in domestic and foreign fintech, cryptocurrency and blockchain-focused funds. AI-powered and bitcoin and blockchain-based exchange-traded funds (ETFs) have also been launched in the Canadian market. The trend in smart beta ETFs and passive index-based products is accelerating the shift from conventional active asset management methodologies and distribution channels to quantitative strategies, machine-driven solutions, data mining and the web-based delivery of asset management products.

f) Robo-advice and artificial intelligence?

A | In 2015, the CSA issued Staff Notice 31-342 'Guidance for Portfolio Managers Regarding Online Advice', which discusses how securities laws apply to online advisers. Portfolio managers who provide advice using online platforms are subject to the same obligations as any other portfolio manager, including know-your-client (KYC) obligations, composition of investment portfolios, due diligence reviews and compliance reviews by CSA staff of a portfolio manager's

plans for providing online advice and terms and conditions that may be imposed on registration.

Significant global capital is pouring into the AI cluster centred around a Montreal-based AI platform and incubator, which is driving research into the use of artificial intelligence, natural language processing, image recognition and other data driven tools, including for developing innovative solutions to transform conventional financial institution servicing infrastructure (eg, front office, back office, cybersecurity functions and financial transactions).

Canadian securities regulators are also increasingly employing data analytics and other sophisticated tools for market oversight and enforcement. In January 2017, the Quebec *Autorité des marchés financiers* hosted the first international Technology Applied to Securities Markets Conference under the aegis of the International Organization of Securities Commissions (IOSCO), with a focus on fintech and artificial intelligence, for which Montreal is now considered to be a global hub.

g) Any other technologies?

A | Canada is also home to a robust insurtech ecosystem.

Regulatory issues

Regulatory approach

Q | How would you describe the regulatory policy for fintech products and services in your jurisdiction?

A | The current regulatory approach to fintech products and services in Canada is supportive, with an emphasis on collaboration between industry participants and regulators.

The Canadian government and its provincial counterparts have also been highly supportive of research and development of artificial intelligence (AI), blockchain and other innovative technologies, particularly in the AI-hubs of Toronto and Montreal. The Quebec government has earmarked C\$100 million over five years for the development of an AI 'super-cluster' in the Montreal area. Additional academic and local government funding initiatives are multiplying across the country.

Q | Have any fintech-specific laws or regulations been enacted in your jurisdiction? Are any envisaged?

A | Generally, Canadian securities laws – particularly the prospectus requirement and dealer and adviser registration requirements – may apply to businesses operating in the fintech space, depending on their classification. While no securities laws or regulations have been enacted, the Canadian Securities Administrators (CSA) issued Staff Notice 46-307 ‘Cryptocurrency Offerings’ in 2017. This advisory notice provides guidance on the application of Canadian securities laws to:

- cryptocurrency exchanges;
- cryptocurrency offerings, including initial coin offerings (ICOs) and initial token offerings (ITOs); and
- cryptocurrency investment funds.

Please refer to the more detailed description of the CSA’s position under the ‘Key technologies’ section above.

The British Columbia Securities Commission Fintech Consultation also seeks industry input on potential measures to clarify and modernise British Columbia securities laws in five key fintech areas.

With cryptocurrency futures contracts beginning to trade on certain futures exchanges in December 2017, the Investment Industry Regulatory Organization of Canada (IIROC) published greater margin requirements for cryptocurrency contracts traded on commodity futures exchanges.

Canada also became one of the first countries in the world to enact legislation on digital currencies. In 2014, amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Anti-money Laundering Act) included new requirements for money services businesses dealing in virtual currencies. However, these amendments are not yet in force and related regulations have not yet been released. Some digital currency businesses are registered with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). The applicability of the registration requirement in any particular case involves a nuanced analysis and careful review of operations and functionality.

Regulatory authorities

Q | Which government authorities regulate the provision of fintech products and services?

A | Canada’s provincial and territorial securities regulators are the primary regulators of fintech products and services. A number of other organisations, including the CSA and IIROC, have also developed and published guidance on fintech-related matters.

