

IN-DEPTH

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GOOD FAITH AND INTERNATIONAL
FRANCHISING



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In-Depth: Franchise Law (formerly The Franchise Law Review) provides an insightful overview of the laws and regulations governing franchise systems in key jurisdictions worldwide. With a focus on recent developments, it also examines the most common practical challenges involved in international franchising, including IP and data protection, tax liabilities and competition law issues.

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Good Faith and International Franchising

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Introduction

The notion of good faith has for many years been gaining traction in the context of both national and international franchising.^[1] In both civil law and common law jurisdictions, courts have sometimes relied on the notion of good faith to compensate for the power imbalance that often exists in a franchise relationship. In most civil law jurisdictions, the duty to act in good faith in commercial dealings is a general and free-standing obligation that arises in addition to the contractual terms between parties. With regard specifically to franchise agreements, relatively recent decisions have arguably extended the implied duty of good faith owed by a franchisor to a franchisee. For a franchisor to fulfil its obligations, courts have held that a franchisor is required to act in good faith throughout the franchise relationship, respond promptly to its franchisees' concerns regarding competitive threats, as well as generally take steps to protect its brand and franchise network.

Although a statutory duty of good faith applicable to all contracts has not been enacted in common law jurisdictions, many franchise-specific and business relationship statutes provide for a duty of good faith and fair dealing in these types of contracts. Common law courts are also increasingly inclined to recognise a duty of good faith in the performance of commercial contracts. For example, Canadian courts have applied the duty of good faith as a general organising principle of common law contracts, particularly in the context of commercial agreements such as franchise arrangements, involving vulnerable parties.

The notion of good faith has been given various interpretations and has been applied on a case-by-case basis, especially in the context of franchise law. This chapter seeks to provide an overview of the manner in which the duty to act in good faith has been interpreted and applied by courts, particularly in civil and common law jurisdictions. The various difficulties and challenges created by the current state of the law on good faith, particularly as it applies in the franchise context, will also be discussed. Finally, the authors will present practical tips for franchisors to comply with their duty to act in good faith.

Although this chapter draws on examples of Canadian case law, the issues addressed in this article commonly arise in cross-border franchising.

Principles of good faith in the civil law tradition

General overview

In many civil law jurisdictions, the duty to act in good faith in commercial dealings is a general and free-standing obligation codified by statute.^[2] For example, a fulsome obligation applicable to all contracts exists in Canada's civil law province, Quebec, which imposes a legal requirement for all parties to conduct themselves in good faith during both contractual and pre-contractual dealings. The obligation to act in good faith applies to the execution of the agreement, the fulfilment of the parties' respective obligations, and the way in which the contract is terminated. Therefore, parties are required to act in good faith throughout the entirety of their contractual relationship, in addition to respecting the express terms of their contractual agreement. Moreover, while the notion of good faith

is far-reaching and applicable to many situations in the civil law tradition, the principle is not typically viewed as yielding a particular result or outcome, but rather informs the manner in which parties to a contract must conduct themselves, and provides the basis for considering the reasonableness and sufficiency of their actions in a given set of circumstances.^[3] To this end, the Supreme Court of Canada recently canvassed the notion of “contractual loyalty” arising from good faith in the performance of contracts, distinguishing it from loyalty emerging from fiduciary obligations. The Supreme Court clarified that such contractual loyalty “does not require contracting parties to act in the sole interest of their counterparty, but [...] does require them to consider the other party’s interests when performing the contract”.^[4]

Despite its far-reaching nature, the duty to act in good faith in commercial dealings in the civil law tradition is not without its limits. Canadian courts have held that, in the context of transactional contracts, the general civil law duty of the parties to exercise their rights in good faith does not impose a duty to renegotiate a long-term contract where, as a result of significant changes in the market, one party reaps substantial benefits from an otherwise legally formed contract. Canadian courts have therefore confirmed that the notion of good faith is not synonymous with distributive justice and that accordingly, the duty to act in good faith will generally find application in situations where there is an inherent imbalance of power between the parties, as is often the case in contracts of adhesion, such as franchise agreements.

