1. The Franchise Law Review: Chapter 20 – Canada

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Please note that this chapter was written by our lawyers – John Rogers (Chair), Richard Weiland, Kwan Loh, Brendan Morley and Stephanie Mui

2. I INTRODUCTION

Franchising is very active in Canada, where an estimated 1,300 franchise brands and 78,000 franchised units currently operate. Approximately 45 per cent of all retail sales in Canada are made from franchised outlets. About 55 per cent of these outlets operate under US-based franchise systems. Although food outlets continue to rank in first place as to number of total franchised units in operation, 60 per cent of Canadian franchises are now in non-food sectors.[1]

The Canadian Franchise Association (CFA) operates nationally and serves the needs of franchisors, franchisees and providers of support services. The CFA cooperates with many other

national associations, including the World Franchise Association, International Franchise Association, British Franchise Association and Australian Franchise Association.

A detailed consultation report on franchising in Canada was prepared by the British Columbia (BC) Law Institute in 2014. The report, which reviews earlier franchise legislation in Canada, was instrumental in the BC government's drafting of new franchise legislation.

3. II MARKET ENTRY

i Restrictions – immigration rules

A non-Canadian franchisor seeking to expand its franchise system to Canada is bound by the following Canadian visa requirements.

Franchisors wishing to have their managers or employees enter Canada must consider whether they need to apply for visas or work permits for the activities they intend be carried on in Canada. Citizens of almost 60 other countries are visa exempt in Canada. This means they can present themselves at a Canadian border or airport without having to apply in advance for a temporary resident visa at a Canadian consulate or high commission overseas. At the port of entry, they can simply present their passports and receive an entry stamp on them, which is an implied visitor permit for a period of six months. However, this type of permit only allows visitors to engage in activities in Canada such as sightseeing, shopping or other leisure-oriented ones.

If proposed activities in Canada are business-related, visitors need to consider whether they may be characterised as 'work' and therefore require a work permit. If, however, a level of proposed business activity is not substantial enough to be considered as 'work', a foreign person who is visa exempt may be admitted under the 'business visitor' category without obtaining a work permit. However, persons seeking entry as business visitors may not receive any payment for their business activities in Canada from a source within Canada and they may not sell any product or provide any service in Canada for which they will be paid in Canada.

If a foreign person's proposed business activities in Canada exceed the scope of activities allowed under the business visitor category, that person must apply for and obtain a work permit before entering Canada.

If the foreign person is a US or Mexican citizen, one of the more straightforward options would be to qualify under the North American Free Trade Agreement (NAFTA) professionals category. Under NAFTA, Americans and Mexicans may also apply for work permits to work for companies in Canada that are related to companies in their home countries. These are called Intra-Company Transferee work permits. Finally, under NAFTA, an American or Mexican may also apply for a work permit as a Treaty Investor.

The above categories are options to expedite applications of foreigners for Canadian work permits. If a foreign person's fact pattern does not fit within any of these categories, then it

would be necessary for him or her to obtain a Labour Market Impact Assessment showing that the Canadian enterprise to be involved has recruited for a particular position but has not found an eligible Canadian worker to be available.

Canada has no restriction on a foreign franchisor granting master franchise or area development rights to a Canadian person or entity.

Also, a foreign franchisor may own an equity interest in a Canadian entity (including a master franchisee or area developer) subject to a reporting requirement under the Investment Canada Act, namely a statutory notice of the establishment of a business operation (a franchise system) in Canada by the foreign franchisor or the acquisition of a Canadian business by the foreigner. Substantial acquisitions (in monetary terms) and smaller monetary acquisitions of cultural businesses are subject to review and approval by the federal government of Canada.

Canada has no foreign currency controls or restrictions.

4. III INTELLECTUAL PROPERTY

i Brand protection via trademark registration

Trademarks (also referred to as ‘marks’) used in connection with a franchise operating in Canada are critically important. The trademarks used in association with a franchise in Canada will form the foundation of that franchise’s goodwill and reputation in this country. As such, they are exceptionally valuable assets of a franchisor and must be properly protected.

As foreign trademark registrations are not enforceable in Canada, it follows that registration in Canada is highly recommended for any franchise system planning to operate in the country. The primary benefit is that once a mark has been registered the franchisor will gain the exclusive right to use and to license others (i.e., franchisees) to use the mark throughout Canada, even though the franchise system may initially operate in only one part of the country.

