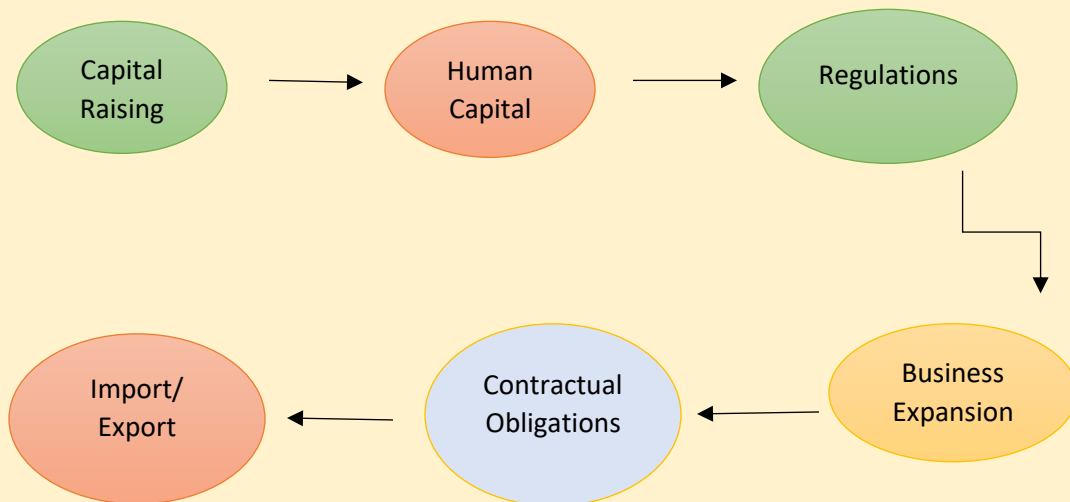


Pathway to SME Scalability

A businesses' ability to expand is directly proportional to its competitiveness. It provides businesses with more opportunities as well as spark interest in employees. Businesses will be able to be in a better position to recruit and retain talented human capital. However, many challenges also arise. There will be a substantial increase in operating costs which takes up a large amount of working capital. In terms of human resources, expansion and team cohesiveness will be needed to adapt to the business's pace of growth.

However, the biggest challenges that face many small businesses are legal disputes. It has been predicted that 3 out of 10 small businesses will face legal disputes in the following three years. And most of these legal disputes have a significant impact on finances and resources. Yet, it has been found that 73% of the businesses don't have the enough funds to resolve disputes –with a two-day civil action costing nearly over \$44, 000.



Contractual Obligation

Did You Know?

Did you know that contracts can be either verbal, written or both? While **verbal contracts** are enforceable, they are hard to prove since it relies on the good faith of all parties. Therefore, it is best to reduce all agreements to writing. **Written contracts** may either be a standard form agreement or a document confirming the agreement.

A contract is binding when there is:

- An offer
- An acceptance
- An intention to enter a contractual relationship
- Consideration

A contract can be terminated when there is:

- An **agreement** by all parties to terminate the contract
- A **frustration** where circumstances outside the parties' control makes it impossible to continue the contract.
- A **breach** where a party failed to comply its contractual obligations. The other party may terminate contract and sue for damages.

Challenges

Parties to a contract may disagree over the terms of the contract. There may be disagreement over the scope of work as outlined as well as the financial liability should a breach of contract occur.

Therefore, contractual conditions are fundamental. If conditions are not fulfilled, the contract will be terminated and parties may seek damages. Contract warranties, on the other hand, are not fundamental in that a contract will not be terminated should a breach occur. However, parties can still seek damages.

Practice Tip

What to include in a contract?

A contract typically include the following elements:

1. **Define all parties:** legal names and full addresses
2. **Scope:** detailed description of work provided
3. **Payment terms:** list payment amount, length of payment period, deadline and interest rate for late payments
4. **Consequences:** define the responsibility of each party and the consequences of a breach
5. **Terms and Conditions:** exculpatory clause, terms for amendment and termination, warranties
6. **Signatures:** include the signatures of all parties, the date signed, the title and typed names of all parties

Before signing a contract:

1. **Read every word**-including the fine prints carefully
2. **Define the terms and conditions** in as much detail as possible
3. Put any **changes in writing** and make sure all parties initial the changes
4. There should be **no blank spaces** to avoid altercations.
5. Ensure the terms and conditions reflect the negotiated agreement
6. **Seek legal advice**
7. Make sure you have **plenty of time** to read and understand the terms and conditions

Employer's Obligation

Did you Know?

