

Introduction to the First Edition

A large number of American franchise systems have, over the last 40 years, made Canada one of their chosen international expansion targets. Many of these have thrived in the Canadian marketplace. They have joined the various home-grown franchise and other retail or service chains in a climate that readily accepts franchising as a method of doing business. Geographic proximity, together with a common language, history and culture, are cited often as the reasons why Canada is the first stop on the road to international markets for U.S. franchisors. In fact, experience tells us that many franchise systems did not historically consider Canada an “international market” at all, but instead simply an extension of their domestic one.

Just as the rest of the world has become a more complicated place to do business, however, so too has entry into this “sort of” international market directly north of the 49th parallel (the geographic line that forms a large part of the border between the two countries). This book is, in part, recognition of that fact. It has been developed as part of the Intensive Program on “Fundamentals of Franchising—Canada” being held at the ABA’s Annual Forum in Vancouver, British Columbia, Canada, on October 6, 2004. The intention is to educate those readers who are, or who have, clients intent on expanding into the Canadian marketplace. In many ways, Canada is very familiar to American companies as a place to franchise their business. But in many crucial aspects, it is a different place to franchise and to conduct business.¹

Canada has a well-educated, highly-skilled workforce, with disposable incomes and spending patterns generally seen as being on par with American consumers. Canada also has available retail locations and undeveloped land, an abundance of natural resources, and an extensive infrastructure of highways, railways, shipping lines and telecommunications. Canada is also seen as receptive to foreign investment. Canadian cities are generally considered safe, and Canadian business practices and legislative developments tend to follow those in the United States (except, notably, in the area of litigation), giving American business the opportunity to succeed in the Canadian marketplace. The vast majority of Canada’s population lives within one hundred miles of the American border.²

1. This Introduction is, in part, reprinted from an article by Larry Weinberg and Geoffrey Shaw in the Fall 2004 ABA Forum’s *Franchise Law Journal*, titled “A Practical Road Map to Entering the Canadian Market,” and is reprinted with permission.

2. “Canadian Statistics—Population of census metropolitan areas,” online: 2001 Census boundaries, <http://www.statcan.ca/english/Pgdb/demo05a.htm>.

So, as a result of many factors, Canada becomes the natural place to grow for an American franchisor lured to foreign markets and concerned about saturating its own local market.

Some of these considerations will typically factor into a well-reasoned decision and execution of a plan to expand or push into Canada. Experience dictates, however, that there are probably just as many examples of franchisors that have not devised any real plan at all and are instead pulled into Canada. This usually occurs because of interests expressed from prospective franchisees or area developers located in Canada. Now, however, and in particular because of the regulation of the franchise sales process in Ontario, Canada's most populated province, a spur-of-the-moment decision to be pulled into Canada will less likely be acted upon. That is probably good news for all potential stakeholders (franchisors and franchisees). Most franchisors and franchise professionals would generally counsel that a franchisor should first be ready with a plan to push into a new country on its own terms, as opposed to being pulled into a new market by the lure of a single-unit franchise.

Throughout this book the reader will likely learn more about Canada's political structure and constitutional division of powers than they care to know about. To avoid too much confusion, this Introduction will provide a short primer on the topic. Canada, like the United States, is rooted in a system of federalism. All aspects of governmental power are divided between the federal (national) and provincial levels of government. While there is but one federal government, there are ten provinces. In addition, there are now three territories, comprising much of Canada's uninhabited north. Territories enjoy a certain degree of autonomy and have their own territorial governments, but otherwise rely to a great extent on the federal government.

The *Constitution Act, 1867*³ s. 91 grants the federal government exclusive jurisdiction over such areas as trade and commerce, banking and bills of exchange, bankruptcy and insolvency, trademarks, patents and copyrights. Section 92 grants provincial governments exclusive jurisdiction over such areas as property and civil rights, as well as the administration of justice in the province. Of relevance to franchisors, therefore, is the fact that intellectual property law (patents, trademarks and copyright), as well as competition (antitrust) law, is within the federal jurisdiction with statutes that apply nationally, while private contractual matters fall within the purview of the provincial governments with their jurisdiction over "property and civil rights . . ." Hence, any franchise legislation in Canada will only ever likely arise at the provincial level, and to date, only the provinces of Alberta and Ontario have passed such laws.

3. (U.K.), 30 & 31 Vict., c. 3, reprinted on R.S.C. 1985, App. II. No. 5.

While this book will outline a host of important differences when comparing the business, law and practice of franchising in Canada and the United States, it will also reveal numerous similarities between the culture and law of both societies. The most successful franchise systems doing business in Canada will invariably be those that recognize and respect the differences, while fully exploiting the similarities.

We hope you gain much from this work.

Larry Weinberg and Peter Snell, 2004