

# Guide to Doing Business in New Brunswick Canada

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# 1 STRUCTURES FOR DOING BUSINESS IN NEW BRUNSWICK

## A | New Brunswick Corporations

### General

A corporation created under the *Business Corporations Act* (New Brunswick) (the “NBBCA”) is a distinct legal entity with all of the powers of a natural person. Directors under the NBBCA are elected by the corporation’s shareholders and are responsible for the day to day management of the business and affairs of the corporation.

The liability of a NBBCA corporation’s shareholders is generally restricted to the amount of their investment. Shareholders are not liable for any of the liabilities of the corporation unless they are a party to a unanimous shareholder agreement that restricts the director’s decision making authority. A shareholder in this case assumes the directors’ liability associated with any of the director’s decision making authority restricted by the unanimous shareholders agreement.

### Incorporation of NBBCA Corporation

A computerized name search must be performed prior to incorporation to determine the availability of the desired name for the corporation. This is known as a NUANS name search and it generally takes up to two business days to complete. Under the NBBCA a corporation is incorporated by filing Articles of Incorporation (“Articles”), a Notice of Registered Office and a Notice of Directors. The Articles contain the:

- name of the corporation;
- authorized classes, maximum number of shares and any maximum aggregate amount for which such shares may be issued, and
  - if two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares,
  - if shares are in series, the authority given to the directors to fix the number of shares in each series and any rights, privileges, restrictions and conditions attaching to each series of shares, and
  - for each kind of share, the par value of each share or a statement that the shares are without par value;
- restrictions on the right to transfer shares, if any;
- number of directors or any minimum and maximum number of directors; and
- restrictions on the business that the corporation may carry on, if any.

The Notice of Registered Office must evidence a registered office in the Province of New Brunswick, (“New Brunswick”) while the Notice of Directors provides contact information regarding the proposed directors. The costs of incorporating include legal fees, and disbursements, including a corporate seal and a corporate minute book. Generally within 2-3 days of filing the Articles and related documents, a Certificate of Incorporation is issued by the Director of the Corporate Affairs Branch of Service New Brunswick but dated on the day the Articles were filed.

## Organization of NBBCA Corporation

Once formed, a NBBCA corporation must maintain a registered office in New Brunswick where all communications and notices may be sent. If the corporation is carrying on business in New Brunswick, it must also appoint an individual resident in New Brunswick as the Recognized Agent for the corporation so that documents may be personally served; this role is often fulfilled by solicitors.

A general meeting of the shareholders must be held in every calendar year, with no more than fifteen months passing between general meetings. Special resolutions require a two-thirds majority of votes cast at a meeting of the shareholders called to pass a special resolution.

Resolutions adopting certain fundamental changes require a two-thirds majority vote among each class of shares. Shareholders of a class of shares who are not otherwise entitled to vote may have the right to vote on a special resolution.

New Brunswick is one of the few jurisdictions in Canada that does not impose any residency requirement upon the directors of a corporation. A director of a New Brunswick corporation may live anywhere in the world. Every New Brunswick corporation must have at least one director at all times. Minutes of shareholder and director meetings must be maintained in a book available for any shareholder to inspect at the registered office of the corporation.

## B | Extra-Provincial Corporations

The NBBCA requires extra-provincial corporations “carrying on business” in New Brunswick to be registered under the NBBCA. An extra-provincial corporation is “carrying on business” in New Brunswick if:

- a. its name, or any name under which it carries on business, appears or is announced in any advertisement in which an address in New Brunswick is given for the extra-provincial corporation;
- b. it has a resident agent or representative or a warehouse, office or place of business in New Brunswick;
- c. it solicits business in New Brunswick;
- d. it is the owner of any estate or interest in land in New Brunswick;
- e. it is licensed or registered or required to be licensed or registered under any Act of New Brunswick entitling it to do business;
- f. it is the holder of a certificate of registration under the *Motor Vehicle Act*;
- g. it is the holder of a licence issued under the *Motor Carrier Act*; or
- h. it otherwise carries on business in New Brunswick.

The NBBCA is available online at <http://www.gnb.ca/0062/acts/acts/b-09-1.htm>.

