

## CANADA

In Canada, the provinces of Alberta, Ontario, New Brunswick and Prince Edward Island 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.<sup>1</sup> 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)*.<sup>2</sup> 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

---

<sup>1</sup> *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.

<sup>2</sup> *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.<sup>3</sup>

The *Franchises Act* is detailed, and to a large extent is 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.<sup>4</sup> They deal in greater detail with the disclosure requirement, including methods of delivery of the disclosure document, which expressly permits electronic means "in

---

<sup>3</sup> *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.

<sup>4</sup> *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*,<sup>5</sup> 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.<sup>6</sup>

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

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

<sup>6</sup> Section 5(1).

purporting to restrict the application of the law of New Brunswick or to restrict jurisdiction or 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 Regulation<sup>7</sup> 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 (“Bill 15”) received royal assent on 17 June 2010 and to date no regulations have been published. The Explanatory Note introducing the text indicates that the Bill was modelled on the Uniform Franchises Act prepared by the Uniform Law Conference of Canada, and that it 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 will presumably be listed in the Regulations that are yet to come, as was 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

---

<sup>7</sup> *New Brunswick Regulation 2010-92 under the Franchises Act.*

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).

#### *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.