

# Guide to Doing Business in Canada: Manitoba



**By Silvia de Sousa**

**P:** 204.934.2592  
or 1.855.483.7529 (Toll-Free)

**F:** 204.934.0592

**E:** [svd@tdslaw.com](mailto:svd@tdslaw.com)  
[www.tdslaw.com/svd](http://www.tdslaw.com/svd)



**THOMPSON  
DORFMAN  
SWEATMAN**

Member  
**LexMundi**  
World Ready

**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... 2

ABOUT TDS ..... 4

ABOUT MANITOBA ..... 5

LEGAL SYSTEM ..... 5

FOREIGN INVESTMENT ..... 5

    Currency ..... 6

BUSINESS ENTERPRISES ..... 7

    Registration Formalities ..... 7

    Share Capital ..... 7

    Non-Cash Consideration ..... 7

    Rights Attaching to Shares ..... 7

    Foreign Shareholders ..... 8

    Management Structure ..... 8

    Directors' Liability ..... 8

    Parent Company Liability ..... 9

    Reporting Requirements ..... 9

EMPLOYMENT ..... 9

    Employment Contracts ..... 9

    Management Representation ..... 10

    Termination of Employment ..... 10

    Layoffs and Redundancies ..... 10

    Requirements for Foreign Employees ..... 11

EMPLOYMENT TAXATION ..... 11

    Tax Residency ..... 11

    Income Tax and Social Security ..... 11

        Tax Resident Employees ..... 11

        Non-Tax Resident Employees ..... 12

        Canada Pension Plan ..... 12

        Employment Insurance ..... 12

BUSINESS ENTITY TAXATION ..... 13

    Tax Residency for Business Entities ..... 13

    Tax Rates for Business Entities ..... 13

    Non-Tax Resident Business Vehicles ..... 13

    Taxation of Dividends, Interest & Royalties ..... 13

Dividends Paid ..... 13

Dividends Received..... 14

Interest Paid ..... 14

IP Royalties Paid..... 14

Thin Capitalization Rules ..... 14

Foreign Subsidiaries ..... 14

Transfer Pricing Rules ..... 14

Imports and Exports..... 15

COMPETITION LAW ..... 15

    Restrictive Agreements and Practices ..... 15

INTELLECTUAL PROPERTY ..... 16

    Patents..... 16

    Trademarks..... 16

    Copyright ..... 16

    Confidential Information ..... 17

    Industrial Designs ..... 17

MARKETING AGREEMENTS..... 18

    Agency..... 18

    Distribution..... 18

    Franchising ..... 18

E-COMMERCE ..... 19

DATA PROTECTION..... 19

PRODUCT LIABILITY ..... 19

    Product Liability and Product Safety ..... 19

ADDITIONAL RESOURCES AND CONNECTIONS..... 20

DISCLAIMER ..... 20

ABOUT THE AUTHOR ..... 21

### ABOUT TDS

With the benefit of more than 125 years of service to Manitobans and to the legal community, Thompson Dorfman Sweatman LLP (“TDS” or “TDS Law”) has become one of the leading full-service business, employment and advocacy and dispute resolution law firms in Manitoba. With ten full-time and part-time offices, TDS has the largest geographic footprint of any major law firm in Manitoba. The firm’s team of 90+ lawyers provides services in over 25 areas of practice to clients locally, nationally and internationally across every major sector. The firm offers multi-lingual services in English, French, Hebrew, Italian, Portuguese, Russian and Spanish. Additional services include video conferencing, a private cloud sharing service and access to the Acumen Dataroom.

TDS has long been recognized as a centre of excellence in the areas of corporate and commercial law, labour relations, employment law and civil litigation. The firm has been recognized by LEXPERT® (Canada's leading source of news and information about the business of law) on numerous occasions, as being the leading corporate law firm in Manitoba. TDS Law has also been ranked and recommended by Chambers Global and recognized as one of the top regional firms in the prairies by Canadian Lawyer Magazine. In addition, several of the firm’s lawyers have been recognized by Best Lawyers® in Canada and Lexpert as leaders in their respective practice areas.

