Article Summary

PART 2: ONTARIO REGULATIONS

LEGISLATION
Recommendations for Amendment

Close to four years have passed since the enactment of the **Arthur Wishart Act (Franchise Disclosure), 2000** and the Regulations thereto. The Act and Regulations have been fairly successful in their attempt to strike a balance between the often competing interests of the franchisor and those of the franchisee. In particular, the Act and Regulations largely manage to ensure that franchisors are not overly burdened from a compliance point of view, while offering significant protection to prospective and existing franchisees. Notwithstanding its merits and successes to date, Ontario's franchise legislation requires a comprehensive review and some revision to address several omissions, ambiguities and inconsistencies in the Act and Regulations. In Part 1 of this paper, Joseph Adler provided his analysis and review of some of these deficiencies and proposed certain technical and substantive amendments to the Act to help facilitate compliance with this legislation and to bring greater clarity to franchise practitioners, and to prospective and existing franchisors and franchisees. In Part 2 of this paper, the author provides an analysis and review of the Regulations and offers recommendations to address various deficiencies in the Regulations.

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Arthur Wishart Act (Franchise Disclosure), 2000: Recommendations for Amendment:

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PART 2: ONTARIO REGULATIONS

In Part 1 of this paper, we examined various issues and proposed certain amendments to the *Arthur Wishart Act (Franchise Disclosure), 2000* (the "Act"), to address several of the omissions, ambiguities and deficiencies in the Act. In this Part, this writer will address some of the omissions, ambiguities and deficiencies arising out of the regulations to the Act (the "Regulations").

1. **Sections 2 and 6** - Section 5 of the Act requires that a franchisor provide a disclosure document to prospective franchisees, which disclosure document is to include "all material facts, including material facts as prescribed". Sections 2 and 6 of the Regulations in turn outline with great particularity the type of information that must be included in any such disclosure document. **Issue:** Whereas Sections 2 and 6 of the Regulations go to great lengths in specifying the information to be disclosed, the Act does not provide a substantial or meaningful remedy to franchisees in the event that a franchisor does not abide by its obligations in this regard. That is, while Section 6(2) of the Act provides franchisees with a right of rescission for up to 2 years in the event that no disclosure is provided, the right of rescission is restricted to only 60 days following the disclosure by a franchisor of a deficient disclosure document.[1] The remedy for a franchisor's failure to substantially provide the information required to be disclosed by Sections 2 and 6 of the Regulations, therefore, amounts to no more than a 60 day money-back guarantee. **Recommendations:** Though the right of rescission is limited in this scenario, it is important to recognize that a franchisee retains the right to initiate a claim against its franchisor

[1] Section 6(1) of the Act provides that a franchisee may rescind the franchise agreement no later than 60 days after receiving the disclosure document if, inter alia, "the contents of the disclosure document did not meet the requirements of Section 5". The legislation does not clearly distinguish between a disclosure document which is partially deficient, and a disclosure document which is so deficient that it does not even remotely fulfil the requirements set out in the Act and the Regulations. In the former case, a franchisee would only be afforded the more narrow remedy outlined at Section 6(1) of the Act, whereas a substantially deficient disclosure document would not necessarily provide a franchisee with the broader remedy under Section 6(2) because recourse to the 2 year right of rescission is only available in cases where the "franchisor has never provided the disclosure document." Furthermore, the 60 day right of rescission is, in fact, even less of a remedy than what it would appear to be on a simple reading of Section 6. This is because the franchisee will inevitably have less than 60 days in which it could rescind its franchise agreement if it wishes to rely upon the latter part of this Section. In particular, should the franchisor provide a franchisee with a disclosure document that does not meet the requirements of Section 5, it will have already have had at least 14 days in which to review the document, for if it did not receive a Disclosure Document at all, it would not be relying upon Section 6(1) of the Act (but rather on Section 6(2)). So in fact, a franchisee would only have <u>46</u> days or less to review the Disclosure Document. By the time furthermore that the franchisee discovers that the contents do not meet the requirements of Section 5, even more time could have elapsed, thereby further diminishing the original period of 60 (or rather 46) days. For this reason, franchisees should ensure that they re-read their disclosure documents before this "60 day period" expires, otherwise they will not be have an opportunity to avail themselves of the Section 6(1) remedy.

