

STAY AHEAD PODCAST: DEMYSTIFYING QUÉBEC'S BUSINESS LANDSCAPE

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In the latest episode of our *Stay Ahead* podcast series, Shari Munk-Manel, McMillan's Montréal Office Management Partner, sits down with Partners Enda Wong - Mergers & Acquisitions, Yonatan Petel - Financial Services, and Steven Sitcoff - Tax, to discuss the Québec market and the opportunities for business development.

Québec presents promising investment opportunities for many kinds of businesses. Nevertheless, those unfamiliar with the province are often apprehensive about navigating its distinct nature and regulatory frameworks. This episode aims to address these concerns, as McMillan's legal lawyers/Partners from the Montréal office shine a light on Québec's business environment and offer the key information businesses need to know to embrace the many opportunities that the province has to offer.

Those interested in learning more about navigating the Québec market should contact Baya Touré at Baya.Toure@mcmillan.ca.

Transcript

Shari Munk-Manel: Hello to everyone listening. My name is Shari Munk-Manel, and I'm the Managing Partner of the Montréal office of McMillan. I'm also a labor and employment lawyer here in Québec, and I work with companies that have employees here. For those of you who are unfamiliar with McMillan, we're a leading full service business law firm with offices in Québec, Toronto, Ottawa, Calgary, Vancouver and Hong Kong, and we do a lot of work with businesses looking to enter into Canada, or who already have a Canadian presence.

The purpose of today's podcast is to provide some advice to businesses outside of Québec, particularly those in the United States, which is where many of our clients are located who are interested in either entering the province or expanding their presence here in Québec. Specifically, we'll be talking a little bit about the legal and regulatory landscape in Québec in order to provide you with some practical and strategic recommendations. We thought that this was an important topic since many businesses are hesitant to enter

the Québec market.

For those of you who don't know, Québec is different than the rest of Canada. While the other provinces are common law jurisdictions, Québec is a civil law jurisdiction, and the primary language in Québec is French. So as a result of its unique nature and the fact that it's different, many businesses are often afraid of entering into this unknown territory.

But we do feel that there are a lot of opportunities to make money here so we wanted to demystify a little bit for you what it means to do business here.

So I'm joined by some of my partners from our Montréal office, and I'm going to give each of them a minute to introduce themselves and tell you about their practice.

Enda Wong: Hi, I'm Enda Wong. My practice is in the M&A space. I also do corporate and commercial transactions and general business law.

Yoni Petel: Yoni Petel. I'm a partner here in the Montréal office as well, at McMillan LLP, and I have a focus on cross border transactions and raising debt and equity with a practice that touches both lenders and investors investing in the Québec market.

Steven Sitcoff: Hi, I'm Steven Sitcoff, and I'm the partner responsible for the tax practice in Québec at McMillan. I'm called to the bars of both Québec and Ontario, and I frequently assist foreign companies that are expanding their businesses to Canada and to Québec in particular.

Shari Munk-Manel: Thank you all for being here and joining me. So let's open up the discussion. I'm first going to just ask all of you what you think the biggest misconceptions are, what you hear from companies that are based in the United States about doing business in Québec. Enda, maybe I'll start with you.

Enda Wong: For sure. So I think maybe the biggest misconception would be that Québec is actually super different from every other jurisdiction in Canada and very, very different from the US, or anything that is more familiar to a lot of our clients. The reality is that when you do an M&A transaction, certainly in the private equity space, but also in the non-private equity space, a lot of the same considerations come into play. Of course, there are areas that are a little bit more nuanced in Québec, but that being said, for the most part, a lot of the same considerations would come into play in your typical transaction.

Yoni Petel: I think, you know, Enda hit the nail on the head when she mentioned about the differences. We are, as Shari mentioned earlier, civil law jurisdiction rather than common law. There is a French speaking majority, right? So those uniquenesses can sometimes be seen as a barrier to entry. And so I think people have the mistaken impression that it's difficult to break into the Québec market. But in fact, though there are

differences with the right advice, the Québec market is very accessible and can provide very unique opportunities and very significant opportunities for US based and other companies looking to invest here, to lend into the market or to expand their operations within the Québec market.