Good faith in franchise agreements

Civil law courts have often characterised franchise agreements as contracts of adhesion given that they typically contain standardised clauses that are not freely negotiated between the parties.^[5] Courts have justified reading an implied duty to act in good faith into franchise agreements and have imposed obligations on franchisors that go beyond the terms of the franchise agreement based on the existence of an inherent power imbalance between the franchisor and the franchisee.^[6]

Furthermore, the relationship between a franchisor and a franchisee is often described as being of a long-term and relational nature.^[7] Therefore, the judiciary is inclined to read into franchise agreements a more robust duty of good faith considering that such agreements do not always spell out all of the terms between the parties in an explicit manner, as is often the case with long-term relationships.^[8] However, courts have also held that there is no fiduciary duty that exists between a franchisor and a franchisee under the civil law tradition.^[9]

In relatively recent decisions, Canadian civil law courts in particular have broadly interpreted, and arguably significantly extended, the duty of good faith owed by a franchisor to a franchisee. Various examples of specific duties that flow from the duty to act in good faith in franchise agreements are discussed below.

Duty to disclose

To act in good faith, franchisors have a pre-contractual duty to furnish accurate and up-to-date information to prospective franchisees regarding their business operations. This requirement is based on the general duty of good faith in contracts, and may in

certain cases extend to the fulsome disclosure requirements set forth in specific franchise disclosure laws. In any event, this pre-contractual disclosure is typically required to allow franchisees to access information they need to make informed investment decisions.^[10] The franchisor must therefore disclose all material information that is likely to influence the franchisee's decision in acquiring a franchise, as well as all information that the franchisee needs to operate the franchise.^[11] This obligation is especially relevant given the Supreme Court of Canada's recent holding that, in circumstances where contracting parties have entered into a long-term business relationship relating to the contract, they have a duty to inform each other of the prospective acquisition of the business, as such duty flows from the obligation of good faith pervading the parties' contractual relationship.^[12] Similarly, and perhaps more obviously, the franchisor cannot misrepresent important information relating to its business, such as its experience operating under a given franchise brand or the profitability and projected revenues of the franchise.^[13]

Given the general nature of the good faith obligation in civil law, there is no specific disclosure checklist that must be satisfied in each franchise context; however, a franchisor is required to exercise discretion and judgement in making its pre-contractual disclosures. As such, any facts or occurrences known to the franchisor that may impact a franchisee's decision to contract must be brought to light in a timely manner.

Duty to collaborate and provide technical and commercial support

According to case law, franchisors are required to collaborate with their franchisees, meaning that franchisors must act in a reasonable manner and diligently towards their franchisees.^[14] Similarly, franchisors are required to provide technical and commercial assistance to their franchisees throughout the course of their relationship.^[15] The rationale is that the franchisor possesses a certain level of know-how and expertise required to thrive in its domain and must therefore support its franchisees to counterbalance the "asymmetry of knowledge" that exists between the franchisor and the franchisee.^[16] This entails that the franchisor must provide its franchisees with the tools that will enable them to:

- develop their business;
- prevent economic loss or at least minimise its impact; and
- resist competition from other franchise networks.^[17]

Duty to compete fairly with the franchisee

The duty to act in good faith would not preclude a franchisor from competing with its franchisees (assuming, of course, the absence of contractual obligations to this effect in favour of the franchisee). However, the franchisor owes an obligation of loyalty towards its franchisees in that, if a franchisor opts to compete with its franchisee, it must ensure that it continues to perform its legal obligations towards the latter and that it acts in such a way that allows the franchisee to continue enjoying the benefits of its franchise.^[18]

Duty to protect the franchise brand

Civil law courts have also held that a franchisor has a duty to protect its brand and network that goes beyond the explicit terms of the franchise agreement. This is a duty that is owed not only to each individual franchisee, but also to the franchise network as a whole.^[19] To fulfil this duty, a franchisor is required to:

- act in good faith throughout the franchise relationship;
- respond promptly to its franchisees' concerns regarding competitive threats; and
- generally take steps to provide adequate brand management and protect its brand and franchise network.^[20]

What must be avoided by franchisors is a maintenance of the status quo or a "business as usual" attitude in the face of significant changes in the market. If the franchisor demonstrates that it has made concrete efforts in protecting and enhancing its brand, and yet in spite of these efforts, competitors have encroached on the franchisee's business, the franchisee will likely have no basis for a complaint.^[21]

Consistent with its duty to protect the franchise brand, the franchisor is also required to police the franchise network, meaning that franchisors must actively monitor and endeavour to curtail relationships with delinquent or free-riding franchisees to ensure the viability and profitability of the franchise network as a whole.^[22]

