

# In the know Sotos

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*"whenever the franchisees' financial interests are materially impacted by a change to the franchise system, ... a formal amendment to the franchise agreement is required."*

- David Sterns



Markus Cohen, Q.C.

1940 to 2009

Markus was a friend, a colleague, and a lawyer of the highest calibre. He was looking forward to starting the year in practice with us, but, sadly and unexpectedly, passed away shortly after the new year. His passing deprived us and the legal and franchising communities of a warm, intelligent and delightful man. We will fondly remember and miss him.

*Sotos LLP*

## Proceed with caution when changing the franchise system

By David Sterns

Businesses operating in dynamic environments must change from time to time if they are to survive and thrive. Franchise systems are no exception. The problem in franchising is that while both the franchisor and franchisee may agree on the need for change, how the change is implemented, and which side bears the brunt of the changes is something which they will rarely agree upon. Franchisors who impose what they view as the necessary changes on reluctant franchisees can find that the franchisees have a number of potent remedies at their disposal. From our vantage point, we are noticing that franchise system changes are becoming fertile ground for costly and uncertain litigation.

There are several points that must be considered before a franchisor introduces changes to its business model. The first and most important is whether the franchisor is really contemplating a new or amended form of agreement with its franchisees. The fact that the franchisor believes that the change will improve the long-term profitability of the franchisees themselves makes little difference. Any attempt to impose a different economic model from the model contained in the franchise agreement may be met with strong resistance and possibly system-wide litigation.

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## Proceed with caution when changing the franchise system

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Take, for example, the case of a fast-food franchisor which decides to outsource a call centre which it had previously operated as part of its franchisor duties at no extra charge to the franchisee. There are a lot of good reasons why a franchisor would want to outsource this responsibility and just as many good reasons why it would impose a cost-recovery charge for this service. You may be surprised to learn that the franchisor which did this was prevented from imposing any charge on the franchisee for this service. In the words of the Quebec Court of Appeal, imposing the call-centre fee on the franchisee would result 'in a different contract'. In the court's view, the changes implemented by the franchisor went 'beyond the intent of the parties' and that 'required the consent of the franchisees.'

The result in that case is all the more surprising considering that the franchise agreement specifically contemplated that the franchise system could be changed and that the franchisee was bound to accept such changes introduced by the franchisor from time to time. Even in the presence of a broad system-change clause such as this, the court required the franchisor to obtain the specific consent of its franchisees before implementing the change.

As a general guideline, any change to the economic relationship between the franchisor and franchisee, or any attempt to impose additional financial burdens on the franchisees, should be considered a material change to the franchise relationship. Unless the franchise agreement explicitly contemplates these types of economic changes, the franchisor may well have to formally amend its agreements with all of its franchisees.

Proceeding without an amendment carries several risks for the franchisor. The first is that the franchisee may simply refuse to accept the change to the relationship. If even one franchisee is able to successfully dispute the enforceability of the change, the franchisor faces a possible wider rebellion and, at the very least, risks losing credibility with other franchisees.

A greater risk is that a franchisee will bring an action against the franchisor for breach of the agreement and damages. There are at least two potential franchise class actions underway that we are aware of at this time concerning franchise system changes. Others will surely follow if either of these two cases is allowed to move forward as a class action. In this era of increasing class actions by franchisees, the issue of whether or not a franchisor has improperly imposed additional charges on its franchisees is ripe for litigation.

It is also important to consider whether the proposed change to the agreement imposes a duty on the franchisor to deliver a fresh disclosure document or statement of material change to the franchisee under the *Arthur Wishart Act (Franchise Disclosure), 2000*. Such a duty may seem surprising at first since the duty to provide a disclosure document typically arises when the franchisee first purchases a franchise or when a franchise is being renewed after there has been a material change to the franchise system. Nev-

ertheless, an argument could be made that the duty to provide a formal disclosure document is also triggered by an amendment to the franchise agreement which arises during the course of the franchise term. This argument has yet to be tested, but it is safe to assume that the courts will one day be asked to rule on it.