Steven Sitcoff: From a tax perspective, not all that dissimilar to the other comments. While US businesses often perceive the Québec marketplace as being unfamiliar in practice, however, Québec is really not all that different from the US experience when it comes to tax matters. In particular, the US has several taxing jurisdictions when taking into account the various federal, state and local tax levels. Similarly, each of Canada's provinces and territories has their own tax system, in addition to that, of the federal tax regime. Provincial corporate taxes are administered by the federal tax authorities in Canada, except for Québec and Alberta, which administer their own corporate tax systems. As a result, corporations that are subject to tax in Québec have to file two separate tax returns, one federal and one provincial, and also to deal with two distinct tax agencies. Clearly, foreign companies would benefit from having an experienced advisor to help them navigate this analysis, to determine the federal and provincial impacts on their operations, as well as any compliance issues which might apply. Moreover, quite apart from any perceived inconvenience in having to deal with two separate tax authorities, there might actually be certain tax advantage which might be derived from operating in Québec as we'll touch upon shortly.

Shari Munk-Manel: Thanks, that's interesting. And Steven, that leads me a little bit to my next question. You kind of touched upon opportunities. So what do you all see as some of the opportunities for businesses that are based in the United States if they decide to enter the Québec Market?

Yoni Petel: Well, I think, you know, Québec is a jurisdiction that's a business friendly, modern jurisdiction with legal, court and financial systems that you would expect in any kind of business forward market. But I think the opportunities really stem from business fundamentals and certain advantages that are available in the Québec market. The first thing is that Québec has a very strategic location. We're near important U. S. markets in the Northeast, Boston, New York, Philadelphia, Washington, and others. We're integrated with the rail network throughout North America, which is important for moving goods. And of course, Montréal has one of the busiest ports in the world. So the strategic location is the first factor. And the next factor, I think, is really the availability of a workforce in Québec that has a culture of innovation. It has a very deep talent pool of highly skilled people, particularly in the technology sector. We're 6th in North America for the highest concentration of high tech jobs.

We have Canada's greatest concentration of university research with eleven universities that have six engineering faculties that produce something like 50,000 graduates a year, and of course, two world renowned universities in McGill and University de Montréal, who consistently rank among the top worldwide, which does provide an important pool of labor for the high tech sector and others. It's also a very multilingual province, and

in particular in Montréal City, with 45% of the population is bilingual across Québec. That's much higher in Montréal, with hundreds of other languages spoken across the workforce.

Another very important factor is Québec's abundance of natural resources. Québec has many different natural resources, including strategic minerals that are important in things like battery production and other technological components, and that includes graphite and alumina and of course, the third largest lithium deposits in the world, which are very important for everything relating to electronic vehicles and battery production. Another important factor relates to that as well, which is the low cost, the availability and the sustainability of electric power in the province. We are lucky enough to have 99% green renewable energy, mostly in the form of hydroelectric power, as the main source of energy, as well as additional energy in the form of natural gas, particularly for industrial applications.

And so, as companies look to ESG Reporting and ESG factors and look to reduce their global kind of carbon footprint, that can be a very big advantage in particular because Québec energy could be up to 70% less greenhouse gas emissions than coal fired power, which is the predominant production method south of the border in the US. And Québec also offers just competitive operating costs generally. In addition to just talking about electric power, the labor costs are about 34% less than the US, 16% less than G7, electricity, as I mentioned, about 36% less than the average in the US and 49% less than the G7. And office rents also 47% less than the cost typically in the US and 51% less than elsewhere in the G7. So those are definitely important factors. And then finally, I'd like to mention the fact that the government provides all kinds of assistance. I'm sure Steven later on will talk more about tax credits and investment incentives and things of that nature. But in addition to that the government also has kind of departments or branches or affiliated agencies that encourage investment and help to accompany companies looking to open up or invest into Québec into the market, including Investissement Québec and Montréal International who do a great job of meeting entrepreneurs and other companies elsewhere, even outside of Québec, and accompanying them in their steps to look at expanding into the Québec market and I'd mentioned that the government recently adopted a five-year plan 2022 to 2027, specifically to invest heavily in supporting R & D and innovation in order to further develop the province's capacity in these areas.

