

Working within the Legal Environment of Business*

THE NEED FOR LAWS

Imagine a society without laws. Just think, no speed limits to control how fast we drive, no age restrictions on the consumption of alcoholic beverages, no limitations on who can practise medicine—a society in which people are free to do whatever they choose, with no interference. Obviously, the more we consider this possibility, the more unrealistic we realize it is. Laws are an essential part of a civilized nation. Over time, though, the depth and scope of the body of laws must change to reflect the needs and changes in society. In the Canadian system of government, which uses the English model, there are three branches of government. Each has a role in the legal system, though sometimes the lines get blurred. The primary function of the *legislative branch* (comprised of the Parliament of Canada, the legislatures of the provinces, and the municipal councils) is to *make* the laws. The *executive branch* (e.g., government departments, administrative boards, and police departments) *administers* the laws, putting them into practice. The *judicial branch* (i.e., the courts) *interprets* and applies the laws when there is a dispute.

The Canadian court system has both federal and provincial courts, with jurisdiction that parallels the constitutional division of power between the central and provincial governments. The courts hear cases involving both criminal and civil law. *Criminal law* defines crimes, establishes punishments, and regulates the investigation and prosecution of people accused of committing crimes. *Civil law* involves legal proceedings that do not involve criminal acts; it includes laws regulating marriage, payment for personal injury, and so on. There are also appeal courts that hear appeals of decisions made at the initial trial, brought by the losing party in the case. Appeal courts can review and overturn decisions made by the trial court.

The law also governs the activities and operations of business in general. In fact, businesspeople often complain that the government is stepping in more and more to govern the behaviour of business. Thus, we have laws and

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regulations regarding sexual harassment on the job, hiring and firing practices, leave for family emergencies, environmental protection, safety, and more. As you may suspect, businesspeople prefer to set their own standards of behaviour. However, the business community has not been perceived as implementing acceptable practices fast enough. To hasten the process, governments have expanded their control and enforcement procedures. In this appendix we will look at some of the laws and regulations now in place and how they affect business.

Business law refers to rules, statutes, codes, and regulations ▶P. 13◀ that are established to provide a legal framework within which business may be conducted and that are enforceable by court action. A businessperson should be familiar with laws regarding product liability, sales, contracts, fair competition, consumer protection, taxes, and bankruptcy. Let's start at the beginning and discuss the foundations of the law. It's hard to understand the law unless you know what the law is.

business law

Rules, statutes, codes, and regulations that are established to provide a legal framework within which business may be conducted and that are enforceable by court action.

STATUTORY AND COMMON LAW

There are two major kinds of law: statutory law and common law. Both are important for businesspeople.

Statutory law includes the laws that are made by the Parliament of Canada and the provincial legislatures, international treaties, and regulations and bylaws—in short, written law. You can read the statutes that make up this body of law, but they are often written in language whose meaning must be determined in court. That's one reason why there are so many lawyers in Canada! **Common law** is the body of law that comes from decisions handed down by judges. Common law is often referred to as *unwritten law* because it does not appear in any legislative enactment, treaty, or other such document. Under common law principles, what judges have decided in previous cases is very important to today's cases. Such decisions are called **precedents**, and they guide judges in the handling of new cases. Common law evolves through decisions made in trial courts, appellate courts, and special courts. Lower courts (trial courts) must abide by the precedents set by higher courts (appeal courts) such as the Supreme Court of Canada. In law classes, therefore, students study case after case to learn about common law as well as statutory law.

statutory law

Federal and provincial legislative enactments, treaties of the federal government, and bylaws/ordinances—in short, written law.

common law

The body of law that comes from decisions handed down by judges; also referred to as *unwritten law*.

precedent

Decisions judges have made in earlier cases that guide the handling of new cases.

The Canadian legal system is complicated by the fact that federal law and provincial (including municipal) law in nine provinces operate under the English common law system. Provincial law in the Province of Quebec, though, operates under the French **civil law** system. The difference lies in that under the common law system courts actually *make* law through their decisions, while under the civil law system courts are restricted to *interpreting* the law that is provided by the provincial civil code.

civil law

Legal proceedings that do not involve criminal acts.

