With a vibrant economy and close proximity to the United States, Canada is the natural first destination for franchise companies in the U.S. and overseas that are looking to expand internationally. There are approximately 1,300 franchise brands and over 75,000 franchise units operating throughout Canada, crossing almost 50 different sectors of the economy, including retail, hospitality, automotive and health care. Franchised businesses account for one out of every five consumer dollars spent in Canada on goods and services, and they contribute approximately $96 billion annually to the nation's Gross Domestic Product.

While Canada is an attractive destination for international expansion, franchisors must be aware of the franchise-specific disclosure laws currently in effect in six of the Canadian provinces.

1. Franchise disclosure legislation
2. The disclosure obligation
3. The duty of fair dealing
4. The right of association
5. Rights cannot be waived
6. Province of Québec
1. Franchise disclosure legislation

The provinces of British Columbia, Alberta, Manitoba, New Brunswick, Ontario and Prince Edward Island have each enacted franchise disclosure legislation. The rights of franchisees and the obligations imposed on franchisors under the franchise legislation in these six provinces are very similar, with the general aim being to regulate the marketplace and to protect both prospective franchisees and those already party to a franchise relationship. The legislation is remedial and is intended to address the perceived imbalance of power in the franchisor-franchisee relationship by adopting the following key principles:

- The obligation imposed on franchisors to provide disclosure
- The duty of good faith and fair dealing imposed upon franchisors and franchisees; and
- The right of franchisees to associate

Failure to comply with any of these obligations gives rise to significant remedies for franchisees. Furthermore, a franchisee cannot contract out of the rights granted to it or grant a waiver of the obligations imposed on franchisors under the legislation.

The franchise legislation also deems unenforceable any provision in a franchise agreement that restricts the application of the laws of the province, or that restricts the jurisdiction or venue to a forum outside of the province for claims enforceable under that province’s franchise legislation.

2. The disclosure obligation

A franchisor wishing to grant a franchise in any of the six disclosure provinces must provide a prospective franchisee with a disclosure document at least 14 days before the earlier of: (i) the signing of the franchise agreement, or any agreement relating to the franchise, by the prospective franchisee, and (ii) the payment by the prospective franchisee of any consideration relating to the franchise.

A disclosure document must contain all of the information prescribed by the regulations under the legislation, including the franchisor’s financial statements in either audited or review-engagement form, as well as all other "material facts" (as discussed below) that would reasonably be considered relevant to a prospective franchisee’s decision to acquire a franchise. Large, mature franchisors may be exempt from the requirement to include financial statements if they meet certain criteria.

a. Material facts
A "material fact" is broadly defined in the legislation to include any information about the business, operations, capital or control of the franchisor or the franchise system that would reasonably be expected to have a significant effect on the value or price of the proposed franchise, or on the decision to acquire the franchise.

The requirement to disclose information beyond that specifically prescribed by the legislation has led to some of Canada’s most significant franchise-related court decisions. As a result, disclosure documents must, in many circumstances, be customized to include information applicable to the subject matter of the franchise grant or the location of the proposed franchise.

b. Certification

A disclosure document must be certified as complete disclosure in accordance with the legislation. A signed and dated certificate is not a mere formality but a mandatory requirement of the disclosure requirements. Failure to include a properly signed and dated certificate in a disclosure document will result in a determination that no disclosure was provided to the franchisee.

The certificate must be signed and dated in the manner prescribed by the legislation. In particular, an incorporated franchisor must ensure that the certificate is signed by two of its officers or directors (or one, if there is only one) and must be signed personally by the directors and officer, not on behalf of the franchisor.

c. Remedies

The franchise legislation has been broadly interpreted by the courts to ensure that the purpose of the legislation is met and that a prospective franchisee is provided with the information necessary to make an informed investment decision.

If the disclosure document provided to a franchisee fails to comply with the disclosure requirements, a franchisee has the right to rescind the franchise agreement. Following a valid rescission, the franchisor is obliged to essentially put the franchisee back into the position it had been in prior to the purchase of the franchise by:

- Refunding all monies paid to the franchisor by the franchisee;
- Purchasing all inventory, equipment and supplies purchased by the franchisee pursuant to the franchise agreement at the price paid by the franchisee; and
- Compensating the franchisee for all losses incurred to establish and operate the franchised business.
Two separate time periods are available to a franchisee to rescind:

- No later than 60 days after receiving the disclosure document, if the disclosure document did not comply with the delivery requirements of the legislation or if the contents of the disclosure document did not meet the legislation's requirements; or
- No later than two years after entering into the franchise agreement, if the franchisor never provided the disclosure document.

The courts' interpretation of the rescission remedy has blurred these two time periods by deeming that a materially non-compliant or deficient disclosure document is no disclosure at all, entitling a franchisee to rescind within two (2) years after entering into the franchise agreement. As a result, strict compliance with the delivery requirements and the prescribed contents of a disclosure document is a necessity. Delivery of a generic "standard form" disclosure document to a prospective franchisee is insufficient and will not protect a franchisor from claims of non-compliance - particularly in cases where additional material information regarding the proposed franchise is known to the franchisor at the time of disclosure.

In addition to the rescission remedy, a franchisee has the right to bring a claim for damages for misrepresentations made in the disclosure document or for a franchisor's failure to comply with the disclosure requirements. Accordingly, if a franchisee misses the time period for rescission, it can still seek damages for a franchisor's failure to comply with the disclosure requirements.