And before I let my colleagues jump in as well, I would mention that this hasn't gone unnoticed and Québec has developed leading hubs in a few areas. AI with the presence of major global players like Meta, Google, Samsung, IBM, Microsoft. We're very well known for video game and animation industry, aerospace, life sciences, with a lot of players from among the most important operating here. And that provides, of course, an additional opportunity for those looking to join those sectors.

Shari Munk-Manel: So what do businesses need to know about the tax laws in Québec and how can a business entering the province navigate this complicated landscape?

Steven Sitcoff: So, from a tax perspective dealing with this question, it's advisable that companies that are doing business in Québec or planning on doing business in Québec to consult with their advisors as to potential tips and traps which might apply to their particular situation. It's better to be aware of any potential concerns from the outset in order to avoid unwelcome surprises. An on Québec corporation can generally be subject to corporate tax in Québec in either of two ways, namely through either having a physical presence in Québec, commonly referred to as a permanent establishment, or by having a deemed establishment in Québec through the presence of certain key employees having a requisite level of authority. So companies doing business in Québec would be well advised to consult with their advisors to ensure that they do not inadvertently become subject to Québec corporate income tax. For example, this might be the case even if the company does not maintain an office in Québec, but merely because it allows certain key employees to work remotely from their home in Québec. This is something that potentially exposes the foreign corporation not only in terms of corporate income taxes, but also potentially to payroll tax obligations as well as various filing requirements.

So this is best handled with care. In broad terms, it is generally advisable for a foreign company which is doing business in Québec to set up a separate Québec or Canadian corporation so as to effectively rank fence the revenues generated by those operations, rather than exposing the non Canadian income to potential Canadian tax liability. Similarly, potential sales tax implications should be considered by any corporation doing business here, namely, there are parallel federal and Québec sales tax regimes which might apply, although both are administered in Québec's case by the Québec tax authorities for Québec taxpayers. On the plus side, as Yoni referred to there are a number of generous tax advantages which might apply for corporate taxpayers doing business in Québec. Some of these are specifically intended to attract investment to Québec by offering a competitive advantage and enhancing the profitability of projects here. First, it should be noted that Québec has a competitive corporate tax rate.

Second, Québec offers a tax credit regime designed to encourage spending on qualifying research and development activities. There is also a potential tax exemption for foreign research and researchers and experts here intended to assist in recruitment.

Third, Québec offers other tax incentives targeted at certain sectors, in particular such as video and film production, including visual effects and animation, multimedia production, such as video games, the development of e-business and ecommerce, manufacturers of zero emission technologies, clean energy generation and natural resources. These tax credits vary by sector and generally cover salaries and labor costs.

Finally, there's a specific program which provides. Certain tax exemptions and other incentives for large investment projects. Of course, in dealing with these issues, you can't really look at Québec just at Québec in a vacuum, without considering the potential impact with respect to other potential provinces and also at the

federal level. The advantage we offer at McMillan is that our national tax team has a presence in key business centers across Canada so we can offer a seamless expertise covering all of these jurisdictions which might be implicated.

Shari Munk-Manel: I'd like to direct my next question to Enda. Enda, can you tell us what a business looking to acquire or merge with a Québec company needs to consider?