The following bodies are also involved in the regulation of fintech products and services:

- FINTRAC, which is Canada’s federal anti-money laundering (AML) authority, which exercises regulatory authority over securities dealers, life insurance companies, brokers and agents, money services businesses and certain other financial businesses. A business providing fintech products and services is required to register with FINTRAC if it is involved in:
 - foreign exchange dealing;
 - money transfers (eg, online money transfer services or digital currency money transmitters);
 - the cashing or selling of money orders, (eg, travellers’ cheques);
 - securities dealing (eg, AI robo-advisers, crowdfunding platforms and lending platforms);
 - life insurance brokerage; or
 - certain other activities.
- The Office of the Superintendent of Financial Institutions (OSFI), which regulates and supervises federally-regulated financial institutions in Canada, including banks and insurance companies.
- The Canada Revenue Agency, which is the federal tax collector, in addition to its counterparts at the provincial level.
- The Bank of Canada, which is Canada’s central bank and actively monitors how new technologies and new players in the fintech sector could affect the financial system and how the bank works to fulfill its core functions. For this reason, the bank closely monitors fintech developments and distributed ledger technologies and is a founding member of the Blockchain Research Institute.

Financial regulatory framework

Q | Which laws and regulations governing the provision of financial services apply to fintech businesses?

A | The provision of financial services in Canada may be subject to the following laws and regulations, among others:

- AML legislation, including the federal Anti-money Laundering Act, the Quebec Money-services Businesses Act and related regulations. As noted above, amendments to the federal Anti-money Laundering Act requiring the registration of money services businesses dealing in virtual currencies were adopted in 2014, but are not yet in force;
- listings and sanctions law, including Part II.1 of the Criminal Code, the Special Economic Measures Act and the United Nations Act;
- federal banking and insurance laws, including the Bank Act and the Insurance Companies Act;
- tax laws;
- consumer protection laws;
- codes of conduct respecting payment processing; and
- data protection laws.

Q | Under what conditions are fintech businesses subject to licensing requirements? Are there any exemptions?

A | Businesses completing ICOs or ITOs may require dealer registration (or an exemption therefrom) if their trades in coins or tokens are considered to be trading in securities for a 'business purpose'. The CSA has provided examples of how marketing coins or tokens at public events or via the Internet, or to a broad base of retail investors, may trigger the dealer registration requirement. Associated regulations require compliance with know-your-client rules, suitability requirements and cybersecurity risk management protocols, among other things.

The CSA has noted that fintech businesses setting up investment funds to invest in cryptocurrencies should prepare for discussions with regulators with respect to compliance issues, including the need to obtain appropriate registrations as dealer, adviser and investment fund manager in Canada. They should also consider whether they need to be registered as exchanges or alternative trading

systems, given the traditional definition of 'exchange' or 'marketplace' as an entity that brings together multiple buyers and multiple sellers of securities or derivatives. Certain fintech businesses could also be considered investment funds and require registration as such.

Money services businesses (MSBs) must register with FINTRAC and comply with reporting, record keeping, know-your-client and compliance programme requirements. MSBs include entities that deal in:

- foreign exchange;
- money transfers;
- money orders;
- travellers' cheques; and
- similar instruments.

In 2014, the Canadian government amended the Anti-money Laundering Act to create new requirements for money services businesses dealing in virtual currencies, but the changes are not yet in force pending the release of related regulations. Some digital currency businesses are registered with FINTRAC, although this is required only in certain specific situations; whether existing law requires such a registration is a question that, in many cases, can be answered only after a careful review of business operations.

Q | Are any fintech products or services prohibited in your jurisdiction?

A | Multilateral Instrument 91-102 'Prohibition of Binary Options', which has been adopted in most Canadian jurisdictions, effectively prohibits advertising, offering, selling or otherwise trading a binary option having a term to maturity of less than 30 days with or to an individual, or to a person or company that was created or is used solely to trade a binary option. A companion policy to the instrument extends the prohibition to offers and solicitations through a website or other electronic means.

Data protection and cybersecurity

Q | What rules and regulations govern the processing and transfer (domestic and cross-border) of data relating to fintech products and services?

A | The processing and transfer of data relating to fintech products and services is restricted by

generally applicable privacy laws, as supplemented in certain cases by sector-specific regulation.

