# PUBLICATION

## Franchising in Alberta: Part II Disclosure Requirements

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Franchising in Alberta: Disclosure Requirements

As discussed in Franchising in Alberta: The Duty of Fair Dealing (Part I of II), entering into a franchise agreement presents unique benefits and challenges for the both the franchisee and franchisor, which they otherwise might not face when entering into other commercial contracts. This is because, in Alberta, franchising agreements are governed by the Franchises Act (the "Act") which imposes certain obligations on the parties which must be complied with. The most onerous of these obligations are the disclosure requirements imposed on franchisors.

Prior to 1995 the sale of franchises in Alberta required the franchisor to register a prospectus-like document with the Alberta Government, however, with the coming into force of the Act, government oversight was removed and the franchisor is now required to provide a comprehensive information package, known as a "disclosure document", to prospective franchisees, subject to certain exemptions.[1] This disclosure document must include copies of all proposed franchise agreements, all reports and financial statements of the franchisor,[2] and must disclose all material facts relating to a comprehensive 21-point list of requirements set-out in the Franchises Regulation (the "Regulations").[3] Further, franchisors must include a certificate, signed by the franchisor's officers and directors which verifies that the information included in the disclosure is accurate.[4]

Franchisors that fail to meet these requirements may be subject to retroactive cancellation or rescindment of the franchise agreement for a period of up to two years after the franchise is granted,[5] and potential liability for losses incurred by the franchisee in acquiring and operating the franchise.[6]

In the 2008 Hi Hotel Limited Partnership v. Holiday Hospitality Franchising Inc. ("Hi Hotel") decision the franchisor provided a disclosure document that complied with the substantive requirements under the Act, but included a certificate that was undated and unsigned. The Alberta Court of Appeal held that, despite the franchisor's substantive compliance with the Act, the requirement for an executed certificate is mandatory, and the franchisor's failure to execute and date the certificate was equivalent to the franchisor providing no disclosure at all.[7] Based on the franchisor's failure to provide the executed certificate the Court held that the franchisee was entitled to rescind the franchise agreement in its entirety, 11 months after execution of the agreement itself.

Further, in Mapleleaf Franchise Concepts, Inc. v. Nassus Frameworks Ltd. ("Mapleleaf") the Alberta Court of Appeal considered the issue of whether the disclosure provided by the franchisor contained a misrepresentation. In Mapleleaf the Franchisor was attempting to enforce a post-termination clause in the

franchise agreement which prohibited the franchisee from operating a business similar to that of the franchisor within a ten kilometer exclusion zone for a period of two years after the termination of the agreement. Prior to execution of the agreement the franchisor provided disclosure, and, while not required to do so, chose to provide a franchise agreement summary which incorrectly described the exclusion zone as being three kilometers instead of the actual ten listed in the franchise agreement itself, a copy of which was also provided in the disclosure. The Court held that the summary's incorrect description of the exclusion zone was a misrepresentation and that, despite provision of the agreement itself which accurately described the exclusion, the franchisor could not enforce the ten kilometer exclusion zone against the franchisee.[8]

When entering into franchise agreements in Alberta franchisors must ensure compliance with the disclosure requirements set out in the Act and Regulations. A franchisor's failure to provide all required aspects of the disclosure or to ensure that all information contained therein, is accurate could result in retroactive rescission of the franchise agreement, return of fees paid by the franchisees, and liability for additional damages incurred by franchisees.

For further information please contact any member of our Commercial Litigation Group.

*Citations*

*1. Franchises Act, RSA 2000, c F-23 – Section 5 and Franchises Act Exemption Regulation, Alta Reg 312/2000 Section 1*
*2. Franchises Act, RSA 2000, c F-23 – Section 4*
*3. Franchises Regulation, Alta Reg 240/1995 Section 2(1)*
*4. Ibid - Section 2(3)*
*5. Ibid 2 – Section 13*
*6. Ibid 2 – Section 14*
*7. Hi Hotel Limited Partnership v. Holiday Hospitality Franchising Inc., 2008*
*8. Mapleleaf Franchise Concepts, Inc. v. Nassus Frameworks Ltd., 2011*