## C | Sole Proprietorship

A sole proprietorship is the simplest form of business enterprise. A proprietorship carrying on business in New Brunswick must be registered under the Partnerships and *Business Names Registration Act* (New Brunswick) unless the business is solely operated in the proprietor's name. The proprietor performs all functions of the business and bears unlimited liability for all liabilities of the business. Both the proprietor's business and personal assets may be used to satisfy these liabilities.

One benefit of operating through a proprietorship is the low cost of organization. If start-up losses are expected, then proprietorship may offer the additional advantage of allowing the proprietor to claim those losses as a deduction for income tax purposes against other sources of income. To succeed in making such a deduction, the proprietor may be required to demonstrate that they have a reasonable expectation of earning a cumulative profit from the business enterprise. As with proposed corporate names, a NUANS name search is required for proposed business name registrations under the Partnerships and *Business Names Registration Act* (New Brunswick).

## D | General Partnership

A partnership is the relationship that exists between two or more persons carrying on a business in common with a view of profit. In New Brunswick, the *Partnership Act* (New Brunswick) governs general partnerships, although most of the provisions of the *Partnership Act* (New Brunswick) relate to matters which are usually addressed in a partnership agreement. With few exceptions, the provisions of the *Partnership Act* (New Brunswick) are subject to an agreement to the contrary made between the partners. A partnership must also maintain an annual registration under the Partnerships and *Business Names Registration Act* (New Brunswick).

Parties who wish to carry on a business in common through a partnership structure should enter into a partnership agreement. Partnership agreements generally outline the rights, interests and responsibilities of each partner. A partnership allows individuals or corporations to pool resources and divide management responsibilities. However it is noteworthy that each partner is held liable for all the debts and liabilities of the partnership that arose while that person was a partner. This includes liability for any wrongful act or omission of any partner carrying acting in the ordinary course of the partnership business. Every partner is also considered to be an agent of the partnership and the other partners with respect to the partnership business, enabling any partner to enter into an agreement which binds all of the partners.

Partnerships may provide for more flexible income and loss sharing arrangements than corporations can provide. Subject to the terms of the partnership agreement, all partners are entitled to participate in the management of the partnership business. Each partner must report its share of the partnership income or loss for income tax purposes. A partnership is deemed to be dissolved upon the death or insolvency of any partner unless the partnership agreement specifically specifies that the partnership will continue in such circumstances.

## E | Limited Partnership

The *Limited Partnership Act* (New Brunswick) governs limited partnerships; however, the *Partnership Act* (New Brunswick) also applies to a limited partnership to the extent that it is not inconsistent with the *Limited Partnership Act* (New Brunswick). A limited partnership may be formed to carry on any business that a partnership without limited partners may carry on.

In a limited partnership, a distinction is drawn between those partners who contribute management efforts to the partnership (a general partner) and those partners who contribute only capital to the partnership (a limited partner). Every New Brunswick limited partnership must have a minimum of one limited partner. A limited partner

is liable only to the extent of its capital contribution; however, this limited liability is lost if the limited partner provides services to or participates in the management of the partnership business.

A limited partnership is formed when a declaration is filed with Service New Brunswick containing the following information:

- the firm name under which the limited partnership is to be conducted;
- the general nature of the business;
- the principal place of business; and
- the name and place of residence of each general partner

The *Partnerships and Business Names Registration Act* (New Brunswick) is available online at <http://www.gnb.ca/0062/acts/acts/p-05.htm>.

The *Partnership Act* (New Brunswick) is available online at <http://www.gnb.ca/0062/acts/acts/p-04.htm>.

The *Limited Partnership Act* (New Brunswick) is available online at <http://www.gnb.ca/0062/acts/acts/l-09-1.htm>.

## 2 INVESTMENT

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### A | Securities Regulation

Securities laws apply to any issuer of securities, incorporated or unincorporated, including those not listed on a stock exchange. New Brunswick has enacted securities legislation which is intended, in the long term, to harmonize New Brunswick's securities laws with those of other Canadian jurisdictions. This overview is intended to identify the key developments in New Brunswick and in navigating through this period of transition.

#### The Securities Commission

The *Securities Act* (New Brunswick) creates a Securities Commission (the "N.B. Securities Commission") with broad rule-making and oversight authority similar to the commissions in other Canadian jurisdictions.