There are four applicable general privacy and data protection statutes in Canada: one enacted federally and three enacted by three provinces that have chosen to create their own substantially similar statutory privacy regimes (Alberta, British Columbia and Quebec).

The federal law, the Personal Information Protection and Electronic Documents Act, applies in the first instance to fintech providers that operate within any of the small number of industries that are federally regulated under Canada's constitution – most notably (in this context) the banking industry. Secondly, the Personal Information Protection and Electronic Documents Act applies to any other commercial organisation that operates wholly within any province that has not enacted its own generally applicable privacy law (currently, all provinces except the three named above). Finally, the act applies with respect to inter-provincial and international disclosures of personal information for consideration, with the result that many national fintech service providers may be subject to the Personal Information Protection and Electronic Documents Act with respect to those disclosures, even if they are located in one of the three provinces that has its own legislation. As this implies, an organisation may be required, in various situations, to comply with more than one of the four pieces of legislation.

Under Canadian privacy laws, organisations generally remain responsible for the appropriate handling of personal information under their custody or control, even where such information has been transferred to domestic or foreign third parties for processing. In such cases, organisations must use contractual and other means to provide a comparable level of protection while the information is in the hands of the third party. Outsourcing organisations are thus obliged to choose vendors with care and, in particular, to ensure that they are contractually bound to comply with appropriate security and confidentiality protocols. Periodic audits of the third party, and of the privacy training provided to third-party personnel, are also required in some circumstances.

Private sector privacy laws generally permit the storage or processing of personal information outside Canada, with consent. For the least sensitive types of personal information, it is often sufficient to obtain implied consent (eg, by posting a notice or including a disclosure in an organisation's privacy policy indicating that personal information may be transferred outside the country and that it will then be subject to the

local laws of that foreign jurisdiction). However, for more sensitive types of personal information, Canadian privacy laws require express consent to such transfers (eg, by means of a signed account agreement or similar document relating to a person's detailed financial information).

Q | What cybersecurity regulations or standards apply to fintech businesses?

A | In Canada, cybersecurity laws and regulations were typically established in the context of personal information protection. Perhaps as a consequence of this, they tend not to be particularly prescriptive with respect to data security obligations, but more typically impose a general obligation to protect personal information through the use of security safeguards appropriate to the sensitivity of the information in question. Methods of protection include physical, organisational and technological measures and should safeguard against loss, theft, unauthorised access, disclosure, copying, use and modification. In assessing the adequacy of security measures implemented by an organisation, the privacy commissions often look for an implementation of recognised third-party certification and standards that are appropriate for the organisation's industry.

With the exception of Alberta's private sector privacy law, Canadian privacy laws do not currently require mandatory breach notification to affected individuals or impose recording requirements in certain circumstances. However, amendments to PIPEDA (the Personal Information Protection and Electronic Documents Act) require organisations to report certain breaches to the federal Privacy Commissioner and affected individuals and, in addition, to maintain records of certain types of cyber breaches. These amendments have been passed but are not yet in force, pending the finalisation of related regulations.

While there is as yet relatively little specific legislation in this area, Canadian regulators and self-regulatory organisations (including the CSA, IIROC, OSFI and the Mutual Fund Dealers Association (MFDA)) have issued a considerable amount of fintech-specific cybersecurity guidance on cybersecurity best practices, including:

- corporate cybersecurity policies;
- incident response plans and reporting;
- employee cybersecurity training; and
- risk assessment and management (including vendor risk management).

While non-binding, this guidance is widely followed by the organisations to which it applies.

Nevertheless, unlike many other jurisdictions, Canada has not yet adopted comprehensive cybersecurity rules that legally require financial service companies, including those in the fintech sector, to adopt best practices of the type just described. Other sources of information and protocols include the Canadian Cyber Incident Response Centre (CCIRC). The CCIRC coordinates the prevention and mitigation of, preparedness for, response to and recovery from cyber incidents on non-federal government systems and also provides a range of cybersecurity-related guidelines, security bulletins and technical reports that can be used by fintech companies. In addition, the federal Department of Public Safety and Emergency Preparedness endorses the National Institute for Standards and Technology (NIST) Framework developed by the US Department of Homeland Security and acknowledges the relevance and applicability of the NIST Framework in the Canadian context.