TDS is the exclusive member firm in Manitoba for Lex Mundi– the world’s leading network of independent law firms with in-depth experience in 100+ countries worldwide. As part of the Lex Mundi global network, TDS can provide our clients with preferred access to more than 21,000 lawyers around the world – all from a single point of contact. TDS is also an early adopter of technology and we have implemented new services including video conferencing and private cloud sharing service to help clients do business abroad. For more information on our services and capabilities, refer to the About section of our website.

Acumen Corporate Development Inc. (“Acumen”), a strategic partner of TDS, spearheads the corporate development function for businesses, providing the expertise and resources required to achieve extraordinary results. Acumen acts as the “quarterback”, linking senior management with other professional service providers including legal, accounting and financing partners. Acumen helps clients succeed with their growth strategy and/or exit strategy by providing specialized expertise and adding capacity to the clients’ available resources.

To access additional resources such as articles, podcasts and publications, visit the TDS Resources page or the firm’s YouTube channel.

## ABOUT MANITOBA

Manitoba is a Canadian prairie province. Winnipeg, where TDS's main office is located, is Canada's seventh-largest city and the largest city in the province, being home to over 60% of Manitoba residents. Agriculture, mostly concentrated in the southern and western parts of the province, is vital to the province's economy; other major industries include transportation, manufacturing, aerospace, mining, forestry, energy, life sciences, information and communications technology and financial services.

Manitoba's largest employers are government and government-funded institutions, including crown corporations and services like hospitals and universities. Manitoba also has large manufacturing and tourism sectors. Churchill, Manitoba is a major tourist attraction; the town is a world capital for polar bear and beluga whale watchers. Manitoba is the only province with an Arctic deep-water seaport, which links to the shortest shipping route between North America, Europe and Asia.

## LEGAL SYSTEM

Manitoba has a common law legal system and is regulated by provincial statutes which apply within the province, in addition to federal statutes which apply Canada-wide.

Manitoba's judiciary consists of the Court of Appeal, the Court of Queen's Bench, and the Provincial Court. The Provincial Court is primarily for criminal law. The Court of Queen's Bench is the highest trial court in the province, and has four jurisdictions: family law (child and family services cases), civil law, criminal law (for indictable offences), and appeals. The Court of Appeal hears appeals from both benches and its decisions can only be appealed to the Supreme Court of Canada.

## FOREIGN INVESTMENT

Manitoba has no specific provincial foreign investment legislation, but federal legislation applies within the province.

The federal *Investment Canada Act* (RSC 1985, c 28), regulates foreign investment in Canada and in Manitoba. Under the Act, if you are a non-Canadian (i.e. not a Canadian citizen or a permanent resident as defined in the *Immigration Act*), you must comply with the provisions of the *Investment Canada Act*.

For the purposes of the Act, a non-Canadian includes any entity that is not controlled or beneficially owned by Canadians. Non-Canadians must file a Notification each time they commence a new business activity in Canada, or each time they acquire control of an existing Canadian business, where the acquisition is not a reviewable transaction, as defined in the Act. The Notification must be filed within thirty days of the investment.

Certain acquisitions are reviewable transactions, and the Act mandates that these investments are subject to review from Industry Canada. An investment is reviewable when a Canadian business is acquired, and the asset value of that business is equal to or greater than the following thresholds, which differ based on whether an investor is a member of the World Trade Organization (“WTO”) or not and whether the acquisition is direct or indirect.

### Non-WTO Investors

- a) For non-WTO investors, the threshold is \$5 million for a **direct acquisition**.
- b) The threshold for an **indirect acquisition** by a non-WTO investor, generally, is over \$50 million. However, if the asset value of the Canadian business being acquired through the acquisition of the parent company exceeds 50% of the asset value of the transaction, the \$5 million dollar threshold applies. The \$50 million dollar threshold will apply where the asset value of the Canadian business being acquired through the acquisition of the parent company is less than 50% of the asset value of the global transaction.

### WTO Investors

- a) The threshold for reviewable **direct acquisitions** from or by WTO investors is calculated annually and was set at \$416 million dollars in 2019.
- b) In general, **indirect acquisitions** by or from WTO investors are not reviewable, but some exceptions may apply.

Certain industries are subject to additional regulations and restrictions, in particular in the following sectors:

- Banking and insurance;
- Print and broadcasting media;
- Telecommunications;
- Air transport.

### Currency

The Canadian dollar is not subject to any exchange control.

