

# The Five Stones: Bill 15, *The Franchises Act*

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M A R Y - E L L E N   W A Y N E \*

*David took off the armor...and picked up five smooth rocks and put them in his leather bag. Then with his sling in his hand, he went straight toward Goliath*  
- The Bible, 1st Samuel c 17, v 40

## I. INTRODUCTION

The colossal power imbalance between most individuals and a behemoth multinational corporation is undeniable. This power imbalance is endured on a daily basis by many franchisees—individuals or groups who pay fees and/or royalties to conduct business under the brand name of what is most commonly a highly recognizable corporation, the franchisor.<sup>1</sup> Most franchisees do not possess nearly the amount of resources, whether human or capital, as the franchisor. Despite this massive disparity in both power and resources, the franchisee was offered no legislative protection in Manitoba until Bill 15, *The Franchises Act*<sup>2</sup> was enacted in 2010. Those who chose to fight could find themselves embroiled in a heated legal battle the scale of a modern day David and Goliath.

The Act provides five powerful legal weapons and major protections to franchisees in Manitoba: (1) the duty of fair dealing; (2) the right to associate; (3) the requirement of pre-contract disclosure; (4) damages for

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<sup>1</sup> This example is only one type of franchise arrangement that has been provided for illustration purposes only. A more detailed explanation of the franchisor-franchisee relationship will be provided in Section 2 of this paper. See Manitoba Law Reform Commission, *Franchise Law*, No 116 (Winnipeg: Manitoba Law Reform Commission, 2008) at 6 [MLRC Report].

<sup>2</sup> Bill 15, *The Franchises Act*, 4th Sess, 39th Leg, Manitoba, 2010 (assented to 17 June 2010), SM 2010, c 13 [the Act]. Will also be referred to as “Bill 15” or “the bill”.

misrepresentation and failure to disclose; and (5) the ability to impose joint and several liability on franchisors and related parties who breach any of the aforementioned duties or obligations. These legislative provisions offer the mere mortal franchisee ammunition against the seemingly impermeable corporation/franchisor. Keeping with traditional Jewish folklore, one stone, or one of these provisions, would be enough to bring down an allegedly invincible Goliath by providing a franchisee the potential to win a legal battle against even the largest corporate leviathan. The provisions of the Act work to help neutralize the gross power indifference between the franchisor and the franchisee, leaving it unnecessary for the franchisee to require large resources analogous to steel armor: just like David.

Bill 15 introduced long delayed legislation controlling franchises in Manitoba. The Act followed failed legislation and lengthy discussion among academics, law reform commissions, and various industry stakeholders, who reached the eventual conclusion that franchise-specific legislation in Manitoba would be helpful. Alarming, while franchising was an integral part of the economy of Manitoba for quite some time, there was no franchise-specific legislation in the province prior to Bill 15. The only previous attempt to enact franchise-specific legislation in Manitoba, Bill 18, died on the order paper in 1992.

Although many individuals fail to consider the origins of the hamburger or submarine sandwich they are consuming, there is a rich legislative history behind franchising in Manitoba. The road to franchise-specific legislation began with the ill-fated Bill 18, and continued with academic discussion and reports from provincial, national, and international law commissions. Other provincial and international jurisdictions also enacted franchise-specific legislation prior to Manitoba, which served as models. These efforts, culminating with the passage of Bill 15, *The Franchises Act*, make it clear that Manitoba did not take a quick route to enact franchise-specific legislation. This delay prevented extending legislative protection to franchisees in the province.

In order to provide context, a brief explanation of franchising and its significance to the Canadian economy, as well as an explanation of the factors leading up to the enactment of Bill 15, will be provided prior to an illustration of the provisions of Bill, the legislative process of the Act, and an analysis of the Act.

## II. FRANCHISING

Although there are several types of franchise arrangements,<sup>3</sup> a franchise is generally “a contract between two businesses, in which the franchisor grants the franchisee the right to operate its business system in return for payment of fees and royalties.”<sup>4</sup> The business system can involve the right to sell products, the use of intellectual property such as logos and trademarks, and/or the use of physical assets.<sup>5</sup> Franchising is recognized as a relatively easy way to expand a business, and can be done more rapidly than other means of expansion due to the fact that new franchises are predominantly financed by franchisees.<sup>6</sup> Several of the world’s largest and most recognizable corporations, including Subway, Coca-Cola, and General Motors,<sup>7</sup> achieved growth in their early years and continue to achieve growth or maintain market share through the use of franchising. Numerous fast-food establishments with a global presence, notably McDonald’s, gained notoriety for their effective use of franchising as a corporate development tool.<sup>8</sup> Franchising involves more than just fast food, however. Several highly recognizable service providers, including H & R Block, operate mainly through franchising. In addition, franchising dates as far back as ancient England, where the monarchy would grant subjects the right to collect taxes.<sup>9</sup>

Franchising commands a strong presence in the marketplace. According to the Canadian Franchise Association, franchises across the

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<sup>3</sup> There are three types of franchise arrangements: the business format franchise, the product distribution franchise, and the business opportunity franchise. The business format franchise, the most common form of franchising, is where the franchisee exclusively operates the franchise using the entire business system of the franchisor. This including adopting the franchisor’s product, brand name, and marketing strategy. For more information on the different types of franchise arrangements, see: MLRC Report, *supra* note 1 at 6.

<sup>4</sup> *Black’s Law Dictionary*, 7th ed, *sub verbo* “franchise”.

<sup>5</sup> MLRC Report, *supra* note 1 at 6.

<sup>6</sup> *Ibid* at 9.

<sup>7</sup> *Ibid* at 5.

<sup>8</sup> Marshall Fishwick, ed, “The World of Ronald McDonald” (Summer 1978) *Journal of American Culture* 1 332-474.