Registration of trademarks in Canada is governed by the federal Trademarks Act. There are no provincial or territorial laws for trademarks. While there are such laws in place for corporate and trade name registrations, the registrations provide no protection of trademark rights.

The process of filing an application to final registration can be completed within 12 months in a best-case scenario; however, the timing is often longer, and in some cases significantly longer if an objection is raised by the Trademarks Office itself or an opposition is filed by a third party. Once granted, trademark registrations act as both a ‘sword’ and a ‘shield’ for a franchisor. As a sword, the franchisor may assert its registered rights against third parties anywhere in Canada. As a shield, registration of a trademark provides the franchisor with the presumptive right to use that trademark anywhere in Canada.

ii Brand enforcement

Brand enforcement – the ability of a franchisor to stop others from using the same or a confusingly similar mark in Canada in association with the same types of goods and services – is significantly improved when the franchisor has registered its mark. While unregistered trademark rights (i.e., rights acquired solely through use of a mark in Canada) are recognised and enforceable in Canada, the extent of that protection is limited to the geographic area within Canada in which the mark is recognised as being associated with the franchise by consumers. In contrast, a trademark registration confers nationwide rights on a franchisor.

Success in a claim for trademark infringement typically results in the franchisor being granted, by the court, a permanent injunction against future use by the infringer, a monetary award of damages or profits, delivery up or destruction of any infringing products, and an award of costs to partially recompense the franchisor's legal fees. In many instances, the damages granted in cases of trademark infringement are relatively minimal; as such, a permanent injunction is often the relief considered most valuable by franchisors.

5. IV FRANCHISE LAW

i Legislation

Six of Canada's 10 provinces now have franchise legislation, BC being the latest. BC's Franchises Act and Regulations take effect on 1 February 2017.

None of the six provinces requires registration of a franchisor or the vetting of franchise documents by a government official. Canada has no federal franchise legislation, so regulation of franchising is currently a provincial matter. None of the six regulated provinces has a statutory form of franchise disclosure document (FDD). It is up to each franchisor, with the aid of a franchise lawyer, to prepare an FDD that complies with disclosure requirements specific to provincial regulations and disclosure of any additional 'material facts'.

ii Pre-contractual disclosure

In each regulated Province:

a. an FDD providing pre-contractual disclosure must be delivered to a prospective or renewing franchisee at least 14 days before an initial or renewal franchise agreement is signed. If a franchisor fails to deliver an FDD to a prospective or renewing franchisee, the franchisee is given two years after signing a franchise agreement to cancel it and claim a return of all monies paid to the franchisor plus reimbursement for any operating losses. If the franchisor delivers an FDD that is materially deficient (for example, by omitting the franchisor's most recent financial statements or two of its directors or officers failing to sign an attached franchisor certificate confirming that the facts shown in the franchise agreement are correct), then some courts in Canada have declared such a deficient FDD to be a nullity and therefore have allowed the franchisee a two-year right of rescission of the signed franchise agreement; and

b. if the franchisor makes a material misrepresentation within an FDD, the recipient franchisee is deemed to have relied on it and may sue for resulting damages.

iii Registration

Although there is no registration requirement for franchisors under any of the provincial franchise statutes, provincial corporate statutes require a franchisor either to incorporate or register in whichever provinces the franchisor is 'carrying on business'.

As mentioned, to protect ownership and use of trademarks, franchisors must register them under the Federal Trademarks Act and then license use of them to franchisees under franchise agreements.

iv Mandatory clauses

Although by statute no mandatory clause is required to be included in any franchise agreement, mandatory 'risk warnings' and sometimes other notices, such as ones concerning alternate dispute resolution, are required to be included in FDDs.

v Guarantees and protection

Guarantees by principals of a franchisee are a common requirement of Canadian franchisors. In Alberta, a guarantor must sign a statutory form of acknowledgement before a lawyer or notary to render the guarantee enforceable in that province.

6. V TAX

i Tax liabilities of franchisors

Canada taxes residents on worldwide income, and taxes non-residents based on certain Canadian source income, including income from a business carried on in Canada. Accordingly, franchisors carrying on business in Canada, whether through a Canadian resident entity or through a Canadian branch of a foreign entity, are subject to Canadian income tax. General corporate tax rates vary from province to province, ranging from 26–31 per cent.

