IN THE MATTER OF AN ARBITRATION PURSUANT TO THE ARBITRATION ACT, 1991, S.O. 1991, c. 17

BETWEEN:

ABC HOTEL LP BY ITS GENERAL PARTNER ABC MASTER GP INC.

Claimant

- and -

XYZ HOSPITALITY INC.

Respondent

BEFORE: Roger Lee, Arbitrator

COUNSEL: Charlene Pendleton, for the Claimant
Peter O'Leary, for the Respondent

AWARD

I. INTRODUCTION

1. This arbitration concerns a franchise dispute between ABC Hotel LP by its general partner ABC Master GP Inc. (the "Franchisee" or "ABC"), the Claimant, and XYZ Hospitality Inc. (the "Franchisor" or "XYZ"), the Respondent. The dispute arises from a Franchise Agreement dated August 24, 2015 (the "Franchise Agreement") for the operation of the Brand A Toronto Hotel (the "Hotel").

2. The Franchisee alleges that the Franchisor has effectively abandoned the Brand A brand in North America, has breached its contractual and statutory obligations, and has demonstrated bad faith. On this basis, the Franchisee asserts an implied right to terminate the Franchise Agreement on reasonable notice and seeks damages.

3. The Franchisor denies these allegations. It maintains that it has met all its obligations, that the Franchise Agreement does not permit unilateral termination by the Franchisee, and that any underperformance of the Hotel is due to the Franchisee's own failure to meet brand standards and complete necessary renovations.

II. JURISDICTION

4. My jurisdiction to hear and determine this matter is not in dispute. It is established by section 23.4 of the Franchise Agreement, which provides for the resolution of disputes by binding arbitration.

5. The Franchise Agreement was executed by both parties. The arbitration clause is valid and binding. This arbitration is conducted pursuant to the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended.

III. PROCEDURAL HISTORY

6. The Claimant initiated this arbitration by serving a Notice of Arbitration dated February 19, 2026.

7. The parties subsequently agreed to a mediation, which was held before me on June 12, 2026, at ADR Chambers in Toronto, Ontario.

8. The mediation did not result in a settlement.

9. The parties agreed that I would continue as sole arbitrator to determine the dispute based on the written record, comprising the Notice of Arbitration and their respective Mediation Briefs with attached documents.

IV. BACKGROUND

10. On August 24, 2015, the parties entered into the Franchise Agreement for the operation of the Hotel as a Brand A-branded property. The Franchise Agreement provided for an initial term of 15 years, expiring on August 23, 2030.

11. Section 4.2 of the Franchise Agreement granted the Franchisor, at its sole option, the right to renew the franchise for an additional five-year period (the “Extension Term”).

12. At the time the Franchise Agreement was executed in 2015, there were seven Brand A Hotel locations in Canada. By 2026, this number had decreased to five.

13. The relationship between the parties began to deteriorate in the years following the execution of the Franchise Agreement. The record indicates that as early as June 30, 2020, the Franchisee expressed dissatisfaction to the Franchisor regarding the Brand A brand’s recognition, lack of growth, and the level of support provided by the Franchisor.

14. Discussions concerning the costs of an early termination of the Franchise Agreement began between the parties in January 2021 and continued through 2024.

15. On March 2, 2025, XYZ's CEO, Dennis Kramer, was quoted in an online travel publication. The article, titled "XYZ Aims to Grow Luxury Brands in North America," quotes Dennis Kramer as stating that while XYZ has many midscale and limited-service brands, "the company will not grow those products in North America because the major brands here – including Brand B, Brand C, Brand D and Brand E – dominate the market and do a good job. However, he said the company's luxury brands will continue to grow…"

16. On May 22, 2025, the Franchisee sent a letter to the Franchisor detailing its history of concerns and requesting to work with the Franchisor to exit the Franchise Agreement immediately.

17. The Franchisor responded by letter dated July 8, 2025. In its response, the Franchisor acknowledged that "Brand A has not grown in Canada in the recent past" and was aware of certain operational challenges, including "delays in response times" and technical issues. However, the Franchisor did not agree to an early termination of the Franchise Agreement.

18. On August 28, 2025, counsel for the Franchisee sent a letter to the Franchisor formally inviting the commencement of negotiations for an early termination.

19. On September 11, 2025, counsel for the Franchisor replied, stating that an early termination of the Franchise Agreement was "not acceptable under any circumstances."

20. On February 11, 2026, the Franchisor delivered a "Notice of Extension of Franchise Agreement" to the Franchisee. Citing its rights under section 4.2 of the Franchise Agreement, the Franchisor exercised its sole option to renew the franchise for the five-year Extension Term, extending the term from August 24, 2030, until August 23, 2035. The notice stated, in part: "For greater certainty, this renewal by Franchisor does not require Franchisee's consent… Franchisee remains obligated to comply with the Franchise Agreement in all respects during the Extension Term".