Administrative Agencies

Different organizations within the government issue many rules, regulations, and orders. **Administrative agencies** are federal or provincial institutions and other government organizations created by Parliament or provincial legislatures with delegated power to pass rules and regulations within their mandated area of authority. Legislative bodies can not only create administrative agencies but also dissolve them. Some administrative agencies hold quasi-legislative, quasi-executive, and quasi-judicial powers. This means an agency is allowed to pass rules and regulations within its area of authority, conduct

administrative agencies

Federal or state institutions and other government organizations created by Parliament or provincial legislatures with delegated power to pass rules and regulations within their mandated area of authority.

investigations in cases of suspected rule violations, and hold hearings when it feels the rules and regulations have been violated.

Administrative agencies actually issue more rulings affecting business and settle more disputes than courts do. There are administrative agencies at the federal, provincial, and local levels of government. For example, these include:

1. **At the federal level:** The CRTC (i.e., Canadian Radio-television and Telecommunications Commission) regulates the use of the airwaves, OSFI (i.e., the Office of the Superintendent of Financial Institutions) regulates the operation of banks and other financial institutions, and the Commissioner of Competition is responsible for investigating complaints that the Competition Act has been violated.
2. **At the provincial level:** Public utility commissions and boards regulate prices for services like electricity, licensing boards set the qualifications required for practising trades and professions (e.g., the practice of medicine or law), and labour relations boards ▶P. 388◀ oversee the certification of unions.
3. **At the local level:** Zoning boards and planning commissions control land use and development, and there are school boards and police commissions.

TORT LAW

tort

A wrongful act that causes injury to another person's body, property, or reputation.

negligence

In tort law, behaviour that does not meet the standard of care required and causes unintentional harm or injury.

The tort system is an example of common law at work. A **tort** is a wrongful act that causes injury to another person's body, property, or reputation. This area of law comes within provincial jurisdiction, so legislation dealing with the topic comes from the provincial legislatures.

Although torts often are not criminal acts, victims can be awarded compensation. This is especially true if the conduct that caused harm is considered *intentional*. An intentional tort is a wilful act that results in injury. On the other hand, **negligence** is behaviour that causes unintentional harm or injury. Decisions involving negligence can often lead to huge judgments against businesses. In a highly publicized U.S. case, McDonald's lost a lawsuit to a person severely burned by its hot coffee. The jury felt the company failed to provide an adequate warning on the cup. Product liability is another example of tort law that's often very controversial. This is especially true regarding torts related to business actions. Let's look briefly at this issue.

Product Liability

Few issues in business law raise as much debate as product liability. Critics believe product liability laws have gone too far and deter product development. Others feel these laws should be expanded to include products such as software and fast food. **Product liability**, covered under tort law, holds businesses liable for harm that results from the production, design, sale, or use of products they market. At one time the legal standard for measuring product liability was whether a producer knowingly placed a hazardous product on the market. Today, many provinces have extended product liability to the level of **strict product liability**. Legally, this means *without regard to fault*. Thus, a company could be held liable for damages caused by placing a defective product on the market even if the company did not know of the defect at the time of sale. In such cases, the company is required to compensate the injured party financially. The rule of strict liability has caused

product liability

Part of tort law that holds businesses liable for harm that results from the production, design, sale, or use of products they market.

strict product liability

Legal responsibility for harm or injury caused by a product regardless of fault.

serious problems for businesses. For example, companies that produced lead-based paint in the past could be subject to expensive legal liabilities even though lead paint has not been sold for many years. The manufacturers of chemicals and drugs are also often susceptible to lawsuits under strict product liability. A producer may place a drug or chemical on the market that everyone agrees is safe. Years later, a side effect or other health problem could emerge. Under the doctrine of strict liability, the manufacturer could still be held liable. Businesses and insurance companies have called for legal relief from huge losses awarded in strict product liability suits. They have lobbied to set limits on the amounts of damages for which they are liable should their products harm consumers.