Non-resident franchisors not considered to be carrying on business in Canada will generally not be subject to Canadian income tax. However, Canada also imposes withholding tax on certain payments made to non-residents, including management or administration fees; interest; and rents, royalties and similar payments. The withholding tax is generally 25 per cent but is reduced under Canadian tax treaties. There is a separate withholding tax of 15 per cent for amounts paid to non-residents for services rendered in Canada.

Whether or not a non-resident franchisor has sufficient activity in Canada to be considered carrying on business in Canada for income tax purposes is determined under Canada's domestic laws and, where applicable, the provisions of Canada's tax treaty with the franchisor's country.

Canada's treaties generally provide that Canadian taxation applies only where business is carried on in Canada through a permanent establishment, such as a Canadian office or employee.

Canada also has a value-added tax system referred to as 'goods and services tax' (GST), which applies at a rate of 5 per cent; in provinces that have harmonised their provincial sales taxes with the GST, the combined tax is imposed at rates from 13–15 per cent and is referred to as 'harmonised sales tax' (HST), except for a province such as BC, which collects GST and 'provincial sales tax' separately, but still at a combined rate of 13 per cent. GST/HST is imposed on taxable supplies of goods and services made in Canada. Franchisors carrying on business in Canada must register to collect and remit GST/HST on their taxable supplies; they will also be entitled to claim rebates based on input tax credits for GST/HST they pay to acquire goods and services for their own businesses. Non-resident franchisors that are not carrying on business in Canada are not required to register for GST/HST.

ii Tax liabilities of franchisees

Franchisees operating in Canada will be subject to Canadian income tax on their net income. General corporate tax rates range from 26–31 per cent depending on the province. Private corporations that are controlled by Canadian residents can take advantage of a lower 'small business' tax rate of between 10 and 18 per cent, on a portion of their net income.

The capital outlay (initial franchise fee) paid by a franchisee to obtain a franchise is depreciable for Canadian tax purposes on a straight-line basis over the life of the franchise.

Franchisees will be required to register to collect and remit GST, or for HST if operating in a participating province, as described in Section V.i, supra.

Franchisees who pay fees to non-resident franchisors should also be aware of their Canadian withholding tax obligation as described in Section V.i, supra.

iii Tax-efficient structures

A primary question for a franchisor seeking to expand into Canada is whether it needs to establish a taxable presence in Canada. The franchisor may stay outside the Canadian tax system by not establishing a presence in Canada and merely generating passive income from Canada in the form of franchise fees, royalty payments and payments for supplies and inventory. For example, expansion into Canada by way of a master franchise agreement with a Canadian master franchisee could potentially be structured without the franchisor establishing a Canadian presence of its own. In such an arrangement, the location of the franchisor should be considered with regard to the withholding rates under the applicable tax treaty.

If the franchisor wishes to establish its own presence in Canada, structures commonly used to accomplish this are a branch operation or a Canadian subsidiary.

If the franchisor operates directly in Canada through a Canadian branch, the franchisor will be subject to Canadian income tax on all net income attributable to the branch. Furthermore, Canada

imposes a branch tax to the extent that net income after taxes is not reinvested in the Canadian branch. The branch tax is imposed at a rate of 25 per cent but may be reduced under an applicable tax treaty. Operating through a branch may be the more tax-efficient approach if the franchisor expects to incur losses from a Canadian operation, as losses will be incurred directly by the franchisor and may be used to offset its other income.

The franchisor may instead incorporate a subsidiary corporation in a Canadian jurisdiction to carry out Canadian operations. The subsidiary will be subject to Canadian tax on its net income as a separate entity. Operating losses may be carried forward for 20 years to offset future income of the subsidiary. Net income after taxes may be repatriated to the parent by way of dividends that are subject to a further withholding tax of 25 per cent, which may be reduced under an applicable treaty. In addition to regular business corporations, a few Canadian provinces allow incorporation of 'unlimited liability corporations' (ULCs), which permit corporate liabilities to flow through to the parent shareholder in certain circumstances. ULCs are taxed in Canada in the same manner as business corporations, but may be taxed on a flow-through basis in the franchisor's country depending on applicable tax laws there.