21. On February 19, 2026, the Franchisee delivered its Notice of Arbitration, commencing these proceedings.

V. ISSUES FOR DETERMINATION

22. The issues for my determination are as follows:

    (i) Does the Franchise Agreement contain an implied right for the Franchisee to terminate without cause on reasonable notice?

    (ii) If there is no implied right to terminate, has the Franchisor committed a breach of the Franchise Agreement of such a nature as to entitle the Franchisee to terminate it?

(iii) If the Franchisee does have the right to terminate the Franchise Agreement, what constitutes a reasonable notice period for termination in the circumstances?

VI. POSITIONS OF THE PARTIES

Issue (i): Implied Right to Terminate

A. The Franchisee's Position

23. The Franchisee submits that, as a matter of law, a right to terminate on reasonable notice should be implied into the Franchise Agreement. It argues that franchise agreements are a category of relational contract, like employment or partnership agreements, that depend on mutual trust, confidence, and satisfaction.

24. The Franchisee contends that where this trust and confidence has irrevocably broken down, it would be commercially unreasonable and unfair to require the relationship to continue.

25. It further submits that the Franchise Agreement is not intended to be a perpetual contract. The termination clauses are, in its submission, extremely limited and operate only in the Franchisor's favour, creating a one-sided relationship that empowers an arbitrator to imply a right of unilateral termination for the Franchisee on reasonable notice.

B. The Franchisor's Position

26. The Franchisor submits that I should not imply a right of termination into a franchise agreement that contains a fixed term with robust expiry and termination provisions. The Franchisor states the Franchise Agreement is such a contract.

27. The Franchisor argues that the Franchise Agreement contains a detailed, 15-year initial term and specific provisions governing expiry, renewal at the Franchisor's option, and termination for cause by either party in limited circumstances. It posits that implying a right to terminate without cause would be inconsistent with these express terms and the parties' clear intentions.

28. The Franchisor distinguishes case law where a termination right was implied, noting those cases often involved oral agreements or agreements of indefinite duration, unlike the detailed written agreement in this matter.

Issue (ii): Breach of Agreement

A. The Franchisee's Position

29. The Franchisee submits that the Franchisor has breached both its contractual obligations under the Franchise Agreement and its statutory duties under the *Arthur Wishart Act (Franchise Disclosure), 2000* (the "AWA").

30. Contractually, the Franchisee alleges the Franchisor has breached its obligations under sections 6.1.3 and 11.3 of the Franchise Agreement to "Maintain and administer the Reservation System, make available on-line distribution marketing assistance and provide the Sales and Marketing Services". The Franchisee points to a failure to provide adequate sales and marketing support, a lack of a local sales team, unresponsiveness, and recurring IT issues as evidence of this breach.

31. Statutorily, the Franchisee submits the Franchisor has breached its duty of fair dealing under section 3 of the AWA. This duty includes an obligation to act in good faith and in accordance with reasonable commercial standards. The Franchisee argues that the Franchisor's "abandonment" of the Brand A brand in North America, its failure to innovate and support the system, and its "high-handed" exercise of the renewal option in the midst of a dispute all constitute breaches of this duty.

B. The Franchisor's Position

32. The Franchisor denies that it has committed any breach, let alone a repudiatory breach that would justify termination. It argues that the threshold for repudiatory breach is exceptionally high and requires a breach so serious as to deprive the non-breaching party of substantially the whole benefit of the contract.

33. The Franchisor asserts that it has at all times met its contractual obligations to provide centralized brand delivery systems, including call centers, online booking sites, and sales and marketing services. It points to evidence that these systems account for a significant majority of the Hotel's room revenues and that the Hotel has been "extremely successful," consistently outperforming its competitors as measured by the RevPAR Index (RPI). The Franchisor argues this success demonstrates that the Franchisee has not been deprived of the benefit of the contract.

34. The Franchisor submits that its alleged "failure to grow the brand" is not a contractual obligation. It argues that it has nonetheless made significant and genuine efforts to maintain, promote, and expand the Brand A brand in Canada.

35. Further, the Franchisor contends that any underperformance of the Hotel is attributable to the Franchisee's own failure to meet its obligations under section 7.5 of the Franchise Agreement to renovate the Hotel and maintain brand standards. It notes a 2024 site visit report ranked the Hotel among the lowest globally for Brand A, citing its dated design.

