



Fourteenth Edition

The **LAW** *And* **BUSINESS**
ADMINISTRATION
In **CANADA**

SMYTH SOBERMAN EASSON MCGILL

KEY WEBLINKS

Throughout this book, references will frequently be made to the statutes enacted by the federal, provincial, and territorial governments. These statutes are now almost all available electronically. Listed below are the websites for the statutes of each jurisdiction:

Canada

<http://lois.justice.gc.ca>

Alberta

www.qp.gov.ab.ca

British Columbia

www.qp.gov.bc.ca/statreg

Manitoba

web2.gov.mb.ca/laws/index.php

New Brunswick

www.gnb.ca/0062/acts/index-e.asp

Newfoundland and Labrador

www.gov.nf.ca/hoa/sr

Northwest Territories

www.justice.gov.nt.ca

Nova Scotia

<http://nslegislature.ca/legc/index.htm>

Nunavut

www.nucj.ca/library/index.htm

Ontario

www.e-laws.gov.on.ca

Prince Edward Island

www.gov.pe.ca/law/statutes

Quebec

www.publicationsduquebec.gouv.qc.ca/accueil.en.html

Saskatchewan

www.qp.gov.sk.ca

Yukon

www.gov.yk.ca/legislation

In addition to the statutory bases, the following websites contain a wealth of material of general legal interest, which is relevant to most of the chapters in this book:

Canadian Legal Information Institute

www.canlii.org

Provides links to federal and provincial legislation, court decisions, etc.

Department of Justice

<http://canada.justice.gc.ca>

Includes details of the Canadian legal system, the courts, the legislative process, etc.

Uniform Law Conference of Canada

www.ulcc.ca

Includes proposals for law reform and harmonization

Legal Line

www.legalline.ca

Provides current information about Canadian law and the legal system

Bora Laskin Law Library

www.law-lib.utoronto.ca/resources

Includes links to various sites on Canadian law

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ADMINISTRATION
in **CANADA**

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This book offers a general discussion of legal principles relevant to business students. It is not intended to provide legal advice nor address specific situations. The law discussed in this book was compiled between January and June of 2014. Subsequent changes in the law will not be reflected in the text.

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Dan Soberman (1929–2010) studied law at Dalhousie University and Harvard University. He began teaching at Dalhousie in 1955, and in 1957 moved to Queen's University to help start the law faculty. He was dean of the faculty from 1968 to 1977, taught full-time until retirement in 1993, and continued to teach part-time there and in the School of Business until 1999. In the late 1960s, he was a member of the federal Business Corporations Task Force that drafted the Canada Business Corporations Act. In the autumn term of 2000, he was visiting professor at Kwansai Gakuin University in Japan. From 1977 until 2000, he was an adjudicator on human rights tribunals in Ontario and federally, and also acted as an arbitrator in labour disputes. He authored, or co-authored, chapters in various legal books and articles in law journals.

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Preface

We are excited to introduce the 14th edition of *The Law and Business Administration in Canada!* Over the past five decades, this text has been studied by thousands of business students. It has shaped today's business leaders and given them an introduction to the integral relationship between law and business.

More today than ever before, law plays a part in every facet of day-to-day business activities. Although contractual relationships remain the foundation of most business dealings with customers, suppliers, and lenders, other pressing legal issues continually emerge. Throughout the previous 13 editions, this text has responded to the quick pace of change in the business and educational environments with new content, features, and resources. The 14th edition responds to the needs of today's business students by streamlining the traditional study of contractual principles, emphasizing current legal topics involving government regulation of business, corporate governance, ecommerce, privacy, and globalization, and adding continuity to the discussion of strategies to manage businesses' legal risks by asking students to consider the legal issues facing a single business as it evolves through each chapter.

The 14th edition is a perfect fit for the current business education environment, maximizing both print and online resources. It expands the available online resources students have come to rely upon. In addition to legal content available in print, each chapter has supplemental detail and/or topics available on the Companion Website, giving instructors greater flexibility in the depth in which they cover certain topics.

