



THE LAWRENCE[®] LETTER

News and information for clients and friends of Lawrence, Lawrence, Stevenson LLP

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FRANCHISE LAW PART I

So You Want To Franchise Your Business?

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Louis Vouloukos

Mr. and Mrs. Singh have created a unique business: a diner that offers customizable, affordable, and healthy sandwiches, salads and soups in a trendy setting. They opened their first store in 2010 and their business concept worked. Customers often tell them they should franchise their business. The idea is very appealing to the Singhs, but they have no idea how to go about it.

Many business-minded individuals, like the Singhs in our fictitious example above, approach me about franchising their business. Some simply have a good idea and are certain that franchising is the way to go, even before they have tested their concept in an active business. Most have opened up a very successful business and have either thought of franchising themselves or been told by others that they should franchise their business.

To be successful in franchising, a number of key prerequisites must be in place.

Test and Replicate Your Business Concept

A good idea is nothing more than that. You must test your idea by opening up a business to determine if the idea translates into profitability. Running a business gives you the opportunity to develop, refine and improve your concept, an important prerequisite to franchising.

But to be successful in franchising, your concept must also be capable of replication. The Singhs have one successful location, but can they repeat that success at other locations that are under different management?

Trade-mark

The public must be able to pick you out easily from your competition. A trade-mark identifies your goods or services and shapes how they are perceived in the marketplace. Obtaining a registered trade-mark is one of the first things you should discuss with your lawyer when franchising your business. Registering a trade-mark gives you the exclusive right to use that trade-mark across Canada, even if your business operates only in a limited geographic area. Using a



business name or an unregistered trade-mark provides only minimal protection and may lead to a costly legal dispute if it turns out that someone else has the rights to a name you thought was yours.

Operations and Training Manuals

An operations manual is the backbone of every franchise system. It sets out in writing for your franchisees the fundamental details and procedures of your

proven system. It can be thought of as a “how to guide”: How do I operate the equipment? How do I hire/train staff? How do I deal with accounting and reporting requirements? How do I purchase products and from whom?

You must also properly train your franchisees if they are to be successful. After all, they are buying into a proven system because they do not want to go through the trial and error of starting a business on their own. You will need to develop a comprehensive training program, usually supplemented by a written training manual.

Legal Requirements

Franchising law is very specific, so it is essential to hire a lawyer with experience in franchise law to prepare your legal documents. In Ontario, you must provide franchisees with a disclosure document, which we’ll cover in our next article. The financial implications of not providing a proper disclosure document are devastating and could sink your franchise system.

At Lawrences, we have helped many franchisors develop their concepts into successful franchises, while avoiding costly mistakes. Call us if you are thinking of franchising your business.



Louis Vouloukos is an associate in Lawrences’ Business Law Group. In addition to corporate and commercial work for the firm’s business clients, he also practises franchise law, providing all necessary legal services to franchisors and franchisees. Louis can be reached at (905) 452-6883 or lvouloukos@lawrences.com.

The Importance of Disclosure Documents In New Commercial Condominiums

Heather M. Picken

Whether you are developing a commercial condominium or buying a unit within one, the condominium's disclosure documents require careful attention, since they describe important features of the proposed condominium. Disputes can arise if buyer and seller do not clearly understand their obligations.

Use Restrictions

Municipal zoning bylaws may restrict the kinds of businesses that can be operated in a condominium. Developers may want further operating restrictions or to prohibit certain kinds of businesses altogether. Buyers may want exclusivity for their businesses within the condominium. The declaration should be drafted to give the buyer exclusivity without causing the condominium corporation to overspend in enforcement.

Purchase Price

The purchase price noted in the purchase agreement may be "grossed up" on closing to reflect each unit owner's proportionate share of construction costs for such common elements as elevators, electrical rooms, and stairwells. Several other adjustments will increase the final costs, e.g. utility meter installations, administration fees, and reserve fund deposits.

Occupancy Fees

Developers of commercial condominiums typically construct a shell unit that the unit owner must customize for its own use (leasehold improvements). When the shell units are ready, unit owners must complete the occupancy closing, even if they do not yet have financing for leasehold improvements. On occupancy closing, the unit owner must begin paying monthly occupancy fees until the condominium is registered and ownership conveyed. Occupancy fees are in addition to the final purchase price. They comprise the unit owner's proportionate share of taxes, common expenses, and interest on the unpaid balance due on closing. It can become costly for unit owners if the time between occupancy and final closing is prolonged.

Calculation of Common Expenses

Many buyers believe that unit owners' proportionate shares for common expenses are calculated according to square footage occupied, but this is not always the case. Sometimes larger "anchor" unit owners like grocery stores will pay a lower percentage, because they will bring in customers for other units in the condominium. Consequently, smaller units sometimes slightly subsidize larger ones; the method for allocating common expenses should be clear.



Unit Boundary Definitions

The disclosure should describe what comprises a standard unit and what are considered common elements, such as the roof. The condominium corporation is responsible for repairing common elements, but what about windows—are they common elements or not? It should also be clear whether a unit owner may make alterations, such as installing special ventilation systems or larger loading doors.

Signage

Sometimes the signage area in front of a unit is a common element granted for the unit owner's exclusive use, usually with restrictions on the type of signage permitted and an approval process before installation. There may also be a pylon sign structure at the entrance to the parking lot, with spaces that can be leased or sold to unit owners.

Parking and Garbage Removal

Are parking spots designated for each unit's exclusive use? Where are the loading docks and what are the access rules for deliveries? Must each unit store its own garbage and arrange for its disposal?

Other Businesses

Will other businesses operating in the condominium use more parking or garbage room space, as with a grocery store? Will any business potentially consume more utilities? If so, how does the condominium corporation calculate extra charges for that unit?