7. VI IMPACT OF GENERAL LAW

i 'Good faith and fair dealing'

As mentioned, legislation in six of the 10 franchise-regulated provinces requires franchisors and franchisees to act in good faith under their franchise agreements. Additionally, the Supreme Court of Canada has ruled in Bhasin v. Hrynew (2014 SCC 71) that all contracts made in Canada require the contracting parties to act in good faith towards each other. Accordingly, in all 10 provinces (and three territories) of Canada, contracting parties are required to act in good faith, whether or not specified in a franchise or other written agreement.

Specifically, in each of the regulated provinces, franchise statutes impose 'a duty of fair dealing, [which] includes the duty to act in good faith and in accordance with reasonable commercial standards'. Although this duty is placed on both franchisors and franchisees, the Ontario Court of Appeal in Salah v. Timothy's Coffees of the World (2010 ONCA 673) ruled that: 'The purpose of the statute [i.e., Ontario's Arthur Wishart Act (Franchise Disclosure), 2000] is clear: it is intended to redress the imbalance of power as between franchisor and franchisee; it is also intended to provide a remedy for abuses stemming from this imbalance.' Later, the same Court ruled that the franchisor's ability to exercise any sole discretion to decide a franchise dispute cannot be applied to taking any action that is against 'the express rules as well as the spirit, letter and intent of the Act'. In deciding whether the statutory duty of fair dealing has been met by a franchisor, courts have examined both the wording of the franchise agreement involved and the conduct of the franchisor, often giving equal weight to both.

ii Agency distribution model

All provincial franchise statutes define a franchise in such a way that a distribution or agency arrangement might be deemed to be a franchise. For example, in Ontario, the definition of

'franchise' includes the grant of a right to distribute goods or services where the supplier or franchisor directly or indirectly provides 'location assistance' to a distributor or franchisee, and regardless of whether a licence to use a trademark is involved.

iii Employment Law

It is possible for a Canadian franchisor to be deemed a 'co-employer' of the employees of its franchisee. Human rights legislation and workers' compensation legislation in particular are given broad interpretation both by labour tribunals and the courts since these pieces of legislation are designed to protect human rights and health and safety of persons, and in some cases a co-employer relationship has been extended to the franchisor under these laws.

For a franchisor to lessen the possibility of being deemed a co-employer, its franchise agreement should explicitly provide that the franchisee is an independent contractor that has total responsibility for its employees, including recruiting, hiring, training and management, as well as any disciplinary action and any termination of employment. The franchisor, in turn, must respect these provisions by conducting itself so that it remains completely at arm's length from its franchisees' employees. Further, the franchise agreement should specify that the only control the franchisor has over employment matters relates exclusively to its own employees.

iv Consumer protection

There is no broad-based consumer protection legislation in Canada; rather, there are various pieces of legislation that address specific issues such as consumer product safety and consumer packaging and labelling, both at the federal and provincial levels. That being said, courts in all franchise-regulated provinces in Canada consider franchise legislation to be akin to consumer protection legislation, with the franchisee seen as the consumer and, as mentioned, courts tending to give precedence to the interests of the franchisee.

v Competition law

Canada's Competition Act deals with a number of competition law matters that franchisors need to be aware of, including price maintenance, abuse of dominance, exclusive dealing, tied selling, refusal to deal, delivered pricing, misleading advertising and market restriction.

While the Competition Tribunal is limited to simply restraining the conduct of a franchisor that is offending the Competition Act, franchisors must take care to avoid adopting pricing policies that could be interpreted as adversely and materially affecting competition in the marketplace. Although a franchisor may set and enforce maximum prices at which its franchisees may sell products, it cannot set minimum prices. Franchisors and other suppliers are also prohibited from discriminating against any franchisee who sells for less than a 'suggested retail price' or franchisor-advertised price.

vi Restrictive covenants

Franchise agreements often include restrictive covenants (more commonly known as non-competition clauses) to prevent franchisees from competing with the franchisor during the term of their franchise agreements and for a period after expiration or termination. Canadian courts interpret restrictive covenants strictly and will not enforce them when they go further than is reasonably necessary to protect the legitimate business interests of the franchisor. As in other jurisdictions, there are three key elements of a restrictive covenant: territory, duration and scope of restricted activity. If a Canadian court finds that any one of these key elements is excessive in nature, then the whole restrictive covenant will be declared void and unenforceable. Accordingly, it is wise for franchisors to act reasonably when drafting each of the key elements.