36. Finally, the Franchisor submits that the Franchisee's claim of repudiation is time-barred, as the Franchisee first raised these concerns in 2020 but did not elect to disaffirm the contract at that time.

Issue (iii): Reasonable Notice

A. The Franchisee's Position

37. The Franchisee submits that, taking into account the lengthy relationship and the Franchisor's neglect and failure to address concerns over at least five years, six months is a reasonable notice period to terminate the Franchise Agreement.

B. The Franchisor's Position

38. The Franchisor's position is that, if a termination right were implied, the notice period must match the liquidated damages calculation period in section 14.6 of the Franchise Agreement. This clause provides for liquidated damages equivalent to the lesser of 84 months of royalty fees or the number of months remaining in the term. The Franchisor argues this reflects the parties' pre-estimate of the minimum time needed to replace the Hotel.

VII. ANALYSIS

39. The dispute before me requires an analysis of the express and implied terms of the Franchise Agreement, an assessment of the parties' conduct in the context of their contractual and statutory obligations, and a determination of the rights and remedies available to them. I will address each of the three issues for determination in turn.

Issue (i): Does the Franchise Agreement contain an implied right for the Franchisee to terminate without cause on reasonable notice?

40. The starting point for this analysis is the Franchise Agreement itself. It is a detailed, sophisticated commercial agreement. It provides for a fixed initial term of 15 years, with an option for the Franchisor alone to renew for a further five years. Article 14, titled "Default and Termination," sets out a comprehensive regime for termination by the Franchisor in the event of the Franchisee's default. Conversely, the Franchisee's right to terminate is extremely limited; section 7.5.3 permits the Franchisee to terminate only if the Hotel is damaged by casualty and the cost to repair exceeds 40% of its fair market value. The Franchise Agreement does not contain an express clause allowing the Franchisee to terminate without cause on notice.

41. The Franchisor submits that where a detailed, fixed-term contract contains robust termination and expiry provisions, the court will not imply a further right to terminate. I accept this as a general principle of contractual interpretation. Courts are hesitant to interfere with the express bargain struck between sophisticated parties by implying terms that are inconsistent with the contract's explicit framework.

42. However, the Franchisee argues that franchise agreements are a special category of "relational" contract, dependent on an ongoing relationship of trust and confidence. The

Franchisee cites *France v. Kumon*, 2014 ONSC 5890, for the proposition that a court may, as a matter of law, imply a term of reasonable notice for unilateral termination into a franchise agreement, even in the absence of an express clause.

43. In *France v. Kumon*, the court found that a franchise agreement is similar to an employment agreement in that it includes “an element of mutual trust and an element of unequal bargaining power”. I find that reasoning persuasive. The nature of the relationship contemplated by the Franchise Agreement is one that requires a high degree of cooperation, trust, and confidence between the parties. The Franchisee is dependent on the Franchisor not only for the brand name but for the entire “System,” which includes marketing, reservations, and operational standards.

44. The Franchisor seeks to distinguish *France v. Kumon* on the basis that it involved an oral franchise agreement of indefinite duration. While the Franchise Agreement here is written and for a fixed term, I find that the underlying principles regarding the relational nature of the contract remain applicable. The termination provisions in the Franchise Agreement are, as the Franchisee submits, entirely one-sided. They provide the Franchisor with numerous grounds for termination but afford the Franchisee virtually none, even in the event of a breach by the Franchisor.

45. In circumstances where the foundation of trust and confidence in such a relational contract has been eroded, I find that it would be commercially unreasonable to require the parties to remain shackled together in an unhappy state of affairs. This is particularly so given the duty of fair dealing imposed on both parties by section 3 of the AWA, which underscores the expectation of good faith and reasonable commercial standards in the performance of the agreement.

46. I am persuaded that the combination of the relational nature of the franchise agreement, the significant imbalance in the express termination rights, and the statutory duty of fair dealing create a circumstance in which a right of termination on reasonable notice may be implied. Implying such a right does not create a perpetual contract; rather, it provides a necessary mechanism for the orderly dissolution of a long-term commercial relationship where the foundation of that relationship has irreparably broken down, a matter I will address further below.

47. For these reasons, I find that the Franchisee has an implied right to terminate the Franchise Agreement on reasonable notice.

Issue (ii): Has the Franchisor committed a breach of the Franchise Agreement of such a nature as to entitle the Franchisee to terminate it?