for any omissions or misrepresentations of the franchisor pursuant to Section 7 of the Act and to pursue any rights that it may have under the common law[2]. Ideally, however, Section 6(2) of the Act should be amended to permit a franchisee to rescind the disclosure document within the 2 year period referred to in that section in the event that the disclosure document is so deficient that it is substantially incomplete or materially deficient.[3]

2. **Sections 2(1) and (2)** - Sections 2(1) and (2) of the Regulations require a franchisor to disclose the business background of the franchisor and the "business background of the directors, the general partners and the officers of the franchisor" to its prospective franchisees. Further, Section 2(1)viii. requires that a franchisor provide a description of every franchise that it may have offered in any other line of business, but this Section does not require that a franchisor disclose any such information regarding any of its associated companies. **Issues:** Information regarding the business background of the franchisor's associates may be very relevant to a prospective franchisee, particularly when the franchisor is substantially carrying on business through its associates and under the same trade-marks. Franchisors will often operate their franchise systems through numerous corporate vehicles for various tax, corporate, creditor proofing and other purposes and, as such, critical information pertaining to these affiliated companies should be disclosed. Furthermore, the franchisor must disclose details concerning any other franchise system that it may be operating in relation to another line of business, but no such disclosure obligation is imposed in respect of any of the associates of the franchisor. Of course, the franchisor would still be required by virtue of Section 5(4)(a) of the Act to disclose any such information if it is deemed to be "material", but given the absence of this explicit requirement in the Regulations, it is conceivable that a franchisor could argue that no such disclosure is required to be made under the Act and Regulations. **Recommendations:** Sections 2(1) and (2) should be amended to include the business background of not only the franchisor, but also the franchisor's associates as well. In particular, disclosure should be made regarding any other franchise system operated by the franchisor and its associates as such information may offer valuable insight in the practises, successes and failures of the franchisor providing the disclosure. It is also conceivable that a franchisor's associate may be operating a franchise competitive to the one being offered, a fact that should definitely be disclosed to a prospective franchisee.

3. **Sections 2(3), (4), (5) and (6)** - **Issue:** Virtually each of these provisions require that disclosure be made in relation to different periods of time. Section 2(3) of the Regulations, for example, refers to a 10 year period, whereas Sections 2(4) and 2(5) identify an indefinite period of time and Section 2(6) imposes a 6 year period of time. These varying periods of time are unnecessarily confusing to both the disclosing franchisors and the recipients of such information, i.e., the prospective franchisees. **Recommendation:** For the sake of consistency and to ensure that the information to be disclosed remains relevant, the

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[2] Section 9 of the Act confirms that the "rights conferred by this Act are in addition to and do not derogate from any other right or remedy a franchisee or franchisor may have at law."

[3] See MAA Diners Inc. et al. v. 3 for 1 Pizza & Wings (Canada) Inc., [2003] Court File 02-CV-232605CM1 (Ont. S.C.) for a brief discussion on the issue of what is considered to be sufficient disclosure for the purposes of the Act. See also a further discussion of this issue at Item 12 of this paper.

periods referred to at Sections 2(3), (4) and (5) should each be reduced to a 6 year period of time.[4]

4. **Sections 2(3), (4) and (5)** - There are several additional problems with these sections of the Regulations. The problems enumerated in the following chart are just a sampling of the difficulties and inconsistencies found in these sections:

Section of Regulation	Information to be Disclosed	Issues and Recommendations
Section 2(3)	A franchisor is required to disclose details of any conviction or pending charge against it or its associates or a director, general partner or officer of the franchisor involving fraud, unfair or deceptive business practices or a violation of a law that regulates "franchises or business".	**Issue:** The words "regulates franchises or business" [Emphasis added] is grammatically incorrect. **Recommendation:** Replace the word "business" with "businesses", as such term is correctly referenced at Section 2(5).
Section 2(4)	A franchisor is required to disclose details of any administrative order or penalty or pending administrative actions "under a law of any jurisdiction regulating franchises or business".	**Issue:** Once again, the words "regulating franchises or business" [Emphasis added] is grammatically incorrect. **Recommendation:** Replace the word "business" with "businesses", as recommended directly above. **Issue:** Note also that this Section is the only one of the three identified in this chart that refers to a violation of a law "imposed under a law of any jurisdiction". Could one imply that this subsection is concerned about orders, penalties or charges in *any* jurisdiction, whereas (by virtue of the more limited wording at) Sections 2(3) and (5) are only concerned about the laws of Ontario? **Recommendation:** To ensure consistency and to provide for more meaningful and comprehensive disclosure, it would be preferable to

[4] Query in general whether the Regulations should be amended to require such information to be disclosed concerning a predecessor of the franchisor as well as this information may possibly be quite valuable to a prospective franchisee, particularly where the predecessor operated a franchise system in a similar line of business as its successor.

