



Bill 45, Making Healthier Choices Act, 2015

Submitted to:
Standing Committee
on General Government

Submitted by:
Canadian Franchise Association

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INTRODUCTION

The definition in Section 1(2) in Bill 45, referring to a franchisor as an owner and operator is factually incorrect.

The Canadian Franchise Association (CFA) asks that this Section, and other components in Section 3 be removed because they do not represent the nature of the relationship, rights and responsibilities of the franchisor and franchisee.

As Canada's only national trade association for franchising, CFA has acted as the authoritative voice for franchising in Canada for almost 50 years. With over 600 corporate members nationwide and representing over 550 franchise brands and over 40,000 franchisees, we work with all levels of government to promote the value of franchising and development of industry made solutions to problems affecting the franchise industry. CFA promotes excellence in franchising and educates Canadians about franchising, specific franchise opportunities, and proper due diligence through its websites and its many events, programs and publications across the country.

COMMENTS

CFA does not have comments as to the intent or substance of Bill 45 *Health Protection and Promotion Act* (the "Health Promotion Act"). Rather we are concerned with the aspects only as they apply to franchising.

In Bill 45, "chain of food service premises" means a company that operates 20 or more food service premises in Ontario, regardless of ownership. This reference may or may not include franchisors. This threshold number is arbitrary but we assume that the number was chosen to ensure that burden isn't placed on small businesses to collect nutritional information.

The section of concern as it relates to franchising is the aspect regarding the definition of "owns or operates", as follows:

Franchisors, etc.

(2) For the purposes of this Act, and without in any way restricting the ordinary meaning of "owns or operates", a person who owns or operates a regulated food service premise includes a franchisor, a licensor, a person who owns or operates a regulated food service premise through a subsidiary, and a manager of a regulated food service premise, but does not include an employee who works at a regulated food service premise but is not a manager."

The definition above, referring to a franchisor as an owner and operator is factually incorrect. The relationship between a franchisor and franchisee is an independent contractual licensing relationship, wherein the franchisor grants the right to franchisees to own and operate a business using the franchisor's proprietary business concept, trademarks, and operational

systems. Franchisees are independent business owner/operators who are responsible for the day-to-day operations of their businesses.

A franchise is a business relationship created by a contract (often called a franchise agreement) between the franchisee and franchisor. The franchisor is the owner of a particular concept that he has developed over time and is the owner of the trademark(s) and operating system for the franchised business. The franchisee is licensed by the franchise agreement to use the trademark(s) and operating system for a fixed period of time called the term, according to the terms/conditions of the contract.

Franchisees are responsible for the activities of their business and run the day-to-day operations of the business including: who they hire, how much they pay employees, how they schedule their employees, filing their own taxes, maintaining ongoing training of their employees and executing employee incentive programs. Importantly, franchisees are responsible for making sure they operate their businesses in accordance with all applicable laws.

Section 1(1) of the Health Promotion Act defines “operator” as *“a person who has responsibility for and control over an activity carried on at the food premises...”*. Further, Section 16.1 of the Health Promotion Act requires *“that every person who operates a food premise shall maintain and operate the food premise in accordance with the regulations”*.

As outlined above, it is the franchisee who “operates” the food premises not the franchisor. Therefore, these sections do not necessarily apply to the franchisor.

The franchisor does not have control over the day-to-day operations of its franchisees and should not be held ultimately responsible for certain actions of the franchisee and it is not always the franchisor who has control over all elements of the supply chain. In many cases, the franchisor may not be the supplier of goods (e.g. menu items, ingredients, etc.) to its franchisees.

Aside from the fact that the definition in Section 1(2) is factually incorrect, the result of making the franchisor liable for the independent actions of the franchisee will have consequences – it makes the franchising option too risky, less attractive, and thus may undermine the future of franchising and reduce investment in the future.

The franchise model is a very successful business model, proven by the contribution and prevalence of franchisees in all communities in Ontario and Canada, as well as both the macro and micro-level effects on the economy of Ontario.

Both parties, the franchisor and the franchisee, are attracted to the respective opportunities and benefits of the relationship, including the boundaries of control a franchisor exercises over the franchisee.

The franchisee is not a glorified manager, and certainly not an employee of the franchisor. They are the owner and operator of their own small business and it has always been understood that they have the rights and responsibilities of small business owners.

The balance of control and the distinction of liability is important to maintain in order to be fair and consistent, as well as to keep franchising as an attractive investment opportunity for both parties. Franchisors should not be legally responsible for the franchisee's obligation to comply with this law.

RECOMMENDATION

It is our recommendation that this distinction of roles and responsibilities be made in Act, and if necessary, the Regulations.

