



Franchising

Doing Business in Canada

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Franchising continues to be a growing industry in Canada, both internally from Canadian companies looking to expand and externally from international companies trying to enter the Canadian market.

Although Canada shares many cultural similarities with the United States, consumer preferences may vary greatly, even among provinces, and it would be beneficial for foreign companies looking to do business in Canada to conduct market research and testing before using franchising as a vehicle for expansion.

Franchising is the 12th largest industry in Canada and is projected to grow by four per cent from 2025, with total franchise-related GDP estimated to reach \$133.3 billion in 2026.¹ The number of franchised establishments is also expected to grow slightly from last year to approximately 67,600 units by the end of 2026.² The largest growth is projected in Ontario, Alberta and British Columbia.³

Franchisors looking to franchise in Canada should be aware that provincial legislation is currently in place in six provinces: Alberta, British Columbia, Manitoba, New Brunswick, Ontario and Prince Edward Island. It is also anticipated that Saskatchewan will introduce its own franchise legislation in 2026. Although Quebec does not have specific franchise legislation, the *Civil Code of Quebec* may impose similar obligations on franchisors. While there has been discussion of introducing harmonized franchising legislation across Canada, there is currently no federal legal regime.

WHAT IS A FRANCHISE?

The statutory definition of “franchise” is exceptionally broad and is almost identical across the provinces that have franchise legislation. A franchise means a right to engage in a business where the franchisee is required by contract or otherwise to make a payment or continuing payments, whether direct or indirect, or a commitment to make such payment or payments, to the franchisor, or the franchisor’s associate, in the course of operating the business or as a condition of acquiring the franchise or commencing operations and,

- a) in which,
 - i. the franchisor grants the franchisee the right to sell, offer for sale or distribute goods or services that are substantially associated with a trade-mark, trade name, logo or

advertising or other commercial symbol that is owned by or licensed to the franchisor or the franchisor’s associate, and

- ii. the franchisor or the franchisor’s associate has the right to exercise or exercises significant control over, or has the right to provide or provides significant assistance in, the franchisee’s method of operation, including building design and furnishings, locations, business organization, marketing techniques or training, or
- b) in which,
- i. the franchisor, or the franchisor’s associate, grants the franchisee the representational or distribution rights, whether or not a trade-mark, trade name, logo or advertising or other commercial symbol is involved, to sell, offer for sale or distribute goods or services supplied by the franchisor or a supplier designated by the franchisor, and
 - ii. the franchisor, or the franchisor’s associate, or a third person designated by the franchisor, provides location assistance, including securing retail outlets or accounts for the goods or services to be sold, offered for sale or distributed or securing locations or sites for vending machines, display racks or other product sales displays used by the franchisee (“franchise”)⁴

It is important that companies operating in these provinces be mindful of whether their business relationship could be deemed a franchise.

Franchising comes in many forms and is not limited to the traditional fast-food restaurant concept many people associate with it. In fact, various business relationships that the parties never intended to be franchises may fall under provincial legislation.

There are two main types of franchising in Canada: (1) business format franchising and (2) product franchising. Both types involve the grant of a right by the franchisor to the franchisee, along with the obligation of the franchisee to make a payment or ongoing payments to the franchisor.

The most common structures that occur in business format franchising, which often involves licensing certain trademarks, training on the franchisor’s methods of operation and enforcement of system standards across the network, are as follows:

