

While Limitation Periods Have Been Extended by Some Government Orders, the Deadline to Update Your FDD Has Not Been Extended

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Arising from the COVID-19 pandemic affecting the entire world, various governments in Canada have issued orders extending deadlines and limitation periods, which generally, are the deadlines by which time someone must launch a claim or forever lose their rights to bring a legal proceeding. For instance, the Province of Ontario issued such an order, pausing limitation periods and procedural steps. It can be found [here](#).

Of the six provinces with a franchise law, similar orders have been made in British Columbia¹ and Alberta.² However, no such orders have been made in Manitoba, New Brunswick, Prince Edward Island.

The Ontario order applies to suspend the running of any limitation period or “any period of time within which any step must be taken in any proceeding [...] including any intended proceeding” under any statute, regulation, by-law or government order subject to the discretion of the presiding court or tribunal. There are very limited exceptions, none of which are relevant to franchising.

This is broad enough to apply to certain limitation periods that are important to franchisors and franchisees. For instance, in Ontario’s franchise law, the *Arthur Wishart Act (Franchise Disclosure) 2000* (Wishart Act), the emergency order could arguably operate to suspend the time required for delivery of and response to Notices of Rescission, since those steps could potentially be characterized as being taken in the context of an intended proceeding. And the order should operate to extend the two-year period within which one must sue under the statute. Orders made in British Columbia and Alberta are similarly worded and would have a similar impact on notices of rescission and proceedings commenced under the franchise statutes in those provinces.

However, nothing in these orders can be construed as extending the time by which a franchisor must update and be ready to use an up-to-date franchise disclosure document (FDD).

As a result of the pandemic, various US States have seen fit to relax their state franchise laws, by extending the deadline by which the franchisor’s US FDD was to have been filed with the state authority.

Canadian provincial franchise laws do not, of course, provide for any such US-style FDD registration

requirement.

Instead, the Canadian franchise laws practically require that a franchisor be satisfied that the FDD is compliant at the time it is used, failing which the franchisor risks liability. To that end, each statute provides a deadline by which a franchisor must include the most recent fiscal year end's compliant financial statements in the FDD. That is generally within 180 days of a franchisor's fiscal year end. As many franchisors have a fiscal year end that is the calendar year end of December 31, then the absolute last day that the Wishart Act permits a franchisor to deliver an FDD containing the financial statements for the immediately preceding fiscal year is by the end of June of the following year.

So that last date is really not a "deadline" or a "period of time within which a step must be taken in a proceeding or intended proceeding." It isn't really a deadline at all. It is simply the end of the period of time by which the latest financial statements must be in the FDD. Importantly, nothing in the emergency orders has suspended the requirement that any FDD delivered during the public emergency must comply with the requirements of applicable franchise disclosure legislation.

There are of course other parts of the provincial franchise laws and their FDD Regulations that practically require the updating of an FDD immediately after a fiscal year end, and the financial statements for the immediately preceding fiscal year end should be included in the FDD as soon as they are ready (even before the end of the 180-day period). And we regularly remind our readers of those obligations. That is important to recognize, as the Canadian provincial franchise laws each require that the FDD be as up to date as required by the statutes when delivered to a prospective franchisee.

Nevertheless, for those who wait until closer to the end of the period that expires 180 days after their fiscal year end, it is important to note that this time period has not been extended.

It is also worth reminding the reader that while many franchisors are not now actively offering new franchises because of the pandemic, there are often events that arise in Canada that mandate the need for an up to date FDD that are out of the control of the franchisor. Most notably, an up to date FDD is often needed on the renewal or transfer of a franchise, both of which may be events dictated by something or someone other than the franchisor.

In summary, nothing in the various provincial emergency orders operate to vary or suspend the disclosure requirements under the franchise laws, or the dates by which certain items in your FDD must be updated in order to be compliant.

Recall that an FDD lacking compliant up-to-date financial statements pursuant to the requirements of the franchise laws has been found time and again by the courts to amount to no disclosure at all. And if a franchisee was entitled to disclosure, and did not or is deemed not to have received one, then that franchisee has a two-year absolute right to rescind the franchise agreement and seek payment of all

amounts paid to the franchisor, the buyback of the franchised business and damages for the losses the franchisee incurred.

These are remedies that can be very harsh on franchisors, and are often taken advantage of as a last resort by franchisees facing financial difficulties or on the brink of termination, and so all the more reason to respect the FDD updating requirements in Canadian franchise laws.

¹ http://www.bclaws.ca/civix/document/id/mo/mo/2020_m086

² <https://open.alberta.ca/dataset/92362163-460c-445f-b0b2-150ab061cfb6/resource/0e5abce0-858b-4e00-a031-dd7892e01ded/download/jsg-ministerial-order-27-2020.pdf>

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