<sup>9</sup> MLRC Report, *supra* note 1 at 1.

country account for \$90 billion in annual sales, amounting to 10% of Canada's gross domestic product.<sup>10</sup> Franchised businesses also account for 40% of retail sales in Canada.<sup>11</sup> In the United States, an International Franchise Association study has measured a nearly \$625 billion economic output directly attributable to the more than 767,000 franchises located throughout the country.<sup>12</sup>

Despite the lucrative financial rewards of franchising, the franchise legal relationship can be fraught with tension.<sup>13</sup> The nature of the franchise relationship creates a high potential for conflict due to the interdependence of the parties in order to maintain success, as well as the intended length of the relationship.<sup>14</sup> Understandably, these characteristics have drawn some analysts to compare the franchise relationship to marriage.<sup>15</sup>

Legislation has been viewed as an instrument to prevent and resolve conflict by imposing duties on each of the parties, such as the duty to act in good faith. Legislation is also seen as useful in implementing obligations and restrictions on the more powerful party, the franchisor, to assist in neutralizing the imbalance of power between the parties. Regulation by legislation in the area appears to be necessary as the common law can be inconsistent, and it can also require a large amount of resources, time, and risk to pursue an action with an unclear outcome in the court system. In addition, the franchise industry does not appear to be regulating itself in the best interest of both the franchisor and the franchisee, but can seem slanted in favour of the franchisor, who often has more pull in the industry than a franchisee. Recommendation 1 of the Manitoba Law Reform Commission report stated, "Manitoba should enact legislation to regulate franchising."<sup>16</sup>

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<sup>10</sup> *Ibid* at 6.

<sup>11</sup> "Fast Facts", online: Canadian Franchise Association <<http://www.cfa.ca>>.

<sup>12</sup> MLRC Report, *supra* note 1 at 6.

<sup>13</sup> There have been a number of cases illustrating the conflict that can occur in a franchise relationship. For example, see *Halligan v Liberty Tax Service Inc.* [2003] MBQB 174, 36 BLR (3d) 75, 176 Man R (2d) 57.

<sup>14</sup> MLRC Report, *supra* note 1 at 11.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid* at 45.

### III. INFLUENCES OF THE ACT

Bill 15 was the second attempt to introduce franchise-specific legislation in Manitoba, following Bill 18 in 1992. In addition, Bill 15 was the product of the passage of similar legislation in other provincial and international jurisdictions, as well as academic discussion on the topic of franchise law reform. Recommendations of the Uniform Law Conference of Canada (“ULCC”), the Manitoba Law Reform Commission (“MLRC”), and the International Institute for the Unification of Private Law (“UNIDROIT”) also had an influence in the eventual success of Bill 15.

#### A. Legislation in Other Provincial Jurisdictions

Prior to the enactment of Bill 15, franchise-specific legislation had been successfully enacted in Alberta, Ontario, New Brunswick, and Prince Edward Island. Although Quebec did not enact legislation specifically designed to protect franchises, it does offer limited protection in this area in its *Civil Code*.<sup>17</sup> The following table summarizes the important dates regarding provincial franchise-specific legislation.

<i>1. Franchise-Specific Legislation Across Canada</i>					
Alberta	Manitoba	Ontario	Prince Edward Island	New Brunswick	Manitoba
1972	1992	2000	2005	2007	2010
Enactment of the <i>Franchises Act</i>	Bill 18 is proposed. Does not succeed	Enactment of the <i>Arthur Wishart Act (Franchise Disclosure)</i>	The <i>Franchises Act</i> receives Royal Assent	The <i>Franchises Act</i> receives Royal Assent	The <i>Franchises Act</i> receives Royal Assent

Alberta was the first province in Canada to enact franchise-specific legislation with the enactment of the *Franchises Act* in 1972, although this

<sup>17</sup> “2008 Franchise Law Symposium” (2009) 6 Underneath the Golden Boy 229 at 229.

legislation was overhauled in 1995.<sup>18</sup> In 2000, Ontario introduced the *Arthur Wishart Act (Franchise Disclosure)*,<sup>19</sup> almost thirty years after the passage of the original Alberta Act. Prince Edward Island enacted the *Franchises Act*, which received Royal Assent on June 7, 2005.<sup>20</sup> The New Brunswick legislation, also called the *Franchises Act*, received Royal Assent on June 26, 2007.<sup>21</sup>

While these Acts are not entirely uniform, they were implemented to protect franchisees from abuse on the part of franchisors.<sup>22</sup> The legislation was also intended to reduce or prevent disputes.<sup>23</sup> Both of these provisions were hoped to increase consumer confidence in the stability of franchises as a business model.<sup>24</sup>

## B. The Uniform Law Conference of Canada and *The Uniform Franchises Act*

A "predictability of uniformity" quickly emerged as the preferred choice of lawyers, clients, and franchisors.<sup>25</sup> As problems arose when individual jurisdictions chose to implement unique regulations, varying regulations carried a potentially detrimental risk to franchisors.<sup>26</sup> *The Uniform Franchises Act* ("ULCC Act")<sup>27</sup> was designed to alleviate this concern by offering model legislation and regulations to provinces to help

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<sup>18</sup> Dominic Mochrie & Frank Zaid, "Something Old, Something New: A Comparison of Canada's Newest Franchise Legislation Against Existing Franchise Laws" (2009) 6 *Underneath the Golden Boy* 403. Will also be referred to as the "Alberta Act".

<sup>19</sup> *Ibid.* Will also be referred to as the "Ontario Act".

<sup>20</sup> *Ibid.* Will also be referred to as the "Prince Edward Island Act".

<sup>21</sup> *Ibid.* Will also be referred to as the "New Brunswick Act".

<sup>22</sup> Bryan Schwartz, John Pozios & Leandro Zylberman, "Response to Consultation Paper on Franchise Law" 6 *Underneath the Golden Boy* 295 at 297-298.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Supra* note 18 at 403.

<sup>26</sup> The potentially detrimental effect of inconsistent franchise regulation was most pronounced to non-international franchisors working in Canada. Many non-international franchisors, unlike large international franchisors, did not have the resources to ensure compliance with multiple varying regulations.

<sup>27</sup> Uniform Law Conference of Canada, "Uniform Franchises Act", online: ULCC <[http://www.ulcc.ca/en/us/Uniform\\_Franchises\\_Act\\_En.pdf](http://www.ulcc.ca/en/us/Uniform_Franchises_Act_En.pdf)>.

ensure uniformity throughout jurisdictions, or as much uniformity as is possible when dealing with the concerns of individual provinces.

The ULCC Act was the product of these efforts and was revealed in August 2005.<sup>28</sup> The ULCC Act was met with approval by many jurisdictions and resulted in the passage of several pieces of provincial franchise-specific legislation. The Prince Edward Island and New Brunswick legislation were based on the ULCC model legislation. Manitoba's Bill 15, now *The Franchises Act*, was also modeled on the ULCC Act. Franchise-specific legislation was enacted in Manitoba in 2010: 18 years after the Manitoba Legislative Assembly opted not to adopt Bill 18.

