



The End of an Era: Manitoba's Crackdown on Grocery Property Controls and the National Shift in Competition Law

In the world of commercial leasing and franchise development, few tools have been as foundational—or as fiercely protected—as the exclusivity clause and the restrictive covenant. Historically, these “property controls” were the bedrock of anchor tenant negotiations, providing a necessary shield for the massive capital investments required to launch a new grocery store or supermarket.

However, we are currently witnessing a seismic shift in the Canadian legal landscape. On June 3, 2025, Manitoba's Property Controls for Grocery Stores and Supermarkets Act (Various Acts Amended) (the “Manitoba Act”) came into force, taking direct aim at these provisions. This provincial move does not exist in a vacuum; it is a calculated alignment with recent amendments to Canada's Competition Act.

From the perspective of a commercial leasing and franchise lawyer, this represents more than just a regulatory hurdle—it is a fundamental rewriting of how we value real estate and manage brand expansion.

A. Key Elements of the Act

1. **What:** A property control is defined as:
 - a. a restrictive covenant that directly or indirectly restricts the sale, ownership, development or use of land as a grocery store or supermarket; or

- b. an exclusivity clause that directly or indirectly restricts the sale, ownership, development, or use of land as a grocery store or supermarket granted in favour of (i) a person who, directly or indirectly, owns or operates a supermarket or (ii) a person who is related to a person who, directly or indirectly, owns or operates a supermarket.

2. When:

- a. On or after June 3, 2025: Any property control created after the Manitoba Act came into force is void. The Act will override the contractual provision without any investigation.
- b. Before June 3, 2025: Holders of a property control created before the Manitoba Act came into force had a strict 180-day window to register their interests on title. Even then, registration is no guarantee of survival; the Municipal Board holds the authority to strike down any registered control found to be contrary to the public interest—specifically focusing on whether it restricts community access to food retail.

3. **Who:** The Manitoba Act makes a distinction between a “convenience store” (stores smaller than 3,013 square feet), a “grocery store” (stores larger than 3,013 square feet), and a “supermarket” (stores larger than 10,000 sq. ft.); however the property control provisions contemplate only grocery stores and supermarkets.

B. National Alignment: The Competition Act

What makes the Manitoba legislation particularly potent is its alignment with recent amendments to the Competition Act. For years, “vertical” agreements—those between a landlord and a tenant—were largely shielded from competition scrutiny unless a “dominant” firm was involved.

The new federal framework has lowered the threshold significantly:

- **Abuse of Dominance (s. 79):** The Bureau can now challenge conduct by a dominant firm if it shows either anti-competitive intent or effect, rather than both.
- **Civil Agreements (s. 90.1):** The Bureau, and now private parties, can challenge agreements between non-competitors (like a landlord and tenant) if a significant purpose of the agreement is to prevent or lessen competition.
- **Larger Monetary Penalties:** Penalties are financially significant, and “disgorgement” of profits gained from anti-competitive conduct may be ordered.
- **A Unique Perspective:** The Collision of Real Estate and Franchise Strategy

While the legislative intent is to avoid “food desserts” in Manitoba, the practical impact on a development manager’s desk is complex. As a lawyer who bridges the gap between physical real estate and franchise system development, I see three critical areas of impact:

1. The "Incentive" Argument is Under Fire

Traditionally, we argued that exclusivity was pro-competitive because it incentivized a grocer to anchor a new, underserved development. The Competition Bureau’s 2025 guidance acknowledges this but sets a very high bar. If multiple tenants are interested in a site and one is willing to sign without an exclusive, the Bureau’s view is that the exclusive was never "necessary" to induce the investment. This changes the leverage during preliminary negotiations.

2. The Ripple Effect on Non-Grocers

The Manitoba Act is so broad that it can impact non-grocery tenants. An existing exclusivity clause for a large drug store or a general retailer that "indirectly" restricts food sales could be deemed amended by operation of law. We are currently reviewing portfolios to ensure that "Standard Permitted Use" and existing exclusivity clauses have not become accidental violations of the new statutes.

3. Fragmented Expansion Strategies

For franchisors, the inability to secure exclusivity in Manitoba (and the increased risk elsewhere) means that a site-selection strategy can no longer rely on this type of territorial protection. Franchisors must now focus on operational excellence and brand loyalty rather than legal barriers to entry. Conversely, it opens up "infills" where previously a restrictive covenant on an old leasehold would have blocked a new franchise from opening for decades.

D. A Balanced Outlook

The removal of property controls is not a "silver bullet" for affordability, as some economists have noted that big-box retailers often avoid close proximity for logistical reasons regardless of legal covenants. However, for independent grocers and smaller specialty food franchises, these laws are a massive win, unlocking prime real estate that was previously "dead land" due to legacy covenants.

As we navigate this transition, my advice to landlords, tenants, and brokers is one of proactive compliance. Overly broad, indefinite exclusives are a liability. The future of commercial leasing belongs

to the "narrowly tailored" clause—one that is limited in geography, duration, and scope to what is truly necessary to protect a specific investment, rather than a blanket attempt to stifle the market.

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