Section of Regulation	Information to be Disclosed	Issues and Recommendations
		adopt the wording found in this Section 2(4) at Sections 2(3) and (5) as well. Provided, however, that this Section should be amended to only require disclosure of any "material" administrative order or penalty or pending administrative actions.
Section 2(5)	A franchisor is required to disclose details of any finding or pending allegation of liability in a civil action of misrepresentation, unfair or deceptive business practices against it or its associates or a director, general partner or officer of the franchisor involving franchises or businesses. This Section is then the *only* Section that provides an example of a "violation of a law" by enumerating the following: "including a failure to provide proper disclosure to a franchisee".	**Issue:** Sections 2(3) and (5) seem to be duplicative as both sections deal with very similar items for disclosure. **Recommendation:** Sections 2(3) and (5) should be merged into, and dealt with under, one section. **Issue:** The words "civil action" seem to exclude details concerning any arbitration or mediation conducted with or by the franchisor. A franchisor could presumably avoid providing disclosure regarding such arbitrations or mediations, subject to, of course, the general obligation by a franchisor to disclose "all material facts" (and not only those specifically identified in the Regulations). Information regarding the subject matter and resolution of such arbitrations or mediations may prove to be very useful to prospective franchisees. Further, only civil actions in which the "franchisor has been found liable" or a "civil action involving such allegations is pending" need to be disclosed. **Recommendation:** Prospective franchisees would arguably find details of any possible causes for dispute, no matter how resolved (i.e., by litigation, mediation or arbitration), of interest and this Section should be amended

Section of Regulation	Information to be Disclosed	Issues and Recommendations
		accordingly to require such disclosure.[5] Notwithstanding the above, the Regulations should be amended to require disclosure of only "material" findings of liability as only such findings may be reasonably expected to "have a significant effect on the value or price of the franchise to be granted or the decision to acquire the franchise". See, for example, the equivalent Federal Trade Commission trade regulation rule in this regard. Furthermore, Section 2(5) of the Regulations should be amended to include details of any civil action even where there was no finding of liability as against the franchisor. In other words, information concerning the civil action (and other dispute resolution procedure) should be disclosed even where the franchisor may have prevailed in its defence or launch of the claim as this information may be considered useful to a prospective franchisee.

5. **Section 2(5)** - **Issues:** Given that they deal with very similar subject matter, why are Sections 2 and 6 of the Regulations split up from each other and not combined into one section? Why does Section 6 of the Regulations require that the information specified therein be collected together in one place, whereas all other information that is required to be disclosed need not be presented in any particular order? What benefit is derived by the prospective franchisee in having the information collated in this manner and conversely, what adverse consequences would result if the information is not presented in accordance with this requirement? Why is the information at Section 6 of the Regulations introduced as being deemed "material" for the purpose of Section 5(4)(a) of the Act, whereas the information at Section 2 of the Regulations is not characterized as such? **Recommendation:** The Regulations should be re-organised so that all of the items to be disclosed are set out in one Section of the Regulations and the requirement that the information be set out in one part of the

[5] Alternative dispute resolution procedures often however require that the parties maintain the subject matter of such arbitration or mediation in confidence. In those circumstances, the franchisor may nevertheless be required to disclose the finding of such arbitration or mediation given the legal requirement that it do so under the Regulations.

document be deleted and replaced with a prescription that the information be set out in the prescribed order. The words "For the purposes of clause 5(4)(a) of the Act" should be deleted for the reasons specified directly below.