### C. 2008 Franchise Law Symposium

Little consideration was afforded to the regulation of franchises in Manitoba prior to the *Consultation Paper on Franchise Law* issued by the MLRC in May 2007. In mid-2007, the MLRC requested a response to the *Consultation Paper on Franchise Law*. The Marcel A. Desautels Centre for Private Enterprise and the Law and the Asper Chair of International Business and Trade Law, two prominent legal research centres at the University of Manitoba, delved further into the issue. These efforts culminated in the creation of the 2008 Franchise Law Symposium, a one-day intensive forum on franchise legislation held on March 14, 2008 in Winnipeg, Manitoba. Discussion topics included (i) scope of disclosure; (ii) exemptions from disclosure; and (iii) relationship considerations.<sup>29</sup> Similar to the research conducted by the ULCC, the preference for predictability of uniformity was sensed in the proceedings.

Ultimately, the Manitoba Law Reform Commission recommended franchise legislation for Manitoba based on the information gained from the Franchise Law Symposium and a study of the ULCC Act.<sup>30</sup> The work of the Franchise Law Symposium was particularly noteworthy as it

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<sup>28</sup> *Supra* note 18 at 404.

<sup>29</sup> For more information on the 2008 Franchise Law Symposium, see the Proceedings of the 2008 Franchise Law Symposium, *Franchise Law Reform: International Perspectives on Creating a Manitoba Statute* (Winnipeg: Asper Chair of International Business and Trade Law and the Desautels Centre for Private Enterprise and the Law, 2009).

<sup>30</sup> Manitoba, Legislative Assembly, *Standing Committee on Social and Economic Development*, vol LXII No 4 (16 June 2010) at 149 [Committee].

provided needed in-depth analysis on the area of franchise regulation. This information was utilized by the MLRC in conducting their research and was instrumental in the eventual recommendation. This is significant as not all MLRC reports are adopted by the Legislative Assembly of Manitoba. The length of the report was also greater than all MLRC reports issued since May 1997, an indicator of the vast amount of consideration and complexity of the issue.<sup>31</sup>

#### D. International Jurisdictions and UNIDROIT

Several international jurisdictions have enacted franchise-specific legislation. These include the United States in 1979,<sup>32</sup> France in 1989,<sup>33</sup> Mexico in 1991,<sup>34</sup> Brazil in 1994,<sup>35</sup> Australia in 1998,<sup>36</sup> China in 2004,<sup>37</sup>

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<sup>31</sup> The MLRC report on Franchise Law was 172 pages in length. In 2008, apart from the Franchise Law report, the MLRC issued four additional reports (Enduring Powers of Attorney Supplementary Report, the Mandatory Arbitration Clauses and Consumer Class Proceedings, and Posthumously Conceived Children: Intestate Succession and Dependents Relief), although none of these reports exceeded 50 pages. The length of the Franchise Law report most closely paralleled the length of the Wills and Succession Legislation report issued in March 2003, which amounted to 162 pages.

<sup>32</sup> Bryan Schwartz, John Pozios & Leandro Zylberman, "Franchise Legislation and Associations Around the World" (2009) 6 *Underneath the Golden Boy* 353 at 362. The Federal Trade Commission Trade Regulation Rule entitled *Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures* came into effect on October 21, 1979.

<sup>33</sup> *Supra* note 22 at 327. France enacted the "Loi Doubin" (Law No. 89-1008) on December 31, 1989. The law relates to commercial enterprises, their development, and the improvement of social, legal, and economic conditions for commercial enterprises.

<sup>34</sup> *Supra* note 32 at 360. Mexico introduced the *Law to Develop and Protect Industrial Property*, which states in art 20(vii) that its goal is to "establish conditions of legal protection between parties to a franchise, such as guaranteeing a non-discriminatory treaty for all franchisees of the same franchisor." As well, Article 142 of the Law focuses exclusively on franchises.

<sup>35</sup> *Ibid* at 359. Brazilian Law No 8955/94, adopted on December 15, 1994, applies to Brazilian master franchises and franchises operated in Brazil.

<sup>36</sup> *Ibid* at 380. The *Franchising Code of Conduct* became law on July 1, 1998.

<sup>37</sup> *Ibid* at 385. The *Measures for the Regulation of Commercial Franchise* was approved on December 31, 2004.



and Sweden in 2006.<sup>38</sup> Additional jurisdictions around the world have also introduced franchise-specific legislation, as contained in Appendix: Existing Franchise Legislation.

UNIDROIT, the International Institute for the Unification of Private Law, began to consider preparing uniform rules regarding franchising in 1985, when franchising was rare in most parts of the world apart from North America.<sup>39</sup> Franchisors opposed an international instrument at this time, however, and UNIDROIT agreed to monitor the situation.<sup>40</sup> By 1993, encountering heightened interest for an international franchise instrument, UNIDROIT established a Study Group on Franchising.<sup>41</sup> In 2002, the Study Group unveiled a *Model Franchise Disclosure Law*.<sup>42</sup> Although this model law only deals with disclosure obligations of franchisors, it still marked international interest in franchise regulation.

#### IV. SUMMARY OF THE ACT

The main goals of legislating franchises are to “protect the franchisee by imposing pre-sale disclosure requirements...and creating substantive duties of good faith, fair dealing, and rights of association.”<sup>43</sup> Bill 15 created duties of fair dealing and right of association, and also imposed pre-sale disclosure requirements, a right of action for misrepresentation and failure to disclose, and the potential for joint and several liability to be found. The Act should be commended for creating these substantive duties, requirements, and rights of action as they are invaluable additions to the legal arsenal of any franchisee.

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<sup>38</sup> *Ibid* at 379. The *Law on the Duty of a Franchisor to Provide Information* (Law No. 2006-484) was passed in 2006.

<sup>39</sup> *Supra* note 1 at 40.

<sup>40</sup> *Ibid*.

<sup>41</sup> *Ibid*.

<sup>42</sup> *Ibid* at 41.

<sup>43</sup> *Supra* note 17.

