

## Franchising in Canada

### FRANCHISE IN CANADA

World's second largest country, Canada shares the longest common border with the United States to the South and Northwest. It counts a total population of 32 million, including 812,000 in its capital, Ottawa. Population growth is from immigration and, to a lesser extent, natural growth. There are 43 ethnic origins, the largest being English (21%), followed by French (15.8%), Scottish (15.2%), Irish (13.9%), German (10.2%), Italian (5%), Chinese (4%), Ukrainian (3.6%), and First Nations (3.5%).

As a federation comprising ten provinces and three territories, Canada functions within a framework of a federal system of parliamentary government and a constitutional monarchy, with Queen Elizabeth II as its head of state. It is a bilingual and multicultural country, with both English and French as official languages, both at the federal level and in the province of New Brunswick.

Many of the country's legislative practices derive from the unwritten conventions of unwritten conventions and precedents set by the United Kingdom's Westminster parliament. Thus, Canadian legal system has its foundation in the British common law system, inherited from being a former colony of the United Kingdom and later a member of the Commonwealth of Nations. Quebec, however, still retains a civil system for issues of private law. Both legal systems are subject to the Constitution of Canada.

### Economy in Canada

Technologically advanced and industrialized, Canada has a diversified economy reliant upon its abundant natural resources and upon trade. It is one of the world's wealthiest nations, with a high per capita income. As one of the world's top ten trading nations, it is also a mixed market, ranking lower than the U.S. but higher than most western European nations. Since the early 1990s, the Canadian economy has been growing rapidly, with low unemployment (7.77%) and large government surpluses on the federal level.

In the past century, the growth of the manufacturing, mining, and service sectors has transformed the nation from a largely rural economy into one primarily industrial and urban. As with other first world nations, the economy is dominated by the service industry, which employs about three quarters of Canadians.

### A franchise system not unified

It is estimated that there are approximately 1,300 franchise systems operating in Canada, and approximately 78,000 franchise units across Canada. Close to 45% of all retail sales in Canada, particularly in the food service industry, are made through franchised businesses.

Franchisors operating are subject to both federal and provincial law, which may vary from province to province. The province with the most notable differences is Quebec. Quebec is predominantly French-speaking, and while the majority of Canada is governed by the common law, all contractual relationships in Quebec are governed by its Civil Code.

The average term of a franchise agreement in Canada is five years. However, franchise agreements come in several fixed periods including 10 and 20 years.

As the largest provincial economy in the country, Ontario has greater franchise business activity than any other province and inaugurated its first comprehensive law dealing with franchising in the province in 2001, with the

Arthur Wishart Act. Actually, Ontario modeled its legislation on the Alberta Franchises Act, which went into effect on November 1, 1995.

Thereby, Alberta and Ontario are one of the few provinces to have specific Franchise Acts, which, in substance, are very similar. They provide for full disclosure of relevant facts and offer additional protection to prospective franchisees.

If the franchisor is operating in Alberta or Ontario, if the prospective franchisee is a resident of those provinces, or has a permanent residence in those provinces, the franchisor is required to provide with a copy of their disclosure document at least 14 days before the signing of any agreement relating to the franchise, or the payment of any consideration relating to the franchise, whichever is earlier.

Both Acts require the franchisor to provide details of any earnings claims information used by the franchisor, including material assumptions underlying its preparation and presentation

There is no legislation similar to Ontario's Arthur Wishart Act in Quebec and therefore no prescribed disclosure requirements. Instead, in Quebec, the Civil Code imposes an implicit obligation on parties to a franchise contract to deal with each other in good faith. This includes the requirement to act in good faith during negotiations and in drawing up franchise agreements. Franchisors have indeed a duty, which flows from the general duty to act in good faith, to inform the franchisee of any relevant information he is aware of that would affect the franchisee's decision to enter a franchise agreement. In return, franchisees have a duty to become informed and obtain relevant professional advice before they enter a franchise agreement. This obligation is similar to the common law duty of fair dealing and good faith in other provinces. This duty also extends to the performance of contractual obligations and to the termination of the contract.

Joining Alberta and Ontario, Prince Edward Island became in 2000 the 3rd Canadian province to enact franchise-specific legislation. Prince Edward Island's legislation is substantially similar to the legislation in the other two provinces.

Lastly, the province of New Brunswick introduced Bill 41 (Franchises Act) into its legislature, in 2007. It is quite similar to the franchise legislation already in place in Ontario, Alberta and Prince Edward Island and, like those laws, has three essential components to it, namely: a Duty of Fair Dealing, a Right for Franchisees to Associate and an Obligation for Franchisors to Provide Pre-sale Disclosure.

Concerning franchise legislation in the province of British Columbia and the province of Manitoba, there is no specific franchise legislative initiative. Constitutionally, the federal government does not have jurisdiction to legislate franchising for the country as a whole.

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