#### Prospectus and Registration Requirements

The general rule is that, unless a statutory exemption is available, no one may issue securities in New Brunswick unless a prospectus has been prepared and approved by the Commission. This is commonly referred to as the "prospectus requirement". Likewise, unless a statutory exemption is available, no one may trade in securities unless registered pursuant to the *Securities Act* (New Brunswick). This is known as the "registration requirement". These requirements are consistent with those found in most Canadian jurisdictions. To the extent that there are any inconsistencies, the *Securities Act* (New Brunswick) gives broad authority to the N.B. Securities Commission to recognize forms of prospectuses that comply with the requirements of other Canadian jurisdictions.

Following the initial disclosure of the prospectus, unless a statutory exemption is available, continuously updated information on the issuing company must be publically available, including details on any material changes to the business of the company, insider trading information, early warnings for take-overs, and up-to-date financial information.

## Prospectus and Registration Exemptions

Unlike most other jurisdictions, there are no exemptions to the prospectus and registration requirements within the *Securities Act* (New Brunswick) itself (see s.80 of *Securities Act*). Rather, all exemptions found in National and Multilateral Instruments will be confirmed in rules to be adopted by the N.B. Securities Commission. Even where an Instrument has not yet been officially adopted by the N.B. Securities Commission, full compliance with the Instrument will be expected as if it were in full force and effect.

National Instrument 45-106 was adopted by the New Brunswick Securities Commission effective September 14, 2005. This Instrument provides a number of prospectus and registration exemptions including:

- a. Capital Raising Exemptions;
- b. Transaction Exemptions;
- c. Investment Fund Exemptions;
- d. Employee, Executive Officer, Director and Consultant Exemptions; and
- e. Miscellaneous Exemptions.

## Capital Raising Exemptions

The following are a few of the more useful capital raising exemptions:

- a. Securities can be sold in any amount without providing any required disclosure to founders, family, close personal friends or close business associates;
- b. Securities can be sold in any amount without providing any required disclosure to employees, executive officers, directors or consultants provided the purchaser is buying the security voluntarily;
- c. Securities can be sold to an accredited investor in any amount without providing any required disclosure about the issuer. There is no limit on the number of purchasers or the amount that can be raised using the accredited investor exemption;
- d. Securities can be issued to anyone without providing any required disclosure provided that the security has a cost of at least \$150,000.00 paid in cash at the time of the trade; and
- e. Securities may be issued to anyone, regardless of their relationship, wealth or the amount of the securities purchased as long as the issuer obtains a signed risk acknowledgment from the purchaser, and delivers an offering memorandum, prepared in the required form, to the recipient before the purchaser signs the agreement to acquire the securities.

Text of National Instrument 45-106 can be found at the N.B. Securities Commission's Website at:  
[http://www.nbsc-cvmnb.ca/nbsc/uploaded\\_topic\\_files/45-106-NI-14-Sep-05-e.pdf](http://www.nbsc-cvmnb.ca/nbsc/uploaded_topic_files/45-106-NI-14-Sep-05-e.pdf).

## B | Secured Financing

Mortgages in New Brunswick are registered on a county-by-county basis in New Brunswick's Land Titles system, which is replacing New Brunswick's older Land Registry system. Each of New Brunswick's Land Titles and Land Registry systems recognize the priority of those mortgages which were registered first in time, over those registered subsequently. In order to protect one's interest in a property, a mortgagee is required to register a mortgage with the Land Titles office in the county where the property is situated. Under the Land Titles system, the Province of New Brunswick guarantees that all property interests encumbering a property are listed on such property's Certificate of Registered Ownership (CRO).

The *Personal Property Security Act* (New Brunswick) (the "PPSA") regulates security interests in personal property in New Brunswick. The PPSA 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 PPSA also sets out various rules pertaining to the attachment, perfection and priority of security interests and sets out a mechanism for the enforcement of such security.

The Personal Property Registry System allows users to determine what registered instruments are attached to any given debtor's personal property. One important point is that the PPSA does not cover all competing claims and property interests, for example, most statutory or common law liens, interests in real property, deemed trusts, some assignments of accounts and rights of buyers and sellers of goods.

The PPSA is available online at <http://www.gnb.ca/0062/acts/acts/p-07-1.htm>.

