



April 13, 2022

Ministry of Justice and Attorney General
Room 355, Legislative Building
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VIA Email – jus.minister@gov.sk.ca

**ATTENTION: HON. GORDON WYANT
MINISTER & ATTORNEY GENERAL**

Dear Sir:

Re: Proposal for a Franchise Act for Saskatchewan

I am writing as Legislation & Law Reform Chair for the Business Law North Section of the Saskatchewan Branch of the Canadian Bar Association (“**CBA Saskatchewan**”) to make a proposal to the Ministry of Justice that the Government of Saskatchewan enact franchise legislation in the form of the *Uniform Franchises Act* drafted by the Uniform Law Conference of Canada (the “**ULCC**”) that would provide a general scheme of protections for franchised businesses based in Saskatchewan (the “**Proposal**”).

The Proposal is supported by the Board of Directors of CBA Saskatchewan. The CBA Saskatchewan membership was invited to provide feedback and comment to the Proposal and no feedback in opposition to the Proposal was received from any CBA Saskatchewan member. Supportive feedback was received from other Saskatchewan lawyers who practice in commercial litigation, or corporate commercial law. They feel that the proposed legislation would harmonize Saskatchewan’s laws with other jurisdictions, and provide needed legal protection to Saskatchewan franchisees and prospective franchisees.

By way of background, franchises are business arrangements where a franchisor grants a franchisee a right to engage in a business in which goods or services are sold under a marketing or business plan prescribed by the franchisor, using the franchisor’s trademark or trade name, in return for payment of fees and royalties by the franchisee to the franchisor. Franchises are a very prevalent business model in Saskatchewan, and can be seen in restaurant, hospitality, grocery, and other retail and service sectors. According to the Canadian Franchise Association, the Canadian franchise industry is estimated to have almost 1,200 brands in 50 different sectors and contributes almost \$100 billion per year to the Canadian economy.

PLEASE REPLY TO:

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Saskatchewan does not currently have any franchise legislation that provides specific protections to franchisees and prospective franchisees. Six Canadian provinces have franchise legislation: British Columbia, Alberta, Manitoba, Ontario, New Brunswick, and P.E.I. The legislation across these provinces is very similar and the *Uniform Franchises Act* was drafted by the ULCC to provide for a harmonized scheme for franchise legislation across Canada. The *Uniform Franchise Act* and associated reports are available at:

<https://ulcc-chlc.ca/Civil-Section/Uniform-Acts/Uniform-Franchises-Act>

The main features of the *Uniform Franchise Act* are as follows:

1. Franchisor obligations to prospective franchisee to disclose financial statements and specific information about the franchise;
2. A duty of fair dealing on franchisor and franchisee;
3. Franchisee ability to rescind agreement if there is a deficiency in franchisor disclosure;
4. Franchisee ability to sue franchisor for misrepresentations in franchisor disclosure;
5. Franchisee rights to associate and form associations; and,
6. Rights under legislation cannot be waived.

As franchising is a highly prevalent business arrangement in Saskatchewan, regulating the sale of franchises and the franchisor-franchisee relationship is very important. In the recent Supreme Court of Canada case of *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35, Madam Justice Karakatsanis described the relationship between franchisor and franchisee as follows:

“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.

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.”

Enacting legislation in Saskatchewan that conforms with the *Uniform Franchise Act* would harmonize Saskatchewan’s franchise law with most other Canadian jurisdictions and address some of the franchisor/franchisee inequalities that exist in the large number of franchised businesses in Saskatchewan.

I would be happy to discuss the Proposal and answer any questions about the implementation of the *Uniform Franchise Act* in Saskatchewan with the Ministry.

McKercher LLP

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I thank you for taking the time to consider this important proposal.

Yours truly,



David J. Ukrainetz

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