Issues: It is also important to note that Section 5(4) states that "all material facts, including material facts as prescribed" concerning the franchise must be disclosed to a prospective franchisee. Instead of identifying certain heads of information in simply a broad and an illustrative manner, the legislation chose to particularise the actual items that require disclosure, thereby reducing the discretion afforded to franchisors in deciding the materiality of the information to be disclosed. The difficulty with forcing the franchisor to disclose certain items of information as the Act and Regulations have done, is that the franchisor is required to disclose everything enumerated by the legislation even where such information is *not* "material" (as such term is defined by the Act). An inadvertent consequence of this approach is that portions of the disclosure document may be completely irrelevant, thereby possibly offending Section 5(6) of the Act which requires that the document be "accurately, clearly and concisely set out". **Recommendation:** The preamble of our proposed combined Sections 2 and 6 of the Regulations should be amended to state as follows:

> "Every disclosure document shall include the following information, if such information is reasonably to be expected to have a significant effect on the value or price of the franchise to be granted or the prospective franchisee's decision to acquire the franchise, and should be presented in the following order:"

6. **Section 3** - **Issue:** Section 3(1)(b) of the Regulations requires that the financial statements reported on a review engagement basis are to be prepared in accordance with the Canadian Institute of Chartered Accountants ("CICA") Handbook standards (or otherwise known as "Canadian GAAP"). The Regulations, however, are silent with respect to the standards to be applied to the audited statements that are prepared in accordance with Section 3(1)(a) of the Regulations. Was this reference to Canadian GAAP deliberately omitted in the case of the audited statements since prospective franchisees ordinarily receive a higher level of comfort when reviewing audited statements, it was felt that the Canadian GAAP standard need not apply in such a case? Or was this omission simply inadvertent and the financial statements of franchisors should therefore be prepared in accordance with Canadian GAAP even where such statements are audited? **Recommendation:** The above-noted queries typically become relevant when dealing with U.S. franchisors who attempt to rely upon their audited financial statements prepared in accordance with U.S. GAAP. Given the economic dominance of the U.S. in the World today, U.S. GAAP is quickly becoming the international accounting standard to be satisfied. As a result, mounting pressure has been exerted upon the CICA to adopt U.S. financial accounting standards so as to facilitate Canadian congruence with U.S. and international standards. An ongoing debate has ensued between those interested in maintaining a "made-in-Canada" set of accounting standards and those that prefer adopting the U.S. model. As long as Canada maintains its own standards, however, it is preferable that Section 3(1)(a) be amended to require audited statements prepared in accordance with Canadian GAAP. This is because franchisors and prospective franchisees in Ontario will seek out accounting expertise in Ontario and such accountants will obviously be more well versed in Canadian GAAP, rather than U.S. GAAP.

7. **Sections 6(1.) and (2.)** - **Issue:** Sections 6(1.) and (2.) of the Regulations are clearly contradictory in terms of what franchisors are required by Regulation to disclose. In particular, Section 6(1.) states that a franchisor is required to disclose a "list of all of the franchisee's costs associated with the establishment **and operation** of the franchise" [Emphasis added]. Section 6(1.) therefore requires a franchisor to disclose the costs that a franchisee should expect to incur in not only establishing the franchise (i.e., the initial investment), but also the anticipated costs of operating the franchise on a going-forward basis. The wording of Section 6(2.), on the other hand, suggests that providing operating costs is not obligatory, but is rather voluntary, as it requires that a franchisor provide a statement (specifying the basis for the estimate, the assumptions underlying the estimate and a location where information is available for inspection that substantiates the estimate) only if "an estimate of annual operating costs for the franchise is provided". **Recommendation:** As the information required to be set out under Section 6(2.) would most likely be relevant and useful and therefore material to a prospective franchisee, Section 6(2.) of the Regulations should be amended so that it assumes that an estimate of annual operating costs will be provided in accordance with the obligation to do so under Section 6(1.) of the Regulations.

Issue: Having said that a franchisor should be obligated to provide the anticipated operating costs to a prospective franchisee as part of its disclosure document, it would however be unreasonable to assume that a franchisor is always in a position to accurately provide an estimate of such operating costs. While franchisors are presumably in the best position to provide certain financial information given their experience with the sale, management and operation of their franchises, franchisors cannot in every situation foresee certain operating costs or all of the costs of establishing and operating the franchise. Why then should a franchisor be held liable for failing to disclose or for possibly misrepresenting such costs when it may not be within the scope or expectation of a franchisor acting reasonably? **Recommendation:** Section 6(1) of the Regulations should be amended so that a franchisor is simply required to provide its "reasonable estimate" of the franchisee's costs associated with the establishment and operation of the franchise. Section 6(2) of the Regulations (and/or the Act in general) should similarly be amended to incorporate a reasonableness standard to provide a legal defence to franchisors who act in good faith when providing operating cost projections to their prospective franchisees.