## 3 TAX

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### A | Personal Income Tax

In addition to federally imposed personal taxes, New Brunswick imposes a personal tax on income on any individual ordinarily resident in New Brunswick on December 31 of a calendar year. The rules for calculating taxable income applicable for determining federal tax liability are also applicable for determining provincial tax liability. The collection of provincial income tax is administered by the Canada Revenue Agency; therefore, an individual taxpayer need only file a single personal tax return for each year. For 2009, the New Brunswick tax rates are:

Taxable Income	Tax Rate
\$0 - \$35,707	9.65%
\$35,707 - \$71,415	14.50%
\$71,415 - \$116,105	16.00%
\$116,105 and over	17.00%

For 2009, the Federal tax rates are:

Taxable Income	Tax Rate
\$0 - \$40,726	15%
\$40,726 - \$81,452	22%
\$81,452 - \$126,264	26%
\$126,264 and over	29%

The New Brunswick dividend tax credit is 5.3% and the federal dividend tax credit is 13.33% of the “grossed-up” taxable dividend. Therefore, the top aggregate provincial tax rate on a dividend is 34.21% [ $1.25 \times (0.17 + 0.29 - 0.053 - 0.1333)$ ].

## B | Corporate Income Tax

In addition to federally imposed corporate taxes, New Brunswick imposes a corporate income tax on income earned in the Province of New Brunswick that is attributable to a permanent establishment of the corporation situated in New Brunswick. If a corporation maintains a permanent establishment in more than one province, its taxable income is allocated among those provinces. To determine the percentage of the taxable income of a corporation that is allocated to a province, the arithmetic average of the revenues earned by the corporation in New Brunswick as a percentage of all revenues earned in all provinces is taken with the wages paid by the corporation as a percentage of all wages paid by the corporation in all provinces.

For 2009, New Brunswick corporate tax rates are:

CCPC* Active Business Income up to \$500,000	CCPC Active Business Income over \$500,000	Non-CCPC Active Business Income	CCPC Investment Income	Non-CCPC Investment Income
5%	13% (12% after June 30, 2009)	13% (12% after June 30, 2009)	13% (12% after June 30, 2009)	13% (12% after June 30, 2009)

For 2008, federal corporate tax rates are:

CCPC* Active Business Income up to \$500,000	CCPC Active Business Income over \$500,000	Non-CCPC Active Business Income	CCPC Investment Income	Non-CCPC Investment Income
11.00%	19.00%	19.00%	34.67%	34.67%

\*A CCPC is a ‘Canadian Controlled Private Corporation’. In general terms, a corporation is typically considered to be Canadian controlled if at least 50% of its issued and outstanding shares are held by an individual or individuals who is resident in Canada or other CCPCs.

## C | Tax Incentives for Investment

A business that acquires qualified property primarily for use in New Brunswick or in the New Brunswick offshore region (that extends 200 nautical miles from shore) may claim against Canadian tax otherwise payable an “investment tax credit” equal to 10% of the acquisition price of the qualified property. Qualified property includes a new building erected on land owned or leased by the taxpayer or most types of new machinery or equipment acquired by the taxpayer used primarily for:

- Manufacturing and processing of goods for sale or lease;
- Farming, fishing or logging;
- Operating an oil & gas well or otherwise extracting oil and gas;
- Exploiting specified other natural resources; and
- Producing or processing electrical energy or steam energy.

An investment tax credit claim also reduces the undepreciated capital cost amount of the qualified property that can be claimed as capital cost allowance for income tax purposes. Where the taxpayer is an individual or a Canadian-controlled private corporation whose income (together with all associated corporations) does not exceed the small business limit for the year set out above, 40% of the investment tax credit claim available to the taxpayer is “refundable” – in other words, that amount of tax is deemed to have been paid by the taxpayer and may be refunded to the taxpayer even if it has incurred losses in the year.

### Scientific Research & Experimental Development (“SR&ED”) Expenditures

According to a 2003 study commissioned by the Government of Canada, Canada offers the most favourable tax treatment of SR&ED Expenditures of any G-7 nation. SR&ED Expenditures include basic research, applied research or experimental development and work undertaken in support of the research or experimental development. Excluded are expenditures made for market research, quality control or routine testing, social science research, prospecting or drilling, style changes, and routine data collection.

