



FRANCHISING IN CANADA:

A Guide for Franchisors and their Legal Counsel

**Franchise & Distribution Group
Davis LLP, Canadian Lawyers
January, 2012**

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Introduction

This paper is general in nature. It is intended to provide franchisors and lawyers experienced in franchising with a broad overview of legal considerations relating to Canadian franchising and expansion of franchise systems within or to Canada.

No part of this paper is to be taken as legal advice by Davis LLP. Legal advice will only be given by Davis LLP once it has opened a file for a specific client who has signed a retainer letter with the firm.

I. Canada - Politically, Demographically and Legally

Canada is a confederation made up of 10 provinces, and 3 territories. Each province and territory has its own government, however, Canada is governed primarily by a federal parliament located in Canada's capital city, Ottawa.

Canada's Constitution divides power between the federal government and the provincial/territorial governments. The Constitution gives provincial and territorial governments power to legislate regarding property, civil rights and other matters of a local or private nature, and the federal government power over defence, criminal law, currency, banking, most forms of intellectual property, competition law and other matters over which the provincial governments are not given primary jurisdiction.

The Constitution appears to give the federal government the right to regulate franchising on a national level; however, it has not yet attempted to do so. Accordingly, Canada has no equivalent to the United States' FTC Rule. Nonetheless, there are several federal statutes in Canada which have an important impact on franchising. They are discussed in Part II of this paper.

As well, there are various provincial laws throughout Canada which have an impact on franchising. These include laws governing franchise regulation, trade practices, consumer protection and taxation.

Canada has 34 million residents, 80% of whom live in urban areas, the majority of which are near the US border. The 4 most populous cities are, in order, Toronto, Montreal, Vancouver and Calgary. Canada has 2 official languages, English and French, with French speakers concentrated in the province of Québec. Canada, the US and Mexico are members of the North American Free Trade Agreement ("NAFTA"). Eighty per cent of Canada's exports are made to the US, while 55% of its imports come from the US. Canada ranks 7th out of 183 countries in the World Bank's "Ease of Doing Business Ranking".

The business of franchising is alive and well in Canada. Close to 50% of all new retail businesses are franchised and many major franchisors have established a strong presence across the nation. The franchisors are both domestic and foreign, with many foreign-based franchise systems enjoying great popularity. Over 50% of existing franchised units are American-based.

The vast majority of franchising activity takes place in Canada's four most populous provinces - Ontario, Québec, British Columbia and Alberta. Two of these particular provinces (Alberta and Ontario) have franchise legislation. Smaller provinces with franchise legislation are New Brunswick and Prince Edward Island, with Manitoba having draft legislation likely to come into force in mid-2012.

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