



BRITISH COLUMBIA LAW INSTITUTE

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Background

Why Is There a Need For This Project?

In Canada, franchising is a popular business model, used by a wide variety of vendors in both the business and retail sector.

Buying a franchise usually requires a significant investment of capital on the part of the franchisee, yet the franchisee/franchisor relationship is typically characterized by unequal bargaining power. The franchisee is at a disadvantage in negotiations in terms of access to information and control of business decisions. As a result of the power imbalance, franchise contracts are often structured so that franchisees are in a more vulnerable economic position as compared with franchisors – in many cases franchisees are the less experienced business partner in dealing with the negotiation of long-term, complex legal arrangements and are completely reliant on the accuracy and quality of disclosure made by franchisors. Despite these inherent inequities, franchising in most provinces in Canada continues to remain unregulated, with franchisees operating in a legal environment that offers little protection to them.

The *Uniform Franchises Act* (UFA) adopted by the Uniform Law Conference of Canada (ULCC) in 2005 creates a model of a regulatory regime for the operation of franchises in Canada that would provide greater protection for franchisees. Franchise legislation has been enacted in several provinces in Canada. British Columbia has yet to do so.

This project is needed in order to determine whether the *Uniform Franchises Act* is appropriate for British Columbia and, if so, whether any changes need to be made to it and/or to existing provincial legislation to facilitate its implementation in this province.

Legal Background

A franchise is a contract between two business owners. Under the contract, the franchisor grants the franchisee the right to operate its system of business by selling its products or services, access its business knowledge and use its intellectual property, such as trademarks. In return, the franchisee pays the franchisor fees and royalties.¹

¹ Manitoba Law Reform Commission, *Franchise Law* (Report No. 116, 2008) at 3.

Franchising has been regulated for decades in many jurisdictions outside Canada but is a relatively new phenomenon in Canada. Alberta originally enacted franchise legislation in 1972, dealing primarily with government review and registration. This was repealed and replaced by a new Act in 1995. This Act did away with registration and government review processes. It is focused primarily on the disclosure obligations of franchisors, but also includes provisions with respect to fair dealing and the freedom of franchisees to associate. Ontario followed suit with its *Arthur Wishart Act (Franchise Disclosure) Act* in 2000, which was largely based on the Alberta legislation.

In Canada, the Canadian Franchise Association developed and adopted a mandatory code of disclosure and conduct and encourages its members to use mediation as a method of dispute resolution. Remedies for breach of mandatory association codes are usually limited to expulsion from the association, however, and those who are not members have no obligation to adhere to the codes of conduct.

In 2002, the Uniform Law Conference of Canada commissioned a working group as part of its Commercial Law Strategy to produce a model franchise law to address the need for uniform legislation across Canada. The working group engaged in widespread consultations with representatives of various industry and trade associations, the legal community and the public and private sector. It determined that the development of uniform regulation would benefit all parties to a franchise agreement. According to the ULCC, benefits will include helping franchisors standardize their procedures and save costs which can be passed on to franchisees and consumers, provide legal protection to franchises, and help parties to resolve disputes by defining one standard code of dealing and one standard method of dispute resolution.

Based on Ontario's existing franchise legislation, the UFA's key features are provisions dealing with disclosure, the duty of fair dealing, rights to rescission, damages for misrepresentation, and dispute resolution. In addition to the Act, there are two model regulations: one addressing the information that is required in a disclosure document and the other mediation before and after commencement of litigation.

Prince Edward Island and New Brunswick enacted franchise legislation modeled on the uniform Act in 2005 and 2007 respectively, and Manitoba is set to proclaim legislation closely modelled on the uniform Act on October 1, 2012.

Objectives of the Project

Through consultation with stakeholders and comparative legal research, the BCLI aims to promote and contribute extensively to an informed discussion involving the public, legal practitioners and policy makers on the need, or otherwise, for regulation of franchises in British Columbia. Further, the BCLI will consider BC's specific legal landscape to determine whether the *Uniform Franchises Act* is an appropriate model, and if so, what modifications might be required to it and existing provincial laws for its implementation in BC. The pro-

ject will culminate in a report with recommendations to government and draft franchise legislation for BC.

Project Administration

This project is managed by Greg Blue Q.C., Senior Staff Lawyer at BCLI, with contributions by other staff members.

About the BCLI

The British Columbia Law Institute was incorporated in 1997 under the British Columbia Society Act. Its mission is to be a leader in law reform by carrying out the best in scholarly law-reform research and writing and the best in outreach relating to law reform.

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