Determining when a change to the franchise system imposes a duty to amend the franchise agreement is rarely a clear-cut question. In cases where the only change is to the operational aspects of the franchise system, it may not be necessary to formally amend the agreement - such changes can usually be effected through the Operations Manual. But whenever the franchisees' financial interests are materially impacted by a change to the franchise system, prudence would dictate that a formal amendment to the franchise agreement is required. Franchisors can be sure that if the changes are unfavourable, a franchisee will seek legal counsel and the outcome may be a bitter one for the franchisor.



# Contract amendment by email

By Andy Seretis

Franchise agreements typically contain a provision limiting contract changes to those agreed to in writing and signed by the parties. Prior to the advent of the internet and the widespread use of email as a vehicle for communication, proving the existence of an agreed amendment was as simple as producing a piece of paper. Given that email communication has to a certain extent replaced oral exchanges between franchisors and franchisees, franchisors may inadvertently be deemed to have agreed to franchise agreement amendments by virtue of a set of email exchanges that take place subsequent to the initial execution of the contract. Although there is no Canadian case law directly on point, provisions in Ontario's *Electronic Commerce Act* and a recent United States decision would indicate that email exchanges between parties to an agreement altering one or more of its terms constitute an executed writing.

In a US case which arose in the employment setting, an executive had entered into a writ-

ten agreement with his employer which contained a provision that "no amendment to or waiver or discharge of this agreement will be valid unless in writing and signed by both of the parties hereto." Subsequent to the making of the contract and because of the 2000 recession, the employee in an email to his CEO concurred with the company's proposal to reduce his salary by 20%. On resigning his employment a few years later, the executive sought to enforce the superior compensation terms in effect prior to the reduction. The court had this to say with respect to the employee's position: "in this modern age, this Court considers email communications, in which the sender and recipient are clearly identified, to constitute writings. And when there is a string of emails, each signed off by two people ... this Court considers the entire string to be signed by both parties." Even though the emails did not refer to the employment contract explicitly, the court nevertheless held that the string of emails was sufficient to evidence a written amendment to the contract.

The reasoning in this decision is also consistent with the *Electronic Commerce Act* which states that an electronic signature found at the end of an email satisfies the requirement that a document be signed. Furthermore, the Act goes on to state that the requirement that a document be in writing is satisfied even if it is in electronic form.

For harried franchise executives with overburdened agendas, casual email exchanges with franchisees agreeing to concessions departing from franchisee obligations may well lead to unintended consequences. It is important therefore that all staff with franchise responsibility be alert to the issue in order to avoid the unintended consequences of making a binding amendment to the franchise agreement. In addition, the franchisor should have strict policies in place that any communications with franchisees representing a departure from the obligations under the franchise agreement be reviewed by the franchisor's legal counsel.

## Dramatic changes to Ontario's judicial system coming in January 2010

By Allan D.J. Dick

Individuals and corporations alike have routinely walked away from pursuing disputes in the courts or have settled cases for three reasons which were seen as antithetical to obtaining "justice" – the judicial system has been seen as too costly, too slow and too unsatisfactory. The Ontario Legislature has introduced dramatic change to the Rules of Civil Procedure to come into effect January, 2010 which ought to change those perceptions and encourage the use of the judicial system for the resolution of disputes.

The following are the highlights:

- Small Claims Court will be available for claims up to \$25,000.
- The Simplified Rules procedure which will limit examinations for discovery to 2 hours and limit trial time will apply to claims of up to \$100,000.
- For claims in excess of \$100,000, discovery will be limited to 7 hours per party. This single change will substantially increase the affordability of litigation.
- Discovery questions will be limited to clearly relevant issues.
- The process for document disclosure will be governed by proportionality considerations and the requirement of co-operation amongst counsel. More complex cases fairly requiring more discovery will have additional discovery rights.
- Summary judgment procedures which permit parties the prospect of having a court rule on their cases at an early stage will be far more widely available.
- All cases will be timetabled. Parties can change timetables acting reasonably but will be punished for abuse.
- Parties will be able to have liability issues determined separately from remedies. This will encourage parties to be far more realistic about pursuing questionable positions.

