

# Franchising Fundamentals

## Law Society of Saskatchewan

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# Franchising in Canada

- Canadian franchises contribute over \$100 billion per year to the Canadian economy
- Create jobs for more than 1.9 million Canadians
- Source: Canadian Franchise Association



# Definition of Franchise

*Franchises Act (Alberta), RSA 2000, c F-23*

1(1)(f) “franchise” means a right to engage in a business

- (i) in which goods or services are sold or offered for sale or are distributed under a marketing or business plan prescribed in substantial part by the franchisor or its associate,
- (ii) that is substantially associated with a trademark, service mark, trade name, logotype or advertising of the franchisor or its associate or designating the franchisor or its associate, and
- (iii) that involves

...

# Definition of Franchise

*Franchises Act* (Alberta), RSA 2000, c F-23

(A) a continuing financial obligation to the franchisor or its associate by the franchisee and significant continuing operational controls by the franchisor or its associate on the operations of the franchised business, or

(B) the payment of a franchise fee,

and includes a master franchise and a subfranchise

# Definition of a Typical Franchise

- Right to use Franchisor's trademark or trade name
- Limited Term
- Fees and Royalties
- Required Inventory/Supply Purchases
- Franchisor Provides Training and Operational Support

# Benefits to Franchisee

- Consistent Franchise “System” – Ensures consistency across franchise locations
- Access to Proven Brand
- Support, Training and Products
- Higher Rates of Success versus Independent Business
- Greater ease with securing financing



# Franchisor Control

- Franchisor Control is Distinctive Characteristic of Franchise Systems
- The Franchise Agreement is the Basis of Franchisor-Franchisee Relationship and Sets Out This Control
- Control Capable of Being Exerted Oppressively



# Franchisor Control

- Potential Investment by Franchisee in 100K's or 1M's
- Debt
- Long Terms Spanning Decades
- Personal Guarantees  
(see *Turtle v Valvoline*, 2021 SKCA 76 (CanLII))
- Franchise Agreement Obligations
- Non-Compete Provisions

# *1688782 Ontario Inc. v. Maple Leaf Foods Inc., 2020 SCC 35*

Madam Justice Karakatsanis -

“Importantly, “the relationship between a franchisor and franchisee is one of vulnerability for the franchisee”, stemming from a fundamental power imbalance... Put simply, “it is unusual for a franchisee to be in the position of being equal in bargaining power to the franchisor.”



# *1688782 Ontario Inc. v. Maple Leaf Foods Inc., 2020 SCC 35*

“Under a franchise arrangement, the franchisor grants the franchisee the right to sell, offer for sale or distribute goods or services that are associated with the franchisor. Given their unique and typically well-established brand or operating structure, franchisors like Mr. Sub tend to already be in a position of power when encountering those who are seeking to operate one of their franchises, who are also often entering business for the first time.”



# *1688782 Ontario Inc. v. Maple Leaf Foods Inc., 2020 SCC 35*

“This inequality has been of concern for some time, with the Ontario government commissioning a report approximately 50 years ago detailing the implications of the franchisee-franchisor relationship and identifying potential areas for regulation to attenuate the effects of this inequality... In light of this power imbalance, franchise legislation across most of Canada now entitles franchisees to greater financial disclosure during the contracting process, thereby alleviating some of the informational disparity between the franchisee and franchisor.”



# *1688782 Ontario Inc. v. Maple Leaf Foods Inc., 2020 SCC 35*

“The fact remains, however, that franchisees are generally unable to negotiate more favourable terms to govern their relationship with the franchisor. The franchise agreement is usually a contract of adhesion, drafted by the stronger party and “whose main provisions are presented on a ‘take it or leave it basis’” with no prospect for negotiation... Indeed, this Court has highlighted the manner in which contracts of adhesion can exacerbate vulnerability and inequality of bargaining power in other contexts.”