Principles of good faith in the common law tradition

General overview

Unlike in the civil law tradition, a freestanding general duty of good faith in contracts does not specifically exist under common law.^[23] Common law courts have traditionally described the concept of good faith as "inherently repugnant to the adversarial position of the parties" and "unworkable in practice".^[24] However, good faith and the role of implied contractual terms are gaining significant traction, particularly under Canadian common law. Canadian courts have recognised that contractual parties have a duty to act honestly in contractual performance, which is a manifestation of an "organising principle of good faith performance in contracts". Good faith does not entail putting the interest of the other contracting party first, but rather implies not seeking to undermine the other's interests in bad faith.^[25] Parties must therefore refrain from lying or otherwise knowingly misleading each other about matters directly linked to the performance of the contract.^[26] It has essentially been found that a basic level of honesty is required to guarantee the "proper functioning of commerce".^[27]

Moreover, the Supreme Court of Canada recognised that the duty of honest performance precludes a contracting party from actively deceiving or knowingly misleading its contractual counterparty, including by way of "lies, half-truths, omissions and even silence, depending on the circumstances" as well as "by failing to correct a misapprehension caused by one's own misleading conduct".^[28] The court, however, did clarify that the duty of honest performance did not impose a free-standing duty to disclose information.^[29] As such, while this decision somewhat expands the notion of the duty of honest performance of contracts governed by Canadian common law beyond simply refraining from lying, the scope of this implied obligation remains a very fact-specific determination whereby

a contractual party will only be obliged to disclose information required to prevent its counterparty from being misled in the given circumstances. In a recent decision, the court further specified that failure to speak out amounts to active dishonesty when directly relating to the performance of the contract – in such circumstances, contractual parties should be mindful to correct misapprehensions, otherwise courts would characterise it as bad faith.^[30] Thereby, this duty is considered as a “minimum standard regarding honesty in performance of the contract so that if the contract does not work out the other party will have a fair opportunity to protect their interests”.^[31] This good faith principle recognised by the Supreme Court of Canada in contract law is an organising principle used to avoid commercial uncertainty between the contracting parties, and courts remain reluctant to extend such principle to extra-contractual parties, unless a contractual provision contemplates it.^[32]

In another recent decision, the Supreme Court of Canada weighed the contours of the duty of good faith against contractual discretionary powers. The court held that the duty to exercise discretion in good faith, like the duty of honest contractual performance, is not an implied term that can be contractually excluded but rather a general principle of law that applies to all contracts, including franchisor–franchisee relationships. This duty is breached when contractual discretion is exercised unreasonably, that is, in a manner unrelated to the purposes for which discretion was granted.^[33] Conversely, the beneficiary of contractual discretion (usually the franchisor in a franchisor–franchisee relationship) who exercises its discretion in a manner relating to the purposes for which such discretion was granted does not breach this duty. More specifically, the duty of good faith does not require that franchisors subordinate their business interests to those of their franchisees. The court also held that an exercise of discretionary power that is arbitrary, deceptive or capricious would be considered unreasonable and sanctioned; however, this would not permit a court to displace a negotiated bargain between parties by either: awarding an undue advantage where there is no identifiable wrong in the exercise of discretion; or adjudicating whether the exercise of discretion is conducted in a “morally opportune or wise” manner from a business perspective. In line with previous decisions on this matter, the determination of an unreasonable exercise of discretion will remain highly context-specific and be dependent upon the intention of the parties as disclosed by their contract.^[34]

It appears that with each additional decision rendered in Canada with respect to the notion of good faith at common law, courts endeavour to provide further clarification in determining whether a good faith obligation is being imposed as a matter of law, as a matter of contractual terms implied by law or facts or as a matter of contract interpretation.

Good faith in franchise agreements

As is the case in civil law jurisdictions, vulnerable contractual parties, such as franchisees, have often been given special consideration under common law. Despite the lack of a general free-standing obligation, a duty to act in good faith has been recognised in certain common law cases in the context of a franchisor–franchisee relationship. Courts have found that a franchise agreement is a type of contract of adhesion, implying long-term partnerships that require mutual cooperation and consideration.^[35] Courts have therefore taken these factors into account when interpreting the scope of the duties to act honestly and in good faith as they apply to franchisors and franchisees.^[36] Courts have also

cautioned that the determination as to whether a duty of good faith has been breached will be contingent upon all of the surrounding circumstances of a particular case – namely, the specific conduct that would be expected of a party must be considered on a case-by-case basis.^[37]

Moreover, unlike in the civil law tradition, common law courts are divided as to whether terms can be implied in a contract by reason of the duties of good faith and honest performance where there is otherwise no indication that contracting parties agreed to an implied term or where the term sought to be implied was found to be inconsistent with the express terms of the contract.^[38] Courts suggests that the implied terms must have a degree of obviousness, meaning that a term cannot be implied if there is evidence of a contrary intention by either party.^[39]

