

CANADA

In Canada, the provinces of Alberta, Ontario, New Brunswick, Prince Edward Island, Manitoba and British Columbia have franchise-specific legislation.

ALBERTA

Until recently only the province of Alberta had legislation on franchising. This legislation, which was considered to be particularly draconian, was subsequently modified, a new franchise disclosure law and its implementing regulations becoming effective on 1 November 1995.¹ The new Franchises Act abolished the registration requirement contained in the previous version of the Act, but still requires pre-sale disclosure. The Act enters into considerable detail and not only covers the disclosure document, but also exemptions from the duty of disclosure (Sections 5 and 6), damages, cancellations and other rights and remedies (Sections 9 – 19), general regulation (Section 20), self-government by the franchising community (Section 21), and transitional provisions, repeal and commencement (Sections 22 – 24). Furthermore it provides for a general duty of fair dealing in performance and enforcement (Section 7). Appended to the Act are two Schedules which contain further details, including a detailed specification of the information that must be disclosed (Schedule 1).

ONTARIO

On 17 May 2000 the Ontario Legislature adopted the *Arthur Wishart Act (Franchise Disclosure)*.² The Act is named after Arthur Wishart, the Minister who first proposed a public inquiry into the franchising industry, which resulted in what is known as the *Grange Report* (1971).

The Act was intended to come into force upon the issuance of implementing regulations, but on 1 July 2000 the Ontario Government proclaimed virtually all provisions of the Act to be in force, the exception being the provisions dealing with disclosure.

The Act covers both disclosure and certain aspects of the relationship between the parties. Of particular importance are firstly, the provisions relating to fair dealing, which Section 3 imposes upon each party to a franchise agreement as respects its performance and enforcement. This duty however also includes a right of action for damages for breach of the duty of fair dealing. Section 3(3) furthermore states that “the duty of fair dealing includes the duty to act in good faith and in accordance with reasonable commercial standards”.

Section 4 deals with the right of franchisees to associate, which the franchisor or the franchisor’s associate may not interfere with, prohibit or restrict. Again, a right of action for

¹ *Franchises Act, (Chapter F-17.1)*, assented to May 17, 1995, effective November 1, 1995. The text of the Alberta Franchises Act and implementing regulations is reproduced in CCH, *Business Franchise Guide*, at ¶ 7010 ff.

² *Arthur Wishart Act (Franchise Disclosure)*, 17 May 2000, in CCH, *Business Franchise Guide*, at ¶ 7050 ff.

damages against the franchisor or franchisor's associate is provided in Section 4(5) should they have contravened the Section.

Section 5 deals with the disclosure document. Regulations containing provisions on what should be disclosed were adopted in October 2000 and amended in November 2000. Whereas the Sections dealing with such matters as fair dealing came into force on 1 July 2000, those relating to disclosure of information to prospective franchisees came into force only on 31 January 2001.

Section 7(1) provides for joint or several liability for persons found liable, or who accept liability in actions for breach of the duty of fair dealing, for interference with the freedom of the franchisees to associate or for misrepresentation in a disclosure document or in a statement of material change.

Other provisions of the Act *inter alia* specify the cases in which the Act applies and does not apply (Section 2), the exemptions from the duty to disclose (Section 5(6)), the right of a franchisee to rescind the agreement (Section 6) (which includes also provisions on the franchisor's obligations upon rescission (Section 6(6)), the cases in which damages for misrepresentation or for failure to disclose may be claimed (Section 7), the non-derogation of other rights (Section 8) and exemptions (Section 12).

PRINCE EDWARD ISLAND

On 7 June 2005 Royal Assent was given to the *Franchises Act* passed by the Prince Edward Island Legislative Assembly.³

The Franchises Act is detailed, and to a large extent similar to Ontario's *Arthur Wishart Act (Franchise Disclosure)*. It has provisions on: the scope of application of the Act (Section 2), the duty of fair dealing (Section 3), the right of franchisees to associate with other franchisees and to form or join an organisation of franchisees (Section 4), the franchisor's obligation to disclose (Section 5), the right of rescission of the franchisee (Section 6), damages for misrepresentation and failure to disclose (Section 7), the exemption of the franchisor from the duty to disclose (Section 8), joint and several liability (Section 9), no derogation of other rights (Section 10), attempts to affect jurisdiction being void (Section 11), rights of franchisee cannot be waived (Section 12), burden of proof (Section 13), Regulations (Section 14) and a proclamation bringing the Act into force (Section 15).