## A. Application

The Act applies to franchise agreements entered into on or after the coming into force of the Act<sup>44</sup> as well as renewals of pre-existing franchise agreements, provided the renewal occurs after the legislation came into force.<sup>45</sup> The Act does not apply to franchise agreements entered into prior to the coming into force of the Act. However, the provisions regarding the duty of fair dealing,<sup>46</sup> right of action,<sup>47</sup> interpretation,<sup>48</sup> right to associate,<sup>49</sup> interfering with, prohibiting or restricting association,<sup>50</sup> penalizing franchisees,<sup>51</sup> provisions void,<sup>52</sup> and right of action<sup>53</sup> all apply to existing franchise agreements entered into before the coming into force of the Act.<sup>54</sup> In addition, the burden of proof,<sup>55</sup> the sections stipulating rights cannot be waived and there is to be no derogation of other rights,<sup>56</sup> as well as the jurisdiction provisions,<sup>57</sup> also apply retroactively. The Act also binds the Crown.<sup>58</sup> The Act does not apply to several areas or types of agreements, including the relationship between an employer and employee,<sup>59</sup> partnership agreements,<sup>60</sup> and organizations operated, defined, or incorporated on a cooperative basis.<sup>61</sup>

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<sup>44</sup> Act, *supra* note 2, s 2(1)(a).

<sup>45</sup> *Ibid.*, s 2(1)(b)(i).

<sup>46</sup> *Ibid.*, s 3(1).

<sup>47</sup> *Ibid.*, s 3(2).

<sup>48</sup> *Ibid.*, s 3(3).

<sup>49</sup> *Ibid.*, s 4(1).

<sup>50</sup> *Ibid.*, s 4(2).

<sup>51</sup> *Ibid.*, s 4(3).

<sup>52</sup> *Ibid.*, s 4(4).

<sup>53</sup> *Ibid.*, s 4(5).

<sup>54</sup> *Ibid.*, s 2(2).

<sup>55</sup> *Ibid.*, s 12.

<sup>56</sup> *Ibid.*, ss 9, 11.

<sup>57</sup> *Ibid.*, ss 10(1)-10(2).

<sup>58</sup> *Ibid.*, s 13.

<sup>59</sup> *Ibid.*, s 2(3)(a).

<sup>60</sup> *Ibid.*, s 2(3)(b).

<sup>61</sup> *Ibid.*, ss 2(3)(c)-2(3)(f).

A franchisee or prospective franchisee cannot waive his or her rights under the Act nor can a franchisee waive an obligation or duty placed on a franchisor under the Act, as per section 11 of the Act. This provision applies retroactively. Also, section 12 of the Act places the burden of proof on the party claiming an exemption or exclusion from a requirement of the Act.

## B. Duty of Fair Dealing

One of the most significant duties imposed by the Act is the duty of fair dealing. Under section 3(1), “Every franchise agreement imposes on each party a duty of fair dealing in the performance and enforcement of the agreement.” “Duty of fair dealing” is defined in the Act as including, “the duty to act in good faith and in accordance with reasonable commercial standards.”<sup>62</sup> Any party who exercises a right under the agreement is also bound by the duty of fair dealing.<sup>63</sup> The Act also provides a right of action to any party to a franchise agreement against the party to the franchise agreement who has breached the duty of fair dealing.

Although the Alberta and Ontario acts also include a duty of fair dealing, they do not extend this duty to the exercise of a right under the agreement.<sup>64</sup> The Manitoba, Prince Edward Island, and New Brunswick Acts, as well as the ULCC Act, go further by also imposing a duty of fair dealing on the exercise of a right under the agreement. As a result of this extended duty, the parties are required to act in accordance with the duty of good faith even if they are exercising a discretionary right. According to the MLRC, “the statutory provisions essentially codify the common law duty of good faith in the franchise context.”<sup>65</sup> In this area, Bill 15 is consistent with the ULCC model legislation.

## C. Right to Associate

The Act also grants franchisees the right to associate, and establishes several important protections to ensure the integrity of this right. Under

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<sup>62</sup> *Ibid*, s 3(3)(a).

<sup>63</sup> *Ibid*, s 3(3)(b).

<sup>64</sup> MLRC Report, *supra* note 1 at 112.

<sup>65</sup> *Ibid* at 114.

section 4(1) of the Act, “a franchisee may associate with other franchisees and may form or join an organization of franchisees.” Section 4(2) of the Act prohibits a franchisor or associate of a franchisor from interfering with, prohibiting or restricting the franchisee’s right to associate. Section 4(3) of the Act establishes that a franchisor or associate of a franchisor is also prohibited from directly or indirectly penalizing a franchisee, attempting to penalize a franchisee, or threatening to penalize a franchisee for exercising their right to associate under section 4.

In addition, section 4(4) of the Act renders void “any provision in a franchise agreement or other agreement relating to a franchise that purports to interfere with, prohibit or restrict a franchisee from exercising any right under [section 4].” Section 4(5) of the Act establishes a right of action for damages against a franchisor or franchisor’s associate who interferes with any of the rights under section 4. All provisions in section 4 are applied retroactively to any franchise agreement.

#### **D. Franchisor’s Obligation to Disclose**

Section 5 of *The Franchises Act* establishes the franchisor’s obligation to disclose<sup>66</sup> as well as additional requirements such as timing,<sup>67</sup> content of the disclosure,<sup>68</sup> and accurate, clear, concise information.<sup>69</sup> With the sole exception of the obligation to disclose in the cases where “the grant of a franchise by an executor, administrator, sheriff, receiver, trustee, trustee in bankruptcy or guardian on behalf of a person other than the franchisor or the franchisor’s estate”,<sup>70</sup> none of the disclosure provisions contained in section 5 extend to franchise agreements entered into before the coming into force of the Act.

Section 5(5) of the Act outlines the required content of the disclosure document. The disclosure document is required to contain:

- (a) all material facts;
- (b) the prescribed financial statements;

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<sup>66</sup> Act, *supra* note 2, s 5(1).

<sup>67</sup> *Ibid*, ss 5(2)–5(3).

<sup>68</sup> *Ibid*, s 5(5).

<sup>69</sup> *Ibid*, s 5(9).

<sup>70</sup> *Ibid*, s 5(11)(d).

- (c) copies of all proposed franchise agreements and other agreements relating to the franchise to be signed by the prospective franchisee;
- (d) the prescribed statements about making an informed decision;
- (e) other prescribed information, statements, descriptions and certificates; and
- (f) copies of other prescribed documents.