Although the approach of common law courts to the duty of good faith in franchise agreements has been inconsistent at times, the content of the duty of good faith in the franchise context may be summarised as follows:

- the franchisor must exercise its powers under the franchise agreement in good faith and with due regard to the interests of the franchisee;
- the franchisor must observe standards of “honesty, fairness and reasonableness” and take into account the interests of its franchisees;
- the parties must not act in such a way that “eviscerates or defeats the objectives of the agreement” or “destroys the rights of the franchisee to enjoy the fruits of the contract”;
- neither party must substantially reduce the benefit of the bargain for the other, or cause significant harm to the other, in a manner contrary to the original intention and expectation of the parties; and
- where the franchisor is given discretion under the franchise agreement, it must be exercised reasonably and with proper justification, and may not be done subjectively, capriciously, or in a manner inconsistent with the reasonable expectations of the parties.^[40]

While common law courts have not been as explicit as civil law courts with regard to the duties that flow from the organising principle of good faith, many franchise and business relationship statutes impose a duty of fair dealing on parties to such agreements, as detailed below.

Statutory duty of fair dealing in franchise relationships

Franchise legislation in many jurisdictions imposes a general obligation of fair dealing on the parties in the performance and enforcement of their franchise agreement; for example, Canadian franchise disclosure laws set out such duties.^[41] To fulfil this duty, franchisors must perform and enforce the franchise agreement in a manner that takes into account the interests of franchisees.^[42] More specifically, when contemplating system-wide changes, a franchisor must consider the interests of the entire franchise network, as opposed to the interests of individual franchisees.^[43] Additionally, before making system-wide changes, franchisors should engage in “meaningful consultation” with their franchisees; it has even been suggested that engaging in a non-binding consultation process can allow a franchisor

to potentially “build an evidentiary record that can be deployed in defence of allegations of bad faith”.^[44]

Furthermore, franchisors are usually subject to stringent statutory pre-contractual disclosure obligations, which require them to provide a franchise disclosure document to every proposed franchisee before the sale of a franchise.^[45] In the context of the renewal of franchise agreements, Canadian common law courts have held that a franchisor will have breached its duty of fair dealing if it unduly withholds information so as to preclude a franchisee from exercising its right to renewal.^[46] The duty of fair dealing also prevents franchisors from exercising termination rights in an unreasonable or abusive manner.^[47] The duty of good faith also prevents a party from manufacturing an artificial reason to terminate the franchise agreement in order to avoid its obligations, such as future payments obligations.^[48]

Although case law has provided some guidance as to how the statutory duty of fair dealing should be interpreted, the extent of this codified common law obligation is far from settled. Still, given that the duty of fair dealing does not generally override unequivocal contractual provisions in the common law tradition, the breadth and scope of this duty may be mitigated by clearly drafted provisions of a franchise agreement.^[49]

Challenges created by the duty of good faith

There are several difficulties and challenges that arise as a result of the current state of the law on good faith, particularly as it applies in the franchise context. These issues include a lack of a uniform definition of the notion of good faith, limited guidance on the practical application of the notion of good faith, as well as difficulty in reconciling an implied duty of good faith with the freedom of contract of parties to a franchise relationship.

Lack of a uniform definition of the notion of good faith

As discussed above, the civil law and common law traditions have very different approaches in characterising the notion of good faith. In each case, the duty of good faith, as it applies in the context of franchise agreements, plays a different role. On the one hand, in civil law jurisdictions, the duty to act in good faith appears to imply a positive obligation to take affirmative steps to, among other things, support franchisees throughout the franchise relationship and be responsive to threats faced by the franchise brand against competition. On the other hand, the common law duty of honest performance, which originates from a general organising principle of good faith, seems to call for a negative obligation for franchisors to refrain from acting in a capricious manner towards franchisees.^[50] Perhaps more importantly, while the distinction between the application of the principle of good faith in these diverging legal traditions may not always be described as simply, it is generally accepted that the notion of good faith in civil law would impose more significant expectations and obligations on a franchisor, and likely sooner, than would similar concepts under common law.

Practical application of the notion of good faith

The concept of good faith remains difficult to apply in practice. Courts have used sweeping terms such as “loyalty”, “reasonableness”, “collaboration” and “honesty” to describe the

notion of good faith. Although courts have stated that the duty of good faith is not a panacea, and that a franchisor is not required to guarantee the success of its franchisee's business, courts have provided limited guidance as to the practical application of the notion of good faith and the duties that flow from this notion, including in the context of franchise agreements, as well as other categories of contracts involving vulnerable parties.^[51] Moreover, many of the cases that have shaped franchisors' good faith obligations in both civil law and common law jurisdictions rely heavily on the factual circumstances arising in a particular context, which suggests that they may be rightfully distinguished in all but a few cases. It has even been posited that the malleable nature of the notion of good faith has given rise to inconsistent "ad hoc jurisprudence".^[52] The extent to which these cases may be applied to franchisors and franchisees at large is therefore debatable.