vii Termination

A well-drafted franchise agreement should document the specific circumstances upon which either the franchisor (or the franchisee) may terminate the franchise agreement. For example, franchise agreements often allow for franchisors to terminate in the event the franchisee is found to be in breach of one of the key provisions of the agreement, such as a failure to pay royalties or advertising fees. Also, franchise agreements often include default provisions listing various circumstances in which the franchisor is entitled to terminate the agreement, such as the franchisee filing for or being petitioned into bankruptcy.

viii Anti-corruption and anti-terrorism regulation

Canada has various federal anti-terrorism statutes that regulate illegal activities by individuals and corporations, with the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCA) likely to be of most relevance to franchising. The PCA requires that any 'money services business' – defined in the PCA as being engaged in the business of foreign exchange dealings, remitting or transmitting funds, or issuing or redeeming money orders, travellers cheques or similar activities – is subject to statutory record-keeping and reporting requirements. More specifically, the reporting requirements provide that any money services business must report to the Financial Transactions and Reports Analysis Center any suspicious transactions that may be related to the commission or attempted commission of a money laundering offence, or may be related to the commission or attempted commission of a terrorist activity financing offence.

ix Privacy

Privacy of personal information is an important consideration for franchisors intending to operate in Canada. The federal Personal Information Protection and Electronic Documents Act (PIPEDA) applies to personal information and its collection, use and disclosure in the course of commercial activities across Canada in the private sector. In addition, the provinces of British Columbia, Alberta and Quebec have enacted personal information legislation that has been deemed 'substantially similar' to PIPEDA, allowing the provincial legislation to apply in place of the federal legislation.

PIPEDA defines 'personal information' to include 'information about an identifiable individual [note that corporations are not included] but does not include the name, title or business address or telephone number of an employee of an organisation'. The definition allows for the protection

of a wide range of information including, but not limited to medical histories, financial transaction histories, photographs, video footage and audio recordings. Generally, an individual must provide his or her written consent to the dissemination of personal information to a third party.

The franchisor and each franchisee should designate an individual as a 'privacy officer' within its organisation. The privacy officer will be charged with ensuring the organisation complies with the relevant personal information legislation. The privacy officer will be governed by a privacy policy that the organisation must establish.

x Dispute resolution

Dispute resolution in Canada is geographically dependent. Canada has one federal government, 10 provinces and three territories. The structures for dispute resolution and the applicable laws will largely be determined by which province or territory a dispute occurs in. This is particularly the case if the dispute occurs in the largely French-speaking province of Quebec, which is the only province having a Civil Code with provisions often substantially different from statutes of the other provinces, which are common law governed.

Generally speaking, legal dispute resolution in Canada will take the form of one of three procedures: through the framework of a statutory dispute resolution body; a lawsuit commenced in a court; or arbitration. Within the context of any of these three procedures, the parties may engage in mediation, either voluntarily or by requirement, depending on the process.

i Statutory dispute resolution bodies

Statutory dispute resolution bodies will differ between provinces but will generally involve highly regulated areas of the law, where a complainant seeks redress through a statutorily empowered tribunal or process. These include labour relations boards, employment standards boards, human rights tribunals, and workers' compensation tribunals, among others. In most cases, the tribunal is mandatory while in others a choice is an option to be elected by the party initiating the process. Generally speaking, these disputes are more likely to occur between an employer and employee, and less likely to occur between a franchisee and franchisor.

While the procedures vary greatly, many statutory dispute resolution bodies will have mandatory mediation procedures.

ii Canadian courts

The structure of Canadian courts and the sometimes substantial variance between provincial laws can often be confusing to outsiders. In Canada, each province has inferior courts (often called provincial courts) and superior courts (called the Supreme Court, Superior Court or Court of Queen's Bench) where a lawsuit may be commenced. While the vast majority of lawsuits concerning franchising in Canada will be commenced in a province's Superior or Supreme Court, it will often be necessary for a prospective plaintiff to speak with a knowledgeable lawyer to determine where to proceed.