Increased access to the courts was seen as being fundamental to enhance Ontario's justice system by ensuring its affordability and effectiveness. These changes will significantly modify how lawyers conduct themselves and their cases in the process.

You are encouraged to ask your lawyers what they will be doing to ensure you understand how the new system is likely to affect you and your business.

## Manitoba law reform commission A franchise law report

By John Sotos

Following the issuance of a Consultation Paper on Franchise Law by the Manitoba Law Reform Commission (the "Commission"), in May 2007, the Commission asked whether franchise legislation was needed in Manitoba, and if so, what such legislation look like. The Commission provided its answers to these questions when it released its Final Report (the "Report") in late December 2008. In preparing the Report, the Commission considered submissions in response to the Consultation Paper and the input of a one day Franchise Law Symposium held in Winnipeg on March 14, 2008 in which this author participated.

Overall, the Commission does recommend the enactment of franchise legislation in Manitoba. The form of legislation recommended is based on the Uniform Law Conference of Canada Franchises Act and Disclosure Document Regulation (the "ULCC Model Bill" and "Model Regulations") produced by the ULCC Franchise Law Project in 2005 which was co-chaired by this author. The ULCC Model Bill and Model Regulations have been adopted by both Prince Edward Island and New Brunswick as the model for their respective franchise legislation.

In addition to the ULCC Model Bill and Model Regulations, the Commission makes further recommendations based in large part on proposals made by the Ontario Bar Association Joint Sub-Committee on Franchising (the working group of which was chaired by Sotos LLP counsel, Arthur Trebilcock) and to a lesser extent the practice in the United States and Australia. What follows is a discussion of the material additions to the ULCC Model Bill and Model Regulations and commentary where appropriate.

### ENHANCED DISCLOSURE OVER ULCC

The most notable difference to the Model Regulations is the greater amount of prescribed items that the Commission recommends be included in a franchisor's disclosure document. Although the Commission recommends adopting the disclosure requirements found in the Model Regulations, the following are just some of the more notable areas where the Commission has stated that additional disclosure is appropriate:

- **Business Background:** While the Model Regulations require disclosure of the business background of the franchisor and its directors, general partners and officers, the Commission recommends that the business background of any individual who will have management responsibilities also be disclosed. Furthermore, the franchisor must disclose the business background of a franchisor's associate, affiliate, or related leasing company and the business background of the directors, general partners, and officers of each. Finally, in order to stop franchisors from avoiding disclosure obligations through the assumption of new corporate identities, the Commission recommends that the business background of a franchisor's predecessor and its directors, general partners and officers also be disclosed.
- **Financial Performance Representation:** The Commission recommends more cautionary language be inserted when financial performance representations (or earnings projections as referred to in the Model Regulations) are made, as well as details on the basis of the projections and whether there are material factors that could cause the results to differ from the representations. If no financial performance representation is made, then the franchisor must state that it does not make or authorize anyone to make projections of financial performance and that the results of the franchise will vary depending on location and other factors.
- **Exclusive Territory:** The Commission recommends detailed disclosure respecting the franchisor's policies on the use of alternative channels of distribution, such as internet, catalogues, telemarketing and other direct marketing techniques. Also, if no exclusive territory is granted, a statement to that effect should be included.
- **Store Openings:** In addition to the requirement to disclose the contact information of other operating franchisees, as well as franchisees that were terminated, not renewed, etc., further disclosure in the form of estimates of the number of units

that will open for business in the year after the disclosure document is also recommended.

- **Renewal Provisions:** The Commission recommends that where the franchise agreement contains no right or option to renew, the disclosure document must include an express statement to that effect.
- **Dispute Resolution:** While the Model Regulations provide for disclosure of pending civil actions and disclosure of judicial determinations, the Commission also recommends: (i) disclosure of any adverse settlements entered into not only by the franchisor but by any of the person or persons whose business background is required to be disclosed; (ii) lawsuits initiated in the last 10 years by the franchisor against franchisees; (iii) franchisor-franchisee disputes that were resolved through mediation or arbitration; and (iv) other franchise-related disputes that are pending in mediation or arbitration.

