

BC Court of Appeal Confirms Franchisees and Franchisor May Be Treated as a Single Employer

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The British Columbia Court of Appeal's recent decisions in [1197785 B.C. Ltd. v. 1315949 B.C. Ltd.](#), 2026 BCCA 310 and [1197785 B.C. Ltd. v. 1315949 B.C. Ltd.](#), 2026 BCCA 365 (the FreshCo Decisions) provide important guidance on the application of the common employer provisions in labour relations legislation to franchise systems.

At issue in the FreshCo Decisions was the degree of integration and control required for a franchisor and a group of franchisees to be treated as a common employer for labour relations and collective bargaining purposes, and specifically, whether such a determination requires common ownership or control among franchisees themselves, or whether a franchisor's oversight and control of multiple franchisees may, on its own, be sufficient.

The decisions underscore that, while franchise systems are structured on the basis that franchisees operate as independent businesses, legal separation alone will not determine the outcome of a common employer analysis. The Court further confirmed that common ownership or control among franchisees is not a prerequisite to a common employer finding. Where a franchisor exercises substantial operational control across a franchise network, a labour board may conclude that the franchisor and multiple franchisees operate as a common employer notwithstanding any lack of control between the franchisees themselves.

Background

The FreshCo Decisions arose from Sobeys' efforts to convert certain unionized Safeway stores in British Columbia to its FreshCo discount banner. At the time, approximately 5,000 Safeway employees were covered by a province-wide collective agreement with United Food and Commercial Workers International Union, Local 1518 (UFWC) that contemplated the possibility of Sobeys introducing new store banners and required further negotiations if it did so. Following a dispute over the terms that would apply to the planned FreshCo stores, an arbitration award was issued in December 2018 requiring a single collective agreement covering Sobeys' Safeway and FreshCo operations.

In early 2019, Sobeys announced that four of the stores slated for conversion would be franchised before reopening rather than remaining company-owned locations. Sobeys took the position that labour relations matters at those stores would thereafter be the responsibility of the franchisees rather than Sobeys.

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UFCW responded by applying to the British Columbia Labour Relations Board (the Board) for a declaration under s. 38 of the Labour Relations Code (the Code) that Sobeys and the franchisees at issue constituted a common employer, seeking to preserve the existing collective bargaining framework notwithstanding the move to a franchise model. UFCW argued that, despite the separate corporate entities involved, Sobeys retained substantial control over the franchise operations through the franchise agreements and its ongoing oversight of store operations.

In determining whether a common employer declaration was warranted, the Board considered whether the requirements of s. 38 were met: (i) more than one entity carrying on a business or activity; (ii) common control or direction; (iii) associated or related activities or businesses; and (iv) a labour relations purpose.

The central issue was whether Sobeys exercised sufficient "common control or direction" over the franchisees. In assessing that question, the Board applied its established multi-factor analysis, which examines factors such as ownership, management, contractual arrangements, labour relations, and operational integration.

Following an extensive hearing, the Board agreed with UFCW and declared Sobeys and the franchisees to be a common employer. That decision was subsequently upheld on reconsideration and judicial review.

The Court of Appeal

The appeal before the British Columbia Court of Appeal focused on the proper interpretation of section 38 of the Code.

The franchisees and Sobeys did not dispute that Sobeys exercised significant control over each franchisee individually. Instead, they argued that a common employer declaration required evidence of common control or direction among the franchisees themselves, in addition to the franchisor's control over each franchisee.

The Court rejected that submission. It held that the language of section 38 did not require the Board to identify a separate relationship of control among the franchisees. Rather, it was open to the Board to conclude that all entities operated under common control or direction because each franchisee was subject to the significant control exercised by Sobeys.

Equally important, the Court emphasized the highly deferential standard of review applicable to the Board's interpretation of labour relations legislation and repeatedly noted that common employer determinations involve matters squarely within the Board's specialized expertise.

Why the Decision Matters for Franchisors

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The FreshCo Decisions confirm that, for labour relations purposes, a common employer finding does not require common ownership, coordination, or control among franchisees themselves. Rather, a labour board may consider whether the franchisor's relationship with multiple franchisees is sufficiently integrated that the franchisor and those franchisees effectively operate as a single enterprise.

At the same time, the decisions should be considered in their factual context. The Court did not suggest that franchisors and franchisees will routinely be treated as a common employer. Rather, the case arose from a highly integrated franchise system that was introduced as part of the conversion of previously unionized grocery stores. The Board was therefore assessing the franchise structure against the backdrop of an existing collective bargaining relationship.

Nevertheless, the decisions serve as an important reminder that labour boards may look beyond contractual statements of independence and focus on the practical realities of how a franchise system operates. In particular, franchisors should be aware that extensive operational oversight across multiple franchisees may support a common employer finding even where the franchisees themselves have no common ownership or control. That risk should be considered when designing both franchise agreements and day-to-day operating practices.

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