Any franchise agreement that provides that disputes may be referred to or resolved by mediation or arbitration, section 5(6) of the Act also requires the disclosure document to include, in addition to the requirements in section 5(5):

- (a) the criteria and methods for selecting a mediator or arbitrator;
- (b) the rules and procedures governing mediation and arbitration;
- (c) any confidentiality obligations imposed on parties to the mediation or arbitration;
- (d) the costs of mediation or arbitration proceedings or the method of calculating those costs; and
- (e) any other prescribed information and statements.

Section 5(9) of the Act requires the information contained in a disclosure document to be “accurately, clearly and concisely set out.” However, “a technical irregularity or mistake not affecting the substance of the document”<sup>71</sup> will not render the document non-compliant with section 5, as section 5(10) of the Act allows room for non-substantial mistakes, provided the document “substantially complies”<sup>72</sup> with the remaining provisions of the Act.

## E. Damages for Misrepresentation and Failure to Disclose

Section 7(1) of the Act establishes a right of action for damages for the franchisee if they have suffered a loss due to a misrepresentation in the disclosure document or the failure of the franchisor to comply with section 5. The franchisee has a right of action against not only the franchisor,<sup>73</sup> but also the franchisor’s associate,<sup>74</sup> the franchisor’s broker,<sup>75</sup> and every person who signed the disclosure document.<sup>76</sup>

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<sup>71</sup> *Ibid*, s 5(10)(b).

<sup>72</sup> *Ibid*, s 5(10)(a).

<sup>73</sup> *Ibid*, s 7(1)(a).

<sup>74</sup> *Ibid*, s 7(1)(b).

<sup>75</sup> *Ibid*, s 7(1)(c).

<sup>76</sup> *Ibid*, s 7(1)(d).

Section 7(4) of the Act establishes a defence, stipulating that a person is not liable if they can prove “that the franchisee acquired the franchise with knowledge of the misrepresentation.” However, the burden of proof is on party claiming the defence to prove the knowledge of the franchisee. Under section 7(5) of the Act, a person is also not liable for a misrepresentation action under section 7 if they can prove that they did not have knowledge of misrepresentation,<sup>77</sup> had no reasonable grounds to believe and did not believe there had been a misrepresentation,<sup>78</sup> were relying on a written statement, report, or opinion of a public officer,<sup>79</sup> or “conducted an investigation sufficient to provide reasonable grounds for believing that there was no misrepresentation”<sup>80</sup> and also believed there was no misrepresentation.<sup>81</sup> Similar to the defence contained in section 7(4), the burden of proof lies with the party claiming the defence, and not the franchisee.

## F. Joint and Several Liability

Joint and several liability refers to where “all of the [defendants] are liable for the full amount of the damages awarded...the plaintiff may, therefore, opt to execute fully her judgment against any one of the defendants.”<sup>82</sup> In the event that a party is found to be liable in an action brought under the corresponding section of the Act, section 8 of the Act imposes joint and several liability on all or any one or more parties to a franchise agreement for a breach of the duty of fair dealing,<sup>83</sup> a breach of the right to associate,<sup>84</sup> and for a misrepresentation or failure to disclose.<sup>85</sup> As a result of the imposition of joint and several liability, it is more difficult for the franchisor to hide behind a brokerage firm or a more judgment-proof associate. If the franchisor is also found to be liable, the

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<sup>77</sup> *Ibid.*, s 7(5)(a).

<sup>78</sup> *Ibid.*, s 7(5)(c).

<sup>79</sup> *Ibid.*, s 7(5)(d).

<sup>80</sup> *Ibid.*, s 7(5)(e)(i).

<sup>81</sup> *Ibid.*, s 7(5)(e)(ii).

<sup>82</sup> Philip H Osborne, *The Law of Torts*, 3d ed (Toronto: Irwin Law, 2007) at 63–64.

<sup>83</sup> Act, *supra* note 2, s 8(1). Applies where liability is found in an action under s 3(2).

<sup>84</sup> *Ibid.*, s 8(2). Applies where liability is found in an action under s 4(5).

<sup>85</sup> *Ibid.*, s 8(3). Applies where liability is found in an action under s 7(1).

franchisee may collect the entire amount of the judgment from the franchisor if the franchisee chooses to do so. This provision is aimed at increasing compliance with the Act, as it potentially opens up liability to anyone who is a signatory to the franchise agreement. This may encourage those who are involved in franchise agreements with franchisees to act more responsibly and in accordance with the provisions of the Act in order to avoid incurring liability.

## V. THE LEGISLATIVE ASSEMBLY OF MANITOBA

The Act received Royal Assent on June 17, 2010 during the 4th Session of the 39th Legislative Assembly of Manitoba.

### A. First Reading

The first reading of Bill 15 occurred on April 6, 2010. The bill was moved by the Honourable Peter Bjornson, Minister of Entrepreneurship, Training and Trade, and New Democratic Party (“NDP”) Member of the Legislative Assembly (“MLA”) for Gimli. The bill was seconded by the Honourable Andrew Swan, Minister of Justice and Attorney General, and NDP MLA for Minto. As this motion was not debatable,<sup>86</sup> only a statement regarding the purpose of Bill 15 was provided by Minister Bjornson.

Minister Bjornson described the purpose of the Act to the House as aiming to:

ensure that potential franchisees have access to adequate information before making an investment decision in a franchised business and will increase protection from unfair treatment for all parties. The proposed legislation will also give franchisees the right to associate with other franchisees without penalty.<sup>87</sup>

The motion to adopt the first reading of Bill 15 was then passed by the House.<sup>88</sup>

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<sup>86</sup> See “Fact Sheet No. 4 – How Laws are Made”, online: The Legislative Assembly of Manitoba <<http://www.gov.mb.ca/legislature/info/factsheets.fact4.pdf>> [How Laws are Made].

<sup>87</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, vol LXII No 22 (6 April 2010) at 527 [*Debates* (6 April 2010)].