The federal *Cross-border Currency and Monetary Instruments Reporting Regulations* require a visitor to Canada to declare all currency and monetary instruments (for example,

stocks and bonds, cheques, travellers cheques, money orders, bank drafts and treasury bills) totalling at least CDN \$10,000 (about EUR €6,715.42 or USD 7,636.15).

### BUSINESS ENTERPRISES

The most common form of business vehicle used by foreign companies in Manitoba is the corporation, which can be incorporated either under the *Canada Business Corporations Act* (RSC 1985 c C-44) (federal) or *The Corporations Act* (CCSM c C225) (Manitoba). For the purpose of this section, only corporations created under *The Corporations Act* (Manitoba) are discussed.

#### Registration Formalities

To carry on a business in Manitoba, a corporate name must be reserved with the Companies Office. A corporate name must end with limited, incorporated or corporation (or some shortened version). A corporate name must be approved by the Companies Office before submitting articles of incorporation, unless the entity will be using a numbered corporation. Once the corporate name is cleared with the Companies Office, articles of incorporation must be filed within 90 days of receiving the name. Fees are charged for registering the corporate name and filing the appropriate forms. Articles of incorporation can take 2-3 weeks to be processed, depending on the volume of requests at the Companies Office, but can be expedited for processing within one business day for increased fees.

#### Share Capital

There are no maximum or minimum share capital requirements, with the exception of insurance corporations.

#### Non-Cash Consideration

Shares can be issued for non-cash consideration, including property or past services. A share cannot be issued until consideration is paid in full. The term "property" does not include promissory notes.

#### Rights Attaching to Shares

Rights attaching to shares can be restricted by:

- *The Corporations Act* (CCSM c C225);
- the articles of incorporation; and
- shareholder agreements.

Shares have three inherent rights: the right to vote; the right to receive dividends (if the board of directors has declared any); and the right to receive the remaining property of the corporation after it is dissolved. A corporation must assign each of these rights to at

least one class of shares, but one class does not need to have all three. If an entity has only one class of shares, that class will carry all these rights.

### Foreign Shareholders

There are no extra restrictions on foreign shareholders in Manitoba.

### Management Structure

A corporation usually has a single-tier board with at least one director. The following people are disqualified from acting as a director:

- anyone less than 18 years of age;
- a person who is not an individual; and
- a person who has the status of bankrupt.

In addition, at least 25% of the directors must be residents of Canada, or if a board is comprised of three or fewer directors, one of them must be a resident of Canada.

If the corporation is a non-profit (non-share) corporation, there must be a minimum of three directors.

### Directors' Liability

Directors are generally not held personally responsible for the acts of the corporation. However, there are certain circumstances where directors may be held liable for their own personal actions. This situation may arise in the following circumstances:

**Breach of Fiduciary Duty:** Every director of a corporation owes a “fiduciary duty” to the corporation. This duty requires a director to act honestly, in good faith, and in the best interests of the corporation. If this standard is not met, the director may be sued by the corporation or others.

**Breach of Director’s Standard of Care:** In carrying out his or her duties, a director must exercise the same level of care, skill and diligence that a reasonably prudent person would exercise in comparable circumstances.

**Tax Issues:** The corporation must ensure all employee deductions (such as Canada Pension Plan or Employment Insurance) are remitted to the Canada Revenue Agency. GST collected by the corporation and income tax that is incurred must also be remitted. Failure to meet any of these tax liabilities may result in personal liability for directors.

**Tort Issues:** A director who commits a tort (a civil wrong) while carrying out his or her duties may be personally liable for the damage caused by the tort. The most common tort is negligence.

**Criminal Issues:** A director who engages in criminal activities while carrying out his or her duties may be personally liable.



## Parent Company Liability

Parent companies are only liable for the acts of subsidiaries as shareholders, except in certain rare cases where a court pierces the corporate veil. Each corporation is treated as a separate legal entity.

## Reporting Requirements

There are the following annual reporting requirements:

- an annual return must be filed with the Companies Office;
- annual resolutions or minutes must be prepared; and
- a separate income tax return must be completed and filed with the federal government.

## EMPLOYMENT

Manitoba employment laws apply to about 90% of all employees, including foreign employees, working in Manitoba. The main laws regulating employment relationships are:

- *The Employment Standards Code* (CCSM c E110);
- *The Labour Relations Act* (CCSM c L10);
- *The Workplace Health and Safety Act* (CCSM c W210); and
- *The Human Rights Code* (CCSM c H175).