Intellectual Property: Patents, Copyrights, and Trademarks

Many people, perhaps including you, have invented products that are assumed to have commercial value. The question that obviously surfaces is what to do next. One step may be to apply for a patent. A **patent** gives inventors exclusive rights to their inventions for 20 years from the date they file their patent application. The Canadian Intellectual Property Office (<http://cipo.gc.ca>) receives the application and grants the patent. In addition to filing forms, the inventor must make sure the product is truly unique. Most inventors rely on lawyers who specialize in the field to manage the filing process.

Patent owners have the right to sell or license the use of a patent to others. Foreign companies are also eligible to file for Canadian patents. Recent changes in the Patent Act and an international patent cooperation treaty permit any inventor who applies within 12 months of filing in his or her own country to obtain a uniform filing date in all participating countries.

The penalties for violating a patent can be very severe, but the defense of patent rights is solely the job of the patent holder. In a rather famous U.S. case (where the law regarding patents is much the same as in Canada), the camera and film company Polaroid was able to force Kodak to recall all of its instant cameras because Polaroid had several patents that Kodak violated. Kodak lost millions of dollars, and Polaroid maintained market leadership in instant cameras for many years. The possible remedies for patent infringement include money damages, injunctions prohibiting further infringements, and an accounting for all profits gained from the infringement.

Just as a patent protects an inventor's right to a product or process, a **copyright** protects a creator's rights to materials such as books, articles, photos, paintings, and cartoons. Copyright is protected by the Copyright Act, a federal statute. The protection of a copyright extends for the life of the original author plus 50 years after his or her death. Registration of the copyright is not required, but provides the benefit of public notice of its existence and provides proof of the copyright holder's ownership of the work.

Recall from Chapter 15 that a trademark is a brand that has been given legal protection for both the brand name **▶P. 418◀** and the pictorial design. Trademarks generally belong to the owner forever, as long as they are properly registered and renewed every 15 years. Some well-known trademarks include the Pillsbury Doughboy, the Disney Company's Mickey Mouse, the Nike swoosh, and the golden arches of McDonald's. Like a patent, a trademark is protected from infringement. Companies fight hard to protect trademarks, especially in global markets where pirating can be extensive. Like patents, there are specific requirements imposed by the Trade-marks Act, the most difficult one being that the trademark must be "distinctive."

The fourth type of intellectual property protected by federal legislation in Canada is an **industrial design**. Industrial designs differ from things that can be copyrighted by the fact that they are produced by an industrial process.

patent

A document that gives inventors exclusive rights to their inventions for 20 years.

copyright

A document that protects a creator's rights to materials such as books, articles, photos, and cartoons.

industrial design

Visible feature(s) of a finished product that identify it and are protected by the law (e.g., its shape or ornamentation).

For example, fine china dinnerware would be a product that would fall into this category. As with the other types of intellectual property, the design of the subject matter must be original.

THE SALE OF GOODS

Each of Canada's provinces has a statute called the Sale of Goods Act. With limited exceptions (i.e., contracts where the price is below the minimum set by the individual province's Act), this Act applies to all contracts for the sale of goods. A sale contract is different from others in that there must be a transfer of ownership of goods in return for money consideration. Except in Ontario and British Columbia, a contract for the sale of goods must be written. There are exceptions, though. For example, where part of the goods have actually been received by the buyer, there has been partial payment of the price, or an "earnest" has been given to demonstrate sincerity. The Sale of Goods Act establishes the rules and requirements associated with the deal, establishing the respective rights and obligations of the parties of the contract.

Warranties

A warranty guarantees that the product sold will be acceptable for the purpose for which the buyer intends to use it. There are two types of warranties. **Express warranties** are specific representations by the seller that buyers rely on regarding the goods they purchase. The warranty you receive in the box with a clock, toaster, or DVD player is the express warranty. It spells out the seller's warranty agreement. **Implied warranties** are legally imposed on the seller. It is implied, for example, that the product will conform to the customary standards of the trade or industry in which it competes. For example, it's expected that a toaster will toast your bread to your desired degree (light, medium, dark) or that food bought for consumption off an establishment's premises is fit to eat.