<sup>88</sup> *Ibid.*

## B. Second Reading

The second reading of Bill 15 occurred on June 14, 2010 and began humorously enough with the Honourable Speaker mistaking the word ‘franchise’ with ‘francais’, and being corrected by those who the *Hansard* only refers to as “Some Honourable Members.”<sup>89</sup> Following this, three Progressive Conservative (“PC”) MLAs spoke to the bill.<sup>90</sup>

Mr. Rick Borotsik, PC MLA for Brandon West, was the first to debate the bill. Mr. Borotsik put forward that Minister Bjornson “doesn’t understand entrepreneurship all that well.”<sup>91</sup> He also expressed concern that Bill 15 was not proposed due to any actual demand or because Minister Bjornson was knowledgeable about franchises, but rather due to the recommendations of the MLRC and the franchise legislation enacted in other provincial jurisdictions.<sup>92</sup> In addition, Mr. Borotsik spoke about the prevalence of franchises in Manitoba and across the country, and he also stated that he believed the government was stepping into the role of “Big Brother” by proposing Bill 15, as “they don’t think that an entrepreneur should, in fact, risk their own money without having a number of protections by people who don’t really understand entrepreneurship anyway.”<sup>93</sup> Mr. Borotsik also expressed that the government’s intentions were too pro-franchisee,<sup>94</sup> and that Bill 15 did not provide “the standardization that [the NDP] government suggests.”<sup>95</sup>

Mrs. Heather Stefanson, PC MLA for Tuxedo, was next to speak to the bill. She expressed concern that although Bill 15 was proposed by an NDP MLA, no NDP MLAs had risen to speak to Bill 15.<sup>96</sup> She also stated that she believed the Act “could potentially discourage franchises...from settling in Manitoba,” contributing to the already present “unfavourable

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<sup>89</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, vol LXII No 61 (14 June 2010) at 2960 [*Debates* (14 June 2010)].

<sup>90</sup> *Ibid* at 2961–2968.

<sup>91</sup> *Ibid* at 2961.

<sup>92</sup> *Ibid* at 2962.

<sup>93</sup> *Ibid* at 2962–2963.

<sup>94</sup> *Ibid* at 2964.

<sup>95</sup> *Ibid*.

<sup>96</sup> *Ibid* at 2966.



business climate” in the province.<sup>97</sup> Indeed, this was a main argument encountered by the MLRC against franchise legislation.<sup>98</sup> Mrs. Stefanson believed the government should be assisting businesses rather than constructing new barriers, and franchises would eventually begin to avoid Manitoba due to the large amount of barriers.<sup>99</sup>

Mr. Blaine Pedersen, PC MLA for Carman, was last to speak to the bill. He stated that while it was positive that the government was moving forward with ensuring consistency with other provinces, he thought the Act should contain a large franchise exemption.<sup>100</sup> In his view, people would be more aware of what is involved prior to investing the amount required to obtain a franchise agreement with a large franchise, as there is more riding on the deal and people would generally be more motivated to make an informed decision. Mr. Pedersen also stated that the Act would mostly influence the service industry, such as restaurants, which are more affected by minimum wage legislation such as the legislation recently enacted by the government.<sup>101</sup> He believed that provisions contained in the Act were acceptable for provinces like Alberta, which has a two-tier minimum wage system involving a lower minimum wage for workers under the age of 18, that puts businesses in a better financial position by saving on labour costs.<sup>102</sup> Mr. Pederson stated that Manitoba should be more of a leader when it comes to promoting business in the province.<sup>103</sup>

In addition, Mr. Pedersen expressed concern with section 7(5) of the Act, the provision requiring the franchisor to carry the burden of proof.<sup>104</sup> Mr. Pedersen claimed this provision to be contrary to the traditional view of law, where the burden of proof does not rest on the accused. Mr. Pedersen concluded that he believed the Act was “a short step forward”,<sup>105</sup> but he would like the government use this opportunity as “the first step in

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<sup>97</sup> *Ibid.*

<sup>98</sup> MLRC Report, *supra* note 1 at 42.

<sup>99</sup> *Debates* (14 June 2010), *supra* note 89 at 2966–2967.

<sup>100</sup> *Ibid* at 2967.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid* at 2968.

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

many steps towards increasing trade and encouraging business within Canada and from outside Canada.”<sup>106</sup>

Following these presentations, the House voted to adopt the motion.<sup>107</sup> Bill 15 had passed second reading, indicating the agreement of the Legislative Assembly with the principle of the bill.<sup>108</sup>

## C. Committee Stage

Bill 15 was referred to the Committee on Social and Economic Development. Several amendments proposed by members of the public were adopted at the committee stage, as outlined below.

### 1. *The Committee Process*

At the committee stage, there was an opportunity to receive valuable public input on Bill 15.<sup>109</sup> Two members of the public arrived to share their opinions on the bill. Ms. Lorraine McLachlan, on behalf of the Canadian Franchise Association (“CFA”) and the current president and chief executive officer of the CFA, spoke first.<sup>110</sup> Joining her for the presentation was Mr. Andrew Ogaranko, also appearing on behalf of the CFA.

Ms. McLachlan informed the committee that the CFA supported Bill 15 in principle and also:

has very little issue with its approach and substance. The CFA's official policy is to encourage uniformity in Canadian franchise legislation and, accordingly, the CFA commends the Manitoba government for proposing the adoption of many of the recommendations of the Uniform Law Commission of Canada. This will help ensure a high degree of uniformity between provinces with franchise legislation, and will help facilitate the growth of franchised businesses and promote the success of franchisees across Canada.<sup>111</sup>

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<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*

<sup>108</sup> How Laws are Made, *supra* note 86.

<sup>109</sup> *Ibid.* Also see “Fact Sheet No. 5 – How Standing Committees Operate”, online: The Legislative Assembly of Manitoba <<http://www.gov.mb.ca/legislature/info/factsheets/fact5.pdf>>.

<sup>110</sup> *Committee*, *supra* note 30 at 129–132.

<sup>111</sup> *Ibid.* at 130.

The CFA, while supportive of the bill, brought a number of recommendations concerning specific provisions of the Act. Firstly, the CFA expressed concern that section 2(2) of the Act, application to existing franchise agreements, would “disentitle franchisors and franchisees from relying on provisions that were acceptable at the time the agreement was entered into.”<sup>112</sup> Also, the CFA expressed concern regarding the wording of section 5(2) of the Act.<sup>113</sup> In the opinion of the CFA, the deletion of several words from the model legislation in the Act narrows the definition of what is considered a payment. The CFA recommended the adoption of the wording contained in the ULCC Act in order to decrease uncertainty in this area.