### OTHER MATTERS

The Commission has departed from the ULCC Model Bill by inserting a provision that a disclosure document is valid if it *substantially complies* with the statute and regulations. This is consistent with the Alberta and PEI statutes.

Furthermore, because sensitive business information is disclosed by the franchisor during the disclosure process and in order for the franchisor to receive some assurance that the franchisee demonstrate a degree of seriousness about the venture, the Commission recommends that the franchisor be allowed to ask for a fully refundable deposit up to 5% of the initial franchise fee before disclosure is made.

Recognizing the purpose and importance of the availability of class proceedings to franchisees, the Commission recommends, unlike any other franchise statute to date, that the Manitoba legislation include a provision stating that franchise agreements which require disputes to be settled by arbitration are invalid insofar as they limit the franchisee's right to commence or become a member of a class proceeding. This provision is consistent with a recent decision of the Ontario courts where our firm successfully argued that clauses which purport to prevent

one party from commencing a class action are not strictly enforceable under Canadian law.

Finally, perhaps the most contentious of the additions to the ULCC Model Bill are the provisions which attempt to regulate the franchise relationship. While every franchise Act in Canada and the ULCC Model Bill have incorporated a standard of conduct, the duty of fair dealing, to govern the franchise relationship, it has been largely left up to the parties and the court system to interpret what constitutes 'fair dealing' and to determine when a party is acting in 'good faith'. Rather, the Commission has recommended that the duty of fair dealing include the following:

- Prohibit the franchise agreement from being terminated without just cause;
- Require that the franchisor allow the franchisee a reasonable time to remedy a breach after receiving notice (exceptions for breaches that are not curable);
- Where there is no option to renew, prohibit a franchisor from failing to renew the agreement without just cause;

- Provide that where terms of a franchise agreement are materially changed by the franchisor on renewal and agreement cannot be reached as to the terms, the franchisor must buy back the franchise at the original purchase price or release the franchisee from the franchise agreement which would include covenants not to compete;
- Provide that the franchisor's approval for sale or transfer cannot be unreasonably withheld and that franchisor may not require, as a condition to the transfer, that the franchisee must relinquish rights or enter into a release;
- Where a franchise is sold, liability of the original franchisee would not extend beyond the original term of the franchisee's agreement; and
- Provide that a franchisee may purchase goods from sources other than those designated by the franchisor where the goods are of comparable quality, with an exception to franchisor-produced goods and goods that incorporate a trade secret.

## CONCLUSION

Whether the Province of Manitoba will adopt all or part of the Report in legislation is unknown at this time. Given the fact that legislation exists in a number of other provinces, it is more likely than not that Manitoba will enact its own legislation. What is more uncertain is predicting which, if any, of the additional recommendations made by the Commission will find their way into legislation. The guess here is that most of the recommendations relating to enhanced disclosure will end up being adopted. What is less clear is if any of the specific definitions relating to elements of good faith and fair dealing will make it into the legislation given that the other provinces have left it to the courts to determine in a piecemeal fashion whether certain conduct falls below the statutory standards. Once again regardless of whether the specific definitions of good faith make it to the legislation, by including them in its Report, the Commission may well have pointed to a standard of conduct expected in those circumstances.



## Considering buying a franchise? Look before you leap

By David Gray

*If you are looking for a career change, you may wish to join the many business people who have had great success turning to the franchise industry. But behind the enchantment and the “sizzle” of buying a franchise is a lot of hard work and thoughtful analysis. Not only does buying a franchise require considerable prior due diligence, it also includes a significant financial and emotional commitment. Understanding what franchising is all about and what to expect in a franchise system are critical to your successful transition to franchise owner. The following article briefly covers the first steps in evaluating yourself and a prospective franchisor.*

### **STEP 1 – Evaluate Yourself**

#### **Skills, Knowledge and Experience**

When deciding whether to become a franchisee, and of course which franchise system to join, a suggested first step is to evaluate your skills, knowledge and experience. Through prior experience with a product of service which you may consider getting involved with is not a necessary requirement to being successful in a franchised business, you should match or compare your interests and skill set with your prospective franchisor's system and business to ensure that they align with each other. For example, if a key to a successful operation of a franchise business lies in aggressive selling by the franchise owner and you do not enjoy sales or feel particularly capable of selling, your chances of succeeding even with an otherwise excellent concept could be greatly diminished.