Fintech businesses that are 'reporting issuers' (ie, public companies) under Canadian securities legislation are expected and required by the CSA to disclose cybersecurity risks, potential effects of a cybersecurity incident and the governance practices that they have in place to mitigate this type of risk. Registrants (ie, dealers and advisers) are also expected to be vigilant in keeping their cybersecurity measures up to date, including by following IIROC and MFDA guidance. In general, the CSA expects all regulated entities to adopt a cybersecurity framework recommended by a regulatory authority or standard-setting body that is appropriate for entities of their size. Significantly, IIROC has recently proposed rule amendments that could require mandatory reporting of cybersecurity incidents by investment dealers.

Financial crime

Q | What anti-fraud, anti-money laundering or other financial crime regulations govern the provision of fintech products and services?

A | Under the federal Anti-money Laundering Act, fintech businesses may be subject to registration with FINTRAC. Registered entities must comply with reporting, record keeping, know-your-client and compliance programme requirements. Securities dealers, life insurance companies, brokers and agents, money services businesses and certain other financial businesses

are subject to FINTRAC's registration and financial transactions reporting requirements.

Businesses providing fintech products or services involving foreign exchange dealing, money transfers (eg, online money transfer services and digital currency transmitters) or the cashing or selling of money orders (eg, travellers' cheques) must register as money services businesses. Businesses providing services similar to securities dealers (eg, AI robo-advisers, crowdfunding platforms and lending platforms), as well as life insurance brokers and those involved in certain other financial businesses may also be subject to registration and reporting requirements.

In 2014, amendments to the Anti-money Laundering Act creating new requirements for money services businesses dealing in virtual currencies were enacted, but they are not yet in force. Even in the absence of those amendments, certain digital currency businesses are registered with FINTRAC, but the existing criteria for registrability are technical and require a careful analysis of each business's operations.

In Quebec, fintech businesses that fall into the money services business category are also subject to registration with the *Autorité des marchés financiers* – the regulatory and oversight body for that province's financial sector.

Q | What precautions should fintech businesses take to ensure compliance with these provisions?

A | Robust client onboarding and ongoing KYC functions are key to ensuring compliance with anti-money laundering regulations.

Consumer protection

Q | What consumer protection laws and regulations apply to the provision of fintech products and services?

A | The federal and provincial governments share responsibility for consumer protection. In general, federal laws focus on ensuring consumers a safe, fair and competitive marketplace. In addition to addressing the anti-competitive effects of mergers and other business practices, federal laws govern consumer product safety, packaging and labelling and deceptive marketing practices. The federal

government also oversees consumer transactions in certain federally regulated sectors, including financial institutions and wireless services. Provincial and territorial laws focus on the terms on which businesses transact with consumers. The provinces also regulate and require licences from a variety of businesses that deal with consumers, particularly where consumer credit is involved.]

Competition

Q | Does the provision of fintech products or services in your jurisdiction raise any particular competition regulatory concerns?

A | On December 14 2017 Canada's Competition Bureau published a report entitled 'Technology-led innovation in the Canadian financial services sector', which:

- assessed the effect of fintech innovation on the competitive landscape;
- identified the barriers to entry and expansion of fintech in Canada; and
- determined whether regulatory changes may be needed to promote greater competition and innovation in the financial services sector.

The study focused on three broad service categories:

- retail payments and the retail payments system;
- lending and equity crowdfunding; and
- investment dealing and advice.

Cross-border regulation

Q | Are there any particular regulatory issues concerning the cross-border provision of fintech products and services (eg, operating jurisdiction rules and currency controls)?

A | There are no particular regulatory issues concerning the provision of fintech products and services, in addition to those that would normally apply to other businesses (eg, anti-money laundering and data protection.)

Non-Canadians who acquire control of an existing Canadian business or who wish to establish a new

unrelated Canadian business are subject to the *Investment Canada Act*, which:

"provide[s] for the review of significant investments in Canada by non-Canadians in a manner that encourages investment, economic growth and employment opportunities in Canada and to provide for the review of investments in Canada by non-Canadians that could be injurious to national security."