The CFA also expressed concern over section 5(3) of the Act, which regards timing of the delivery of the disclosure document. The CFA noticed that Bill 15 did not require the disclosure agreement to be delivered one document at a time, leaving it open for franchisors to make “piecemeal deliveries” of the required information.<sup>114</sup> This was unique in that neither the ULCC Act nor any of the other provincial acts allow piece by piece deliveries of disclosure documents. The CFA recommended that this section be made uniform to the ULCC Act due to the uncertainty regarding a possible extension of the 14-day waiting period until the date of delivery of the final document.<sup>115</sup> This provision is also unique to Manitoba.

Fourthly, the CFA recommended that section 5(4) of the Act, delivery methods, include electronic delivery and commercial courier as acceptable delivery methods.<sup>116</sup> In addition, the CFA also recommended the inclusion of electronic delivery and commercial courier as acceptable delivery methods under section 6(3) of the Act for notice of rescission.<sup>117</sup> Although these sections of the Act also state, “or any other prescribed method”<sup>118</sup> and “or other prescribed method,”<sup>119</sup> the CFA wanted

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<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid* at 131.

<sup>117</sup> *Ibid.*

<sup>118</sup> Act, *supra* note 2, s 5(4).

electronic delivery and commercial courier to be expressly included so there would be no uncertainty as to whether these methods were acceptable. The CFA was partial to these delivery methods as they are trackable.

Finally, the CFA expressed concern over section 5(6) of the Act, disclosure regarding mediation and arbitration.<sup>120</sup> The amount of information required in Bill 15 is more detailed than the Ontario, Alberta, or Prince Edward Island Acts, but requires less information than the New Brunswick Act, creating inconsistency among provinces. The CFA put forward that inconsistency in these requirements amongst provinces can create a burden for franchisors, and the CFA recommended that the provision be brought into line with the Ontario, Alberta, and Prince Edward Island Acts to increase uniformity across provinces.<sup>121</sup>

#### **i. Amendments Adopted at the Committee Stage**

At the committee stage, section 5(2)(b) of the Act was amended to be consistent with the model legislation, as per the recommendation that evening by the CFA.<sup>122</sup> Section 5(8)(b) of the Act was also amended to make the bill's language more consistent with the ULCC legislation.<sup>123</sup>

#### **ii. Were Stakeholders Sufficiently Consulted on the Bill?**

A number of detailed issues were brought up at the committee stage by the CFA. When asked by Mr. Borotsik whether the CFA had made their recommendations available to the government during the drafting of the legislation, Ms. McLachlan stated that the CFA had not, as "the first time we saw the bill was when it went to first reading."<sup>124</sup> This raises questions as to the effectiveness of the pre-drafting consultations if such a large franchise industry stakeholder as the CFA was not consulted. Mr. Borotsik suggested that "had the government discussed this legislation with the CFA...prior to putting this legislation forward, amendments

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<sup>119</sup> *Ibid.*, s 6(3).

<sup>120</sup> *Committee*, *supra* note 30 at 131.

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid* at 148-149.

<sup>123</sup> *Ibid* at 149.

<sup>124</sup> *Ibid* at 132.

wouldn't be required."<sup>125</sup> Nevertheless, the CFA still had an opportunity to make their voice heard at the committee stage. A large amount of input was received from the MLRC and academic discussion on the topic of franchise law, including the Franchise Law Symposium.

#### **D. Report Stage**

There were no amendments to Bill 15 adopted at the report stage.

#### **E. Third Reading and Royal Assent**

The third reading of Bill 15 occurred on June 17, 2010. Mr. Borotsik reiterated the same concerns he expressed earlier that week at second reading, namely that Bill 15 is pro-franchisee and the government is not doing enough to make Manitoba an attractive target for businesses.<sup>126</sup> Mr. Borotsik also expressed concern that the CFA was not consulted during the drafting of the Act, and wondered why the government did not seek their input even though they are a group will be directly affected by the legislation. Mr. Borotsik did agree, however, that the amendments adopted at committee stage the previous day were helpful.<sup>127</sup> The House then adopted the motion for concurrence and third reading.<sup>128</sup>

Bill 15 received Royal Assent on 17 June 2010. It is set to come into force on a date fixed by proclamation.

### **VI. ANALYSIS OF THE ACT**

#### **A. General**

The main goals of legislating franchises are to "protect the franchisee by imposing pre-sale disclosure requirements...and creating substantive duties of good faith, fair dealing, and rights of association."<sup>129</sup> Bill 15 lives up to these goals by imposing disclosure obligations on the franchisor in section 5 of the Act. The Act also creates duties of fair dealing and rights

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<sup>125</sup> *Ibid* at 148.

<sup>126</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, vol LXII No 64B (17 June 2010) at 3199 [*Debates* (17 June 2010)].

<sup>127</sup> *Ibid* at 3200.

<sup>128</sup> *Ibid*.

<sup>129</sup> *Supra* note 17.

of association in sections 3 and 4, respectively. The government appears to have sufficiently reviewed legislation in other jurisdictions concerning franchises to ensure that the bill is optimal. This is apparent due to the fact that Bill 15 is modeled from model legislation as well as legislation from other jurisdictions. There is no overlap between the Act and existing legislation in Manitoba as the Act is the first piece of franchise legislation in Manitoba to receive Royal Assent.

The Act does not impose a regulatory burden on persons or bodies, and in fact may do the opposite. The Act was enacted to ensure uniform regulations were in place across provinces in order to make it easier for businesses to comply with the regulations. The Act is written in clear, understandable language. In addition to the obligatory definitions section, the Act also includes an interpretation section regarding the fair dealing provision, in order to avoid ambiguity in this area.<sup>130</sup> In the opinion of the author, the Act should be acclaimed for its clarity. The Act does not encroach on federal jurisdiction or any other provincial jurisdiction as the provisions of the Act only apply to franchised businesses that are operated, or are to be operated, partly or wholly in Manitoba.<sup>131</sup>

## B. Potential to Reduce Conflict

The Act should also be lauded for its strong potential to reduce and/or resolve conflict in the franchise legal relationship. By creating substantive duties of fair dealing and right of association for both parties, as well as imposing pre-disclosure requirements, The Act is likely to assist in resolving conflict between parties to a franchise agreement. These provisions are especially useful in resolving conflicts. Reviews of franchise disputes in Canada, the United States, and Australia identified the following factors as some of the top contributors to the power imbalance in the franchise relationship:

- i. lack of pre-contract disclosure;
- ii. deceptive practices, including misrepresentation of the nature of the franchise, the range of supplies, equipment and training to be provided in the franchise's package, the value and profitability of the franchise and the franchisor's stability and prior experience;

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<sup>130</sup> Act, *supra* note 2, s 3(3)(a)–3(3)(b).