The CFA respectfully recommends to the committee that the following amendments be made:

Delete Section 1(2) of the HMCA in its entirety:

~~Franchisors, etc.~~

~~(2) For the purposes of this Act, and without in any way restricting the ordinary meaning of "owns or operates", a person who owns or operates a regulated food service premise includes a franchisor, a licensor, a person who owns or operates a regulated food service premise through a subsidiary, and a manager of a regulated food service premise, but does not include an employee who works at a regulated food service premise but is not a manager."~~

Amend Section 3 of the HMCA:

Inspection

(2) For the purpose of determining whether this Act is being complied with, an inspector may, without a warrant, enter and inspect,

- (a) a regulated food service premise; or
- (b) any business premises of a company that owns or operates, franchises or licenses one or more regulated food service premises.

CONCLUSION

The CFA respectfully submits the amendments above for consideration for the committee. It is the suggestion of the CFA that further clarification of responsibility, compliance and liability be distinguished in the Regulations.

The franchisor does not have control over the day-to-day operations of the franchisee. It is our opinion that further consultation and discussion are required to distinguish for what a franchisor can reasonably be held accountable. Including the current language in the Bill is not

only factually inaccurate, but it undermines the independent nature of the franchisor/franchisee relationship in the franchise business model.

Furthermore, the error of giving the franchisor more control and liability than they should have is risky for both parties and makes franchising in general a less attractive method of doing business. Given the foundational and future opportunity that franchising has for the economy, the CFA warns of the implications of passing this legislation without the recommended amendments.

If the legislation is to pass, the CFA is happy to work with the government on the development of the Regulations to ensure that responsibilities and liabilities of parties are clear, fair, and respectful of the franchise business model.

APPENDIX 1: FRANCHISING FUNDAMENTALS

What is a Franchisor?

A franchisor is the owner of a business concept, its trademarks, and operational systems who licences its proprietary system to franchisees.

What is a Franchisee?

The individual or company that is granted the licence to own and operate a business using a franchisor's proprietary business concept. Franchisees are independent business owner/operators who are responsible for the day-to-day operations of their businesses.

What is Franchising?

Franchising is a method of doing business in which one person, the franchisor, grants another, the franchisee, certain rights contained in the franchise agreement. These rights govern the way in which the franchisee will conduct their business. The franchisee gains access to the franchisor's proven business system, including the operations manuals which will outline the systems and processes used to operate the franchise.

As the success of a franchised business depends on all franchisees delivering the same positive customer experience, the operations manuals are one of the key ways a franchise system can ensure consistent delivery of its product or service. Deviating from this uniformity and consistency of experience can be confusing to customers and can undermine the entire system. The relationship between the franchisor and the franchisees is symbiotic with the franchisor depending on the franchisees for revenue and the franchisees depending on the franchisor to grow the brand and create greater demand for the product/service which, in turn, leads to more customers. The franchisor, in addition to providing the standard operating system, typically offers its franchisees initial and ongoing training and support and assistance with marketing.

Franchising is a lower-risk route than creating a start-up business. The know-how and brand are licensed for use by the franchisee through the franchise agreement. Franchisees benefit from the franchisor's business system and know-how in the industry, which is typically shared through training, access to operations manuals and other forms of operational assistance. The franchisee also benefits from the franchisor's brand recognition and established good will, which helps franchisees establish a customer base more quickly than they could as a new start-up business owner. Many people who own a franchise would otherwise not be in business for themselves or would not be as successful as early in the process.

Contribution/Benefits of Franchising

Franchising is a great engine for the Canadian economy, creating new jobs every time a new franchise opens as well as providing direct and indirect economic benefits to the community in which it operates. Successful franchisees tend to reinvest in opening multiple units, which

generate more jobs and career opportunities for employees. Some successful franchisees may eventually also go on to establish their own franchise systems, thereby amplifying this effect.

Franchisees are independent business owners and franchise units are individual small businesses owned and operated by the franchisees, independent of the franchisor. Franchisees are responsible for the day-to-day operations of their business.

Franchising contributes significantly to the economy of Ontario. Every time a franchise opens it creates new jobs, and the economic impact, both direct and indirect, benefits the local community. There are approximately 78,000 franchise units across Canada and CFA members represent more than 600 brands and over 40,000 franchise locations in Canada. The geographic scope and prevalence of franchising in Canada is one that is impressive – members are represented in nearly every community and province in Canada. 88% of our members operate in Ontario.

Every time a franchise opens, a new business is opened and new jobs are created. Close to 700,000 people are directly employed by the franchising industry in Canada, when indirect employment is included, well over 1 million jobs are supported. Franchising contributes approximately \$68 billion to the Canadian economy annually, with community-level direct and indirect impact every time a franchise opens in a neighbourhood.