Implied duty of good faith versus the freedom of contract

Some authors contend that the far-reaching nature of the obligation of good faith, particularly in the civil law tradition, unduly interferes with the parties' freedom of contract and may lead to uncertainty and unpredictability in commercial relationships.^[53] Where a duty of good faith is read into franchise agreements, it makes it difficult for franchisors to anticipate the types of obligations they must uphold. Indeed, in certain circumstances, a franchisor who has otherwise respected the explicit terms of its contract with a franchisee may be found to have breached its duty to act in good faith.^[54] This lack of certainty can be quite disturbing in practice.

Practical suggestions for franchisors

While the meaning of good faith is likely to continue to significantly evolve in response to current trends and future litigation, franchisors are encouraged to perform and enforce the terms of their franchise agreements in a manner consistent with the principles presented in this chapter. Regardless of where their franchise network is operating, franchisors should proceed with caution as the fundamental principles of good faith and honesty will undoubtedly continue to inform their conduct throughout their relationship with franchisees. More particularly, franchisors may consider implementing some or all of the following practical tips, with a view to complying with the duty to act in good faith and circumscribing the scope of their obligations that may lead to claims of unfair practices or conduct inconsistent with the requirements of good faith in any particular circumstances:

- The good faith requirements in each jurisdiction where franchisors wish to operate should be carefully studied and, in particular, it should be taken into account that their good faith obligations will likely prove to be more cumbersome in civil law jurisdictions.
- To avoid interpretative ambiguity and mitigate the risk that courts will read in more onerous obligations for a brand than were intended, franchisors should critically review their franchise agreements with a view to removing statements pertaining to the significant value and goodwill of their trademarks and business model, as well as any provisions that may be construed as commitments to enhance or engage in continued development of their brand.
-

Provisions should be included in the franchise agreement pursuant to which franchisees expressly acknowledge and agree that the franchisor is entitled to make decisions and take actions in the exercise of its discretion or rights with respect to an individual franchisee with a view to protecting or otherwise benefiting the franchised system or network generally.

- Franchisors should ensure that their exercise of contractual discretion be reasonable and clearly related to the purposes for which the discretion was granted under the franchise agreement and in all circumstances not appear arbitrary, deceptive or capricious.
- In light of the significant operational requirements often imposed on franchisees that are central to their contractual compliance, franchisors should be mindful of possible corollary obligations for them to enforce these obligations across the franchised network. As a result, franchisors may consider including in their franchise agreements specific defaults and termination rights where franchisees fail to comply with imperative operating requirements or otherwise engage in behaviour that may tarnish the reputation of the franchised network, and franchisors should not be too reluctant to exercise their rights under such provisions.
- Franchisors should act responsibly and not fail to take timely steps to protect their franchised networks when threatened, including as a result of competitive threats in the market, by offering some attempt at resolving genuine concerns of franchisees about the viability of the franchised system or the future of the franchised business. If a franchisor is in a position to demonstrate that it genuinely took some measure of response in order to assist its franchised network in dealing with competitive forces, it is unlikely that its conduct will be met with severe scrutiny.
- Franchisors should avoid drastically changing tack during the course of renewal discussions and refrain from engaging in conduct that could be seen as provoking an arbitrary impasse in the renewal process.
- Franchisors should refrain from manufacturing an artificial reason to terminate the franchise agreement.
- Franchisors should not lose sight of their obligations to avoid material harm to the interests of their franchisees that could result from the franchisor's failure to exercise, or its negligent or improper exercise of, rights available to it in respect of third parties (including landlords, suppliers, IT service providers, equipment vendors and marketing service providers). Franchisors should always conduct themselves with due regard for the impacts of their actions (and inaction) in respect of their franchisees, particularly where the latter could be denied access to their premises or availability of other goods or services essential to the operation of their franchised business by reason of the franchisor's failure to exercise, or its negligent or improper exercise of, rights available to it.
- Throughout the course of the contractual relationship, franchisors should refrain from actively deceiving or otherwise knowingly misleading a franchisee, including by way of mistruths, omissions or even silence, and should proactively correct any misapprehension caused by the franchisors' own misleading conduct.