48. The Franchisee alleges that the Franchisor has committed breaches of both its contractual and statutory obligations that are so fundamental as to constitute a repudiation of the

Franchise Agreement. A repudiatory breach is a serious matter. It must be a breach that goes to the root of the contract, depriving the innocent party of substantially the whole benefit that it was intended to receive under the agreement.

a. Statutory Duty of Fair Dealing

49. I begin with the statutory duty. Section 3(3) of the AWA provides that the duty of fair dealing "includes the duty to act in good faith and in accordance with reasonable commercial standards." This is a positive obligation imposed on both parties in the performance and enforcement of their agreement.

50. The evidence before me demonstrates a pattern of conduct by the Franchisor that, when viewed cumulatively, falls short of this statutory standard. The Franchisee's expressions of dissatisfaction date back to at least June 2020. Its concerns, as detailed in its letter of May 22, 2025, included poor brand recognition, lack of growth, and inadequate sales and marketing support.

51. The Franchisor's response of July 8, 2025 is particularly telling. In that letter, the Franchisor expressly acknowledges that "Brand A has not grown in Canada in the recent past." It also acknowledges "recent challenges with the organization and accessibility of Portal Alpha," awareness of "delays in response times" from its marketing and brand teams, and the Franchisee's "fair concerns regarding 'guest expectations and local market adaptation'". While the Franchisor's letter attempts to reassure the Franchisee of its commitment, these admissions give significant weight to the Franchisee's long-standing complaints. They are contemporaneous acknowledgements from the Franchisor that the system was suffering from precisely the deficiencies the Franchisee had been identifying.

52. The most significant piece of evidence on this issue, however, is the public statement attributed to XYZ's CEO, Dennis Kramer, on March 2, 2025. His declaration that XYZ "will not grow" its midscale brands, including by clear implication Brand A, in North America because major brands "dominate the market and do a good job" is a clear and public statement of strategic abandonment. It is a signal to the market, to competitors, and, most importantly, to its franchisees, that XYZ's focus and resources will be directed elsewhere—specifically, to its luxury brands.

53. The Franchisor submits that these comments are being misconstrued and taken out of the context of a broad overview of global strategy. I do not accept this submission. For a franchisee whose entire business is tied to the strength and growth of a midscale brand in North America, it is difficult to imagine a more disheartening and commercially damaging statement from the head of the franchise system. It is a public confirmation of the very concerns the Franchisee had been raising for years: that the Brand A brand was being neglected in favour of other parts of XYZ's portfolio. To permit a brand to "weaken and

go into decline," as the Franchisee puts it, is inconsistent with the reasonable commercial standards expected of a prudent franchisor.

54. Finally, the Franchisor's decision to exercise its unilateral right to extend the Franchise Agreement for five years, in the midst of this profound dispute, is difficult to reconcile with the duty of good faith. The Notice of Extension was delivered on February 11, 2026, only days before the Franchisee commenced this arbitration. At that point, the parties were in a dispute, with the Franchisee having clearly communicated its desire to exit the system for reasons the Franchisor itself had partially acknowledged. I understand that the Franchisor wanted the Franchisee to recognize the risk that it may be legally bound to Franchise Agreement not for just another four years, but for another nine. The Franchisor was trying to show that it had leverage in the negotiation to make its offers to settle seem more appealing. But instead of exercising the option, the Franchisor could have achieved the same objective by alerting the Franchisee to the fact that, if there were no settlement, it would be prudent for the Franchisor to exercise the option. There was no reason why the option had to be exercised when it was.

55. Taking these factors together—the long-standing and unaddressed concerns, the Franchisor's admissions of deficiencies, the CEO's public statement of strategic abandonment, and the timing of the contract extension—I find that the Franchisor has breached its statutory duty of fair dealing under section 3 of the AWA.

b. Contractual Obligations and Repudiatory Breach

56. The Franchisee alleges a breach of section 6.1.3 of the Franchise Agreement, which requires the Franchisor to provide sales and marketing services and support for the reservation system. The Franchisor's position is that it has complied with its obligations, pointing to the Hotel's strong financial performance as evidence that the Franchisee has received the benefit of the bargain.

57. I do not find the Hotel's financial success, as measured by the RPI, to be an answer to the allegation of breach. An operator's ability to outperform its local competitors may be a testament to its own management skill, and does not absolve the Franchisor of its specific obligations to support the brand. The Franchisor's own acknowledgements of service delays and a lack of brand growth in Canada support the Franchisee's position that the services provided fell short of what was contractually required.

58. The central question is whether these breaches, combined with the breach of the duty of fair dealing, amount to a repudiation. As noted, a repudiatory breach must deprive the innocent party of substantially the whole benefit of the contract. The benefit of a franchise agreement is not merely a license to use a name; it is the right to participate in a vibrant, supported, and competitive brand system.

