

FRANCHISING LAW FOR COMMERCIAL LEASING PROFESSIONALS

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I. Initial Considerations:

- Who owns the property? Franchisor, Franchisee or Third Party Landlord

II. Know Your Parties:

- I represent...

	Franchisors	Franchisees	Third Party Landlords
Considerations	<ul style="list-style-type: none"> ✓ Maximize control over the premise ✓ Bargaining power of Franchisor ✓ Head lease liability ✓ Assignment rights ✓ Remedies in case of Franchisee default 	<ul style="list-style-type: none"> ✓ Bargaining power of Franchisor ✓ Control over premise ✓ Privity of contract with Third Party Landlord ✓ Safety net of Franchisor 	<ul style="list-style-type: none"> ✓ Financial strength/stability of Franchisor ✓ Enforcement of head lease ✓ Flexibility on default

III. Relationship between the Parties:

- Franchisor as tenant with sublease to Franchisee;
- Franchisor as tenant with assignment to Franchisee;
- Franchisee as tenant.

Ideal Relationship: In Canada, in particular with major franchisors (e.g. McDonald’s Canada), it is common for a Franchisor to lease the premises from the Third Party Landlord and, in turn, the Franchisor would sublease the premises to the Franchisee. This practice may be changing (e.g. TDL Group Corp).

A. Other Issues

- Common default clause
- Franchisor’s rights in case of Franchisee default
- Assignment rights
- Cure periods under head lease, sublease and franchise agreement
- Franchise Disclosure issues: update on *Raibex Canada Ltd. v ASWR Franchising Corp.* (2018 ONCA)