Taxpayers undertaking SR&ED in Canada are eligible to deduct all SR&ED expenditures made in a year, including those of a capital nature, that relate to a business of the taxpayer. Taxpayers must seek approval from the Canada Revenue Agency that the expenses incurred in the course of research or experimental development being undertaken by the taxpayer will qualify as SR&ED expenditures.

In addition to receiving a current deduction for SR&ED expenditures that are capital in nature, a corporation may also claim an investment tax credit of 20% of the qualified expenditure pool. For a Canadian-controlled private corporation, the investment tax credit rate is increased to 35% for the first \$3,000,000 of current SR&ED expenditures so long as its income remains below the small business income limit set out above and its taxable capital employed in Canada remains less than \$10,000,000. For SR&ED expenditures of a capital nature incurred by a Canadian-controlled private corporation, 40% of the ITC amount (effectively 14% of the expenditure amount) may be refundable.

In addition to the federal credit, New Brunswick offers a 15% refundable credit for SR&ED carried out in New Brunswick by a corporation with a permanent establishment within New Brunswick. Unlike the federal credit, the 15% credit offered by New Brunswick is refundable even if the corporation is not a Canadian-controlled private corporation.

## New Brunswick Small Business Investor Tax Credit Program

A corporation that intends to seek a common share equity investment from a minimum of three individuals resident in New Brunswick may apply under the *Small Business Investor Tax Credit Act* (New Brunswick) for a Certificate under that Act. When issued, the Certificate entitles the investor to claim, as a provincial tax credit, 30% of the amount invested to a maximum of a \$24,000 credit (a \$80,000 investment). The criteria for a corporation to become eligible to allow investors in its voting common shares to claim the New Brunswick Small Business Investor Tax Credit are:

- the corporation must be a private company
- the corporation is incorporated or registered to carry on business in New Brunswick
- the corporation must have authorized capital consisting of shares without par value
- the corporation must have net tangible assets less than \$40 million (including associated corporations)
- all, or substantially all, of the corporation's assets and income must be used to generate active business income in New Brunswick
- the corporations must pay, in each of the four years after the date of registration, at least 75% of its wages and salaries to individuals who are residents of New Brunswick
- the corporation is not lending money, providing a loan guarantee or any other financial assistance, to a person for the purchase of shares included in a specified issue under the Small Business Investor Tax Credit Program
- that the issued shares will not be purchased by investors who have disposed of shares of the corporations after December 10, 2002, and before the proposed share issuance
- the shares to be issued are newly issued, fully paid shares of the capital stock of a corporation that is registered under the *Small Business Investor Tax Credit Act* and will not include a replacement share.

The *Small Business Investor Tax Credit Act* (New Brunswick) is available online at <http://www.gnb.ca/0062/acts/acts/s-09-05.htm>.

## D | Harmonized Sales Tax

For goods and services provided in New Brunswick in the course of a commercial activity of the supplier, harmonized sales tax ("HST") is payable by the recipient at the rate of 13% of the amount paid for the supply. Of the 13%, 5% is payable to the federal government and 8% is payable to the provincial government. HST is not applied to residential property transactions (other than new home construction); for financial, health care, educational, child care or personal care services, and for supplies made by charities or public sector bodies. The tax rate applicable to supplies of prescription drugs, medical devices, basic groceries, agriculture and fishing products, exported goods and services and transportation services is 0%.

HST is collected by the business that provides the good or service. The business is obliged to file an HST information return and remit any HST collected either monthly, quarterly or annually depending upon the revenues of the business. A business that provides goods or services that are not exempt (even if the tax rate applicable is 0%) may claim an input tax credit for any HST paid by the business in the course of providing its goods and services. In essence, the HST is intended to be a tax borne solely by consumers.

## E | Payroll Taxes

An employer carrying on business anywhere in New Brunswick is obliged to pay a levy to the Workers Compensation Board of New Brunswick. The amount of the levy per \$100 of total payroll in New Brunswick varies depending on the Industry Classification, Industry Grouping, Rate Grouping and Experience Rating determined by WorkSafeNB.

The Workers' Compensation Board of New Brunswick website contains further assessment information at:  
[http://www.worksafenb.ca/emp4\\_e.asp](http://www.worksafenb.ca/emp4_e.asp)

## F | Land Transfer Tax

New Brunswick imposes a tax on the value of consideration paid for real property upon the registration of a Deed in relation to that property. The land transfer tax rate in New Brunswick is one-quarter of one percent of the greater of: (a) the consideration for the transfer; or (b) the assessed value of the real property.