The remaining 10% of employees working in Manitoba work in federally regulated industries, and the main laws regulating those employment relationships are:

- *Canada Labour Code* (RSC 1985 c L-2); and
- *Canadian Human Rights Act* (RSC 1985 c H-6).

## Employment Contracts

Written contracts of employment are not required (but are recommended).

Terms not identified in an employment contract may be incorporated through:

- employee handbooks;
- collective agreements; and
- the course of dealings between the employer and the employee.

In addition, mandatory terms are implied into the employment relationship through statute and common law.

## Management Representation

Employees are not entitled to management representation in Manitoba. There is no obligation to consult with employees in relation to corporate transactions unless required by an employment agreement or collective agreement.

## Termination of Employment

For provincially regulated employees, *The Employment Standards Code* governs the termination of individual employment contracts and requires notice of termination, subject to certain exceptions, to be provided in accordance with the following based on length of employment:

- at least thirty days but less than one year of employment: one week notice period;
- at least one year and less than three years: two weeks;
- at least three years and less than five years: four weeks;
- at least five years and less than ten years: six weeks; and
- at least ten years: eight weeks.

An employer must pay wages for any portion of that notice that is not provided.

There are several statutory exceptions to this requirement in Manitoba, including when the employment of the employee is terminated for just cause.

With respect to federally regulated employees working in Manitoba, the *Canada Labour Code* contains both notice of termination provisions and severance pay provisions. It also contains unjust dismissal provisions that permit an employee to file a complaint within 90 days of a termination alleging the dismissal was unjust. Terminations are not considered to be unjust in certain circumstances set out in the Code.

In addition to statutory notice of termination provisions, common law considerations also apply to both provincially and federally regulated employees. Generally, an employee may be terminated either for cause without notice, or without cause with notice. The amount of notice required at common law is in accordance with any enforceable terms of agreement between the employee and the employer, or in the absence of an enforceable agreement, based on the common law implied term of reasonable notice. In many cases, the common law notice obligation will be greater than the statutory minimum notice obligation.

## Layoffs and Redundancies

For provincially regulated employees, *The Employment Standards Code* contains a group notice provision if fifty or more employees are terminated within any four-week period. If the group notice obligations are triggered, a certain amount of notice must be given to employees ranging from ten weeks to eighteen weeks, depending on the number of employees terminated. If any portion of the notice is not provided to employees, the employer must provide the equivalent wages in lieu of the notice. The Minister of Labour

must also be provided with the notice of termination and may establish a Joint Planning Committee of management and employee representatives.

Similar group notice of termination provisions exist in the *Canada Labour Code* for federally regulated employees working in Manitoba.

### Requirements for Foreign Employees

The entry of foreign employees into Canada is governed by federal law. In almost all cases, a valid work permit is required to work in Canada and a temporary resident visa may be required. The employer may need to obtain a Labour Market Impact Assessment in order to hire the foreign employee. A fee from Can \$155 (about EUR €105) is charged for a work permit. Online work permit applications submitted in Canada have a processing time of approximately 7 weeks. The processing times for work permit applications made outside of Canada vary according to the location of the visa office. A fee of Can \$100 (about EUR €67) is charged for a temporary resident visa. Online temporary resident visa extension applications for visitors already in Canada have a processing time of approximately 61 days. The processing times for visitors outside of Canada vary according to the location of the visa office.

## EMPLOYMENT TAXATION

### Tax Residency

Residency is determined under both the common law and federal law. Under federal law, an individual is deemed to be a resident in Canada if he has been in the country for a period or periods aggregating 183 days or more in the calendar year. Individuals in Canada are considered residents of the province in which they resided on December 31 of the previous year. In Manitoba, determination as to residency under provincial tax legislation follows common law and federal law.

### Income Tax and Social Security

#### Tax Resident Employees

A tax resident of Canada is taxed on his or her worldwide income. In Manitoba, an individual's basic tax payable for the 2019 taxation year and for each subsequent taxation year varies according to the following levels of taxable income (TI):

- 10.80% on the first CDN \$32,670 (about EUR €22,037.71); **plus**
- 12.75% on the next CDN \$37,940 (about EUR €25,592.62); **plus**
- 17.40% on the amount over CDN \$70,610 (about EUR €47,630.33).