While financial services businesses are subject to the same significant investment review thresholds as other businesses, no thresholds apply to reviews on national security grounds. While national security reviews only occasionally result in the rejection of a proposed investment, the likelihood of such a review would need to be assessed on a case-by-case basis (eg, a fintech business that uses sensitive technology or has custody of significant personal data).

Financing, investment and government support

Government support

Q | Does the government provide any incentives or support programmes to promote fintech innovation in your jurisdiction (eg, tax incentives, grants and regulatory sandboxes)?

A | In 2017, the Canadian Securities Administrators (CSA) launched a regulatory sandbox initiative that supports businesses seeking to offer innovative products, services and applications. The sandbox is open to business models that are innovative and provide qualifying businesses with relief from regulatory requirements, allowing them to test their products and services in the Canadian market. Examples of the types of business that are eligible to participate in the sandbox include:

- online platforms (eg, crowdfunding portals, online lenders, angel investor networks and other technological innovations for securities trading and advising);
- businesses using artificial intelligence for trades or recommendations;
- cryptocurrency or distributed ledger technology-based ventures; and
- technology service providers to the securities industry (eg, non-client facing risk and compliance support services).

Firms that have benefited from the sandbox to date include:

- investment fund managers for cryptocurrency investment funds;
- issuers in respect of initial coin offerings; and
- an online platform facilitating venture capital and angel investing.

Individual provincial and territorial securities regulators or regulatory authorities in Canada have also established various advisory committees which support fintech innovation. For example, the Ontario Securities Commission (OSC) has established a fintech advisory committee, including representatives from the fintech industry, to advise it on developments in the fintech space as well as the unique challenges faced by fintech businesses in the securities industry. It has also established the OSC LaunchPad, which is essentially the Ontario version of the CSA regulatory sandbox.

Other provincial regulators have undertaken similar initiatives. For example, the British Columbia Securities Commission has set up a dedicated tech team to answer questions regarding regulatory issues relating to fintech businesses, while Quebec's *Autorité des marchés financiers* has created a fintech working group to analyse technological innovations in the financial sector and anticipate the issues they will raise for consumers and regulators. Like the OSC LaunchPad, the British Columbia and Quebec initiatives have recently sponsored hackathons.

In November 2017 the Ontario government also announced its intention to create a regulatory super sandbox to provide a framework within which fintech business models and products could experiment, along with the launch of an agency known as the Ontario FinTech Accelerator Office to assist start-ups.

Tax incentives are also available in some cases. At the federal level, qualifying corporations can claim a tax credit based on eligible scientific research and experimental development (SRED) expenditures. The federal credit is up to 35% for Canadian controlled private corporations (CCPCs, as defined in Canadian tax law) and 15% for other corporations and is only refundable for certain CCPCs.

Quebec has two tax incentives that are attractive for fintech businesses:

- R&D tax credits – these credits allow a company to claim a tax credit based on its R&D expenses. The Quebec credit is 30% for CCPCs and 14% for other corporations and is refundable (ie, if the company is not liable to pay taxes, the credit is refunded to the company, thereby financing a portion of the R&D costs). Credit limitations and conditions to apply.
- E-business tax credit – this credit is a 30% credit on eligible salaries paid for IT development. A portion of the credit is refundable (24%), the balance (6%) is non-refundable. If the e-business credit is claimed for an eligible salary, the same salary is ineligible for the R&D credit.

In Ontario, qualifying corporations can claim a non-refundable 3.5% tax credit on eligible SRED expenditures. An innovation tax credit is also available to qualifying corporations, allowing them to claim a refundable 8% tax credit based on eligible SRED expenditures. If the corporation exceeds certain thresholds, the credit is phased out and eliminated. While both credits can be claimed, the amount of eligible expenditures on which a credit can be claimed will be reduced by the amount of the other credit.

In British Columbia, qualifying corporations can claim a 10% tax credit based on eligible SRED expenditures. The credit is refundable for certain CCPCs. If the CCPC exceeds certain thresholds, or if the corporation is not a CCPC, the credit is non-refundable.