8. **Section 6(8.)** - This Section of the Regulations, inter alia, requires that franchisors provide a description of their policies regarding any volume rebates that they or their associates may receive and whether they or their associates receive a rebate, commission, payment or other benefit as a result of purchases of goods and services by their franchisees. **Issue:** The Regulations, however, do not specifically require that franchisors disclose information regarding any obligation imposed upon their franchisees to purchase or lease goods and/or services from third parties during the course of the franchised relationship.[6] Such information would undoubtedly be of great interest and benefit to prospective franchisees. **Recommendations:** A

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[6] On the other hand, one could argue that Clauses 1 and 2 of Section 6 to the Regulations effectively requires franchisors to disclose such information should they or their associates require their franchisees to purchase the goods and/or services directly from them (as opposed to a third party) as such a requirement would constitute a cost of establishing and/or operating the franchise pursuant to such provisions. (Clause 1 of Section 6 seems to suggest that it is only concerned about "payments to the franchisor" and not to third parties). Furthermore, such information may be deemed "material" and therefore required to be disclosed under the general disclosure obligation pursuant to Section 5(4)(a) of the Act.

new subsection should be added to Section 6 of the Regulations to specifically address the above-noted proposed disclosure requirement.

9. **Sections 6(9.)** - Under this Section of the Regulations, a franchisor is required to disclose the "rights the franchisor or the franchisor's associate has to the trade-mark, service mark, trade name, logo or advertising or other commercial symbol associated with the franchise" (collectively referred to herein as "Marks"). **Issue:** The franchisor's disclosure obligation imposed by this Section is excessively broad. First, the words "associated with the franchise" encompass not only those Marks directly related to the franchise being investigated by the prospective franchisee, but also those Marks that may be largely irrelevant to the franchisee, but loosely associated with the franchise system nonetheless. With more mature franchised systems, a franchisor and its associates may have several dozen if not hundreds of Marks associated with their respective systems. When several Marks are involved, not only does this Section impose an onerous obligation upon the franchisor by requiring it to make such disclosure, much of the said information may have no relevance to the franchise being considered by the prospective franchisee. Second, this Section also requires a franchisor to disclose information pertaining to not only the franchisor itself, but also information regarding its associates. Such information regarding the associates of the franchisor however will not likely have much direct bearing on the franchise being examined by the prospective franchisee and will therefore often be superfluous and irrelevant. **Recommendation:** Franchisors should only be expected to disclose information regarding Marks that are in fact intended to be *licensed* to the prospective franchisee, and not information regarding such Marks if they are simply "associated" with the franchise. The Regulations should be amended, therefore, by replacing the existing words "associated with the franchise" with the words "to be licensed to the franchisee". Also, the words "or the franchisor's associate" should be deleted.[7]

10. **Sections 6 (15.) and (16.)** - Clauses 15 and 16 of Section 6 of the Regulations, when read in conjunction with each other, is unnecessarily confusing and ambiguous. These Sections pose several issues, including the following:

Section of Regulation	Information to be Disclosed	Issues and Recommendations
Section 6 (15.)	A franchisor is required to disclose the "name, last known address and telephone number of each franchisee in Ontario who operated a franchise of the type being offered that has been terminated, cancelled, not renewed or reacquired by the franchisor or otherwise left the system within	**Issues:** Clause 15 of Section 6 of the Regulations refers to information that should be disclosed in respect of franchisees in Ontario, whereas there is no such geographical reference or restriction in Clause 16 of this Section.

[7] The UFOC Requirements only require that the franchisor disclose the "principal trademarks to be licensed to the franchisee" and are not as broadly drafted as the equivalent section in the Regulations.