1. **Registration with WSIB:** Within 10 days of hiring any employees, employers must register with the Workplace Safety and Insurance Board (WSIB)
2. **Written Records:** All employers must collect and store written records of each employee. Certain information employers must collect includes:
 - **Name, address and starting date of employment**
 - **Vacation time and pay information**
 - **Employees' pay stubs information**
 - **Any overtime hours and pay**
 - **Date of Birth** (If employee is under 18 years of age)
 - **Any documents** detailing an employee's critical illness, pregnancy, emergency contact information, family medical, organ donor, family caregiver and crime related child death
3. **Termination** of an employee must be in accordance with the *Employment Standards Act, 2000*. Employees must be provided with either a written notice or a termination pay. Termination Pay must cover one week of an employee's regular compensation including vacation pay
4. **Right to refuse work:** An employee have the right to refuse to work on public holidays. If an employee agreed to work during a public holiday, they may later rescind their consent by giving at least 48 hours of notice to the employer.
5. **Personal Information Protection:** An employer have the obligation to protect the privacy of any personal information collected from their employees. Employers should review and comply with the *Personal Information Protection and Electronic Documents Act (PIPEDA)*. Some of the obligations include:
 - **Consent** → Obtaining employee's consent when collecting personal information
 - **Limitation of Use** → employers must limit the use of the personal information to the purpose they have identified and only retain the records for as long as necessary

Safeguards: Safety measures should be set up to protect sensitive information

Challenges

One of the biggest challenges facing employers is workplace compliance with the *Ontario Health and Safety Act (OHSA)*. Did you know that failure to comply with OHSA may not only lead to a fine of \$250 to \$650 on the spot, but may also lead to a court judgment? The courts

may fine the employer an additional fine of up to \$100, 000 per individual (or 12 months jail time) or an additional fine of up to \$1, 500, 000 for corporations.

Employee's Rights	Employer's Obligations
Pursuant to section 25 of OHSA employees have the right to know any safety risks they might be exposed to.	All employer must put up certain posters such as: <ul style="list-style-type: none"> • Health & Safety at Work: Prevention Starts Here • A copy of the Occupational Health and Safety Act
As outlined in section 43 of OHSA, employees may refuse to work if they believe they are exposed to danger	If an employer have 6 or more employees they must (in addition to the documents above) put up: <ul style="list-style-type: none"> • Health and Safety Policy • Workplace Violence Prevention Policy • Workplace Harassment prevention Policy
Workers have a general obligation to take responsibility for their own health and safety. They should not knowingly or act recklessly when operating equipment that may endanger themselves or others.	If an employer have 20 or more employees they must set up a joint health and safety committee. All employees are entitled to the names and locations of such committee.
	Employers must ensure that any equipment, supplies, materials are in good repair. They must take all reasonable steps to ensure the health and safety of their employees.

Additional Resources

For additional information you may want to visit workers health and safety center where they have additional training and resources for employers

To review your rights and duties as an employer and whether they are compliant with the OHSA please visit the Ontario Ministry of Labour, Training and Skills Development webpage for more information. <https://www.labour.gov.on.ca/english/hs/faqs/rights.php>

Business Licensing

A business license grant businesses the right to operate within a country, province or municipality. Without proper licensing, businesses may be fined or in some case even shut down. A business may be required to have not just one but several licenses. Below is a summary of some of the basic permits and license you may be required to obtain.

License	Description	Application Form
Food Handler Certification	Obtained if you plan to serve beverages or food	https://secure.toronto.ca/webapps/foodhandlers/
Produce License	Obtained to import fresh fruit and vegetables into the country	https://www.inspection.gc.ca/about-the-cfia/my-cfia/eng/1482204298243/1482204318353
Liquor Sales License	To sell and serve alcohol in Ontario	https://www.iagco.agco.ca/prod/pub/en/login.aspx
Municipal Clearance for Liquor License (Municipal Information Form)	To sell and serve alcohol in Toronto	https://www.toronto.ca/wp-content/uploads/2017/11/98b8-Municipal-Liquor-Licence-Clearance-form.pdf
Public Health Inspection (DineSafe)	All restaurants in Toronto must undergo food safety inspections.	https://www.toronto.ca/community-people/health-wellness-care/health-programs-advice/food-safety/dinesafe/
Boulevard Café Permit	Obtained by restaurants and cafes to operate an outdoor patio on the sidewalk in Toronto	https://www.toronto.ca/service-s-payments/permits-licences-bylaws/sidewalk-cafe/
Canada Customs Coding Form	Retail Stores must document any imported goods for commercial use.	https://www.cbsa-asfc.gc.ca/publications/forms-formulaires/b3-3.pdf
Canada Customs Invoice	Stores must properly invoice any imported goods	https://www.cbsa-asfc.gc.ca/publications/forms-formulaires/ci1.pdf
Import Control Permit	If you are importing agriculture products, firearms, weapons, textiles and clothing or steel, you need an additional permit.	https://www.international.gc.ca/controls-controles/assets/pdfs/forms/documents/EXT1466.pdf

