

Frequently Asked Questions – Franchising in Québec

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Franchisors looking to expand business operations into Québec need to be mindful of the key differences in the franchise model unique to the province — compared to the rest of Canada — in order to effectively tap into this potentially lucrative market and avoid legal issues.

Below are answers to two commonly asked questions about franchising in Québec.

1. Can I use a single franchise contract, or standard form contract, with all my Québec franchisees?

Yes. However, a franchisor using a standard form franchise agreement must be aware of the possible consequences. Notably, it must be aware of the likelihood that the franchise contracts will be considered to be “contracts of adhesion” within the meaning of the *Civil Code of Québec*.

A contract of adhesion is one where the essential stipulations, that is, the material terms of this particular contract, were (1) imposed or drawn up by the franchisor, on its behalf or upon its instructions, and (2) not negotiable by the franchisee. Whether the essential stipulations were negotiable by the franchisee depends on the particular facts surrounding the signature of each contract. Unless the franchisee had the opportunity to negotiate the essential stipulations, whether or not it acted on this opportunity, the franchise agreement will be considered to be a contract of adhesion.

A standard form franchise contract supposes the franchisor intends for the material terms of the franchise relationship to be the same across the network. Thus, it is no surprise that the majority of franchise agreements are found to be contracts of adhesion.

Québec law treats the “adhering party,” that is, the party on which the essential terms were imposed (the franchisee), the same way it treats consumers: both are treated as vulnerable parties in need of protection from the imbalanced effects of freedom of contract. As such, a franchisee will benefit from protections against, namely, abusive clauses.

2. If my franchise agreement is a contract of adhesion, what does it mean for a clause to be abusive?

In the context of contracts of adhesion, the *Civil Code of Québec* gives the courts a broad discretion in deciding what term in a particular contract is abusive. An abusive clause is any term of a contract that is excessively and unreasonably detrimental to the franchisee and that is therefore contrary to the requirements of good faith; in particular, a clause is abusive if it so departs from fundamental obligations arising from the rules normally governing franchise agreements that it changes the nature of the contract.

A clause should not be found to be abusive simply because it is disadvantageous to the franchisee. It must be so unreasonable and excessive that it fundamentally departs from socially acceptable contractual practices. Whether a clause is excessive can be determined either objectively or subjectively. A clause is objectively excessive when the resulting obligation is virtually impossible for a franchisee to meet, or is completely disproportionate in light of the franchisor's corresponding obligations. It is subjectively excessive when the difficulties that result from the particular circumstances of the franchisee are taken into account, such as the franchisee's lack of experience or financial vulnerability.

Should a clause be found to be abusive, the court may choose, at its discretion, to annul the clause in question or reduce the obligations of the franchisee stemming from said clause.