Section of Regulation	Information to be Disclosed	Issues and Recommendations
	the last fiscal year immediately preceding the date of the disclosure document".	Furthermore, Clauses 15, 16 and 17 each require that the information be provided with respect to franchised systems of the "type being offered", whether or not such information is material to the prospective franchisee. This disclosure requirement places an onerous obligation upon franchisors that may have various and distinct franchised systems of the "type being offered", irrespective of whether such systems are in fact being offered by the franchisor to the prospective franchisee in question. For instance, a franchisor may conceivably operate various restaurant-based franchised systems, each under separate trade-marks. Such a franchisor would be required by each of Clauses 15, 16 and 17 to disclose information pertaining to its related franchise systems, notwithstanding the potentially differing circumstances facing the franchisees of each system. As well, Clause 15 notably does not require disclosure pertaining to the franchisor's associates, whereas Clause 16 does. **Recommendations:** It would be preferable for the sake of clarity alone, to amend Clauses 15 and 16 so that they are consistent with each other. At a minimum, Clause 16 should refer specifically to closures of a franchise within the Province of Ontario, as does Clause 15. It would be preferable, however, if Clauses 15 and 16 were merged together into one provision since they both deal with very similar subject matter.
Section 6 (16.)	A franchisor is required to disclose the "reasons for the closure, including whether the franchisor or franchisor's associate terminated or cancelled the franchise agreement, the	**Issues:** Clause 15 refers to information that should be disclosed in respect of terminations, cancellations, non-renewals, re-acquisitions or departures of franchisees during the past fiscal year, whereas Clause 16 requires information be disclosed for the

Section of Regulation	Information to be Disclosed	Issues and Recommendations
	franchisor or franchisor's associate refused to renew the franchise agreement or the franchisee refused to renew the franchise agreement or otherwise left the franchise system."	past 3 years immediately preceding the date of the disclosure document. **Recommendations:** Once again, it would be preferable for Clauses 15 and 16 to be amalgamated into one provision to address the inconsistent time periods exhibited by these subsections. Alternatively, the period of time for which disclosure is required at Clause 15 should be extended to 3 years to ensure consistency with Clause 16.

11. **Section 6(17.)** - **Issue:** Under this Section, franchisors are only required to disclose the prescribed information pertaining to "franchises in Ontario of the type being offered." One may argue therefore that franchisors interested in selling unit franchises, for example, may not be required to disclose the addresses, telephone numbers and names of any area developers to prospective franchisees as the sale of unit franchises is distinctly dissimilar from the sale of area development rights and visa-versa.[8] Conversely, it may be argued that the addresses, telephone numbers and names of unit franchisees need not be disclosed to prospective area developers. **Recommendations:** Information relating to area developers would presumably be of interest to prospective unit franchisees even where such franchisees were simply interested in purchasing one franchised unit from the franchisor. As such, the words "and area developers, if any" should be added following the words "A list of locations of all franchises" at Clause 17 of Section 6 of the Regulations.

12. **Regulations to the Alberta Franchises Act.** Section 2(2) of the Regulations to the Alberta Franchises Act states that a disclosure document authorized from a jurisdiction outside of Alberta may be given to a prospective franchisee provided that certain supplementary information (that sets out any material changes to the document from that jurisdiction so that it complies with the requirements of the Regulations) is added. Furthermore, Section 2(4) of the Alberta Regulations provides that if a disclosure document is "substantially complete", it will deny a franchisee a right of rescission pursuant to Section 13 of the Alberta Franchises Act. Section 2(2) of the Alberta Regulations is occasionally relied upon by U.S. franchisors who wish to use their UFOCs for purposes of satisfying their legal requirements under the Alberta Franchises Act. A U.S. franchisor would do so by simply attaching what is commonly referred to as a "wrap-around" document to its UFOC, which document would address any matters

[8] Though one may alternatively argue that the words "type being offered" refer not to the type of franchise arrangement (i.e., unit, area developer or master franchise), but to the kinds of products or services being offered for sale or distribution. If this were the case, franchisors would be required to disclose information regarding area developers to prospective unit franchisees and visa-versa so long as they both relate to the same type of franchise being offered for sale.