Fish Import License	Obtain this license if you plan to import fish or fish products	https://www.inspection.gc.ca/about-the-cfia/my-cfia/eng/1482204298243/1482204318353
Export Declaration	You must declare any goods that are exported from the country.	https://www.cbsa-asfc.gc.ca/publications/forms-formulaires/b13a.pdf
Export Permit	Export Permit is needed to export goods such as: military and strategic goods, firearms, softwood lumber, logs, sugar and products containing sugar, peanut butter, goods originating in the U.S. and technology	https://www.excol-ceed.gc.ca/Main-Principal/Home_Accueil.aspx
Sound Licenses	Obtained to use recorded music in public	

Non-Disclosure Agreements

Did You Know?

In today's competitive business environment, it is critical for businesses to protect themselves and their inventions by drafting non-disclosure agreements. **A non-disclosure agreement** is an agreement that protects sensitive information from being shared with a competitor or a third party. In other words, the party with whom the information is shared cannot use or disclose that information without your consent.

There are two types of non-disclosure agreements. **A one-sided agreement** is used when only one party share sensitive information with the other party. However if both sides may potentially share sensitive information, a **mutual NDA form** is used.

Challenges

One of the main challenges of drafting non-disclosure agreement is defining the meaning and scope of information covered by the agreement. Is confidential information limited to writing or can it include oral information? The disclosing party may want to define confidential information as broadly as possible so the other party do not take advantage of any loopholes created by the contract. The receiving party may want the terms to be defined narrowly so as to know exactly what they can and cannot disclose. Dealing with oral information may be tricky. Without any limitations, oral information may be too broad to be deemed as confidential information. In practice, after confidential oral information was disclosed, the disclosing party has to draft in writing what oral statements are deemed confidential. When legal disputes arises, Courts have substantial discretion in judging the scope of confidential information covered by the agreement including the intention of the parties and the specific language used.

Secondly, there may be situations where it would be too burdensome for the recipient party to keep information confidential. The NDA may address these situations by containing exclusion clauses.

Exclusion clause may include situations such as:

1. Information already known to the public
2. The recipient party independently developed a product without the use of the confidential information
3. The recipient party is forced to disclose the information through a court order

Practice Tips

A non-disclosure agreement should include:

1. The parties to whom the agreement applies: → Does the agreement apply to both parties? Does it apply only to one party? Is it between individuals or businesses? Employers and Employees?
2. The duration of the NDA → How long does the agreement remain in effect?
3. The geographical limitation of the NDA → Does it apply to a province? To a country?
4. The scope of the information protected → Does it protect oral information? One aspect of an innovation?

It is important to store sensitive information on an USB key or own computer. Never email sensitive documents.

Business Tool

1. **Pro Bono Ontario**
 - Provides free legal advice to small business owners over the phone. Call toll-free within Ontario: 1-855-255-7256
2. **Office of the Employer Adviser:**
 - Call (416) 327-0020 if there is inquiry about workers' rights and compensation
3. **Small Business Enterprise Centre**
 - North York
 - Enterprise Toronto
 - North York Civic Centre
 - 5100 Yonge Street, main floor
 - North York, Ontario
 - M2N 5V7
4. **Search license and permits:**
 - A search tool that allows owners to know specifically what permits are needed <https://www.bizpal.ca/>
5. **Legal Issues for small businesses:** <https://www.canada.ca/en/services/business/protecting.html?it=managing-your-business/day-to-day-operations/protecting-your-business/legal-issues/legal-issues-for-small-business/&it=eng/page/2695/>
6. **Law Help Ontario:**
 - A legal clinic that helps litigants with civil matters free of charge
 - Visit www.lawhelpontario.org
7. **Ontario Legal Information Centre:**
 - Provides a free 30 minute consultation to any resident of Ontario facing legal disputes. Services are available in both English and in French.
 - Please call 1 844-343-7462