Warranties offered by sellers can be either full or limited. A full warranty requires a seller to replace or repair a product at no charge if the product is defective, whereas a limited warranty typically limits the defects or mechanical problems that are covered. Many of the rights of buyers, including the acceptance and rejection of goods, are spelled out in the Sale of Goods Act, so both buyers and sellers should be familiar with its provisions.

NEGOTIABLE INSTRUMENTS

negotiable instruments
Forms of commercial paper (such as cheques) that are transferable among businesses and individuals and represent a promise to pay a specified amount.

Negotiable instruments are forms of commercial paper, and come in three types: promissory notes, cheques, and bills of exchange. A promissory note **►P. 532◀** is a written contract with a promise to pay a sum of money in the future. A cheque is an instruction to a bank to make a payment. A bill (or draft) is an order to make a payment. They are regulated by the federal Bills of Exchange Act. All three types are transferable among businesses and individuals and represent a promise to pay a specified amount. They must be (1) written and signed by the maker or drawer, (2) payable on demand or at a certain time, (3) payable to the bearer (the person holding the instrument) or to a specific order, and (4) contain an unconditional promise to pay a specified amount of money. Negotiable instruments are transferred (negotiated for payment) when the payee signs the back. The payee's signature is referred to as an *endorsement*.

CONTRACT LAW

If I offer to sell you my bike for \$35 and later change my mind, can you force me to sell the bike, saying we had a contract? If I lose \$120 to you in a poker game, can you sue in court to get your money? If I agree to sing at your wedding for free and back out at the last minute, can you claim I violated a contract? These are the kinds of questions that contract law answers.

A **contract** is a legally enforceable agreement between two or more parties. **Contract law** specifies what constitutes a legally enforceable agreement. Basically, a contract is legally binding if the following conditions are met:

1. **An offer is made.** An offer to do something or sell something can be oral or written. If I agree to sell you my bike for \$35, I have made an offer. That offer is not legally binding, however, until other conditions are met.
2. **There is a voluntary acceptance of the offer.** Both parties to a contract must voluntarily agree on the terms. If I used duress in getting you to agree to buy my bike, the contract would not be legal. Duress occurs if there is coercion through force or threat of force. You couldn't use duress to get me to sell my bike, either. Even if we both agree, though, the contract is still not legally binding without the next four conditions.
3. **Both parties give consideration.** **Consideration** means something of value, and there must be a flow of consideration in both directions. If I agree to sell you my bike for \$35, the bike and the \$35 are consideration, and we have a legally binding contract. If I agree to sing at your wedding and you do not give me anything in return (consideration), we have no contract.
4. **Both parties are competent.** A person under the influence of alcohol or drugs, or a person of unsound mind (e.g., one who has been legally declared incompetent), cannot be held to a contract. In many cases, a minor may not be held to a contract either. For example, if a 15-year-old agrees to pay \$10,000 for a car, the seller will not be able to enforce the contract due to the buyer's lack of competence.
5. **The contract must be legal.** A contract to do something illegal cannot be enforced. For example, a contract for the sale of illegal drugs or stolen merchandise would be unenforceable since both types of sales are violations of criminal law.
6. **The contract is in proper form.** Provincial legislation in each province requires that an agreement for the sale of goods for more than a fixed amount (e.g., \$200) must be in writing. Contracts that cannot be fulfilled within one year and contracts regarding real property (land and everything attached to it) must be in writing as well.

contract

A legally enforceable agreement between two or more parties.

contract law

Set of laws that specify what constitutes a legally enforceable agreement.

consideration

Something of value; consideration is one of the requirements of a legal contract.

Breach of Contract

Breach of contract occurs when one party fails to follow the terms of a contract. Both parties may voluntarily agree to end a contract. While in force, however, if one person violates the contract, the following remedies may be available.

1. **Specific performance.** The person who violated the contract may be required to live up to the agreement if money damages would not be adequate. For example, if I legally offered to sell you a rare painting, I would have to actually sell you that painting.

breach of contract

When one party fails to follow the terms of a contract.

damages

The monetary settlement awarded to a person who is injured by a breach of contract.