In terms of procedure, lawsuits in common law provinces follow procedures similar to those in most other Commonwealth jurisdictions. Lawsuits generally follow three stages: pleadings, discovery and trial. As elsewhere, in Canada the final stage of litigation is trial, which may be heard by a judge alone or judge and jury. Statistically, only a small percentage of lawsuits in Canada are taken all of the way to trial.

Under all provincial franchise statutes, a claim made under such a statute must be heard in the province involved.

iii Arbitration

Each province of Canada has enacted a separate act governing commercial arbitration. There is no national arbitration statute in Canada, as there is in the United States.

Many franchise agreements will include an 'arbitration clause' requiring that most disputes between the franchisor and franchisee must be resolved by arbitration. While an arbitration procedure will again depend on the statutory framework one is operating under, it is effectively a private proceeding heard by one or more arbitrators who, like a judge, will make a ruling on the dispute between the parties. Traditionally, many foreign franchisors operating in Canada would include arbitration clauses requiring that any arbitration proceed in the franchisor's home jurisdiction. However, a Canadian court may 'seize jurisdiction' when appropriate. Also, the new BC Franchises Act requires arbitration of a franchise operating in BC to be heard in BC.

Most arbitration clauses in Canada will have an exception (or 'carveout') whereby parties are permitted to seek injunctive relief from a court. This is because of the limited power of arbitrators to grant injunctions and because certain situations may be sufficiently urgent to necessitate a direct application to a court. Most commercial arbitrators in Canada are either senior lawyers or retired judges.

iv Mediation

In Canada, mediation refers to private, structured negotiations between parties conducted by a mediator. Generally speaking, and unlike arbitration, mediation is not binding and parties cannot be compelled to accept a settlement to which they do not explicitly agree. Further, mediation is generally conducted on a 'without prejudice' basis whereby admissions or concessions made by parties during a mediation cannot be subsequently raised by other parties. As with commercial arbitrators, most of the well-known commercial mediators in Canada are senior lawyers or retired judges.

There are several methods by which parties may end up in mediation. First, many statutory tribunals require parties to attend some form of mediation as the initial part of the dispute resolution process. Second, many franchise agreements will contain clauses specifically requiring the parties to engage in mediation for a certain period before either is permitted to commence arbitration or a lawsuit. Third, several provincial superior court rules permit one party to compel another party to attend mediation. Finally, many disputes are referred to mediation by mutual agreement, sometimes before any lawsuit or arbitration is commenced.

Mediation is becoming increasingly popular in Canada as it permits the parties to enter into a private settlement without the 'winner–loser' scenario associated with public lawsuits and can potentially allow a dispute to be settled in a more efficient manner than by lawsuit.

8. VII CURRENT DEVELOPMENTS

As mentioned, BC is the sixth of 10 provinces of Canada to introduce franchise legislation, and this is effective as of 1 February 2017. In addition to common statutory duties of fair dealing and good faith imposed on franchisors and franchisees, and the duty of a franchisor to deliver a complete FDD to each prospective or renewing franchisee, the BC Act has some requirements that are novel to legislation in some or all of the other five regulated provinces. For example, in BC, an FDD may be delivered electronically and any arbitration (in addition to litigation) pursuant to its Franchises Act must be heard in BC.

The potential imposition of co-employer status on parties, including franchisors, by statute is under study by the Changing Workplace Review Committee in Ontario. In a written submission to the Committee, the Canadian Franchise Association has made it clear that it opposes potential legislation on the bases that it would impose an unfair burden on franchisors and, at the same time, would weaken the necessary direction and control of franchisees as the 'true' employers of their staff.

9. About the Authors

John L Rogers

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John L Rogers is a leading lawyer in the fields of franchising, licensing and distribution law and is also knowledgeable in the preparation and implementation of a wide range of commercial contracts.

John practised law in Toronto, Ontario for eight years. While there, he served a four-year term as General Counsel, Director and Secretary of the Canadian Franchise Association (CFA). He is currently a member of the CFA's Legal and Legislative Affairs Committee.

Mr Rogers is recommended by *Who's Who Legal: Franchise*, by *Franchise Times* as a 'Legal Eagle', and is 'repeatedly recommended' in franchising according to *The Canadian Legal Lexpert Directory*. His practice takes him throughout North America. John speaks Spanish at an intermediate level.