Federal income tax rates also apply to income earned, and the rates for the 2019 taxation year also vary according to the following levels of taxable income (TI):

- 15.0% on the first CDN \$47,630 (about EUR €32,129.05); **plus**
- 20.5% on the next CDN \$47,629 (about EUR €32,128.38); **plus**
- 26.0% on the next \$52,408 (about EUR €35,352.08); **plus**
- 29.0% on the next CDN \$62,704 (about EUR €42,297.30) **plus**;
- 33.0% on income over CDN \$210,371 (about EUR €141,906.81).

### Non-Tax Resident Employees

A non-tax resident is taxed on his Manitoba-source income at the same rates as a tax resident (*see above, Tax resident employees*).

### Canada Pension Plan

With limited exceptions, anyone employed in Canada who is over the age of 18 and earns more than \$3,500.00 must make a contribution to the Canada Pension Plan (CPP). If an individual is an employee, the employee is responsible for paying half, and the employer is responsible for paying the remaining half. If self-employed, the individual is responsible for the full amount.

The amount an individual contributes is based on his/her employment income. Contributions are made only on the annual earnings between a minimum and a maximum amount (the “pensionable earnings”). The minimum amount is set at \$3,500 and the maximum amount is set in January of each year, based on increases in the average wage in Canada. For 2019, the maximum amount is \$57,400.

The contribution rate on these pensionable earnings is 10.2% (9.9% for the base, or original CPP, and 0.3% for the CPP enhancement which began to be phased in on January 1, 2019), split equally between the employee and the employer. The maximum contribution to the base CPP for employers and employees in 2019 is \$2,748.90 each. Employers are required by law to deduct these amounts to submit to CPP.

For the self-employed, the maximum contribution is \$5,497.80 and the contributions are based on the individual’s net business income (after expenses).

### Employment Insurance

As of January 1st, 2019, \$1.62 for each \$100 of salary of an employee shall be deducted from the employee’s earnings, up to the maximum insurable earnings of \$53,100. The maximum contribution amount for each employee is \$860.22.

As of January 1st, 2019, employers pay a premium rate of \$2.268 per \$100 of each employee's earnings, up to the annual maximum insurable earnings of \$53,100 for each employee. The maximum contribution amount per employee is \$1,204.31. This is also a mandatory deduction and payment which needs to be made by the employer to Employment Insurance.

## BUSINESS ENTITY TAXATION

### Tax Residency for Business Entities

*The Income Tax Act* (Manitoba) provides that every corporation that maintains a permanent establishment in Manitoba at any time in a taxation year must pay tax for the year. In addition, under the common law doctrine of residency in respect to business entities, a corporation is generally deemed resident in Manitoba if its central management and control is located in Manitoba, which is a question of fact.

### Tax Rates for Business Entities

In Manitoba, the tax payable by a corporation that carries on active business is calculated by the following formula:  $\text{tax payable} = T \times R \times D_p/D_y$ . In this formula:

- T is corporation's taxable income earned in Manitoba for the taxation year.
- R is the applicable tax rate for the period as set out in the provincial legislation.
- $D_p$  is the number of days in the taxation year that fall within the period.
- $D_y$  is the number of days in the taxation year.

As of December 1, 2010, the Manitoba provincial tax rate for corporations carrying on active business was eliminated for small businesses (0%). This is unique to Manitoba and is the lowest in Canada. The rate for large businesses (income over \$500,000, as of 2019) is 12%.

Federal corporate income tax also applies to corporations operating in Manitoba and is based on national corporate taxable income. The 2019 general corporate income tax rate is 15%; however, the small business rate is 9%. Under the federal *Income Tax Act*, the small business limit is \$500,000.

### Non-Tax Resident Business Vehicles

A non-resident business must pay tax on all income earned in Manitoba, but is subject to different rates of tax. For example, the rate of tax on general income earned in Manitoba by a non-resident corporation is 12%. Non-resident corporations that may be classified as small business are subject to a 0% tax rate. All non-resident corporations that are permanently established in Manitoba may also be subject to a federal branch tax of 5%. (U.S. companies may be subject to treaty exemptions.)