Claims for misrepresentation can be made against not only the franchisor, but also against the directors or officers who signed the certificate of disclosure and other individuals who are involved with the grant of the franchise. "Misrepresentation" is defined broadly to include omissions, and a franchisee is deemed to rely on a misrepresentation in a disclosure document and on the information contained in the disclosure document provided.

3. The duty of fair dealing

Franchise legislation in Canada imposes on all parties to a franchise agreement a duty of fair dealing in the performance and enforcement of the agreement. This includes the duty to act in good faith and in accordance with reasonable commercial standards.

The courts have interpreted the duty of fair dealing to require that a franchisor enforce the franchise agreement in a manner that takes into account the interests of the franchisee (but not to the exclusion of the franchisor's interests) without malice or ulterior purpose. In effect, the obligation imposes limitations on a franchisor's discretion in enforcing its strict contractual rights where such exercise negatively impacts the interests of the franchisee. The duty of fair dealing
is imposed on both the franchisor and a franchisee, and a breach entitles the non-breaching party to claim damages for the breach.

4. The right of association

Franchisees have the right to associate with other franchisees and to form or join an organization of franchisees without penalty or interference from the franchisor. Any provision in a franchise agreement that restricts this right is void, and a franchisee has a right of action against the franchisor for breach of this right. The right of association has been used by the courts to protect a franchisee's right to participate in a class action claim against a franchisor.

5. Rights cannot be waived

Under the franchise legislation, rights given to a franchisee and obligations imposed on a franchisor cannot be waived. Accordingly, a release by the franchisee as a condition to the franchisor's consent to a renewal or transfer of its franchise must expressly exclude rights and obligations imposed by the legislation.

In addition, the applicable provisions in the franchise agreement requiring a release by the franchisee on renewal or transfer must expressly state that the release excludes the rights and obligations imposed by applicable franchise legislation in the franchisee's province - or the condition requiring delivery of the release will be rendered void. However, the courts will uphold a release given by a franchisee of existing known claims as part of a negotiated settlement of a dispute.

6. Province of Québec

The province of Québec is a civil law jurisdiction. While Québec has no franchise-specific legislation, both the Civil Code of Québec and the Charter of the French Language apply to franchising.

Québec's Civil Code contains provisions governing "contracts of adhesion," which include franchise agreements and other standard form agreements of a franchisor. One interesting provision of the Civil Code states that any terms of a contract that are not fully known to a party, such as a franchisee, at the time of signing will not be enforceable. This could affect the usual franchise agreement term that requires franchisees to comply with the operations manual, and would require franchisors to arrange for a confidential disclosure of the manual to a
prospective franchisee before the franchise agreement is signed.

The Civil Code also contains a statutory duty of good faith. This duty is broader than the duty of fair dealing under the provincial franchise legislation, as it applies to the negotiation as well as the performance and enforcement of franchise agreements.

The Charter of the French Language mandates French as the required language of doing business in Québec and in the workplace in Québec. "Doing business" applies to forms, advertising (including websites), posters and signs. In addition, if a French version of a trademark has been registered, it must be used by a franchised business in Québec.

While the Charter requirements typically result in the equal use of French and English, there are some provisions, such as those governing the use of signs and posters, where the use of the French language must be "markedly predominant." This usually means a French-to-English ratio of two-to-one in size of wording or number of items.

In the workplace, working documents must be available in French, including software if French-language versions exist.

Franchising is a significant and well-recognized means of doing business in the province of Québec, and although there are specific laws intended to preserve and entrench the French language in the province, they are usually easily complied with.

Learn more about Gowling WLG services in franchise law »

NOT LEGAL ADVICE. Information made available on this website in any form is for information purposes only. It is not, and should not be taken as, legal advice. You should not rely on, or take or fail to take any action based upon this information. Never disregard professional legal advice or delay in seeking legal advice because of something you have read on this website. Gowling WLG professionals will be pleased to discuss resolutions to specific legal concerns you may have.
<table>
<thead>
<tr>
<th>Email</th>
<th><a href="mailto:peter.snell@gowlingwlg.com">peter.snell@gowlingwlg.com</a></th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone</td>
<td>+1 604-891-2281</td>
</tr>
<tr>
<td>vCard</td>
<td>Peter VanVliet Snell</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Email</th>
<th><a href="mailto:debi.sutin@gowlingwlg.com">debi.sutin@gowlingwlg.com</a></th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone</td>
<td>+1 905-540-3259</td>
</tr>
<tr>
<td>vCard</td>
<td>Debi M. Sutin</td>
</tr>
</tbody>
</table>

**Doing business in Canada - a checklist**
Is Canadian business in your organization's future? Our checklist offers a high-level summary of the legal issues organizations should consider before entering the lucrative Canadian market.

**Doing Business in Canada: Top ten things that may surprise you**
Although Canada's legal system may be familiar to many foreign investors and companies, it has a number of unique aspects that may surprise you.

**Gowling WLG updates**
Sign up to receive our updates on the latest legal trends and developments that matter most to you.
How we can help

To meet your unique needs, we pair our renowned service area expertise with an in-depth knowledge of your industry sector. Our dedicated legal professionals are here to answer your questions.

Gowling WLG is an international law firm comprising the members of Gowling WLG International Limited, an English Company Limited by Guarantee, and their respective affiliates. Each member and affiliate is an autonomous and independent entity. Gowling WLG International Limited promotes, facilitates and co-ordinates the activities of its members but does not itself provide services to clients. Our structure is explained in more detail on our Legal Information page.

© 2020 Gowling WLG International Limited. All rights reserved.