specific to the Alberta legislation that is not already dealt with in the UFOC. Section 2(4) of the Alberta Regulations provides additional comfort to franchisors who wish to rely upon a "substantially complete" disclosure document by preventing a franchisee in such a case from claiming a right of rescission under Section 13 of the Alberta Franchises Act. **Issue:** As there are no provisions in the Ontario legislation equivalent to the aforementioned sections found in the Alberta Franchises Act, there have been calls by many to amend the Act or the Regulations to obtain the purported benefits of these Alberta provisions. **Recommendations:** To permit the usage of a wrap-around document as the Alberta Regulations do would undermine the unique contents and standardized "look and feel" of the disclosure document as currently mandated in Ontario. There are also benefits in promoting and maintaining a standard form of disclosure document (that is distinguishable from a document prepared in another jurisdiction) as this writer has advocated at Item 13 directly below. Furthermore, the Ontario Regulations currently requires that certain information be collected and set out in certain places in the disclosure document[9]. The adoption of a UFOC-type document, therefore, would certainly not be consistent with the requirement set out at Section 6 of the Regulations in this regard as the items required to be disclosed at Section 6 of the Regulations are not identically laid out in the UFOC and are not collected "together in one part of the document".

Further, though enticing in theory, the Ontario Regulations would not currently benefit from incorporating the "substantially complete" rule found at Section 2(4) of the Alberta Regulations for the following reason. In the Alberta scenario, a franchisee could possibly rescind its franchise agreement at any time within 2 years after it is granted the franchise if the disclosure document is not "substantially complete". This however is not to date the case in Ontario because the franchisee's right of rescission is limited to simply 60 days in the event that the "contents of the disclosure document did not meet the requirements" of the Ontario Act. Given the huge discrepancy in the remedies available, therefore, the "substantially complete" defence is an absolute necessity in Alberta where the consequences are more severe, whereas the same cannot be said of Ontario for the reasons noted above. In any event, if the Act is amended as recommended at Item 1 of this paper (i.e., by giving a franchisee a 2 year right of rescission when in receipt of a substantially incomplete disclosure document), a similar provision to the "substantially complete" rule found at Section 2(4) of the Alberta Regulations should be seriously considered for insertion into the Ontario Act as well.

13. **General Formatting.** **Issues:** Difficulties in interpreting the Regulations and implementing its requirements not only arise due to the above-noted substantive ambiguities and inconsistencies in the legislation, but are also a direct result of the lack of order and formatting in the items to be disclosed. An example of the poor manner by which this legislation was drafted was highlighted above, in relation to our discussion regarding Sections 2 and 6 of the Regulations. These sections were inexplicably and awkwardly separated from each other when in fact they should have been merged into one section for ease of reference and for substantive reasons as noted above. **Recommendations:** In contrast, written guidelines along those developed by the North American Securities Administrators Association ("NASSA") in the form of the Uniform Franchise Offering Circular ("UFOC") Guidelines in the mid-seventies, continue to provide franchisors and franchisees with a clear set of instructions to facilitate compliance

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9 Sections 4 and 6 of the Regulations.

with disclosure obligations throughout the United States.[10] These Guidelines have for the most part successfully promoted consistency in the preparation of UFOCs among the various U.S. states, an incredible achievement given the patchwork of franchising legislation throughout the U.S. In particular, the NASSA Guidelines very specifically outline not only the content of the disclosure to be provided to prospective franchisees, but also delineate in great detail the manner and form by which the disclosure is to be provided.[11] The Act and Regulations, therefore, would better serve the needs of the franchising community in Ontario and beyond were there similar guidelines promulgated in this legislation which would prescribe the format of the disclosure document.

By implementing the above-noted recommendations and those recently made by other franchise counsel to amend the Act and the Regulations, we are hopeful that franchisors, franchisees and franchise counsel will all derive even greater benefits from this franchise legislation and that, as a result, the quality of franchising in this province will be noticeably improved. Until that time, however, franchisors and franchisees and those professionals that represent them will undoubtedly struggle to manage and comprehend their respective obligations under this poorly drafted legislation.

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[10] The Federal Trade Commission ("FTC") similarly issued guidelines to the FTC's "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" to "assist franchisors in understanding the rule and complying with its obligations" (located at 44 Fed Reg 49966 (Aug. 24, 1979)).

[11] Examples of various applicable forms are attached to the UFOC as well as instructions as to how to fulfil the UFOC requirements are clearly laid out in the Guidelines.