Of particular interest are the provisions of Section 5, which list the items that have to be disclosed to a prospective franchisee.

Franchises Act Regulations were approved by the Lieutenant Governor in Council on 25 April 2006.⁴ They deal in greater detail with the disclosure requirement, including methods of delivery of the disclosure document, which expressly permits electronic means "in

³ *Franchises Act*, Acts of 2005, Chapter 36, received Royal Assent on 7 June 2005, Sections 1 – 4, 8, 9(1), 9(2) and 10 – 15 became effective on 1 July 2006, Sections 5 – 7, and 9(3) became effective on 1 January 2007 as proclaimed by the Lieutenant Governor in Council on 25 April 2006 and published in the Royal Gazette on 6 May 2006.

⁴ *Regulations adopted pursuant to Section 14 of the Franchises Act R.S.P.E.I. 1988, Cap. F-14.1*, by Order of the Lieutenant Governor in Council of 25 April 2006, effective on 1 January 2007, except Sections 1, 8 and sub-section 9(2) which became effective on 1 July 2006.

machine-readable media”, on certain specified conditions (Section 2). Part 2 lists the required information about the franchisor, including previous convictions and pending charges, administrative orders and proceedings, civil actions and liabilities and bankruptcy. Part 3 lists the required information about the franchise and Part 4 lists of franchisees.

NEW BRUNSWICK

The New Brunswick *Franchises Act*,⁵ adopted in 2007, came into effect on 1 February 2011. It is similar to the laws in Ontario, Alberta and Prince Edward Island, and requires franchisors to prepare and deliver a disclosure document to prospective franchisees fourteen days before the execution of a franchise agreement or payment of any consideration.⁶

On 10 June 2010, New Brunswick published two regulations for franchising. The first sets out disclosure requirements similar to those found in Ontario, Alberta and Prince Edward Island. The second instead sets out a mediation procedure originally proposed by the Uniform Law Conference of Canada in 2005.

The provisions of the Act are largely consistent with those in Ontario’s *Arthur Wishart Act (Franchise Disclosure)*, 2000.

The Act covers both disclosure and certain aspects of the relationship between the parties. Of particular importance are firstly, the provisions relating to fair dealing, which Section 3(1) imposes upon each party to a franchise agreement as respects its performance and enforcement. This duty also includes a right of action for damages for breach of the duty of fair dealing (Section 3(2)). Section 3(3)(a) furthermore states that “the duty of fair dealing includes the duty to act in good faith and in accordance with reasonable commercial standards”.

Section 4 deals with the right of franchisees to associate, which the franchisor or the franchisor’s associate may not interfere with, prohibit or restrict (Section 4(2)). Again, a right of action for damages against the franchisor or franchisor’s associate is provided in Section 4(5) should they have contravened the Section.

Section 5 deals with the franchisor’s obligation to disclose. As indicated above, a Regulation containing provisions on what should be disclosed was adopted on 10 June 2010.

Section 6 deals with the franchisee’s right to rescind the franchise agreement and Section 7 with damages for misrepresentation or failure to disclose. Section 8 deals with dispute resolution, including the possibility (“may”) to resort to mediation.

Section 9 provides for joint or several liability for “[a]ll or any one or more of the parties to a franchise agreement who are found to be liable in an action under subsection 3(2) or who accepts liability with respect to an action brought under that subsection [...]”.

Other provisions of the Act *inter alia* specify the cases in which the Act applies and does not apply (Section 2), the exemptions from the duty to disclose (Section 5(8)), the non-derogation of other rights (Section 10), the fact that any provision in a franchise agreement purporting to restrict the application of the law of New Brunswick or to restrict jurisdiction or

⁵ *Franchises Act – Bill 32*, Laws of 2007, Bill No. 32, received Royal Assent on 26 June 2007, effective on 1 February 2011.