Changes

Buyers have the right to terminate a purchase agreement if the developer makes a material change to the disclosure documents, such as significantly increasing the unit owner's share of common expenses. The right to terminate is effective for 10 days after the buyer is notified about the changes.

Whether you are developing a commercial condominium or buying a unit within it, Lawrences can help you close the transaction without making costly mistakes.



Heather Picken heads Lawrences' Real Estate Group. She has extensive experience in condominium development, both commercial and residential, as well as all other aspects of real estate law. Heather can be reached at (905) 452-6891 or hpicken@lawrences.com.

Occupancy fees are in addition to the final purchase price.

TERMINATING EMPLOYEES

The Termination Meeting

Damien M. E. Buntsma

Terminating an employee is one of the most difficult decisions employers face. Once the decision to terminate has been made, employers must consider the potential negative effects upon the employee, other staff, the organization's reputation, and the threat of litigation. To avoid negative consequences, the conduct of the termination is as important as the decision itself.

Reason for Terminating

Termination can be undertaken with or without cause. Termination with cause is usually reserved for serious, proven misconduct, such as theft, fraud, assault, sexual harassment, excessive absences for unsubstantiated reasons, serious insubordination, or conflict of interest. Poor performance will rarely be considered cause for dismissal, unless there is clear evidence that the employee has not responded to progressive disciplinary measures.

In termination without cause, in its simplest form, the employee is entitled to one of three provisions: minimum standards under the relevant employment standards legislation, an amount specified in a contract, or an amount provided under the common law. The employer should seek legal advice to determine a particular employee's entitlements upon termination without cause.

The Termination Letter

Before the termination meeting, the employer should carefully craft a termination letter. Its content and specificity will depend upon the circumstances and whether the termination is with or without cause. Legal advice should be sought on drafting the letter and completing an employee's Record of Employment.

The Termination Meeting

To mitigate potential legal liability, employers must follow specified procedures in carrying out any termination, whether with or without cause. We offer the following ten tips on how to carry out a proper termination meeting:

1. Prepare what you will say; make a checklist of items to be covered.
2. One person should be the "official voice" during the meeting, with a witness taking notes. Do not "gang up" on the employee.
3. Be brief. Let the employee know unmistakably that he or she is being terminated, but in general terms. If the employee pushes for specifics, simply state that the decision was made by management; it is final and you cannot discuss further details.



4. If alleging cause, make sure that this is clear, including whether or not you are offering any gratuitous payment in lieu of notice.
5. In many cases, the meeting will become emotional. The person conducting the meeting should be firm, yet sensitive, without losing control of the meeting.
6. Have the termination letter plus any written offer and associated documents ready for the employee. Do not require the employee to read the letter or sign a release immediately.
7. Describe the notice, or payment in lieu of notice, being provided, plus any offers in exchange for a signed release.
8. Allow employees to take their personal effects with them, or make arrangements to retrieve these items at a later date, supervised by management. Employees should not be allowed access to any company computers or other electronic devices after termination, unless supervised by management.
9. Carry out a dismissal early in the week and late in the day, so that the employee can seek advice and leave without encountering co-workers.
10. Pay for a taxi to drive the employee home, or contact someone to come and pick up the employee.

The Last Word

When contemplating the termination of any employee, seek legal advice before making the decision, not after.



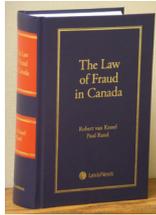
Damien Buntsma is an associate in Lawrences' Employment & Labour Law Group. He represents and advises public and private sector employers, unionized and non-unionized, in all areas of labour and employment law. Damien can be reached at 905-452-6876 or dbuntsma@lawrences.com.

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Life at Lawrences®

Lawrences®' lawyers lead active lives in the profession and in the community. Here are some of their latest achievements.

In the Bookshop



Lawrences is very pleased to announce the publication of *The Law of Fraud in Canada* by our late friend and partner **Robert J. van Kessel**. After Rob's death in 2012, co-author Paul Rand, senior counsel at RBC Capital Markets, completed the book and oversaw its publication by LexisNexis Canada. The book is intended as a reference for lawyers, judges, and governments in dealing with the growing problem of fraud. Proceeds from the sale of the book will go to Rob's alma mater, the University of Windsor Law School, for a scholarship in his name.

In the Medals



Lawrences' managing partner **Heather M. Picken** has received the Queen Elizabeth II Diamond Jubilee Medal. The City of Brampton nominated Heather, through the Federation of Canadian Municipalities, for her extensive volunteer work with local organizations.

A very well-deserved honour, Heather, for carrying on the Lawrences tradition of giving back to the community!

THE LAWRENCES® LETTER

The Lawrences® Letter is a free newsletter offered by Lawrence, Lawrence, Stevenson LLP. If you have colleagues who would be interested in receiving the newsletter, please have them send their contact information to newsletter@lawrences.com.

If you do not wish to continue receiving the newsletter, please send an e-mail to newsletter@lawrences.com with the word 'unsubscribe' in the subject line.

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At the Ballot Box



In the 2013 Ontario Bar Association's elections, Lawrences' litigator **Edwin G. Upenieks** was elected second vice-president and will take over as president in 2015. The OBA exists to improve the administration of justice and the standards of the legal profession in Ontario, and nationally through the Canadian Bar Association. Congratulations on your election, Ed!

In this festive season, we take this opportunity to thank you, our friends and clients, for your continued support and for your business.

We wish you and your family a happy holiday season and health and prosperity in 2014.

In lieu of sending holiday cards this year, Lawrences will be contributing to

The Robert J. van Kessel Memorial Fund at the Brampton Area Community Foundation in memory of our friend and partner, the late Robert J. van Kessel

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