Other steps to mitigate risks for franchisors may also be explored and will vary based on a franchisor's operations and market segment. Specific solutions may need to be adapted based on the nature of any given business and its approach to franchising.

Tariffs, Covid-19, good faith and the franchise landscape

It would be remiss not to consider franchisors' good faith obligations through the lens of global health crises and trade contexts, namely the Covid-19 pandemic, as well as the imposition of tariffs by the US government and the ensuing worldwide trade war, which have both profoundly destabilised the economy both internationally and in Quebec and the rest of Canada. The pandemic's lingering effects and the trade war's impact on franchised businesses both in Canada and across the world are significant. At the height of the pandemic, governments had taken sweeping steps to order the reduction of business activities in many sectors, particularly commercial fields, while government-imposed tariffs and resulting cost increases have substantially disrupted franchise systems' supply chain. While some franchised businesses have transitioned to working remotely, have ramped up their e-commerce business models and are less reliant on imported goods, allowing them to mitigate their losses somewhat, certain traditional franchised businesses remain in a precarious state owing to a drastic reduction in revenues, lower profit margins and uncertain economic conditions for the foreseeable future.

As a reminder, in the civil law tradition, franchisors are required to collaborate with their franchisees, meaning that franchisors must act in a reasonable and diligent manner towards their franchisees. Similarly, franchisors are required to provide technical and commercial assistance to their franchisees and ensure transparency of disclosures (including financial and supply-related) in connection with the franchise system throughout the course of their relationship. Moreover, in the common law tradition, franchise legislation in many jurisdictions imposes general obligations of fair dealing and honesty on the parties in the performance and enforcement of their franchise agreement. To fulfil these duties, franchisors must perform and enforce the franchise agreement in a manner that takes into account the interests of franchisees, but does not involve putting the interest of the franchisees first, and must take care not to deceive or mislead franchisees.

In light of the foregoing, franchisors may question the scope of their good faith obligations as they navigate through the economic repercussions of the pandemic and the trade war. In practice, the importance of proactive communication between franchisors and franchisees must be emphasised, particularly as concerns any temporary relief, the reconsideration of any provisions of the franchise agreement or the revision of initial investment estimates and ongoing expenses communicated to franchisees. Since the interests of franchisors and franchisees are aligned when it comes to ensuring the survival of franchised businesses, it is critical to consider the issues that will achieve mutually acceptable solutions for navigating the residual effects of the health crisis and the impact of the trade war. Such collaboration is also necessary for ensuring the long-term viability of the business model in the present context of rebuilding the economy post-pandemic while reckoning with government-imposed tariffs, including by accounting for the effects of persisting inflation and shifts in consumption patterns and customer expectations.

For example, franchisors and franchisees alike may review their franchise agreements and franchise disclosure documents in order to assess:

- in the interest of transparency, potential changes to pre-contractual disclosures as concerns initial investment estimates, ongoing expenses, profitability of the franchised business and supply procurement to address the increased cost of equipment, supplies and inventory (if any);
- further flexibility in vendor selection or whether domestic alternatives should be preferred to mitigate financial strain on franchisees;
- how the model or business may be adapted for e-commerce, kerbside pick-up, takeout or delivery;
- whether online outreach tools may be of assistance in that regard; and
- who will bear the responsibility for initiating and implementing any such changes.

The Covid-19 pandemic has had an unprecedented effect on social and economic realities that will continue to have lasting effects, including upon customer preferences. Similarly, political and economic uncertainties stemming from, or resulting in, the implementation of tariffs will likely shift consumer behaviours. It is therefore incumbent upon franchisors and franchisees to collaborate and seek creative and responsive solutions to the issues as they arise and to generally ensure their continued relevance in the commercial marketplace in the future.

Conclusion

The obligation to act in good faith, as it applies in the context of franchise agreements, is a burgeoning field. In light of the developing recognition of the duty to act in good faith in both common law and civil law jurisdictions, it will not be surprising if the trend continues in cases where one party's conduct is inherently unreasonable, unfair or otherwise offends the basic tenets of commercial dealings. Given the recent shifts in the scope of protections recognised for franchisees in various jurisdictions worldwide, it will be important for franchisors conducting business both nationally and internationally to monitor and comply with their good faith obligations for the foreseeable future.