Certain other industry-specific tax credits are available, depending on the circumstances.

Q | Has the government concluded any international cooperation agreements to promote and facilitate the cross-border expansion of fintech businesses?

A | A number of Canadian securities regulators have entered into international fintech cooperation agreements with:

- Australia's Securities and Investments Commission (2018);
- France's *Autorité des marchés financiers* (2017 and 2018);

- the Financial Services Regulatory Authority of Abu Dhabi (2017); and
- the UK Financial Conduct Authority (2017).

These agreements generally have the dual purpose of sharing lessons learned from fintech regulation initiatives while creating mutual referral processes that enable innovative fintech businesses to enter new markets.

Financing and investment

Q | What private financing and investment schemes are available and commonly used for fintech start-ups in your jurisdiction?

A | Fintech start-ups in Canada generally benefit from the same type of financing and investment schemes as other start-ups. Canada has a strong venture capital market and many funds dedicated to fintech. In addition to private placements, some of Canada's smaller stock exchanges have been important vehicles for fintech companies looking to raise capital – for example, the use of reverse takeovers using the Toronto Stock Exchange Venture Exchange's capital pool company programme has become common for many companies.

Ancillary issues

IP rights

Q | What forms of IP protection are available for fintech innovations?

A | Canada has a robust IP framework. As in any other country, fintech innovations are generally protected through patents, copyrights and trade secrets.

Q | What rules govern the ownership of IP rights to fintech innovations?

A | Generally, innovations created by independent third parties and consultants will belong to these persons unless otherwise addressed in written contracts. In Canada, the rules that apply to ownership of assets developed by employees vary greatly between copyright and patents. Any business with employees in Canada should be aware of these unique rules and, to avoid any uncertainty, put in place

contracts containing relevant provisions pertaining to the transfer of IP rights. The Canadian copyright regime also contains a moral rights regime that must be addressed.

Immigration

Q | What immigration schemes are available for fintech businesses to recruit skilled staff from abroad? Are there any special regimes specific to the tech or financial sector?

A | There are numerous programmes and immigration categories that enable Canadian companies to hire temporary foreign workers in the IT and financial sectors. The specific possibilities in a given case depend on:

- where the company is located (and where the workers would be working);
- the type of business the company is engaged in; and
- the citizenship and qualifications of the staff being recruited.

Q | What immigration schemes are available for foreign investors and entrepreneurs wishing to invest in or establish a fintech business in your jurisdiction?

A | There are a number of programmes of this type in Canada. For investors and entrepreneurs, the requirements and available programmes in Canada usually depend on:

- which province they intend to invest;
- the amount of the investment; and
- the provincial agencies are involved in the establishment of business operations.

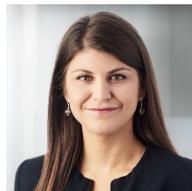
For further information, please contact your Stikeman Elliott representative or any of the following authors:



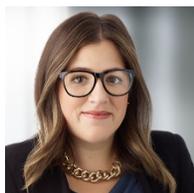
Martin Langlois
mlanglois@stikeman.com
+1 416 869 5672



Alix d'Anglejan-Chatillon
adanglejan@stikeman.com
+1 514 397 3240



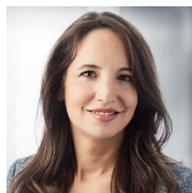
Léa Bénitah-Bouchard
lbenitahbouchard@stikeman.com
+1 514 397 3152



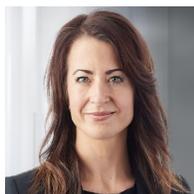
Laura Levine
llevine@stikeman.com
+1 416 869 5620



David Elder
delder@stikeman.com
+1 613 566 0532



Vanessa Coiteux
vcoiteux@stikeman.com
+1 514 397 3681



Eveline Poirier
epoirier@stikeman.com
+1 514 397 2417



Éric Lévesque
erlevesque@stikeman.com
+1 514 397 2415



Subscribe to updates on a variety of valuable legal topics.
Visit Stikeman Elliott's Knowledge Hub at stikeman.com/kh