



CONTINUING CHALLENGES: ONTARIO DISCLOSURE

INITIAL DISCLOSURE

- Disclosure must be provided to a prospective franchisee at least **14 days** before signing an agreement or receiving any payment (including a deposit).
- The onus is on the franchisor to prove that proper disclosure was made.
- **Exceptions** exist; however, it is always prudent to seek professional legal advice to confirm the availability of the exemption.

DISCLOSURE ON RENEWALS

- Disclosure must be provided upon a renewal of a franchise, unless there has been no interruption of the business operation and there has been no material change since the existing franchise agreement or latest renewal.
- If the renewal agreement is occurring more than 5 years after the original agreement, it would be rare for there to be no material changes.

DISCLOSING MATERIAL FACTS

- All "material facts" must be disclosed.
- A "material fact" is any information about the business, operations, capital or control of the franchisor or franchisor's associate, or about 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 the decision to acquire the franchise.

DISCLOSING FINANCIAL INFORMATION

- Subject to limited exemptions, a franchisor must disclose financial statements for the purpose of assisting a prospective franchisee in making informed investment decisions.
- A franchisor must provide a list of up to date costs associated with the establishment of the franchise, for example the cost of inventory and equipment.

DIRECTORS AND OFFICERS

- Disclosure must include information on all directors, officers and general partners, including their principal occupation and a brief description of the relevant business experience and length of time a person has engaged in the line of business associated with the franchise.

LICENSES AND REGISTRATIONS

- A franchisor must provide a description of every license, registration, authorization or other permission the franchisee is required to obtain to operate the franchise under federal, provincial or municipal law.

FRANCHISEE'S TERRITORY RIGHTS

- If the franchisor is granting the franchisee an exclusive territory, a description of this territory must be provided in the disclosure.
- The franchisor must also provide a description of the franchisor's policy as to whether the continuation of the exclusive right depends on the franchisee achieving specific levels of sales, or other conditions.
- Reservation of rights to adjust territorial boundaries is recommended and must be carefully drafted.

DISCLOSURE OF ANY MATERIAL CHANGE

- The franchisor must provide the franchisee with a written statement of any “material change”, sent as soon as practicable after the change has occurred and before any further signed agreement or payments.
- “Material change” means any change in the business, operations, capital or control of the franchisor or franchisor’s associate, a change in the franchise system or a prescribed change, that would reasonably be expected to have a significant adverse effect on the value or price of the franchise to be granted or the decision to acquire the franchise.

CONSEQUENCES OF DEFICIENT, OR NO DISCLOSURE

- A franchisee may *rescind* a franchise agreement (without penalty or obligation) within 60 days of receiving a disclosure document if the document failed to satisfy the timing, content, or other disclosure requirements.
- A franchisee may *rescind* a franchise agreement (without penalty or obligation) within 2 years of entering into a franchise agreement if the franchisor never provided a disclosure document.
- The Courts have held that franchisors cannot comply with the disclosure requirements in a “piecemeal fashion” and in some circumstances a deficient disclosure document may constitute no disclosure at all.
- Rescission requires a franchisor to refund monies paid by the franchisee, purchase any inventory that the franchisee had purchased pursuant to the franchise agreement, purchase any supplies and equipment that the franchisee purchased pursuant to the franchise agreement, and compensate the franchisee for any losses that it incurred in acquiring and setting up the franchise, less the amounts already refunded.

PERSONAL LIABILITY FOR FAILURE TO COMPLY OR MISREPRESENTATION

- If a franchisee suffers a loss because of a misrepresentation contained in a disclosure document or as a result of a franchisor’s failure to comply with the disclosure requirements, a franchisee has a right of action for damages against:
 - The franchisor;
 - The franchisor’s agent;
 - The franchisor’s broker
 - The franchisor’s associate; and
 - Every person who signed the disclosure document

HOW MILLER CANFIELD HELP:

- We assist in preparation of Disclosure Documentation.
- We offer legal review / audit services to assess existing practices and potential risk.
- We assist in adapting disclosure documents to satisfy other jurisdictions.

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This information is provided for general information and convenience only. You should seek legal advice regarding your specific facts & circumstances before acting or omitting to act based upon this information.

Miller, Canfield, Paddock and Stone