59. I find that the statement by XYZ's CEO on March 2, 2025, constitutes an anticipatory breach of the Franchise Agreement that goes to its root. A public declaration by the head of a franchise system that it will no longer grow a brand in a franchisee's territory is an announcement that the franchisee will no longer receive the benefit of being part of a dynamic and developing system. Instead, it will be part of a stagnant brand that the franchisor has publicly deemed uncompetitive. This fundamentally alters the bargain. The Franchisee contracted to be part of a growing, innovative hotel banner, as represented by the Franchisor in 2015. It is now, by the Franchisor's own admission, part of a brand that has been intentionally left to stagnate in its market.

60. This, in my view, deprives the Franchisee of substantially the whole benefit of the Franchise Agreement. While it may still use the Brand A name and reservation system, it has lost the essential and implicit promise of being part of a brand that the Franchisor is committed to promoting, growing, and defending in the marketplace.

61. The Franchisor's argument that the claim is time-barred is not persuasive. While the Franchisee's concerns date to 2020, the CEO's definitive public statement in March 2025 and the Franchisor's subsequent conduct, including the renewal notice, crystallized the repudiation. The Franchisee acted in a timely manner thereafter to bring the matter to a head.

62. For these reasons, I find that the Franchisor has committed a repudiatory breach of the Franchise Agreement, which entitles the Franchisee to terminate the contract.

Issue (iii): Reasonable Notice Period

63. Having found both an implied right to terminate on reasonable notice and that the Franchisor has committed a repudiatory breach, I must determine the appropriate remedy. In either case, the relationship must come to an end. The question is on what terms.

64. The Franchisee submits that a period of six months is a reasonable notice period. The Franchisor argues that the notice period should be benchmarked against the liquidated damages clause in section 14.6, which provides for a payment equivalent to 84 months of royalty fees in the event of termination for the Franchisee's default.

65. I do not accept the Franchisor's position. The liquidated damages clause is applicable to a specific circumstance: a termination by the Franchisor flowing from a default by the Franchisee. It is designed to compensate the Franchisor for the loss of a performing franchisee. It has no application to the present situation, where termination is justified by the Franchisor's own breach and the breakdown of the relationship. To import its 84-month timeline would be to penalize the innocent party.

66. In determining a reasonable notice period for the termination of a franchise agreement, I am guided by the factors considered in cases such as *France v. Kumon*. These include the length of the relationship, the history of performance, the conduct of the parties, and the degree of dependency of the franchisee on the franchisor.

67. The parties have had a relationship since 2015. The evidence indicates the Franchisee has been a successful operator, at least from a financial perspective. The Franchisee is highly dependent on the Franchisor's brand and systems. These factors, on their own, might suggest a longer notice period.

68. However, these must be weighed against my findings of the Franchisor's conduct. The Franchisor has breached its duty of fair dealing and repudiated the agreement. It failed to address the Franchisee's legitimate concerns over a period of years and effectively abandoned its brand in the Franchisee's market. In such circumstances, justice does not require a lengthy notice period that would prolong the Franchisee's association with a brand the Franchisor has decided not to support.

69. A notice period should provide for an orderly transition, allowing the Franchisee to rebrand or make other arrangements for its business. Taking all these factors into account, I find that the six-month notice period proposed by the Franchisee is reasonable in all the circumstances.

VIII. COSTS AND INTEREST

70. The Franchisee has been successful in this arbitration. The usual principle is that costs follow the event. They should do so in this case.

71. As the primary relief is declaratory, an award of pre-award interest is not applicable. Post-award interest shall accrue on the costs award in accordance with the Courts of Justice Act.

IX. AWARD

72. For the reasons set out above, I determine and award as follows:

    a. It is declared that the Claimant has an implied right to terminate the Franchise Agreement dated August 24, 2015, on reasonable notice.

    b. It is declared that the Respondent has committed a repudiatory breach of the Franchise Agreement and a breach of its statutory duty of fair dealing under the *Arthur Wishart Act (Franchise Disclosure), 2000*.

c. It is declared that the Claimant is entitled to terminate, and does hereby terminate, the Franchise Agreement. Such termination shall be effective six (6) months from the date of this Award.

d. The Respondent shall pay to the Claimant its legal costs of this arbitration. This amount shall be payable within thirty (30) days of the date of this Award.

e. Interest shall accrue on any unpaid portion of the costs award at the post-judgment rate prescribed by the *Courts of Justice Act*, R.S.O. 1990, c. C.43, from the date thirty (30) days following the date of this Award until the date of payment.

f. All other claims made in this arbitration are hereby dismissed.

73. This is a final award disposing of all issues in this arbitration.

Dated at Toronto, Ontario this 24th day of August, 2026.

Roger Lee, Arbitrator