# *1688782 Ontario Inc. v. Maple Leaf Foods Inc., 2020 SCC 35*

“Further, the power imbalance that characterizes the start of the franchisor-franchisee contractual relationship continues to affect the relationship long after. Franchisors demand and exercise significant control over the operation and decisions of the franchisees, and thereby deeply affect the success of their businesses”

# Franchisee Dependence

- Prospective Franchisees are Highly Dependent on the Franchise for Information and on their Lawyer for Good Legal Advice
- Franchisor Can Benefit Even if Business is Unprofitable

# Provincial Franchise Legislation

- Franchise Legislation in:
- Alberta, British Columbia, Manitoba, New Brunswick, Ontario and PEI
- No Franchise Legislation in Saskatchewan – CBA Business Law Section Proposal to Introduce



# Provincial Franchise Legislation

- The purpose of Franchise Disclosure Legislation is to regulate the franchise marketplace and protect both prospective franchisees and the franchisor
- The law is remedial and is intended to address the perceived imbalance of power in the franchisor-franchisee relationship, and adopts three key principles:

# Provincial Franchise Legislation

1. The obligation imposed on franchisors to provide presale disclosure (and on renewal and transfer)
2. The duty of good faith and fair dealing imposed upon franchisors and franchisees
3. The right of franchisees to associate

# ULCC – Model Legislation

- Model ULCC Franchise Legislation Adopted in August 2004
- ULCC Model Act is substantially the same as the Ontario Act

# ULCC – Model Legislation

The Chief Features of the ULCC Uniform Franchises Act:

- Franchisor Disclosure Before Signing Franchise Agreement
- Franchise Agreement May be Rescinded if Inadequate Disclosure
- Duty of Fair Dealing
- Franchisee Right to Sue for Misrepresentation
- Restrictions on Governing Jurisdiction Clauses
- Rights under the Legislation Cannot be Waived or Released




# Franchise Documents

- Franchise Agreement
- Lease/Sublease
- Interspousal Agreement
- Guarantee of Principals
- Collective Agreement
- General Security Agreement
- Supplier Contracts

# Financing/Valuation

 Royal Bank
Canada(EN) -



### Manage a Successful Franchise

Whether you own a franchise or you're looking to buy one, we can offer the financing, advice and solutions you need to get it off the ground and grow it over time.

Have A Specialist Contact You

[Call us at 1-855-418-5307](tel:1-855-418-5307)

## We Can Help You Own a Franchise


### A Franchise Specialist Will:

- ✓ Understand the challenges you face while choosing and managing a franchise
- ✓ Offer guidance to help you make informed decisions
- ✓ Provide quick turnaround on financing, so you can get up and running quickly

### Why Choose RBC

- ✓ 45+ years of franchise experience, with over 10,000 franchise clients
- ✓ Banking, cash flow management, financing solutions and more
- ✓ Tools and resources to help you get started and grow
- ✓ Quick turnarounds on financing
- ✓ Dedicated franchise specialists across Canada

#### Franchise Assessment Tool



Many would-be franchise buyers aren't sure where to start. If you're still deciding whether owning a franchise is right for you, our free Franchise Assessment tool could help make your decision easier.

[Start Assessment](#)

## Ready to Get Started?

It all starts by talking to one of our 200+ dedicated RBC Franchise Specialists.

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## The Franchise Commitment: Scotiabank Guide to Choosing a Franchise

At Scotiabank, we recognize the important contribution that franchised businesses are making to our economy. As a result, we have negotiated banking and financing arrangements with some of the most established franchisors, which are designed to meet the unique requirements of their franchisees.

If, after going through this guide, you conclude that franchising will help you meet your business objectives, then inquire about our franchise financing program. From basic deposit accounts, credit card services, and commercial loans to sophisticated electronic cash management, Scotiabank has the banking services to help you make it.

### Introduction

You are about to make one of the most important business decisions of your life. Committing your money to operating a franchise business is no small step. But you'll put more into it than just your money. You're going to have to invest all your hard work, creativity and entrepreneurial spirit to make it work. And it's important to know that each franchisor is different and has different expectations of its franchisees. Each has its own kind of support to offer and in turn expects varying degrees of conformity to its procedures. To help you decide which, if any, franchise system is right for you, we've put together this overview of the franchise concept, and a checklist of the crucial questions you should ask the franchisor, existing franchisees and most importantly, yourself. We don't have all the answers. But by using our questions, you should be better able to decide what's right for you.

Franchising



\* Registered trademark of The Bank of Nova Scotia.



# Questions?



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