<sup>131</sup> *Ibid.*, s 2(1)(b)(iii).

- iii. unfair contract terms arising from a refusal by franchisors to negotiate the terms and conditions of contracts (the 'take it or leave it' contract);
- iv. encroachment by the franchisor on the franchisee's geographic trading area;
- v. franchisor-imposed system wide changes that bear significant cost;
- vi. transfer and renewal restrictions and renewals on different and more onerous terms; and
- vii. unfair terminations.<sup>132</sup>

The Act aims to reduce disputes stemming from the absence of pre-contract disclosure by requiring disclosure of this information under the Act. In addition, the requirement of pre-contract disclosure will likely help avoid misrepresentation disputes arising from information that is to be provided in pre-contract disclosure, such as the value of the franchise and the supplies and other goods that are to be included in the agreement, in the pre-contract disclosure information. The Act also provides a right of action for damages if the franchisee has suffered a loss due to reliance on a misrepresentation in the disclosure document, protecting the franchisee in the event they do suffer a loss from a misrepresentation contained in the disclosure document.<sup>133</sup>

The duty of fair dealing provided under the Act aim to prevent the franchisor from encroaching into the franchisee's trading area. The geographic trading area is often a prescribed term in franchise agreements, and the duty of fair dealing requires both parties to perform and enforce the terms of the agreement. Even if the franchisor fails to have any regard for this section, the Act also provides a right of action to a party to a franchise agreement who has breached the duty of fair dealing.<sup>134</sup> The fair dealing provision could also help prevent the franchisor from imposing system wide changes that bear significant cost, from transfer and renewal restrictions and renewals on different and more onerous terms, and unfair terminations, as these actions do not appear to be viewed as acting in good faith or in accordance with reasonable commercial standards, as required by section 3 of the Act.

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<sup>132</sup> MLRC Report, *supra* note 1 at 18–19.

<sup>133</sup> Act, *supra* note 2, s 7(1)(a)–7(1)(d).

<sup>134</sup> *Ibid*, s 3(2).

## VII. CONCLUSION

*The Franchises Act* offers five strong legal weapons for franchisees: the duty of fair dealing, the right to associate, the requirement of pre-contract disclosure, damages for misrepresentation and failure to disclose, and the ability of the court to impose joint and several liability on franchisors and related parties who breach any of the aforementioned duties or obligations. These provisions will be invaluable to a franchisee in a legal battle against the modern day Goliath, the franchisor, provided the franchisee can afford to fight. The legislative process of Bill 15 is a shining example of the effective use of recommendations, as the drafting of the bill incorporated recommendations from academic discussion as well as various law reform commissions. For these reasons, as well as the many others discussed in this paper, the legislative process of Bill 15 shines a positive light on everyone involved in the creation and enactment of *The Franchises Act*.

## VIII. APPENDIX: EXISTING FRANCHISE LEGISLATION<sup>135</sup>

Country	Franchise Legislation	Coming into Force	Key Areas
North America			
Canada	<u>Alberta</u> : <i>Franchises Act</i> <u>Ontario</u> : <i>Arthur Wishart Act (Franchise Disclosure)</i> <u>PEI</u> : <i>Franchises Act</i> <u>New Brunswick</u> : <i>Franchises Act</i> <u>Manitoba</u> : <i>The Franchises Act</i>	<u>Alberta</u> : 1975 (revised in 1995) <u>Ontario</u> : 2000 <u>PEI</u> : 2006 <u>New Brunswick</u> : 2007 <u>Manitoba</u> : TBD	Disclosure and Relationship

<sup>135</sup> Adapted and updated from Bryan Schwartz, John Pozios & Leandro Zylberman, "Franchise Legislation and Associations Around the World" (2009) 6 Underneath the Golden Boy 353 at 398-401.



Mexico	<i>The Law to Develop and Protect Industrial Property, Article 142</i>	1991	Disclosure
United States of America	<i>Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures</i>	1979	Disclosure
<b>South America</b>			
Brazil	Law No 8955/94 and Law No 9279	1994	Disclosure and Registration
Venezuela	<i>Guidelines for the Evaluation of Franchise Agreements</i>	2000	Restricts competition and imposes obligations on the franchisee for the protection of industrial or intellectual property rights of the franchisor
<b>Europe</b>			
Belgium	<i>Law Relative to pre-contractual information in the framework of agreements of commercial partnership</i>	2006	Disclosure and Relationship
Estonia	<i>Law of Obligations Act, Chapter 19</i>	2002	Relationship
France	<i>Loi Doubin (Law No. 89-1008)</i>	1989, 1991	Disclosure
Italy	<i>Law on Commercial Affiliation</i>	2004	Disclosure and Relationship

Lithuania	<i>Civil Code</i> , Chapter XXXVII	2001	Relationship
Romania	<i>Ordinance 52/1997</i>	1998	Disclosure
Russia	<i>Civil Code</i> , Chapter 54 (Commercial Concessions)	1996	Relationship and Registration
Spain	Act 7/1996, Article 62 and the <i>Royal Decree 2475/1998</i> . The Decree has been amended by the <i>Royal Decree 419/2006</i> .	1996, 1998, 2006	Disclosure and Registration
Sweden	<i>Law on the Duty of a Franchisor to Provide Information</i> (Law No. 2006:484)	2006	Disclosure
<b>Pan-Asia</b>			
Australia	<i>Trade Practices (Industry Codes – Franchising) Regulations 1998</i>	1998	Disclosure and Relationship. Contains mandatory mediation provisions and a “cooling off” agreement cancellation period for franchisees
China	<i>Measures for the Administration of Commercial Franchise</i> (Franchise Measures)	2005	Disclosure, with a few relationship provisions. Replaces the 1997 <i>Measures of the Administration</i>

			<i>of Commercial Franchise Operations, which only regulated domestic operators</i>
Indonesia	Government Regulation No 16/1997	1997	Disclosure and Registration
Japan	<i>Medium-Small Business Promotion Act and the Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade</i>	1983 (amended in 2002)	Disclosure
South Korea	<i>Act on Fairness in Franchise Transactions and the presidential Decree to Implement the Act on Fairness in Franchise Transactions</i>	2002	Disclosure