2. **Payment of damages.** The term **damages** refers to the monetary settlement awarded by the court to a person who is injured by a breach of contract. If I fail to live up to a contract, you can sue me for damages, usually the amount you would lose from my nonperformance. If we had a legally binding contract for me to sing at your wedding, for example, and I failed to come, you could sue me for the cost of hiring a new singer.
3. **Discharge of obligation.** If I fail to live up to my end of a contract, you could agree to drop the matter. Generally you would not have to live up to your end of the agreement either.

Lawyers would not be paid so handsomely if the law were as simple as implied in these rules of contracts. In fact, it is always best to have a contract in writing even if not required under law. The offer and consideration in a contract should be clearly specified, and the contract should be signed and dated. A contract does not have to be complicated as long as it has these elements: it is in writing, mutual consideration is specified, and there is a clear offer and agreement.

LAWS TO PROMOTE FAIR AND COMPETITIVE PRACTICES

One objective of legislators is to pass laws that the judiciary will enforce to ensure a competitive atmosphere among businesses and promote fair business practices. In Canada, the Competition Bureau and other government agencies serve as watchdogs to ensure that competition among sellers flows freely and that new competitors have open access to the market. The scope of the governments' approach on this is broad and extensive.

There was, however, a time when big businesses were able to drive smaller competitors out of business with little resistance. The following discussion shows how government responded to these troubling situations in the past and how businesses must deal with new challenges facing them today.

The changing nature of business from manufacturing to knowledge technology has called for new levels of regulation on the part of federal agencies.

For example, Microsoft's competitive practices have been the focus of intense investigation in countries around the globe. One of the major accusations against the computer software giant was that it hindered competition by refusing to sell the Windows operating system to computer manufacturers unless they agree to sell Windows-based computers exclusively. This gives computer manufacturers a difficult choice: buy only Windows or don't buy Windows at all! Given that many consumers wanted Windows, the computer companies had little choice but to agree.

LAWS TO PROTECT CONSUMERS

consumerism

A social movement that seeks to increase and strengthen the rights and powers of buyers in relation to sellers.

Consumerism is a social movement that seeks to increase and strengthen the rights and powers of buyers in relation to sellers. Although consumerism is not a new movement, it has taken on new vigour and direction in the early 2000s because of the corporate scandals and greed involving companies such as Enron and WorldCom. Consumers have been particularly critical of government for its lack of oversight and action in the securities markets.

The protection of consumers has only recently come into vogue as a suitable topic for legislation. In earlier times, legislators deemed it appropriate to leave this to the common law, supplemented by the provisions of the Sale of

Goods Act. The modern phenomenon of concentration of economic power in large manufacturing and distributing companies and in financial institutions has dramatically eroded the relative bargaining power of the consumer. The technical sophistication of modern products makes it impossible for consumers to detect product defects in advance. Price, quality, and safety have become matters that are often not negotiable: the consumer's choice is to accept or not accept the product, as is. Because of the inequality of bargaining power held by consumers in comparison to large retailers, manufacturers, and financial institutions, legislators have deemed it appropriate to intervene, readjusting the balance by protecting the consumer. The topics that have received the most attention are product performance and business practices.

Product Performance

The Parliament of Canada has enacted several major statutes dealing with consumer safety and product performance. The Consumer Packaging and Labelling Act establishes requirements for disclosing ingredients and quantities, and includes provision for some standardization of package sizes. The Textile Labelling Act requires disclosure of the fabrics and fibres in wearing apparel, together with recommended cleaning procedures. The Weights and Measures Act establishes a uniform system for weighing and measuring goods sold to consumers. The Food and Drugs Act provides for inspection and regulation of food and drugs, requires purity and sanitary storage, and restricts the distribution of potentially harmful substances. The Hazardous Products Act establishes a list of dangerous products that it is illegal to manufacture, and regulations governing the manufacture, packaging, and distribution of other products that can be harmful. The Motor Vehicle Safety Act and the Aeronautics Act establish national standards, specifying safety features that must be provided in motor vehicles and aircraft.