Enda Wong: Absolutely. So I think the first one is just more of a general, you know, might not be true in all cases, but I think is generally true from my experience, which is just basically the general corporate culture in Québec. So I think there's a lot of even though there are some very big companies in Québec, I think the general corporate culture that some of our clients from other jurisdictions are not as used to when they come to Québec is how, even for large enterprises, the corporate culture seems to be a little bit less formal, in the sense that there's a lot of companies with a lot of history that were kind of family based, and even though they've grown, that kind of spirit kind of still gets carried through. So when negotiating certain points, a lot of things tend to be more straightforward or more like, okay, just give me the bottom line. So, like I said, it's more of a general commentary, maybe not really legal based, but a general observation that I do think that people are struck by when they try to negotiate with owner-operators who are looking to sell, certainly. So the other things that I want to mention are that there are a lot of aspects as much as I want to say that there are a lot of aspects that are the same. There's lots of aspects that are quite different. So a lot of the times when someone comes to Québec and they're looking to acquire business in Québec, even if they know nothing else about Québec, the first thing they're concerned with are the language requirements. And with good reason, I think, you know, Québec does have a very, I want to say a very developed legislative framework with respect to what language obligations are in place.

And so recently Québec passed more stringent legislation with respect to French language laws. And so that's definitely something that foreign clients do need to be aware of the other thing is with respect to other regulatory frameworks. So for instance, in Québec there's an authority called the Autorité du marché public. So for anyone who does public tenders with government authorities, they need to be aware that they need to qualify with this. So this kind of brings into play like a lot of other regulatory frameworks. For instance, Québec has a very developed privacy office that oversees privacy legislation, which was recently modernized as well, and which carries very stringent penalties. Québec also recently implemented legislation with respect to corporate transparency, rendering information with respect to ultimate beneficial owners of corporations publicly accessible for anyone who's searching. So that is something that businesses should be aware of as they're looking to invest in Québec. I guess one last thing that I should mention would be the duty of good faith. I think this gets passed over quite a bit and we kind of forget a bit about it when we're situated in Québec because it governs every aspect of civil law and it's a public order requirement. But the impact of it is that when

negotiating as well as when carrying out a contract, there's an expectation that parties will act in good faith and not try to pull a fast one on each other. So I think that's something that is important to reiterate as well.

Shari Munk-Manel: Well, I have a general question for all of you. What industries have you seen that have been able to successfully enter the Québec market? Maybe Steven, I'll start with you.

Steven Sitcoff: Thanks, Sherry. The Québec government's strategy in using targeted tax credits as a means of attracting foreign investment in industries that have been identified as priorities has certainly been a success. It is particularly noteworthy in this regard that some of these targeted tax credits are refundable, which means that you could receive the full amount of the tax credit as a financial incentive, even if you actually owe little to no taxes. As a result of these credit regimes, Québec has become an important hub in both the film and television production, including special effects and animation, as well as the video game production industries. And there has been an important impact in terms of spinoffs, including the development of a highly qualified and well trained local talent pool, as well as a vast homegrown support network as well for those industries. Québec is now seeking to achieve similar successes in the areas of clean energy and zero emissions technologies. There have already been announcements in recent months of important foreign developments in EV battery production plants as well as critical mineral development projects.

Enda Wong: So I guess from my point of view, I think a lot of these things were kind of touched on already. So it's not necessarily a specific industry area, but I think a lot of small and medium sized business do find a lot of success in Québec. There is a lot of funding that goes to size of a company. We do see a very healthy startup environment as well. And I think the tech industry has actually been quite successful in making a large footprint in Québec as well.

Yoni Petel: Yeah, I would know I'd pick up on the Shred credit program Steven, I think mentioned it, but the fact that you can get refundable credits, this is true throughout Canada, I think not particular only to Québec, but I think Québec as well has certain similar incentives. You're able to have refundable credits for a large part of development in R&D. So anything related to R&D this tends to be. For all those you know, mentioning the available talent pool combined with those tax credits. can make it a very important opportunity for anybody looking to do R&D. And that doesn't only relate to tech, but primarily, I guess some of the industries that have taken advantage have been tech but also fintech, agrifood, food processors who do kind of quality control and R&D and new development of new processes and new equipment, all of those life sciences as well, all kinds of research related to whether it's medications or other processes can benefit from some of those credits. So those tend to be opportunities within various industries. And again, I mentioned some of the, we have a leading hub of video game and animation kind of productions and as well as AI. And Steven mentioned, you mentioned some of the new industries relating to clean energy and battery production and some of that. The combination of having the primary materials available in the market in terms of mineral exploration that are

important, combined with the tech workforce, combined with those tax incentives, probably is a good recipe for somebody with know-how to come in and have a great kick at the can in terms of developing something very unique here in Montréal or elsewhere in Québec. That's the other thing. We tend to think of **Montréal** as one of the main hubs and then Québec City, but there are also other regions that have very important industrial and other production facilities. One of the things that attracts people to those regions is that they still have that available talent pool that are highly skilled to work in those industries. So I think that provides a great opportunity.