## G | Property Tax

New Brunswick imposes a tax on the owner of real property situate in New Brunswick (a) at the rate of one dollar and fifty cents on each one hundred dollars valuation of real property being residential property; or (b) at the rate of two dollars and twenty-five cents on each one hundred dollars valuation of real property being non-residential property.

In addition municipalities and local service districts in New Brunswick impose a tax on the owner of each property situate within its boundaries. The tax payable is based upon the market value of the property.

For further information on property tax Service New Brunswick offers an online guide at:  
<http://www.gnb.ca/0162/tax/intropt1.htm>

## H | Collection of Taxes by New Brunswick Businesses

It is the responsibility of all New Brunswick businesses to collect federal and provincial income tax payable by its employees based upon tables provided by the Canada Revenue Agency. In addition, Canada Pension Plan (CPP) contributions and Employment Insurance (EI) premiums of employees must be collected by the employers and remitted to the Canada Revenue Agency.

Non-resident withholding tax must be withheld by the Canadian resident payor and remitted to the Canada Revenue Agency on behalf of the non-resident recipient of the payment.

## 4 IMPORT/EXPORT

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### A | International Sale of Goods

New Brunswick has jurisdiction over contracts and sales of goods. In 1989, New Brunswick passed the *International Sale of Goods Act* (New Brunswick), which came into force in 1992 and gave effect to the United Nations Convention on Contracts for the International Sale of Goods, an accord designed to facilitate the globalization of market economies and encourage international trade. The *International Sale of Goods Act* (New Brunswick) governs all aspects of trade between parties from different countries and directs that disputes between these parties are to be handled in accordance with the *International Commercial Arbitration Act* (New Brunswick).

That the United Nations Convention has been incorporated into the law of New Brunswick is significant for parties intending to do international business from the province, or transact business from abroad with a New Brunswick-based supplier.

The *International Sale of Goods Act* (New Brunswick) is available online at <http://www.gnb.ca/0062/acts/acts/i-12-21.htm>.

The *International Commercial Arbitration Act* (New Brunswick) is available online at <http://www.gnb.ca/0062/acts/acts/i-12-2.htm>.

## 5 WARRANTIES AND CONSUMER PROTECTION

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### A | Product Standards

The *Sale of Goods Act* (New Brunswick) creates various rights and remedies for buyers and sellers alike concerning the purchase and sale of goods on the commercial market. Included in the rights guaranteed to a buyer under the *Sale of Goods Act* (New Brunswick) is the right to expect that goods supplied will be fit for the buyer's intended use (where such use is made known to the seller in advance), that the goods correspond with any sample taken from or description offered by the vendor, and the right to expect that the goods conveyed are of merchantable quality. Under the legislation, which codifies common law remedies of vendor and purchaser, a seller is endowed with the right to insist on payment upon delivery, among numerous other rights including the stopping of shipments if the buyer becomes insolvent and the imposition of vendor's liens.

The *Consumer Product Warranty and Liability Act* (New Brunswick) applies to every sale of any tangible personal property, new or used, of a kind that is commonly used for personal, family or household purpose (“consumer product”). The sale of a consumer good must be by a person ordinarily engaged in the sale of consumer goods and the legislation seeks to protect ordinary consumers. The *Consumer Product Warranty and Liability Act* (New Brunswick) provides that it is an implied condition in every contract for the sale of a consumer good that:

- the seller has a right to convey the goods sold;
- the product is free of any lien and the buyer will enjoy quiet possession;
- the product is unused;
- the product is of such quality, in such state or condition, and as fit for the purpose or purposes for which products of that kind are normally used;
- the product complies with all mandatory federal and provincial standards in relation to health, safety and quality; and
- the product will be durable for a reasonable period of time.

The implied warranties will be inoperative in cases where the buyer has actual knowledge that they do not apply to the consumer good being bought. Additionally, if the seller is aware of the particular purpose for which the product is to be used, there is an implied warranty given by the seller to the buyer that the product is reasonably fit for that purpose, whether or not that is a purpose for which such a product is normally used.