### Taxation of Dividends, Interest & Royalties

#### Dividends Paid

The payment of dividends by a Canadian corporation to a non-resident shareholder is subject to a 25% withholding tax. However, dividend payments to residents of countries with which Canada has a tax treaty are usually limited by the treaty to a lower rate.

### Dividends Received

Dividends received by resident Canadians from foreign companies are taxed in the same manner and at the same rate as dividends received by resident companies.

### Interest Paid

Withholding tax on interest paid by a company to non-resident shareholders who are at arm's length with the payor company was eliminated, except for specific types of participating debt interest. A 25% withholding tax still applies to interest payments made to non-arm's length non-resident shareholders.

### IP Royalties Paid

A 25% withholding tax applies to payments of certain Intellectual Property (IP) royalties to non-residents. However, IP royalty payments to residents of countries with which Canada has a tax treaty are usually limited by the treaty to a lower rate. Royalties paid to non-residents in respect of a copyright for the production or reproduction of any literary, dramatic, musical or artistic work are exempt from tax under federal legislation.

### Thin Capitalization Rules

Thin capitalization rules are governed by federal legislation and limit the interest deductible on outstanding indebtedness owed to certain non-residents to the extent that their ratio of debt to equity exceeds 2:1. In 2012, these rules were changed to reduce the permissible debt-to-equity ratio from 2:1 to 1.5:1.

### Foreign Subsidiaries

Manitoba does not have controlled foreign company rules. This comes under federal legislation.

Under the *Income Tax Act* (Canada), Canadian corporate shareholders must include in their income for a taxation year, their share of any Foreign Accrual Property Income ("FAPI") earned by a controlled foreign affiliate in the year, whether or not any amount is actually distributed by the controlled foreign affiliate to the corporate shareholder.

FAPI Rules require that Canadian resident corporations include certain passive income from their foreign affiliates, such as rents, royalties, interest and non-foreign affiliate dividends. Income from active business of the foreign affiliate is generally not included.

### Transfer Pricing Rules

Rules regarding transfer pricing are contained under federal legislation in section 247 of the *Income Tax Act* (Canada). Canadian taxpayers must report taxable income arising from transactions conducted with related non-residents as though the resident taxpayer and the related non-resident were at arm's length during the tax year.

## Imports and Exports

Imports and exports are taxed under *The Retail Sales Tax Act* (CCSM c R130) of Manitoba. The Retail Sales Tax (RST) is a tax applied to the retail sale or rental of most goods and certain services in Manitoba. The tax is calculated on the selling price, before the GST (Good and Services Tax) is applied. As of July 1, 2019, the general sales tax rate changed from 8% to 7% within the province. The GST is a tax that applies on most supplies of goods and services made in Canada. The GST also applies to supplies of real property, such as land, buildings and interests in such property, as well as applying to intangible property such as trademarks, rights to use a patent, and digitized products downloaded from the Internet and paid for individually. The GST rate is 5%.

At the federal level, imports and exports are taxed under the *Excise Tax Act* (RSC 1985 c E-15). Excise taxes apply to:

- fuel-inefficient vehicles
- automobile air conditioners
- certain petroleum products

The *Excise Tax Act* sets out the excise tax rate for each of these goods. For goods which are made in Canada, excise tax becomes payable when the goods are delivered to the buyer. When goods are imported into Canada, the excise tax is payable by the importer at the time the goods are imported. In certain cases, refunds of excise taxes can be claimed.

Goods imported into Manitoba are also subject to GST, except for items specified as non-taxable importations. GST is calculated on the Canadian dollar value of the goods, including duty and excise tax, and is collected at the border at the same time as these duties and taxes.

## COMPETITION LAW

### Restrictive Agreements and Practices

Issues with respect to competition law are regulated under the *Competition Act* (RSC 1985 c C-34).

## INTELLECTUAL PROPERTY

### Patents

**Nature of the right** - In Manitoba, to be patentable an invention must be:

- new;
- non-obvious;
- useful.

**Protection** - Protection is achieved by registration under the federal *Patent Act* (RSC, 1985, c P-4).

**Enforcement** - A claim for infringement may be brought in the courts of the province where the infringement occurred, or in the Federal Court of Canada.