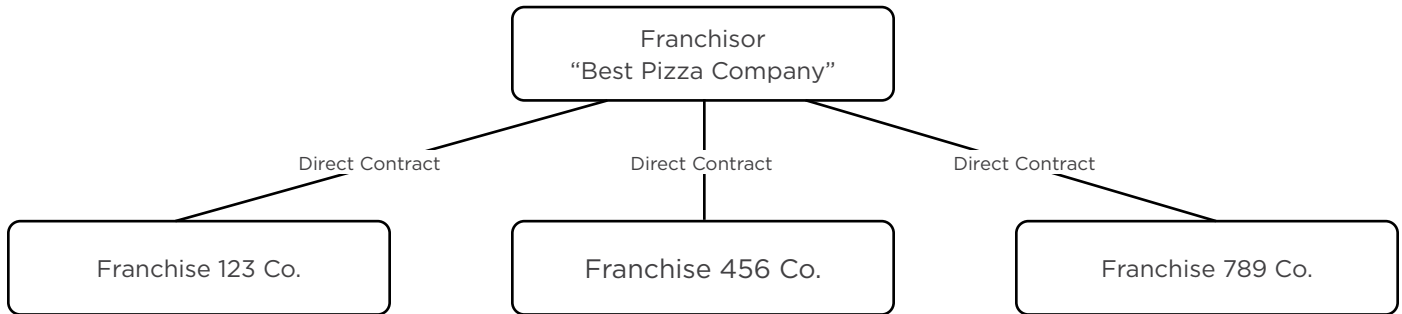
¹ Canadian Franchise Association, Canadian Franchise Industry Economic Outlook 2025, April 2025, Executive Summary.

² Ibid.

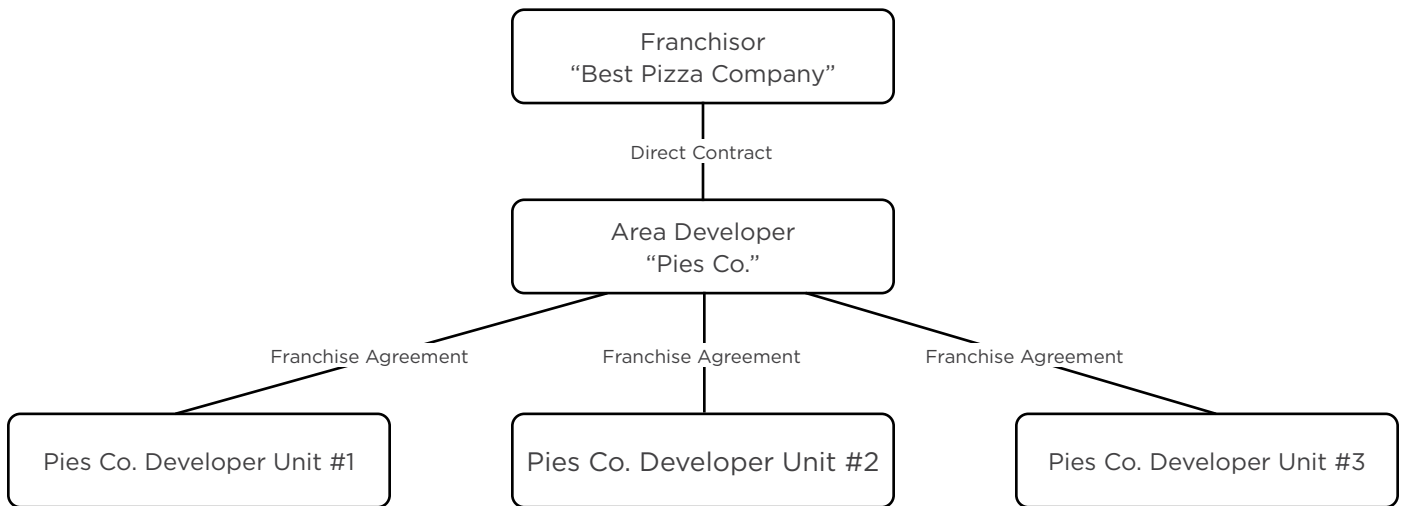
³ Ibid.

⁴ Section 1(1) definition of “Franchise” pursuant to the [Arthur Wishart Act \(Franchise Disclosure\)](#), 2000, S.O. 2000, c. 3 | [ontario.ca](#).

