

The Franchises Act - Manitoba

published 11/28/2012

On October 1, 2012, The Franchises Act came into force in Manitoba (the “Act”). The Act seeks to formally regulate the relationship between franchisors and franchisees in Manitoba. Traditionally, the relationship between these two parties (in Manitoba) has been governed by contract law, with the balance of power typically resting with the franchisor. The Act attempts to regulate this imbalance.

From a national perspective, provinces and territories have been slow to formally regulate franchises. Ontario and Alberta were the first to enact franchise legislation, and with the help of national organizations like the Canadian Franchise Association; New Brunswick, Prince Edward Island and now Manitoba have followed suit. British Columbia enacted its franchise legislation in February 2017, making it the sixth province to regulate franchises.

All franchise legislation in Canada is constructed similarly, and tend to focus on three areas:

1. Pre -Sale Disclosure – Pre-Sale disclosure is a key principle of franchise statutes. Franchisors are required to deliver a disclosure document to a prospective franchisee within a certain period of time before the franchisee enters into an agreement with the franchisor.
2. Right to association – The Act legislates that every franchisee has the right to communicate and share information with every other franchisee in the franchise.
3. Duty of fair dealing – This is perhaps the most important provision. It imposes on each party a duty of fair dealing in the performance and enforcement of the Franchise Agreement.

What does this mean for businesses wishing to create or become part of a franchise in Manitoba? The Act is essentially a guide to create transparency between the two parties. Practically speaking, both parties must ensure that their roles and responsibilities are articulated in two documents, the Franchise Agreement and the Disclosure Statement.

A. The Franchise Agreement

The Franchise Agreement is an agreement between the parties defining the relationship

moving forward. The Franchise Agreement should touch upon the following:

1. Advertising – this will include advertising budgets and the territory given to the franchisee by the franchisor.
2. Intellectual property – the franchisor should list ways in which its’ protected trademarks and goodwill are to be used by the franchisee.
3. Leasing – It is important that any Lease entered into by the franchisee is congruent with the duration of the Franchise Agreement.
4. Suppliers – The franchisee should be given clear protocol of how to contact and do business with the franchisor’s suppliers and dealers.
5. Conduct -Typically the franchisor provides the franchisee with a manual outlining the practises and policies of the franchise.

B. Disclosure Statement

The Disclosure Statement sets out the financial and business information that the franchisor must disclose to the franchisee prior to the finalization of the Franchise Agreement.

For example, the franchisor must disclose to the franchisee the following:

1. The length of time the franchisor has been in business;
2. The franchisor’s financial statements;
3. Any restrictions on suppliers, products or markets; and
4. A list of any franchisees that have gone out business and their contact information.

The foregoing is just a small sample of the requirements under the Act. Franchisors and Franchisees must ensure they are properly conducting business under the new regime. The Act can be beneficial to both sides as it creates a template for the franchise model to operate with transparency and efficiency.

This article was written by Mike Guthrie, former Lawyer of TDS.

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