#### **Interest and Enthusiasm**

To be a successful franchisee, you need to be interested in running your business and to be enthusiastic about your franchisor's product or service. Though often overlooked, many positive results originate from an enthusiastic outlook. A positive attitude will motivate you through the cycles of ups and downs an entrepreneur may have to contend with. A positive attitude will likely contribute to a better business relationship with the franchisor; a positive attitude will be contagious and will inspire your employees and other franchisees; and a positive attitude will be noticed by customers who will be more likely to patronize your business.

#### **Equity Requirements**

Being realistic about your financial position will eliminate those franchise systems whose

equity requirements are more than you can comfortably manage. You should speak with your business advisor to make certain that you scrutinize not only the franchise fee and the capital investment requirements, but also the cost to operate the business as a going concern. Once you have a good understanding of your net worth and the extent to which you can afford to invest, make an appointment with your lender to determine the amount of money that you can borrow. Be prepared for the interview because as part of their decision making process, lenders will assess your financial history and business plan and will likely conduct a host of other background checks.

### **STEP 2 – Evaluate the Franchisor**

As a prospective franchisee, evaluating a franchise system may seem a daunting proposition. It is recommended that prior to expending resources negotiating with a franchisor, you first make sure that this opportunity is for you, both from a financial and lifestyle perspective.

There are several sources and methods of evaluating the franchise opportunity, including:

#### **Disclosure Documents**

An excellent source of information about a franchise system, and a franchisor, can be harvested from a disclosure document. In general, the disclosure document will provide written information about the history of the franchise, financial performance and other material information important to prospective franchisee's ultimate decision as to whether to buy the franchise. You should strongly consider meeting with your legal and business advisor in order to get their impartial and critical opinion as to the contents of the disclosure document. Disclosure documents are valuable tools to allow one to compare franchise opportunities.

#### **Current and Terminated Franchisees of the Franchisor**

Information about the franchisor's support, commitment, integrity, business acumen, etc. should be readily available from the existing and previous franchisees in the system. By speaking to a range of franchisees (from most successful to least successful), a prospective franchisee should obtain a clear perception on the franchisor and the franchise opportunity. Contact information for franchisees is available in the disclosure document.

#### **Associations**

Associations such as the Canadian Franchise Association (“CFA”) are an excellent source of information about franchisors. The CFA may have information regarding previous complaints, membership standing with CFA, as well as competitors of the franchisor.

#### **Industry Publications**

There are number of franchise magazines, including *Canadian Opportunities*, which provide ongoing analyses on the franchise industry in general and feature articles on specific franchises. Franchise rankings which are published, however, should be used only as an aid in your evaluation and should not be relied upon as the foundation for your decision.

#### **Credit Rating Services**

Credit rating services should not be overlooked as an evaluation tool, particularly in respect of a non-public franchising company.

#### **Business References**

Though it is always recommended to request a list of references from the franchisor, a prospective franchisee may also want to contact others not listed with whom the franchisor does business.

#### **Competitors**

In order to analyse a franchisor's strengths and weaknesses, it may be very helpful to contact the franchisor's competitors.

#### **Trade Shows and Expos**

Franchise and business opportunity trade shows provide a great opportunity to meet a number of franchisors at the same time.

#### **Franchise Consultants**

There are numerous franchise consulting companies and independent consultants who can provide a wealth of information on either the franchise industry or a specific franchisor.

#### **The Internet**

There are a great number of franchise specific websites that will assist you in researching the franchise industry.

In conclusion, there are several sources and methods for evaluating a franchisor's history as well as the franchise system. The prospective franchisee should review all of the information and have it evaluated by experienced legal and business advisors.

