

BUILDING UNIFORMITY: SASKATCHEWAN'S *FRANCHISE DISCLOSURE ACT* RECEIVES ROYAL ASSENT

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First introduced last fall, Saskatchewan's Bill 149, *The Franchise Disclosure Act*, received Royal Assent on May 8, 2024 (the "Act").^[1] In doing so, Saskatchewan now joins British Columbia, Alberta, Manitoba, Ontario, New Brunswick, and Prince Edward Island as the seventh Canadian province to enact franchise-specific legislation. The Lieutenant Governor in Council is yet to set the date that the Act will come into force. Once fully enacted, franchisors operating in Saskatchewan will need to ensure that their business practices comply with the specific requirements mandated by the province.

Key Takeaways

The Act is based on the form developed by the Uniform Law Conference of Canada ("ULCC"), which encourages uniformity of laws throughout the Canadian provinces. While they have not been published, the regulations are also expected to be based largely on the ULCC template franchise regulations, as well as recommendations made by the Canadian Franchise Association.

The Act is similar to franchise-specific legislation in the other provinces but tracks more closely with the provisions of British Columbia's *Franchises Act*, which was the most recently enacted legislation and came into force in 2017. Among other things, the Act codifies the following rights and obligations:

- **Duty of fair dealing.** The imposition of a duty of fair dealing on both franchisors and franchisees in respect of their performance under a franchise agreement and includes remedies for a breach of the duty.
- **Franchisee's right of association.** Confirmation of franchisees' right to associate with other franchisees and to form or join an organization of franchisees without penalty or interference from the franchisor. Any provision in a franchise agreement that restricts this right is void, and a franchisee has a right of action against the franchisor for breach of this right.
- **Disclosure obligations.** Establishment of a disclosure process, whereby franchisors are required to provide prospective franchisees with a disclosure document containing detailed information about the franchisor and franchise system at least 14 days before a franchise agreement is signed or any

consideration is paid to the franchisor.

- **Franchisees' right to rescission.** The franchisee's remedy of choice – the right to rescind a franchise agreement for failure to comply with disclosure obligations – is included in the Act together with related damages provisions.
- **Damages.** Franchisees also have the right to bring a claim for damages for misrepresentations made in the disclosure document or for a franchisor's failure to comply with the disclosure requirements.
- **No waiver of application.** A Prohibition on opting out of or waiving Saskatchewan's jurisdiction, governing law and courts, including waiving a party's rights under the Act. The latter prohibition being subject to an exception where such waiver is in accordance with a settlement of an action, claim or dispute.

Despite its overall consistency with other provincial franchise-specific legislation, and particularly the BC legislation, the Act has a few notable differences. For example, in Saskatchewan:

- defects in a disclosure document's form and other technical irregularities will not affect its validity, so long as such errors do not affect the document's substance and the document otherwise substantially complies with the legislation.
- if a disclosure document is not received by a franchisee prior to the execution of a franchise agreement, the franchisor can remedy this by delivering a disclosure document within two years *after* the franchisee enters into the franchise agreement.
- There are no exemptions for government entities for franchise-like contracts with the Crown. The Act also does not expressly exclude application to a service contract or franchise-like arrangement with the provincial Crown.
- The Lieutenant Governor in Council has a broader range of powers to make regulations concerning any matter as it is deemed necessary to carry out the intent of the Act and contemplate ongoing legislative updates.

Next Steps

The Act currently has not been given a "coming-into-force" date and draft regulations still need to be published. Having said that, while most of the provisions in the Act will apply going forward, there are some provisions that will apply to existing arrangements. Accordingly, franchisors with franchise arrangements in Saskatchewan should begin considering what obligations will apply to their businesses, and what steps should be taken to shift toward compliance once the Act comes into force. Franchisors already operating in other provinces with franchise legislation, however, will find that only minor adjustments are necessary.

[1] Bill No. 149, *An Act respecting Franchisees*, [online](#). Bill 149 passed its first reading on November 9, 2023, and its second reading on March 4, 2024. Following an amendment by the Standing Committee on Intergovernmental Affairs and Justice on April 15, 2024, the bill passed its third reading on April 16, 2024, and received royal assent on May 8, 2024.

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A Cautionary Note

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