This federal legislation is supplemented by provincial legislation in all provinces. Some provinces have been much more active in this regard than others. In most, this legislation appears in a provincial consumer protection Act, but provisions designed to protect consumers appear in other Acts as well.

Business Practices

With respect to door-to-door sales, most provinces have legislation permitting the consumer to rescind a purchase contract within a specified "cooling off" period. All provinces also have registration and licensing requirements for door-to-door sellers and collection agencies, designed to prevent the use of harassment and pressure. Most also provide that a consumer who receives unsolicited goods through the mail is not liable to pay for them, or even to return them. Most provinces have also established statutory warranties with regard to contracts for the purchase and sale of consumer durables, voiding attempts to negate the warranties implied by the Sale of Goods Act.

Misleading Advertising

One of the major topics addressed by the Competition Act, mentioned earlier in this appendix, is misleading advertising. False or misleading representations about the characteristics of a product are prohibited. These include statements, warranties, and guarantees about the performance, efficacy, or length of life of a product that are not based upon adequate or proper testing, and by placing the onus on anyone making such representations to prove that they are based on testing. Misleading representations about the "ordinary" price of

a product are also prohibited, as is the advertising of products for sale at a “bargain” price when the advertiser does not have reasonable quantities available for sale.

Most provinces supplement the federal legislation in this area, in much the same way as they do with regard to product performance requirements. The Ontario Business Practices Act, for example, prohibits false representations about product performance.

TAX LAWS

Mention the word *taxes* and most people frown. That’s because taxes affect almost every individual and business in the country. Taxes are how the government (federal, provincial, and local) raises money. Traditionally, taxes have been used primarily as a source of funding for government operations and programs. They have also been used as a method of encouraging or discouraging taxpayers from doing something. For example, if the government wishes to reduce the use of certain classes of products (cigarettes, liquor, etc.), it passes what are referred to as *sin taxes*. The additional cost of the product from increased taxes perhaps discourages additional consumption. In other situations, the government may encourage businesses to hire new employees or purchase new equipment by offering a tax credit. A tax credit is an amount that can be deducted from a tax bill.

Taxes are levied from a variety of sources. Income (personal and business), sales, and property are the major bases of tax revenue. The federal government receives its largest share of taxes from income. Provinces and local communities often make extensive use of sales taxes and taxes on real property. School districts are often largely dependent on real property taxes. The tax policies of provinces and cities are taken into consideration when businesses seek to locate operations. Tax policies also affect personal decisions such as retirement. A key tax issue sure to reappear in the 21st century involves Internet taxation, especially taxing Internet transactions (e-commerce). The European Union has already decided to levy certain Internet taxes. Expect this issue to be debated fiercely in the years ahead.

BANKRUPTCY AND INSOLVENCY

bankruptcy

The legal process by which a person, business, or government entity unable to meet financial obligations is relieved of those obligations by a court that divides any assets among creditors, allowing creditors to get at least part of their money and freeing the debtor to begin anew.

voluntary bankruptcy

Legal procedures initiated by a debtor.

involuntary bankruptcy

Bankruptcy procedures filed by a debtor’s creditors.

The **bankruptcy** process recognizes that a debtor can reach a point where he or she will never be able to meet all obligations to creditors. The process is designed to minimize the negative impact of this situation for both debtor and creditor. The Bankruptcy and Insolvency Act, a federal statute, establishes a uniform national system for dealing with the problem. It is designed to achieve a reasonable and fair distribution of the debtor’s assets among creditors, and to release the honest debtor in this position from ongoing obligations that cannot possibly be met, allowing him or her to resume business activity without them.

The provinces continue to have jurisdiction over an individual’s financial affairs until he or she becomes insolvent or bankrupt. Once a person becomes bankrupt, the central government has jurisdiction to enact laws governing the rights and obligations of bankrupts and their creditors.

Bankruptcy can be either voluntary or involuntary. In **voluntary bankruptcy** cases the debtor applies for bankruptcy, whereas in **involuntary bankruptcy** cases the creditors start legal procedures against the debtor. Most bankruptcies today are voluntary because creditors usually want to wait in

hopes that they will be paid all of the money due them rather than settle for only part of it.