Endnotes

- 1 Zoubeir Mrabet, "Les comportements opportunistes du franchiseur: étude du droit civil et du droit international uniforme", (2007) 41 RJT 429 at 464. [^ Back to section](#)
- 2 Articles 6, 7 CCQ; article 1134 C civ; Dr Mark Abell and Victoria Hobbs, "The Duty of Good Faith in Franchise Agreements – A Comparative Study of the Civil and Common Law Approaches in the EU" (2014) 12:1 Int'l J Franchising L 25. [^ Back to section](#)
- 3 CCQ sections 1375, 1434; Craig Trachtenberg, Jean-Philippe Turgeon and Stéphanie Destrempe, "The Franchisor's Duty to Police the Franchise System", (2016) 36:1 Franchise Law Journal 87 at 97–103; Daniel F So, Canadian Franchise Law: A Practical Guide, 2nd ed (Toronto: LexisNexis, 2010) at 93–94. *Churchill Falls (Labrador) Corp v Hydro-Québec*, 2018 SCC 46, [2018] 3 SCR 101; *Groupe Jean Coutu (PJC) inc v Villagi*, 2022 QCCS 4219 at para 48. [^ Back to section](#)

- 4 *Ponce v Société d'investissements Rhéaume Itée*, 2023 SCC 25 at para 72 (Ponce); *Groupe Jean Coutu (PJC) inc v Villagi*, 2022 QCCS 4219 at para 48. ^ [Back to section](#)
- 5 Frederic P Gilbert, *Le Droit de la Franchise au Québec* (Montreal: Éditions Yvon Blais, 2014) at 43–44. ^ [Back to section](#)
- 6 *ibid* at 161–163; Mrabet, note 1 at 464. ^ [Back to section](#)
- 7 *Dunkin' Brands Canada Ltd v Bertico Inc*, 2015 QCCA 624 at para 71 (Dunkin). ^ [Back to section](#)
- 8 *ibid* at paras 62–63. ^ [Back to section](#)
- 9 *Provigo Distribution inc v Supermarché ARG Inc*, 1997 CanLII 10209 (QC CA) at 20 (Provigo). ^ [Back to section](#)
- 10 So, note 3 above at 241–248. ^ [Back to section](#)
- 11 *ibid*; Gilbert, note 6 above at 163. ^ [Back to section](#)
- 12 Ponce, note 4 above at paras 71, 81. ^ [Back to section](#)
- 13 *Concept Bio Minceur inc v Ventilation Concept inc*, 2023 QCCS 4536 at paras 32, 73, 76 and 78. ^ [Back to section](#)
- 14 Gilbert, note 5 above at 177. ^ [Back to section](#)
- 15 Provigo, note 9 above at 24. ^ [Back to section](#)
- 16 *ibid*; James Judson, “The Duty to Protect the Brand Against Competition: How Bertico Affects Franchisors in Ontario”, (2018) 60 CBLJ 405 at 406–408. ^ [Back to section](#)
- 17 Provigo, note 9 above at 25–26. ^ [Back to section](#)
- 18 Provigo, note 9 above at 22–23; Trachtenberg, Turgeon and Destrempes, note 3 above at 98. ^ [Back to section](#)
- 19 Gilbert, note 5 above at 178–179. ^ [Back to section](#)
- 20 Dunkin, note 7 above at paras 77–88; Trachtenberg, Turgeon and Destrempes, note 3 at 99–100. ^ [Back to section](#)
- 21 Dunkin, note 7 above at paras 93–105; Provigo, note 9 above at 22–24, 31–32. ^ [Back to section](#)
- 22 Dunkin, note 7 above at paras 83–85; Trachtenberg, Turgeon and Destrempes, note 3 above at 99–100; Gilbert, note 5 above at 178–179. ^ [Back to section](#)