The *Sale of Goods Act* (New Brunswick) is available online at <http://www.gnb.ca/0062/acts/acts/s-01.htm>.

The *Consumer Product Warranty and Liability Act* (New Brunswick) is available online at <http://www.gnb.ca/0062/acts/acts/c-18-1.htm>.

## B | 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 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. Terms of a contract for the purchase and sale of a product may be implied by reference to common trade practice. The *Sale of Goods Act* (New Brunswick) will also imply terms and conditions as to the fitness and quality of goods sold.

## 6 LABOUR AND EMPLOYMENT

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### A | Employment Standards

The *Employment Standards Act* (New Brunswick), and its associated regulations, set forth minimum standards that an employer must provide for its employees. These standards include, amongst others, a minimum wage (currently \$8.00 Canadian per hour, and increasing to \$8.25 Canadian per hour on September 1, 2009), a maximum number of hours of work that an employee can work at minimum wage (currently 44 hours per week) and a minimum wage for excess time worked (currently \$12.00 Canadian per hour, and increasing to \$12.38 Canadian per hour on September 1, 2009).

Other standards imposed on employers by the *Employment Standards Act* include:

- Minimum Wage Generally (Sections 9-13);
- Hours of Work Generally (Sections 14-16);
- Minimum Reporting Wage (Section 16.1);
- Weekly Rest Period (Sections 17-17.1);
- Public Holidays (Sections 18-23);
- Vacations (Sections 24-27);
- Unjust Dismissal and Related Unfair Employer Action (Section 28);
- Notice of Termination (Sections 29-34);
- Prompt Payment of Wages (Sections 35-37);
- Equal Pay for Equal Work (Section 37.1);
- Wage Protection (Sections 38-38.8);
- Children (Sections 39-41);
- Maternity (Sections 42-44);
- Child Care (Section 44.02);
- Sick Leave (Section 44.021);
- Family Responsibility Leave (Section 44.022);
- Court Leave (Section 44.023);
- Compassionate Care Leave (Section 44.024);
- Bereavement (Section 44.03);
- Leaves Generally (Sections 44.04-44.05); and
- Lie Detector Tests (Section 44.1).

The *Employment Standards Act* (New Brunswick) is available online at <http://www.gnb.ca/0062/acts/acts/e-07-2.htm>.

## B | Industrial Relations

The *Industrial Relations Act* (New Brunswick) generally applies to all businesses in New Brunswick and provides that employees have the right to join a union. The *Industrial Relations Act* (New Brunswick) also outlines the general procedure and rules and regulations associated with establishing a union or collective bargaining unit in New Brunswick.

Under the *Industrial Relations Act* (New Brunswick), certification is a statutory process in which a union seeks to obtain the legal rights to represent some or all of an employer's employees as one collective voice. Once a union fulfills the statutory pre-conditions under the *Industrial Relations Act* (New Brunswick), they are certified as a "bargaining agent" to represent a company's employees.

There is New Brunswick case law to support the proposition that a company with as few as two employees can be subject to its employees joining a union. Once as few as two employees join a union, one of the employees may leave the union and/or the company, and the remaining employee can still be part of the union.

The *Industrial Relations Act* (New Brunswick) is available online at <http://www.gnb.ca/0062/acts/acts/i-04.htm>.

## C | Occupational Health and Safety Act

The *Occupational Health and Safety Act* (New Brunswick) (the "OHS") applies to every place of employment in New Brunswick and creates general safety standards for the workplace. Every employer in New Brunswick is under a positive duty to ensure that the standards set out in the OHS are complied with by both the employer and its employees. The primary focus of the OHS is on workplace hazardous materials and industry sectors that have an inherently hazardous aspect to their operations.

The OHS is available at <http://www.gnb.ca/0062/acts/acts/o-00-2.htm>.

## D | Workers' Compensation

The *Workers' Compensation Act* (New Brunswick) (the "WCA") provides a public insurance scheme to pay for the treatment, care and rehabilitation of New Brunswick employees injured while carrying out their employment. Employers must contribute to the insurance fund if they have in excess of three employees, although an employer may voluntarily apply to be subject to the WCA.

The WCA is available online at <http://www.gnb.ca/0062/acts/acts/w-13.htm>.

## E | Human Rights

Any business operation in New Brunswick is subject to the *Human Rights Act* (New Brunswick). The human rights provided under the *Human Rights Act* are similar in scope to those in place in most North American jurisdictions.

