Cassels

Saskatchewan Officially Becomes Canada's Seventh Province with Franchise Legislation

Peter V. Snell, Sofi Katsovskaia

May 27, 2024

Saskatchewan has officially become the seventh Canadian province to enact its own provincial franchise legislation, joining Ontario, Alberta, British Columbia, Manitoba, New Brunswick, and Prince Edward Island (collectively, the Regulated Provinces). Saskatchewan's much anticipated franchise legislation, *The Franchise Disclosure Act* (the Act), received royal assent on May 8, 2024. It has not yet come into force.

Before the Act comes into force, the regulations to the Act (the Regulations) will be drafted and published. Once the Regulations are released (which may take some time), and assuming Saskatchewan follows the same approach as the other Regulated Provinces, franchisors can expect to receive sufficient lead time to comply with the Act before the date on which it comes into force (which will be determined by an Order in Council).

At a high level, the Act is substantially similar to the legislation in other Regulated Provinces, and we expect there to be a degree of uniformity and predictability for franchisors across Canada. In particular, the Act closely mirrors the British Columbia *Franchises Act*, S.B.C. 2015, c. 35, which is the most recent iteration of provincial franchise disclosure legislation in Canada. As with existing Canadian franchise legislation, the Saskatchewan Act will primarily:

1. Impose a statutory duty of fair dealing on parties to a franchise agreement;
2. Confirm franchisees' right of association;
3. Impose disclosure obligations on franchisors;
4. Provide franchisees with a statutory right of rescission or right to bring an action for misrepresentation in certain circumstances; and
5. Prevent the waiver of rights granted to a franchisee, or obligations imposed on a franchisor, under the Act.

Brief Legislative Recap

- Leading up to the introduction of the Act, the Government of Saskatchewan announced that it was considering modelling the proposed legislation on the *Uniform Franchises Act* adopted by the Uniform Law Conference of Canada, and sought public consultation on the matter;
- In November 2023, the Act was introduced for first and second reading in the Saskatchewan

Legislature;
- In early 2024, the Act moved through the committee stage in which members of the Legislative Assembly of the Government of Saskatchewan reviewed the Act and considered proposed amendments;
- In March 2024, we commented on the Act, which provided guidance on the direction of the new franchise statute, as well as notable differences compared to other Regulated Provinces; and
- The Act passed through the legislature for third reading on April 16, 2024, and as discussed, received royal assent on May 8, 2024.

Notable Amendment

It is worth noting that one amendment was made to the Act before it passed third reading. The Act was initially drafted to state the following:

"A franchisee may rescind the franchise agreement, without penalty or obligation, within 2 years after entering into the franchise agreement if the franchisor fails to provide the disclosure document *within those 2 years*" (emphasis added)

This language above suggested that the franchisee's right to rescission would *not* be available if the franchisor provided a disclosure document within the stated two-year period, even if that disclosure document was provided after the signing of a franchise agreement, which was a notable difference from existing Canadian franchise legislation.

However, prior to receiving royal assent, the language was amended to align more closely with existing Canadian franchise statutes. The Act now states the following regarding the franchisee's right to rescission:

"A franchisee may rescind the franchise agreement, without penalty or obligation, within 2 years after entering into the franchise agreement if the franchisor *never provided a disclosure document*" (emphasis added)

Looking Ahead

As discussed, the Regulations have yet to be published and no coming-into-force date has been set. However, based on our discussions with the regulators in the province of Saskatchewan, we do not expect the Regulations to deviate substantially from the regulations in place in other Regulated Provinces.

We will continue to monitor all developments related to the Act and the Regulations. In the meantime, there is no need for franchisors that have operations in Canada to update their franchise disclosure documents

yet. Once additional information becomes available, we will provide a further update.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.