As in previous editions, the 14th edition combines an unsurpassed commitment to in-depth legal content with an integrated practical approach to legal risk management. Each chapter identifies relevant international and ethical issues and highlights strategies to manage the legal risks identified in the chapter.

In this edition, we continue to streamline the contract content to make it more manageable and student friendly. The former Chapters 9 and 10 are combined to deal with writing and contractual interpretation in a consolidated manner. The Sale of Goods chapter in the specialty contracts part of the book is expanded to include consumer contracts, giving it a broader appeal. Government regulation of business continues to grow in importance, so this topic is given new priority in the 14th edition. The former Chapter 30 is revised and moved to the first part of the book; now, as Chapter 3, it rounds out the introductory material. Content in Chapters 1 and 2 was redistributed to guide the reader through the sources of law into a more detailed discussion of administrative law issues in the new Chapter 3. As a result of all of these changes, the 14th edition contains 32 rather than 33 chapters and the early tort and contract chapter numbers have changed.

As always, the new edition incorporates recent developments in the law into all chapters. Significant changes to copyright legislation, as well as new anti-spam legislation, are discussed in the relevant chapters. Landmark Supreme Court judgments involving copyright, international jurisdiction, and secured creditor priority are also incorporated into this edition. We completed the research supporting the revisions in the spring of 2014 so subsequent changes in the law will be reflected in the next edition.

In sum, the 14th edition presents a comprehensive overview of traditional and current business law topics in a readable, practical, multiplatform format with expanded online content and resources.

Shelley McGill
July 2014

SUMMARY OF CHANGES TO THIS EDITION

We set three key goals for this edition:

- streamlining and integrating print material with online resources
- reorganizing Part 1 to incorporate government regulation of business
- improving the organization and delivery of the contract content

A **multiplatform delivery of content** in both print and online formats benefits both instructors and students. In addition to the province-specific material that has been available online for some time, the Companion Website for the 14th edition offers supplemental material for each chapter including some of the detail and historical content offered in previous editions of the print book as well as expanded coverage of difficult or new topics. This online resource gives instructors greater flexibility in their approach to individual topics; those wishing more background, depth, or examples can incorporate the online material into class content, while those taking a more general approach may omit it. Students' reading assignments can be more easily customized to instructor priorities and students with particular interests may access additional material on their own. An added benefit of this coordinated use of resources is that the print text is considerably shorter than the 13th edition. We continue to make every effort to simplify the writing style while maintaining the in-depth coverage and level of explanation.

Part 1, entitled “The Law in Its Social and Business Context,” sets the stage for the more in-depth study of law that follows it. In this edition, a new chapter is added to this part that naturally follows the Chapter 2 content on the “Sources of Law” discussion of the legislative process with “Government Regulation of Business” content from the former Chapter 30. Expanded content on administrative law is also offered at this point, giving students a more complete description of procedural law before they confront the substantive principles in the balance of the book.

Contracts are the cornerstone of business activity, and therefore contract law is the heart of every business law course. Unfortunately, the detailed rules and exceptions can be confusing and overlapping. To improve student comprehension, we have consolidated the discussion of the requirement of writing with contractual interpretation by combining the former Chapters 9 and 10 into one comprehensive chapter. Detailed content is provided online. Chapter 14, formerly covering only specialty contracts involving the Sale of Goods Act, has been expanded to cover consumer contracts as well.

All chapters have been thoroughly updated and the Cases and Problems in each chapter now include a continuing scenario. A simple start-up business is introduced in Chapter 2 and followed through successive chapters as it confronts chapter relevant legal issues or challenges. Students will see how common it is for a single business to repeatedly encounter different legal issues as it evolves.

Extensive revisions made to particular chapters are summarized below.

Part 1: The Law in Its Social and Business Context

This part has undergone significant organizational and content changes to coordinate and consolidate the procedural and administrative law content from the former Chapter 30 with the existing Chapters 1 and 2.