# What every Franchisor should know about Franchisee Advisory Councils and Franchisee Associations – Part 1

By John Yiokaris

*There are many challenges in the relationship between franchisees and franchisors. Franchise associations and franchisee advisory councils can serve as a useful interface in the franchisor / franchisee relationship. In general, both types of organisations can play a useful role as communication vehicles and sounding boards if properly structured and utilised. Conversely, poorly organised and led franchise associations and franchisee advisory councils can lead to conflict or futility.*

## A. What are the key differences between advisory councils and franchisee associations?

### Franchise Associations

Franchise legislation in the Provinces of Ontario, Alberta, and Prince Edward Island accord franchisees a statutory right of association i.e. the right of franchisees to associate with each other without interference or penalty from a franchisor. For the most part, franchisee associations are created by franchisees and exist independent of the franchisor. Membership is voluntarily and rarely represents all franchisees in a system. Their purposes include improving communication between franchisees and the franchisor, collecting information of interest to all members, and negotiating with the franchisor. Associations have no authority to make decisions binding on a franchisor, though the collective will of an effective association may be difficult for a franchisor to ignore. The franchisor typically has no official role within the franchise association and is not present for association meetings.

Franchise associations are funded by franchisees who wish to join the association. These associations formulate their own governing rules and constitutional documents, and retain independent legal and financial expertise. Franchise associations are best advised to organise themselves in corporate form, without share capital, in order to take advantage of the limited liability of incorporation. Limiting liability may be of particular concern for those assuming an organizing or leadership role in the association. Incorporation as a not-for-

profit corporation will not lead to personal liability for directors of the corporation so long as the directors of such a corporation fulfill their fiduciary duties and abide by corporate laws.

There are many different catalysts for the formation of an independent franchisee association. They often form as a crystallization of prolonged frustration that a franchisor has not been listening to franchisee concerns or is unwilling to address specific issues. The formation of an association can be triggered by a perceived threat to franchisees arising as a result of a franchisor that is viewed as incompetent, unreasonable, or self-serving in its intentions and actions. Associations are sometimes formed as a result of inside or outside agitation or political forces, for example, franchisees having a personal grievance against a franchisor and taking it upon themselves to “bring down” the system.

### Advisory Councils

The lines between what is a franchise association and what is an advisory council may be blurred at times. Some franchisors, for example, are given membership privileges and voting rights in a franchise association. Independent franchise associations may also be subsidized by franchisors. However, a common feature of a franchise advisory council is that it is created by the franchisor and exists only with the franchisor’s continuing support.

The franchisor retains a significant amount of control over the activities of the council and its decision making authority. The franchisor will usually prepare the council’s governing documents, establish a method for selection of members (e.g. appointment, election according to regions, etc.) and require certain conditions for membership (e.g. that a franchisee not be in default under its franchise or sub-lease agreements). The International Franchise Association notes that approximately 90% of advisory councils constitute their membership through election, rather than appointment by franchisor.

Advisory councils have existed since the 1960s and have been used by franchisors as a means of communicating to franchisees important developments, such as the introduction of system-wide changes. The advisory council typically meets with the franchisor quarterly or semi-annually. Rarely would the council have veto rights over franchisor decisions, but it is equally rare that a franchisor would ignore the recommendations of its council. The topics discussed by the advisory council can vary considerably and may include discussion of the manner in which goods and services are provided within the system, equipment selection and financing, approaches to advertising, corporate policy, and communications.

There are a number of factors that contribute to a successful advisory council. On the one hand, there is a risk that the council can become a form of “management by committee”, raising the possibility of a system becoming listless and unfocused. Similar to the complaint that is made of direct democracy, when council members are elected, rather than appointed, there is the possibility of creating a fractious council composed of a disproportionate number of disgruntled members. One of the behavioural dynamics of franchisees within a system, as in most other aspects of organized systems, is that those who are satisfied will more likely be complacent, and thus, displaced by more agitated franchisees. Thus, a council can become a forum providing greater stature and credibility for a vocal minority than might otherwise be possible.

Another aspect in evaluating the success of a franchise advisory council is the extent to which consultations between franchisor and council slow the process of decision making. Additionally, franchisees may become disappointed or disillusioned by an apparent lack of tangible successes by the advisory council. There may also be disagreement over how much decision making authority the council enjoys.