The Bankruptcy and Insolvency Act establishes the scheme of distribution to be followed by the trustee in settling the claims of a bankrupt person's creditors. There are three basic categories of creditors for these purposes.

The highest priority is given to *secured creditors*, who have a direct claim against a specified asset of the debtor. When a debtor goes through bankruptcy proceedings, secured creditors are entitled to the entire proceeds realized on the sale of the asset in which they hold security, up to the secured amount owed to them by the debtor.

The second class of creditors is *preferred creditors*, and they have priority over general or unsecured creditors. This category includes trustees and lawyers involved in the process, unpaid employees of the bankrupt individual, and unpaid taxes.

The third group is the *unsecured creditors*, who do not have a direct claim against any asset and are not given preferred treatment by the Act. Unsecured claims include amounts owed to secured or preferred creditors that are in excess of the amount secured or preferred. All unsecured claims are treated equally by the Act, with each entitled to receive the same amount per dollar owed from the trustee in settlement of the amount claimed.

The bankrupt's contractual obligations to his or her creditors are discharged once he or she has complied fully with the terms of the arrangement that has been made by the trustee and accepted by the court. Payment of the established proportion of unsecured obligations, rather than payment in full, is sufficient to discharge all obligations. However, the discharge of a bankrupt is not automatic; it is a matter within the court's discretion. Whether a discharge is granted depends on matters like whether the person is a first-time bankrupt. Also, a discharge doesn't cover absolutely all obligations. Some obligations continue anyway. These include fines, child support payments, and amounts gained through fraud.

The Companies' Creditors Arrangement Act

The Companies' Creditors Arrangement Act (CCAA) is a federal statute that provides a second option in the commercial context for insolvent debtors to avoid bankruptcy proceedings. It makes provision for the restructuring of business debt when a company is unable to meet its financial obligations. The CCAA enables a company to submit a proposal to its creditors for an arrangement without bankruptcy proceedings. It permits a company to remain in business even though insolvent, and protects it from proceedings by creditors who might wish to force it into bankruptcy. The benefit to creditors is orderly conduct of the debtor's affairs, by maintaining the status quo while the debtor attempts to gain its creditors' approval of the plan and, if the plan is approved, payment by its terms. The attempts to financially restructure Air Canada and Stelco in the early years of this decade have been made under the CCAA.

The CCAA and the Bankruptcy and Insolvency Act work in concert with each other. The Bankruptcy and Insolvency Act expressly provides that it does not affect the operation of the CCAA, and allows the court to order continuation of a proposal made under the Bankruptcy and Insolvency Act under the CCAA.

DEREGULATION

Canada now has laws and regulations covering almost every aspect of business. In recent years public concern that there are *too* many laws and regulations,

deregulation

Government withdrawal of certain laws and regulations that seem to hinder competition.

and that these laws and regulations cost the public too much money, has developed. Thus began the movement toward deregulation. **Deregulation** means that the government withdraws certain laws and regulations that seem to hinder competition. Perhaps the most publicized examples of deregulation were those in the airlines and telecommunications industries. Government used to severely restrict airlines with regard to where they could land and fly. When such restrictions were lifted, the airlines began competing for different routes and charging lower prices. This has provided a clear benefit to consumers, but puts tremendous pressure on the airlines to be competitive. Airlines such as WestJet have taken advantage of the opportunities, while Air Canada has had difficulty adapting. Similar deregulation in telecommunications has given consumers a flood of options in the telephone service market.

It seems some regulation of business is necessary to ensure fair and honest dealings with the public. Still, businesses have adapted to the laws and regulations, and have done much toward producing safer, more effective products. However, corporate scandals since the turn of the century have soured what appeared to be better dialogue and cooperation between business and government. Many in government and society called for even more government regulation and control of business operations to protect investors and workers. With global competition increasing and small and medium-sized businesses striving to capture selected markets, business and government need to continue to work together to create a competitive environment that is fair and open. If businesses do not want additional regulation, they must accept their responsibilities to all their stakeholders.

Key Terms

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