⁶ Section 5(1).

venue to a forum outside New Brunswick is void with respect to a claim otherwise enforceable under the Act in New Brunswick (Section 11(1)), and the fact that the rights conferred on a franchisee or prospective franchisee by or under the Act cannot be waived (Section 12).

The Disclosure Regulation⁷ became effective on 1 February 2011, even if it was filed on 10 June 2010. It generally requires disclosure similar to that required in other regulated provinces, with some differences. Thus, delivery by electronic means is specifically permitted, “if the disclosure document (i) is delivered in a form that enables the recipient to view, store, retrieve and print the disclosure document, and (ii) contains no links to or from external documents or content” (Section 3(1), see also Section 3(2)). A disclosure document prepared for use in other jurisdictions can be used in New Brunswick, provided any additional disclosure required by the Act is also provided (Section 4). Sections 7 and 8 deal with financial statements, the latter listing exemptions from the requirement to include financial statements. Schedule A to the Regulation provides the requirements for a disclosure document, including in Part 2 disclosure of various items in relation to the franchisor, the directors, general partners and officers of the franchisor, previous convictions and pending charges, including administrative orders and proceedings, civil proceedings and bankruptcy. Part 3 instead turns to the required information about the franchise and Part 4 to lists of franchisees and businesses.

MANITOBA

The *Franchises Act* (C.C.S.M. c. F156) received royal assent on 17 June 2010. The text was modelled on the Uniform Franchises Act prepared by the Uniform Law Conference of Canada, and is similar to legislation in Alberta, Ontario, New Brunswick and Prince Edward Island.

Thus, the *Franchises Act* *inter alia* deals with the scope of application of the Act (Section 2), fair dealing (Section 3), the right of franchisees to associate (Section 4), including the prohibition for the franchisor or the franchisor’s associate to interfere with, prohibit or restrict a franchisee from forming or joining an organisation of franchisees or from associating with other franchisees (Section 4(2)), and the franchisor’s obligation to disclose (Section 5). The contents of the disclosure document is briefly described in Section 5(5), the details being listed in the Regulations adopted, as is the case in the legislation of other provinces. Section 5(11) deals with exceptions to the obligation to disclose. The franchisee’s right to rescind the agreement is dealt with in Section 6. Section 6(5) specifies the franchisor’s obligations upon rescission. Actions and defences are dealt with in Section 7, including damages for misrepresentation and failure to disclose (Section 7(1)). Section 8 considers joint and several liability and Section 9 indicates that the Act does not entail the derogation of other rights. Furthermore, it is specified that attempts to affect jurisdiction are void (Section 10) and that the rights conferred by the Act cannot be waived (Section 11). Burden of Proof is considered in Section 12.

⁷ *New Brunswick Regulation 2010-92 under the Franchises Act.*

The *Franchises Regulation* (Regulation 29/2012, registered on 26 March 2012) specifies a number of topics in greater detail. Thus, Section 2 specifies the contents of the disclosure document, Section 4 the requirements when the disclosure document is provided in parts and Section 5 the methods of delivery of the disclosure document. Section 3 details the required risk warnings. Section 6 illustrates the methods of delivery of statements of material change, and Section 7 details requirements as to financial statements. Section 8 specifies the exemptions from the requirement to provide financial statements and Section 9 the prescribed methods for delivering notice of rescission. Section 10 specifies the prescribed amount of total annual investment, Section 11 the prescribed amount of refundable deposit and finally, Section 12 specifies that the Regulations will come into force on the same day as The Franchises Act (1 October 2012).

The text of the Regulation is followed by Schedule A on *Disclosure Document Requirements*, listed in 27 Sections, and by Schedule B which contains two forms for the *Certificate of Franchisor* required by Sub-section 8(1) of the Franchises Regulation.

A requirement which is different from the requirement of the franchise laws of other provinces is that the Franchises Act permits the disclosure document to be delivered in parts and does not require it to be delivered as one document at one time (Act, Section 5(3)). If a disclosure document is delivered in parts, the 14-day disclosure period starts to run when the prospective franchisee receives the last part. Disclosure documents prepared for use in other jurisdictions may be used also in Manitoba "if the franchisor includes such additional information with that document as is necessary to comply with the disclosure requirements of the Act and this regulation" (Franchises Regulation Section 2(2)).

