

Section 3 of the Act imposes a duty of fair dealing on all parties to a franchise agreement (including Franchisee). Subsection 3(3) of the Act defines the duty of fair dealing to include a duty to act in good faith and in accordance with reasonable commercial standards.

The terms “good faith” and “reasonable commercial standards” are not defined in the Act. Canadian Courts have held that the Act merely codifies the common law duties owed by parties to act in good faith one to the other and that this duty would not normally be characterized as “fiduciary” in nature. While the manner in which Courts have applied the duty of fair dealing is, beyond the scope of this Website, as a generalization Courts have held that it at least requires one party to consider the commercial interests of the other in making decisions and exercising discretion. Courts have held Franchisors in breach of this duty where Franchisor has established a competing system and used scarce resources to favour one group of Franchisees at the expense of another,¹ and where Franchisor has professed its support for Franchisee one moment, and then “turned its back on Franchisee when the latter needed it most”.² The converse is equally true and Franchisee must give equal consideration to the interests of Franchisor. The duty of good faith has also been employed by the courts to ensure that the parties to a contract do not act in a way that defeats the objectives of the agreement reached.³

It seems likely that the Courts will interpret the statutory duty of fair dealing, which includes the duty to act in good faith, in a manner consistent with statements of the Ontario Court of Appeal. That is, the parties must act in a manner commensurate with their contractual obligations. This interpretation is supported by the recent decision whereby the Court awarded the plaintiff franchisee \$50,000.00 in damages for the defendant franchisor’s breach of the statutory duty of good faith, with a modest apportionment for mental distress, as a result of the defendant franchisor failure to provide relevant information to the plaintiff franchisee on the terms of the lease renewal, “...the counseling of secrecy...” and “...the lack of honesty in the price quoted...”.⁴

¹ See *Shelanu v. Print Three Franchising Corp.* (2000), 11 B.L.R. (3d) 69, appealed (2003), 64 O.R. (3d) 533 (C.A.).

² See *Country Style Food Services Inc. v. 1304271 Ontario Ltd.*, [2005] O.J. No. 2730; 7 B.L.R.(4th) 171 (C.A.), at ¶98.

³ *CivicLife.com Inc. v. Canada (Attorney General)*, [2006] O.J. No. 2474 (C.A.) at ¶ 49 (QL).

⁴ *Abdulhamid Salah and 1470256 Ontario Inc. v. Timothy’s Coffees of the World Inc.*