

Frequently Asked Questions – Franchising in Québec

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Franchisors looking to expand business operations into Québec need to be mindful of the key differences in the franchise model unique to the province — compared to the rest of Canada — in order to effectively tap into this potentially lucrative market and avoid legal issues.

Below are answers to two commonly asked questions about franchising in Québec.

1. What disclosure is legally required to be provided to a potential franchisee in Québec?

Unlike in the United States and certain other Canadian provinces, there is no franchise-specific disclosure legislation in Québec. Instead, Québec civil law imposes upon parties engaged in negotiations a pre-contractual duty to inform. This duty flows from the general obligation for parties to act in good faith as prescribed under the *Civil Code of Québec*.

The Supreme Court of Canada has interpreted this pre-contractual duty to arise when (a) the party owing the obligation has actual or presumed knowledge of the information; (b) the information is of decisive importance; and (c) the parties to whom the obligation is owed cannot inform themselves, or ultimately rely on the party owing the obligation. In the franchise context, this generally means that the potential franchisee is entitled to be made aware of material facts about the franchise. Practically, franchisors often provide the potential franchisee with a slightly modified version of the standard Canadian franchise disclosure document.

2. So I have a pre-contractual duty to inform. What are the risks associated with inadvertent non-compliance with this duty and how can I mitigate such risks?

A failure to meet the pre-contractual duty to inform may entitle the franchisee to annul the franchise agreement (i.e., treat the franchise agreement as never having been entered into). A franchisee's entitlement to annul a franchise agreement usually arises from either (1) mere errors or (2) errors due to fraud.

Mere errors in the franchise context arise when franchisees enter into franchise agreements in reliance on an error as to (1) the general nature of the contract, (2) the object to which the contract relates or (3) any other term of the contract which was material to the franchisee, provided that the franchisee made such materiality known. It is important to note that, while a failure to inform can cause mere errors, mere errors can occur despite the franchisor having met its duty to inform.

On the other hand, courts will not annul a franchise agreement if the mere error is

“inexcusable” on the part of the franchisee (i.e., if the franchisee does not take reasonable steps expected of him/her/it to come to an informed decision regarding the franchise agreement). Whether or not a mere error is “inexcusable” depends on the personal characteristics of the franchisee, with a higher standard of conduct expected from sophisticated franchisees with significant business experience.

In contrast, errors due to fraud are not restricted to categories, and the concept of an “inexcusable” error does not apply. Further, an error due to fraud can give rise to damages in addition to annulment or, in the alternative, a reduction of the victim’s obligations. In the franchise context, franchisors should note that wilful omission to disclose unfavorable financial information and the presentation of overly optimistic projections have been held to constitute fraudulent misrepresentation. However, projections of future financial performance do not necessarily attract liability by virtue of the fact that they diverge significantly from actual performance, if the franchisor acted reasonably in preparing such projections.

To avoid the risk of pro forma financial statements being classified as fraudulent misrepresentation, franchisors should (1) act reasonably in making projections, (2) disclose all relevant past performance data, (3) include an entire agreement clause disclaiming all representations not reflected in the franchise agreement and (4) disclaim the risks of operating a franchise and expressly note that the financial projections do not guarantee future profitability.

Content for the FAQs is based on the following article authored by Osler’s [Andraya Frith](#), [Éric Préfontaine](#) and [Gillian Scott](#): [“La Belle Province: A practical business guide to key legal issues when franchising in Québec.”](#)