Chapter 1: Law, Society, and Business

- Moved historic content online.
- Added legal profession content formerly in Chapter 2 as part of the “Legal Risk Management” content.

Chapter 2: The Machinery of Justice

- Revised and moved the administrative law content to Chapter 3 and supported it with additional content online.
- Moved the historic description of House of Lords and Privy Council online and describe the new (now independent) UK Supreme Court.

- **Moved** the discussion of the legal profession to Chapter 1.
- **Introduced** the continuing business scenario that will appear in each successive chapter's Cases and Problems.

Chapter 3: Government Regulation of Business

As noted earlier, this chapter was moved to Part 1 so that it follows naturally after the description of legislation, constitutional powers, and the Charter in Chapters 1 and 2 and eliminates the duplication of this material (needed to refresh the reader by the time they got to the former Chapter 30). In response to reviewer demand, this chapter is substantively changed to increase the emphasis on procedural enforcement of government regulations by adding “Administrative Law” as a stand-out section.

- **Revised and reduced** the content in “The Legal Framework for Doing Business in Canada” and “The Power to Regulate Business” to avoid repetition with Chapters 1 and 2.
- **Deleted** Case 30.1 repeated from Chapter 1 and added online examples.
- **Added** “Administrative Law” section before “Judicial Review of Government Regulation” discussing how regulatory boards monitor compliance with government regulations.
- **Reordered** the “Competition” content for a detailed description of the regulatory scheme complete with investigative and adjudicative components.
- **Reduced** content on “Regulation of Business Conduct Toward Consumers,” moving most to the new Chapter 14, “Sale of Goods and Consumer Contracts,” and some online.
- **Deleted** content under “The Common Law” heading as students will not have studied this yet.
- **Added** “Environmental Protection” content to the print and online resource referencing the new Canadian Environmental Assessment Act, 2012, and new Supreme Court decisions as well as the new Foreign Corrupt Practices Act.

Part 2: Torts

Chapter 4: The Law of Torts

- **Added** content on the new Supreme Court of Canada cases addressing key intentional torts such as nuisance, malicious prosecution, and unlawful interference with economic relations.
- **Added** content on the new tort of intrusion on seclusion; greater detail is offered in Chapter 32, “Privacy.”
- **Revised** the negligence content to separate causation and damage topics and simplify the discussion of remoteness.
- **Moved** some footnote detail, historic content on *res ipsa loquitor*, and policy discussions about the relevance of insurance to the Companion Website.

Chapter 5: Professional Liability: The Legal Challenges

- **Revised** the content on fiduciary duty to incorporate the new criteria set by the Supreme Court in 2011.
- **Reordered** the material on negligent misrepresentation, moving some of the history of its development online.

Part 3: Contracts

All contract chapters were revised to streamline and update content and remove duplication. Two chapters were consolidated.

Chapter 10: Writing and Interpretation

- **Combined** the content of the 13th edition's Chapters 9 and 10 into one chapter.
- **Revised** the subsection on "The Benefits of a Written Record" to incorporate a condensed version of "The Relationship Between Formation and Interpretation of Contracts" in the 13th edition's Chapter 10.
- **Revised** the subsection on "Types of Contract Affected by the Statute of Frauds" in the 13th edition to a list format with shorter descriptions, moving some content online.
- **Reduced** detail on "Requirements of the Sale of Goods Act," moving some detail to the new Chapter 14 and some to the Companion Website.
- **Reduced** the detail of "Consumer Protection Legislation" to a list format, moving the details to the new Chapter 14, "Sale of Goods and Consumer Contracts."
- **Added** 13th edition's Chapter 10 content on "The Interpretation of Express Terms" beginning with the former Illustration 10.1.
- **Revised** the former Ethical Issue "Can Judges Really Assess Credibility?" under a new heading, "Conflicting Testimony and Credibility."
- **Consolidated** material under "How the Courts Apply the Approaches" with content under "Predicting the Likely Outcome of the Court" and "The Goal of the Courts: Giving Validity to Contracts."
- **Updated** content on "Implied Terms" to include reference to terms implied by statutes, specifically the Sale of Goods Act and Consumer Protection Act (referring readers to Chapter 14).

