

Cassels

Update Season Is Upon Us!

Larry M. Weinberg, Frank Robinson, Noah Leszcz

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As always at this time of year, franchisors should be considering if annual updates to their Canadian franchise disclosure document (FDD) are required. **Importantly, if your franchisor entity has a fiscal year end, like many do, on or around December 31st (i.e., December 31, 2020), then you must update your FDD by replacing the financial statements for the most recently completed fiscal year before the end of June 2021 (within 180 days of the fiscal year end), or you cannot use the FDD at all after this date.**

If you plan to offer franchises in any of the six Canadian provinces requiring disclosure, or will have renewals or resales coming up, you need to ensure that your FDD complies with the requirements of each applicable provincial franchise law, and that the contents of your FDD are consistently accurate and up-to-date. That includes updating of all prescribed disclosure items (some of which require updating every new year, some on the change of a franchisor's fiscal year, and others on a more frequent basis), and ensuring the FDD always includes all material facts.

A relatively small amount of effort by counsel and the franchisor can yield a form of FDD that can greatly minimize your risk of a claim based on non-compliance.

This year's update is particularly important, as Ontario's franchise statute, *Arthur Wishart Act (Franchise Disclosure), 2000*, was amended in the fall of 2020. One of our previous articles discussed the changes to Ontario's franchise disclosure legislation in more detail, but notable changes that might require discussion with your franchise counsel include the permissibility of signing certain pre-FDD non-disclosure agreements, changes to the disclosure exemptions, and new form language to be included in all statement of material changes used in Ontario. In addition, the ongoing COVID-19 pandemic has and continues to have impacts on the way disclosure documents may be prepared.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.