The *Human Rights Act* (New Brunswick) is available online at <http://www.gnb.ca/0062/acts/acts/h-11.htm>.

## 7 DIRECTOR LIABILITY

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The nature of the duty owed by a director to the corporation they serve is substantively the same in New Brunswick as it is in the other common-law provinces. This duty is referred to as a fiduciary duty. The director's fiduciary duty requires that, while carrying out the director's duties, all other duties are set aside and the director acts honestly and in good faith with the best interest of the corporation in mind.

Directors are to fully disclose all information relevant to the corporation that they possess to the other directors and the properly appointed officers of the corporation. This duty also requires that directors avoid any conflict of interest in the fulfillment of his or her duties. Directors must also exercise such skill and diligence in fulfilling their duties as would be expected of a reasonable person with similar knowledge and background.

In addition to potential liability to the corporations they serve, directors may be liable under the following legislation, which is not intended to be a comprehensive list of legislation imposing some form of director liability:

- *Income Tax Act* (Canada) – Directors are personally liable for unremitted source deductions imposed on employees of the corporation for federal tax (of the employee), CPP & EI contributions;
- *Excise Tax Act* (Canada) – Directors are personally liable for unremitted HST collected by the corporation.
- *Workers Compensation Act* (New Brunswick) – Directors are personally liable for any unpaid premiums payable by a corporation.
- *Occupational Health & Safety Act* (New Brunswick) – A director, officer, a manager or agent of a corporation who directed, assented to, acquiesced in or participates in an offence under the Act is guilty of that offence.
- *Clean Environment Act* (New Brunswick) – A director may be liable for the cost of cleaning up a pollution causing event created by a corporation if it was reasonable to foresee a likelihood of such occurrence and reasonable precautions were not established.

## 8 ENVIRONMENT

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The New Brunswick Department of the Environment and Local Government's (the "Department") is charged with administering seven statutes, and 23 associated regulations, that address environmental issues.

The following are the statutes which are administered by the Department:

- *The Clean Environment Act* (New Brunswick) which is available online at <http://www.gnb.ca/0062/acts/acts/c-06.htm>
- *The Clean Water Act* (New Brunswick) which is available online at <http://www.gnb.ca/0062/acts/acts/c-06-1.htm>
- *The Clean Air Act* (New Brunswick) which is available online at <http://www.gnb.ca/0062/acts/acts/c-05-2.htm>
- *The Environmental Trust Fund Act* (New Brunswick) which is available online at <http://www.gnb.ca/0062/acts/acts/e-09-3.htm>
- *The Pesticides Control Act* (New Brunswick) which is available online at <http://www.gnb.ca/0062/acts/acts/p-08.htm>
- *The Unsightly Premises Act* (New Brunswick) which is available online at <http://www.gnb.ca/0062/acts/acts/u-02.htm>
- *The Beverage Containers Act* (New Brunswick) which is available online at <http://www.gnb.ca/0062/acts/acts/b-02-2.htm>

Of the statutes listed above, the *Clean Water Act* (New Brunswick), the *Clean Environment Act* (New Brunswick), and the *Clean Air Act* (New Brunswick) are the three key statutes administered by the Department. These Acts provide broad powers to the Minister of the Environment and Local Government (the "Minister"). These Acts and their related regulations combine to:

- require anyone discharging a contaminant to obtain approval from the Minister;
- grant Order-making powers to the Minister, including the power to:
  - control or stop the discharge of contaminants, or
  - require the clean-up of contaminated sites.
- provide administrative procedures for various systems of approvals, permits, registrations, and other authorizations issued by the Department; and
- provide for the establishment of solid waste commissions, water and sewer commissions, and the New Brunswick Tire Stewardship Board.

A corporation found guilty of an offence under the *Clean Water Act* (New Brunswick), the *Clean Environment Act* (New Brunswick), or the *Clean Air Act* (New Brunswick) may be fined up to a million dollars. If a court determines that the offence was committed for financial advantage, the court may impose a fine that removes any advantage gained and is not limited to the one million dollars.

For a detailed discussion of the Department and the environmental regulatory regime please see the Department's articles and general publications at <http://www.gnb.ca/0009/0010-e.asp>

