
Uniform Law Conference of Canada

Briefing Note

Uniform Franchises Act

Subject:

- Implementation of a new *Uniform Franchises Act* and Regulations

Background:

- Alberta and Ontario currently have franchise legislation. To address the need for uniform legislation, the Uniform Law Conference of Canada (ULCC) commissioned a working group to produce a model law.
- The working group presented a draft *Uniform Franchises Act* at the 2004 ULCC, which was approved in principle. A resolution was passed at the Conference directing the working group to finalize the legislation and prepare regulations to be adopted at the 2005 ULCC.
- In preparing a draft *Uniform Franchises Act*, the working group reviewed legislation from a number of jurisdictions including the Model Franchise Disclosure Law adopted by UNIDROIT, the current Federal Trade Commission Franchise Disclosure Rule in the United States, and proposed amendments to the FTC Rule.
- The approach of the working group was to use the Ontario legislation as a working model, comparing it with the Alberta legislation, and making appropriate changes and modifications to ensure that the provisions of the proposed uniform law are clear and consistent. In addition, new provisions are included in the proposed law to make it comprehensive and in line with the realities of today's franchise industry.

Summary of the Uniform Franchises Act:

- The proposed *Uniform Franchises Act* sets out a regulatory regime for the operation of franchises in Canada. It provides for the rights and obligations of franchisors and franchisees and other interested parties to a franchise. The proposed legislation also provides for dispute resolution, which includes mediation, and regulation-making authority for government.
- The key elements of the proposed legislation are the following:
- Definitions.

- The duty of each party to a franchise agreement to engage in fair dealing in the performance and enforcement of the agreement.
 - Franchisor's obligation to provide a disclosure document to a prospective franchisee, contents of such document and what constitutes a material change.
 - The right of a franchisee to rescind a franchise agreement.
 - Damages for misrepresentation in a disclosure document and failure to disclose a material change.
 - Steps for parties to take to resolve a dispute including mediation.
- In addition to the *Uniform Franchises Act*, there are two proposed regulations on disclosure documents and mediation.
- The Regulation on Disclosure Documents deals with information that is required in a disclosure document such as costs of establishing a franchise, earnings projection, financing, training, manuals and purchase and sale restrictions. It prescribes schedules that are required including those of current franchisees, businesses and franchise and business closure information. The Regulation also prescribes financial statements to include in a disclosure document and provides for certificates to be issued by a franchisor.
 - The Regulation on Mediation provides for the appointment of a mediator and the conduct of mediation to resolve a dispute between parties to a franchise agreement. There are rules for two types of mediation: pre-litigation and post-litigation. The Regulation also prescribes forms to be used in mediation. The Regulation represents a significant and positive development in connection with the resolution of franchise disputes in the interest of all stakeholders.

Recommendation:

- Provincial and territorial governments are urged to enact *the Uniform Franchises Act* and its Regulations as soon as possible.

Date: August 25th, 2005