**Length of protection** - An exclusive right is granted for a maximum of 20 years.

### Trademarks

**Nature of the right** - Under the federal *Trade-marks Act* (RSC 1985 c T-13), a trade mark is adopted when a person:

- starts to use the trademark in Canada;
- makes the trademark known in Canada; or
- registers the trademark under the Act.

A person may also have rights of use under common law once the trademark has been used to distinguish goods or services in the marketplace.

**Protection** - Protection occurs from when a trademark is adopted (*see above, Nature of the right*).

**Enforcement** - A claim for infringement and/or passing off may be brought in the courts of the province where the infringement and/or passing off occurred, or in the Federal Court of Canada.

**Length of protection** - Trademark protection lasts for 10 years and may be renewed indefinitely.

### Copyright

**Nature of the right** - Copyright subsists in the original production of any literary, dramatic, musical or artistic work. The rights of a copyright owner include the sole right to produce or reproduce the work or any substantial part of it. Neighbouring rights and moral rights also exist.

**Protection** - Copyright protection arises automatically.



**Enforcement** - The federal *Copyright Act* (RSC 1985 c C-42) grants jurisdiction over civil remedies for the enforcement of copyright to both the federal and provincial courts. In Manitoba's courts, the right holder is entitled to receive injunctive relief, damages, accounting of profits or delivery up of the publication. However, for orders relating to the registration of copyright or amendment of registrations, relief must be sought in the Federal Court of Canada.

**Length of protection** - Generally, copyright subsists for the life of the author, the remainder of the calendar year in which the author dies, and a period of 50 years following the end of that calendar year. However, exceptions to this general rule exist (*Copyright Act*).

## Confidential Information

**Nature of the right** - The obligations of confidentiality required of an employee are determined by:

- the express terms of the employment contract; or
- the implied terms of the employment contract.

**Protection** - The information must remain confidential for it to be protected.

**Enforcement** - In a claim for breach of confidence, employers in Manitoba must establish in court that:

- the information conveyed was confidential;
- the circumstances under which the information was conveyed clearly imposes an obligation on the recipient to respect the confidentiality of the information;
- the information was used or disclosed by the employee without consent or justification; and
- the employer suffered damages as a result of the use or disclosure.

The remedies available are damages and/or injunctive relief. This would be through an action filed in the Manitoba Court of Queen's Bench.

**Length of protection** - There is no fixed term. However, the information must remain confidential for it to be protected.

## Industrial Designs

**Nature of the right** - To be registrable, an industrial design must be a design which is:

- not solely for utilitarian function;
- not a mere method or principle of manufacture or construction; and
- not identical to or confusingly similar to any registered industrial design.

Application for registration must be made within 12 months of any publication of the design. Once registered, the owner has the exclusive right to make or sell, for the purpose

of trade or business, any article in respect of which the design is registered and to which the design has been applied.

**Protection** - Industrial designs are protected by registration under the federal *Industrial Design Act* (RSC 1985 c I-9).

**Enforcement** - An action for infringement may be brought before any court of competent jurisdiction, including the Federal Court of Canada.

**Length of protection** - The exclusive right is granted for a term of ten years.

## MARKETING AGREEMENTS

### Agency

There are no specific agency laws in Manitoba other than the common law. However, there are some sections of *The Corporations Act* (CCSM c C225) which deal with agency.

### Distribution

In Manitoba, there are laws that govern the distribution of certain agricultural products under *The Farm Products Marketing Act* (CCSM c F47).

### Franchising

Franchising in Manitoba is governed under *The Franchises Act* (CCSM c F156). The Act imposes a duty of fair dealing on all parties to a franchise agreement, which creates a right of action for breach of such duty. A franchisor must give every franchisee a copy of the franchisor's disclosure document at least 14 days before signing of a franchise agreement or any payment by the franchisee to the franchisor, whichever is earlier. There are specific rules relating to delivery of the disclosure document. There are a number of statutory exceptions to this disclosure requirement, including:

- franchises for less than a year;
- if the franchise is governed by the federal Competition Act; and
- the grant of a franchise to an existing franchisee, or the renewal of a franchise agreement.

If material information is left out of the disclosure documents or disclosure documents are not provided, then the franchisee may rescind the franchise agreement within prescribed time limits. The Act also sets up actions and defences for misrepresentation and deems reliance on the disclosure documents.