Successful advisory councils have the following characteristics. First, they are chaired by a competent member who keeps discussions focused on relevant issues, and is able to

## What every Franchisor should know about Franchisee Advisory Councils and Franchisee Associations – Part 1 *Continued from pg. 7*

encourage an open but constructive dialogue among other council members. Second, not only must there be involvement by the franchisor at the most senior levels of management, but the franchisor must be prepared to listen and take action on legitimate concerns. The council should not be used as a forum for “divide and conquer” by the franchisor or to subvert the resolution of challenging issues affecting the system. Third, there should be involvement of mature, commercially minded franchisees, who respect the rights and responsibilities of the franchisor and are genuinely motivated to enhance the value of the franchise brand. Those driven by personal agendas do not contribute to the smooth operation of an advisory council. Fourth, aligning messages between the advisory council and the franchisor is important, so as to avoid inconsistencies and confusion among franchisees. Finally, topics of discussion should be of interest to both parties, who should adopt an interest-based attitude to problem solving, rather than the more adversarial, “winner takes all” approach of positional bargaining.

### **B. Why are advisory councils and franchisee associations formed?**

Franchisee associations and advisory councils are usually formed to unite franchisees in acting together to deal with common issues, to lobby more effectively for greater collective rights, and to acquire a greater say in the operation of the franchise system. Moreover, these organisations provide opportunities to fill vacuums which are created because the franchisor charges too much for ancillary services or doesn't provide these services at all, ie health insurance, utility services, legal services, and local marketing and advertising.

There are a number of reasons why franchisee associations and councils form, including:

1. Declining sales or margins which are not acknowledged or addressed by the franchisor.
2. Inappropriate use by the franchisor of discretionary funds, such as marketing funds.
3. Unilateral changes to franchisee contracts which are seen as unfairly disadvantaging franchisees.
4. Franchisors not sharing the benefits of purchasing programs with franchisees, especially if the franchisor is seen as benefiting from rebates from suppliers at the expense of franchisees. This problem is particularly acute when the administration of rebates lacks transparency.
5. Concerns relating to a franchisor's oversaturating of a market, and encroaching on the businesses of existing franchisees.
6. System expansion and a franchisor's competence in overseeing expansion, while providing adequate support to existing franchisees.
7. Failed product or marketing initiatives or a lack of clear marketing strategy and direction.
8. Changes to the brand, leadership and culture of the company that undermine a franchisee's sense of identity.
9. Concerns over the financial viability of the franchisor. For instance, reports of a drastic decrease in market share, or report that a franchisor has gone into receivership.
10. The franchisor company going public, with fears of a subsequent drive for profit at the expense of franchisee profitability.
11. Franchisor leadership behaving indifferently or arrogantly to franchisees, or treating them as though they are employees.
12. Overcharging the franchisor for ancillary services or where the franchisor does a poor job in providing these services (e.g. provision of health insurance, utility services, legal services, or local marketing and advertising). The association or council may fill the vacuum and become a competitor to the franchisor vis a vis a preferred supplier.
13. Providing a forum given the human predilection to express one's views and have grievances recognized, promote collective rights, and assert a group identity. Many franchise disputes are exacerbated, if not caused, by franchisor ignorance of these factors.

In the next issue, we will explore the roles of franchise associations and advisory councils and the franchisor's reaction to, recognition of, and involvement with them.



## Contact List...

David Sterns: [dsterns@sotosllp.com](mailto:dsterns@sotosllp.com)

Andy Seretis: [aseretis@sotosllp.com](mailto:aseretis@sotosllp.com)

Allan Dick: [adjdick@sotosllp.com](mailto:adjdick@sotosllp.com)

John Sotos: [jsotos@sotosllp.com](mailto:jsotos@sotosllp.com)

David Gray: [dgray@sotosllp.com](mailto:dgray@sotosllp.com)

John Yiokaris: [jyiokaris@sotosllp.com](mailto:jyiokaris@sotosllp.com)