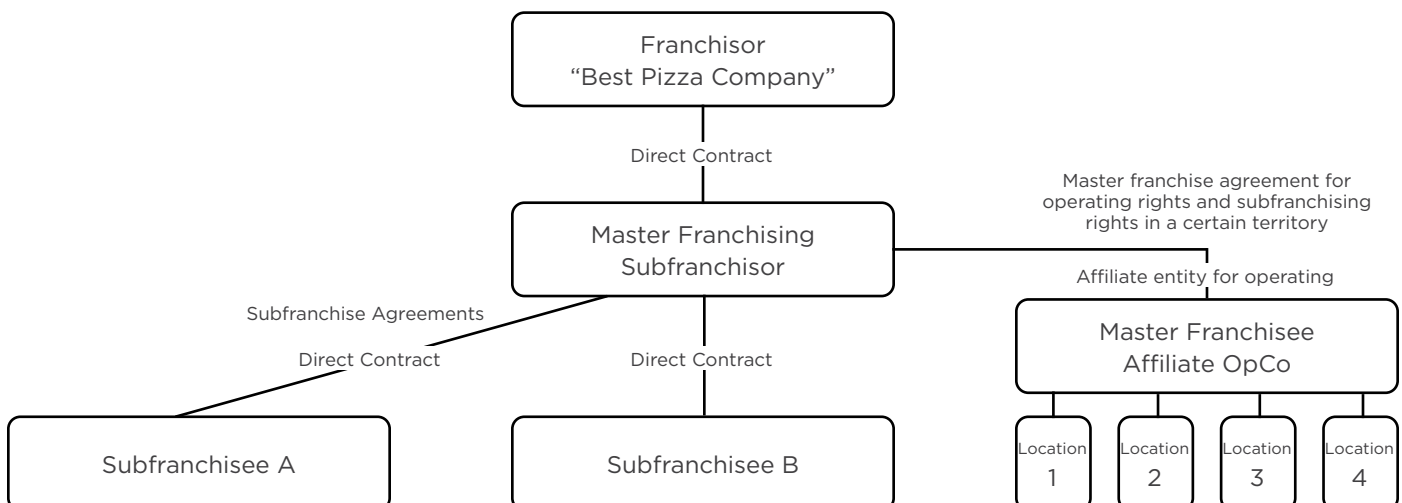
Unit franchising involves a direct contractual relationship between the franchisor and a franchisee for the license and grant to operate a single location.



Area development franchising involves the franchisor granting a franchisee a specific territory or region in which they have the right to develop, build and operate a certain number of locations.



Master franchising involves the franchisor granting a franchisee rights to both operate individual locations themselves (or through an affiliate) and subfranchise locations to third parties within a specific territory and for a specified number of locations.



Some common structures in product franchising in Canada are as follows:

Trademark licensing arrangements for goods and services involve a franchisor granting a franchisee the right to sell certain products and services under specific trademarks or trade names, but without necessarily prescribing a method of operation.

Product distribution arrangements for goods and services involve a franchisor granting a franchisee the right to sell products and services without a specific trademark, trade name or brand affiliation.

Significantly, the courts have held that the parties' intention will not be considered in determining whether a business relationship constitutes a "franchise" under applicable provincial legislation. As well, parties cannot "contract out" of being deemed a franchise, even if their agreements contain express language to that effect, because a franchisee's rights under franchise legislation cannot be waived. Instead, based upon a case by case determination, the court looks to see whether or not the franchisor had exercised significant control or had the option to exercise significant control over the franchisee's method of operation or if the franchisor provided significant assistance to the franchisee.

Certain relationships are exempt from being a "franchise" under statute, such as employer-employee relationships, partnerships, co-operatives, Crown agreements and others.

THE LEGAL FRAMEWORK

Canadian franchise legislation is remedial and designed to address the purported imbalance of power and informational gap in the franchisor-franchisee relationship. As courts typically recognize franchisors as more sophisticated and better resourced, and franchisees as less sophisticated with limited resources, Canadian courts generally interpret franchise legislation broadly in the franchisee's favour.