Part 4: Special Types of Contracts

Chapter 14: Sale of Goods and Consumer Contracts

- **Moved** excess detail on risk of loss online.
- **Added to, revised, and updated** Sale of Goods Act and consumer contract content from the former Chapters 9, 10, and 30.

Chapter 19: Negotiable Instruments

- **Updated** content on Canadian Payments Association and Canadian Payments Act.
- **Added** online content on electronic cheque cashing.

Part 5: Property

The chapters in this part have undergone some modifications to incorporate key legislative changes including the Copyright Act and multiple Supreme Court of Canada decisions.

Chapter 20: Intellectual Property

- **Revised** copyright content to reflect the passage of the new Copyright Act.
- **Added** discussion of six new Supreme Court of Canada copyright cases.

Part 8: The Modern Legal Environment for Business

Chapter 30: International Business Transactions

- **Updated** the discussion of jurisdiction and forum non conveniens arising from new Supreme Court of Canada decisions.
- **Expanded** the NAFTA content on the Companion Website.

Chapter 31: Electronic Commerce

- **Updated** the discussion of Canadian anti-spam legislation.
- **Added** content on internet defamation arising from new Supreme Court of Canada decisions.
- **Updated** content on the new copyright legislation and Supreme Court of Canada decisions.
- **Expanded** discussion of forum non conveniens as it relates to internet contracts.

Chapter 32: Privacy (added in the 12th edition)

- **Added** discussion of new invasion of privacy tort called “intrusion on seclusion.”
- **Added** new content on three Supreme Court of Canada decisions on privacy.

FEATURES

A careful effort has been made to standardize features in each chapter that will facilitate learning and enhance an understanding of business applications:

- An Explanation of Abbreviations is printed on the inside back cover.
- A Table of Statutes and a Table of Cases are provided on pages xxv and xxx, respectively.
- Case and illustration boxes throughout each chapter in the book and on the Companion Website provide examples based on actual cases.
- The opening section of each chapter summarizes the focus of the material to follow and lists some of the questions that will be considered.
- Definitions of key terms are included in the margins of each page.
- A continuing scenario involving the same business is included in the Cases and Problems section of each chapter.
- For convenience, an explanation of How to Read a Citation is printed on the inside back cover.

SUPPLEMENTS

Companion Website (www.pearsoncanada.ca/smyth)

The Companion Website provides students with an assortment of tools to help enrich the learning experience, including

- self-assessment quizzes,
- mini-cases with assessment questions,
- province-specific legal material, and
- supplemental content for each chapter.

An access code for the Companion Website may be packaged with the printed text or may be purchased separately.

Instructor Supplements

The following instructor supplements are available for downloading from a password-protected section of Pearson Education Canada’s online catalogue (www.pearsoncanada.ca/highered). Navigate to your book’s catalogue page to view a list of those supplements that are available. See your local sales representative for details and access.

- **Instructor’s Resource Manual:** This manual provides lecture suggestions, a summary of the major changes from the 13th edition, additional information about the cases cited in the text, notes on the various Issue boxes, and suggested answers to all the Questions for Review and Cases and Problems.

- **Computerized Test Bank:** Pearson’s computerized test banks allow instructors to filter and select questions to create quizzes, tests, or homework. Instructors can revise questions or add their own, and may be able to choose print or online options. The test bank for *The Law and Business Administration*, 14th edition, includes over 1800 questions in multiple choice, true–false, short answer, and essay format.
- **Test Item File:** This test bank includes all the questions from the computerized version in Microsoft Word format.
- **PowerPoints:** Chapter-by-chapter presentations complement the text chapter content.

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