- 23** *Bhasin v Hrynew*, [2014] 3 SCR 494, 2014 SCC 71 (Bhasin); Abell and Hobbs, note 2 above. ^ [Back to section](#)
- 24** *Walford and Others v Miles and Another* [1992] 2 AC 128, [1992] 1 All ER 453, [1992] 2 WLR 174, 64 P & CR 166, [1992] 11 EG 115, [1992] 1 EGLR 207. ^ [Back to section](#)
- 25** *Time Development Group Inc (In Trust) v Bitton*, 2018 ONSC 4384, at para 63, cited in *Sunstar Ventures Ltd v Conexus Credit Union 2006*, 2022 BCSC 1674, at para 115. ^ [Back to section](#)
- 26** Bhasin, note 23 above at para 73. ^ [Back to section](#)
- 27** *ibid* at para 60; Trachtenberg, Turgeon and Destrempes, note 3 above at 95–96. ^ [Back to section](#)
- 28** *CM Callow Inc v Zollinger*, 2020 SCC 45, at para 90–91; *Greta Energy Inc v Pembina Pipeline Corporation*, 2022 ONCA 783, at para 26. ^ [Back to section](#)
- 29** Callow, note 29 above at para 80; *Potash Corporation of Saskatchewan Inc v HB Construction Company Ltd*, 2022 NBCA 39, at para 167–168. ^ [Back to section](#)
- 30** *Borrelly v Sernova Corp*, 2022 BCSC 1401 at para 55. ^ [Back to section](#)
- 31** *ibid* at para 53. ^ [Back to section](#)
- 32** Potash Corporation of Saskatchewan Inc, note 29 above. ^ [Back to section](#)
- 33** *Anthem Crestpoint Tillicum Holdings Ltd v Hudson's Bay Company ULC Compagnie de la Baie D'Hudson SRI*, 2022 BCCA 166 at para 92-93. ^ [Back to section](#)
- 34** *Wastech Services Ltd v Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7. ^ [Back to section](#)
- 35** *Shelanu Inc v Print Three Franchising Corp*, 2003 CanLII 52151 (ON CA), at paras 58, 70 (Shelanu). ^ [Back to section](#)
- 36** *ibid*. ^ [Back to section](#)
- 37** *ibid*; Bhasin, note 23 above. ^ [Back to section](#)
- 38** *Energy Fundamentals Group Inc v Veresen Inc*, 2015 ONCA 514 at paras 30–35; *Moulton Contracting Ltd v British Columbia*, 2015 BCCA 89 at para 78. ^ [Back to section](#)
- 39** Moulton, note 38 at para 54; *Elsser v University of Victoria*, 2022 BCSC 580 at para 48-49. ^ [Back to section](#)

- 40** *Fairview Donut Inc v The TDL Group Corp*, 2012 ONSC 1252 (CanLII) at paras 502–503 (*Fairview Donut Inc v The TDL Group Corp*, 2012 ONCA 867, appeal dismissed); Edward (Ned) Levitt, “Good Faith in Franchising”, presented at Lexpert Conference on Implied Obligation of Good Faith, 2 June 2015, 1 at 4. [^ Back to section](#)
- 41** Arthur Wishart Act (Franchise Disclosure), 2000, SO 2000, c 3; The Franchises Act, CCSM c F156; Franchises Act, RSNB 2014, c 111; Franchises Act, RSPEI 1988, c F-14.1; Franchises Act, RSA 2000, c F-23. [^ Back to section](#)
- 42** Levitt, note 40 above. [^ Back to section](#)
- 43** Adam Ship and Eli Lederman, “The State of the Law on Good Faith in Franchising: Best Practices and Practical Tips to Maximize Compliance and Mitigate Risk”, presented at the Canadian Franchise Association’s 2016 Law Day, 28 January 2016, 1 at 16–17. [^ Back to section](#)
- 44** *ibid*; *Fairview Donut*, note 40 above. [^ Back to section](#)
- 45** *Mendoza v Active Tire & Auto Inc*, 2017 ONCA 471 (CanLII) (*Active Tire & Auto Centre Inc v Francisco Yao Mendoza and Francis Mendoza Inc*, 2018 CanLII 51172 (SCC), application for leave to appeal dismissed); Levitt, note 40 above at 7–10; So, note 3 above at 241–248. [^ Back to section](#)
- 46** *Salah v Timothy’s Coffees of the World Inc*, 2010 ONCA 673 (CanLII) at paras 19–22; Levitt, note 40 above at 11; Ship and Lederman, note 43 above at 9–12. [^ Back to section](#)
- 47** Shelanu, note 35 above; Levitt, note 40 above at 15–17; Ship and Lederman, note 43 above at 6–9. [^ Back to section](#)
- 48** *2161907 Alberta Ltd v 11180673 Canada Inc*, 2021 ONCA 590, para 66. [^ Back to section](#)
- 49** Levitt, note 40 above at 5. [^ Back to section](#)
- 50** Manasvin Goswami, “Coherence and Consistency in a System of Good Faith: Assessing and Explaining the Impact of *Bhasin v Hrynew* on Canadian Contract Law” (2017), 77 SCLR (2d) 309; Judson, note 17 above at 411–415. [^ Back to section](#)
- 51** *Bhasin*, note 23 above at para 70; Andrea M Bolieiro, “*Bhasin v Hrynew* and the principle of good faith in contracts: Moving towards a modern view of commercial relationships” (2015) 33:4 Adv J 23. [^ Back to section](#)
- 52** Judson, note 16 above at 408–411. [^ Back to section](#)
- 53** *ibid*. [^ Back to section](#)
- 54** Trachtenberg, Turgeon and Destrempes, note 3 above at 94. [^ Back to section](#)



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