## E-COMMERCE

Generally, electronic commerce is regulated in Manitoba by *The Electronic Commerce and Information Act* (CCSM c E55), which governs the enforceability and validity of electronic documents and electronic contracts made in Manitoba and electronic signatures. In addition, internet contracts are regulated in Manitoba under *The Consumer Protection Act* (CCSM c C200).

Companies which operate under federal jurisdiction are subject to the *Personal Information Protection and Electronic Documents Act* (SC 2000 c 5), the purpose of which is to provide for the use of electronic contracts, documents and signatures, in the approved manner, where federal laws currently contemplate the use of paper to record or to communicate information or to process transactions.

## DATA PROTECTION

In Manitoba, under *The Freedom of Information and Protection of Privacy Act* (CCSM c F175), personal information held by public bodies is protected. In addition, protection of health information is available under *The Personal Health Information Act* (CCSM c P33.5).

In Manitoba, the provincial legislature recently passed new privacy legislation which applies to the private sector and to the not-for-profit sector, entitled *The Personal Information Protection and Identity Theft Prevention Act* ("PIPITPA"). PIPITPA establishes rules for the collection, use and disclosure of personal information, including employee information, for most organizations in the province. Despite being passed by the legislature in September of 2013, PIPITPA is not yet in force in the province.

The federal *Personal Information Protection and Electronic Documents Act* also protects health and non-health information in the possession of private sector bodies in the province.

## PRODUCT LIABILITY

### Product Liability and Product Safety

A claim for product liability in Manitoba can be based on:

- the contractual terms of a purchase or supply agreement;
- an implied warranty under *The Sale of Goods Act* (CCSM c S10); or
- the common law for a negligently manufactured product, a negligent designed product or for failure to warn foreseeable users of the product of dangers inherent therein.

## ADDITIONAL RESOURCES AND CONNECTIONS

With roots in Winnipeg dating back to 1887, TDS is an established law firm in the community. TDS is highly connected in the business community, with local and regional governments and with other professionals such as accounting firms, commercial real estate brokers, customs brokers and lenders. If businesses or professionals need an introduction in Manitoba, chances are we can help. A few organizations which can provide assistance with respect to doing business in Manitoba are:

- [World Trade Centre Winnipeg;](#)
- [CentrePort Canada;](#)
- [Yes! Winnipeg;](#)
- [Economic Development Winnipeg;](#)
- [Winnipeg Chamber of Commerce;](#)
- [Manitoba Chambers of Commerce;](#)
- [North Forge](#)
- [Trade Commissioner Service](#)
- [Export Development Canada \(EDC\)](#)

## DISCLAIMER

This article is presented for informational purposes only. The content does not constitute legal advice or solicitation and does not create a solicitor client relationship. The views expressed are solely the authors' and should not be attributed to any other party, including Thompson Dorfman Sweatman LLP (TDS), its affiliate companies or its clients. The authors make no guarantees regarding the accuracy or adequacy of the information contained herein or linked to via this article. The authors are not able to provide free legal advice. If you are seeking advice on specific matters, please contact Keith LaBossiere, CEO & Managing Partner at [kdl@tdslaw.com](mailto:kdl@tdslaw.com), or 204.934.2587. Please be aware that any unsolicited information sent to the author(s) cannot be considered to be solicitor-client privileged.

While care is taken to ensure the accuracy for the purposes stated, before relying upon these articles, you should seek and be guided by legal advice based on your specific circumstances. We would be pleased to provide you with our assistance on any of the issues raised in these articles.

**ABOUT THE AUTHOR – SILVIA DE SOUSA**



Phone: 204.934.2592 | Email: [svd@tdslaw.com](mailto:svd@tdslaw.com) | Web: [www.tdslaw.com/svd](http://www.tdslaw.com/svd)

Silvia's practice is concentrated in the area of business law with an emphasis on intellectual property law and technology law. Her practice also includes intellectual property transactions, cannabis advertising and marketing, intellectual property protection, trademarks, copyrights, patents and licensing matters. Silvia is a trademark agent. She is fluent in both Portuguese and French.

TOLL-FREE (NORTH AMERICA) 1.855.483.7529

[WWW.TDSLAW.COM](http://WWW.TDSLAW.COM)

(UPDATED JULY, 2019)