What should be noted is that in a number of instances if no information is available, a statement specifying that this is so should be included in the disclosure. Thus, if an estimate of annual operating costs for the franchise, or of operating costs for another regular period, is not provided, a statement to that effect must be made (Regulations Schedule 1 Section 10(2)), or if an earning projection for the franchise is not provided (Reg. Sch. 1 Sec. 11(2)), if training is not offered to the franchisee by the franchisor or the franchisor's associate (Sec. 13(2)), if no manuals are provided to the franchisee (Sec. 14(2)), or if no exclusive territory is granted to the franchise (Sec. 18(2)).

BRITISH COLUMBIA

The British Columbia's Franchises Act ([SBC 2015] Chapter 35) and the Franchises Regulation came into force on 1 February 2017. While the Act itself was assented to on 17 November 2015, the Regulations (B.C. Reg. 238/2016 – O.C. 686/2017) were deposited on 4 October 2016.

Under Section 5(1) of the Franchises Act, a franchisor must provide a prospective franchisee with a disclosure document at least 14 days before the earlier of the signing, by the prospective franchisee, of the franchise agreement or any other agreement relating to the franchise, and the payment, by or on behalf of the prospective franchisee to the franchisor or the franchisor's associate, of any consideration relating to the franchise.

Section 5(4) specifies that a disclosure document must contain prescribed financial statements; copies of all proposed franchise agreements, and other agreements relating to the franchise, to be signed by a prospective franchisee; prescribed statements that have the purpose of assisting a prospective franchisee to make informed investment decisions; other prescribed information; and copies of other prescribed documents. Section 2 of the Regulation reiterates the contents of the disclosure document specified in the Act, and provides details in the Schedule appended to the Regulation (the business background of the franchisor, the business background of the directors, officers and general partners of the franchisor, information on previous convictions and pending charges, administrative orders and proceedings, civil proceedings, and bankruptcy. Information should also be provided on the costs of establishing the franchise, other fees, guarantees and security interests, an estimate of operating costs, an earnings projection (if an earnings projection is not provided, the disclosure document must include a statement to that effect), financing, training, manuals, advertising, purchase and sale restrictions and territory, etc.).

In addition, the disclosure document must contain all material facts (Section 5(5)), where material fact is defined in Section 1(1) as “any information about the business, operations, capital or control of the franchisor or franchisor's associate, or about the franchise or the franchise system, that would reasonably be expected to have a significant effect on the value or price of the franchise to be granted or on the decision to acquire the franchise”.

The Franchises Act also deals with its application (Section 2), fair dealing (Section 3), the right to associate (Section 4), the right of rescission (Section 6), damages (Section 7), exceptions and defenses to liability (Section 8), substantial compliance (Section 9), joint and several liability (Section 10), no derogation of other rights (Section 11), attempt to affect jurisdiction void (Section 12), rights cannot be waived (Section 13), burden of proof (section 14), Section 5 of the Offence Act (Section 15), the Regulations and the power of the Lieutenant-General to adopt Regulations (Section 16), and the entry into force of the Act (Section 17).

The Franchises Regulation provides definitions for the interpretation of the Regulations (Section 1), describes the contents of the disclosure document (Section 2), risk warnings (Section 3), dispute resolution (Section 4), gives details of the financial documents to be given to prospective franchisees (Section 5), and the exemptions from the requirement to disclose financial statements (Section 6), the certificate of franchisor (Section 7), the delivery of the disclosure document and statement of material change (which includes by electronic means) (Section 8), the delivery of a notice of rescission (Section 9), the prescribed amount of the investment (Section 10) and the prescribed amount of the deposit (Section 11). A detailed Schedule containing Disclosure Document Requirements concludes the Regulation.

QUEBEC

The adoption of the New Civil Code in the province of Quebec (1994), which contains a broad definition of contracts of adhesion in its Article 1379, has raised the question of the applicability of the provisions relating to adhesion contracts to franchise agreements.

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