Shari Munk-Manel: Thanks, Yoni. Before we conclude, I'm going to ask all of you, even after listening to everything that you had to say and all your compelling arguments for why it would be a good idea to enter the Québec market, for businesses that are still hesitant, what would you say to them?

Yoni, maybe let's start with you.

Yoni Petel: There are definite differences. Those differences can be a barrier to entry. But if you are properly advised and properly accompanied in your steps to enter the market, you will be successful, I think. And you know, that doesn't just mean of know the advice we could provide as professionals, but as well, like I mentioned them before, Montréal International, Investissement Québec, others who help companies who are considering making the move in to understand the market, understand what's available, understand the subsidies and take advantage of you know, don't let the differences block you from doing it. If you're interested and want to know more, look into it before you make the decision. Some have had great successes, we have some great success stories which maybe we'll discuss as a last step. And I'll just point to one, which is Morgan Stanley. Morgan Stanley's presence in Montréal. Their office opened in 2008 with 160 employees. It's now grown to over 2700 engineers and IT professionals here in Montréal, making it one of its most prominent tech hubs in the world and its biggest in Canada. So that's a great example of someone coming in the market, they came in. You don't have to start at the end, you start at the beginning, you start step by step and you will find that the opportunity that's here, if you are well advised and poised to take advantage of it, can lead you pretty far.

Shari Munk-Manel: Steven, do you have anything to add to that?

Steven Sitcoff: Well, I think that it's very telling that the Québec government has been using tax policy as a means of driving economic development and that's something that's been going back decades now. So I think that tells you an awful lot about the overall atmosphere which is intended to attract business and investment to Québec. So that's certainly something that should be taken into account but ultimately, of course, you don't go skydiving without a parachute. So anyone who's interested in testing the waters would be well advised to consult with their professional advisors to determine whether and how some of these incentives and other tax consequences might apply to their particular circumstances.

Enda Wong: Yeah, I think on my end, just kind of playing on those themes, but not exactly on the same topic. I think one thing I did want to mention about Québec is that in many ways, sometimes investors come and they think, oh, it's so different and I think that's been sort of the theme of this podcast. But really at the end of the day, if you look at some of the changes that I mentioned during my segment anyways about some of the changes that you need to be aware of in Québec law, a lot of these things are already in existence, but in other parts of the world. So I think where other common law provinces tend to look to the US for inspiration for certain changes, Québec has a tendency to look towards Europe. So, for instance, when I mentioned the privacy legislation and how they made major reforms, a lot of that followed GDPR. When we look at the Transparency Register as an example, the other provinces are starting to look into this and to follow suit. The federal government is looking into it. So even though Québec is the first adopter, they're not necessarily going to be the outlier at the end of the day. So while these things might seem, I guess a little bit intimidating, because Québec seems to be the first one to do these things, they are things that this is basically where future regulation is heading, I think, and so it could be a good indicative environment as to what you have to look out for in your industry to the extent that something applies to you.

Shari Munk-Manel: On that note, I would like to thank all of you, Enda, Yoni and Stephen for being here. Your input was extremely informative, and I think that it will definitely assist our listeners in making educated decisions when thinking about whether to enter the Québec market or not. I also want to thank all of our listeners for being here. I hope that the information provided answered your questions, and I encourage you all to reach out to Enda, Yoni or Steven in the future. If you have any questions or if you'd like more information, you can find them on our website. And you could also follow McMillan on LinkedIn and on Twitter for more content, which we regularly post.