Broadly speaking, franchise legislation can be broken down into three main components:

- disclosure regime for franchisors;
- duty of fair dealing for both; and
- right to associate for franchisees.

DISCLOSURE

Franchisors are subject to a rigorous pre-contractual disclosure obligation. They must provide prospective franchisees with all the information necessary to make an informed decision about whether to invest in the franchise.

Franchisors must wait 14 days from delivery of the franchise disclosure document before signing a franchise agreement with a prospective franchisee or entering into any other agreements relating to the franchise, except for confidentiality or non-disclosure agreements. During this period, a franchisor is also prohibited from accepting payment from a prospective franchisee, with certain carve-outs for deposits.

A franchisor's disclosure document must include a long list of prescribed information and must also disclose all "material facts" that could reasonably be expected to have a significant impact on the value of the franchise or the franchisee's decision to acquire it.

The franchisor's obligation to disclose material facts is over and above the prescribed information already required and has been interpreted by the courts as non-exhaustive. Although there has been significant litigation over what constitutes a "material fact" for the purposes of franchise disclosure, regulators have not provided further guidance or clarity.

Given the onerous obligations imposed on franchisors to provide a fully compliant franchise disclosure document, franchisors are advised to seek legal counsel experienced in franchising to prepare a national franchise disclosure document that can be used across disclosure provinces.

Additionally, it is a best practice for franchisors to provide prospective franchisees in non-disclosure provinces with a form of franchise disclosure document. This is especially the case when a system intends to have multi-provincial franchisees that may own numerous locations.

Since the Canadian regime differs significantly from that of other jurisdictions, such as the United States, when it comes to disclosure of all material facts, it is unlikely that a foreign franchise disclosure document would be considered compliant in Canada.

A franchisor's failure to deliver a compliant franchise disclosure document, or to provide one at all, may entitle the franchisee to power statutory rights of rescission. Franchisees can claim damages under the statutory regime, which is designed to return

them to the position they would have been in had they not acquired the franchise.

Unfortunately for some accidental franchisors who fall into this quagmire, rescission claims can reach into the millions of dollars and take years to resolve. Having qualified litigation counsel with specific expertise in franchising can make a significant difference.

FAIR DEALING

Franchise legislation imposes on both parties to a franchise agreement a duty of fair dealing in the performance and the enforcement of their respective obligations.

This includes the duty to act in good faith and in accordance with reasonable commercial standards. A party that fails to meet the duty of fair dealing may face a right of action for damages brought by the other.

Courts have interpreted this obligation on a case-by-case basis and in the context of the specific franchise agreement. The Canadian landscape on this duty has evolved over many years through various circumstances and widely different facts.

However, it is well established that the duty of good faith and fair dealing is meant to secure the performance of the contract at hand. It is not intended to replace the contract, rewrite its terms or imply new ones.

Parties should observe standards of honesty, fairness and reasonableness, but franchisors are not required to put a franchisee's interests ahead of their own. The duty is not freestanding; it is grounded in the contractual rights and obligations set out in the franchise agreement.

At the end of the day, there is often no bright-line test for determining whether a party has breached its duty of fair dealing. It is often easier to identify bad faith through conduct that is dishonest, oppressive or unconscionable toward the weaker party.

RIGHT OF ASSOCIATION

As the purpose of franchise legislation is to address the perceived power imbalance between franchisors and franchisees, it is unsurprising that franchisees are protected by law from penalty or interference from the franchisor for associating with each other or forming organizations.

Courts have interpreted this right to include the ability to take collective action, including bringing a class action against the franchisor.

On the other hand, this right does not go so far as to require franchisors to recognize franchisee associations. From a practical perspective, although not required, it may make good business sense for franchisors to work collaboratively with franchisee associations.

A hallmark of a healthy franchised network is open communication and transparency between franchisors and franchisees. This helps foster mutual respect and trust between commercial parties that intend to build a long-term relationship.

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