John has acted as an author and lecturer for the International Bar Association, International Franchise Association, American Bar Association, Canadian Franchise Association, the

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Mr Rogers received his Bachelor of Laws degree from the University of British Columbia in 1976. He was called to the British Columbia Bar in 1977 and to the Ontario Bar in 2005.

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Richard Weiland is a tax partner of the firm and co-chair of the firm's wealth preservation group. His practice is focused on advising business owners and high-net-worth individuals and families on corporate structuring, tax and estate planning. He also advises a number of charities, non-profits and other tax-exempt entities on tax, governance and business structuring matters. He also provides tax advice to domestic and foreign franchisors.

Richard has completed the Canadian Institute of Chartered Accountants' In-depth Tax Course, and is a registered Trust and Estate Practitioner with the Society of Trust and Estate Practitioners. He has authored and contributed to a number of chapters for practice manuals published by the Continuing Legal Education Society of British Columbia and used by lawyers across British Columbia. He is a regular speaker for both legal and non-legal audiences in his areas of practice.

Richard earned a Bachelor of Arts degree in communications from Trinity Western University in 1997, and a Bachelor of Laws degree from the University of Victoria in 2001. He was called to the Bar of British Columbia in 2002.

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Kwan Loh is an associate with the firm's technology and intellectual property groups. In addition to being a lawyer, Kwan is also a registered Canadian Trademark Agent.

Kwan practises exclusively in intellectual property law, and regularly advises clients (including franchisors and licensors) on how to procure, protect and enforce their intellectual property rights. In particular, he is well versed in a wide spectrum of trademark matters, including the filing and prosecution of trademark applications in Canada, the United States and around the world, as well as the handling of trademark opposition and cancellation proceedings in Canada.

Kwan is also experienced in managing trademark portfolios for clients across multiple jurisdictions, including clearance work and prosecution strategy. As part of this work, Kwan also engages in the negotiation of licences, assignments and other commercial agreements for clients.

In addition to handling prosecution and solicitor work, Kwan also has experience with trademark-related disputes and has appeared before the Federal Court and Federal Court of Appeal in trademark-related litigation.

Kwan received his Bachelor of Science in physiology, with honours, from the University of British Columbia (UBC) in 2002 and his Bachelor of Laws in 2006 also from UBC. He was called to the Bar of Ontario in 2007 and the Bar of British Columbia in 2010. Kwan is fluent in Mandarin and conversant with Cantonese.

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Brendan Morley is an associate with the firm's business litigation group.

Brendan's primary practice area is commercial litigation with a special emphasis on shareholders' oppression and derivative claims, and real estate and development disputes. Brendan also has experience in defamation claims, employment litigation and franchise litigation.

He has appeared before the Supreme Court of British Columbia, the Provincial Court of British Columbia and the Court of Appeal. Brendan has also served as counsel before a variety of administrative tribunals and has acted as counsel in numerous mediations and arbitrations.

Brendan obtained his BA from the University of British Columbia in 2001 and his LLB from the University of Saskatchewan in 2006. He was called to the Bar of British Columbia in 2007.

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Stephanie Mui is an associate with the Technology, Intellectual Property, Franchise and Private Company Transactions Groups. Her expertise encompasses corporate governance and regulatory compliance matters and mergers and acquisitions.

Stephanie also advises clients on various intellectual property issues (including copyright and trademark issues) relating to commercial transactions, and negotiates and drafts franchise

agreements, licence agreements and service agreements. She also assists local and international clients in obtaining trademark protection in Canada.

In addition to her legal background, Stephanie has a strong business advisory skill set, having previously worked as a management consultant advising public and private sector clients on operations, human resources and strategic business issues.

Stephanie is also active in community affairs, holding leadership positions in various non-profit organisations and mentoring undergraduate and law students at the University of British Columbia.

Stephanie obtained her Juris Doctor degree from the University of British Columbia in 2012; she was called to the Bar of British Columbia in 2013.

Source: Canadian Franchise Association, 2016.

Available at www.bcli.org/sites/default/files/franchise_act_consultation_paper_mar13.pdf.

For ease of reference, both provinces and territories will hereafter generally be referred to as ‘provinces’.