

# DELIVERY LIKE IT'S 1999: ONTARIO PROPOSES UPDATE TO FRANCHISE DISCLOSURE LAW

Posted on April 26, 2016

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Ontario is poised to introduce new rules that will be of interest to all franchisors in the province. Last week, the Ministry of Government and Consumer Services proposed amendments to regulations made under the *Arthur Wishart Act (Franchise Disclosure)*, 2000, SO 2000, c 3 (the "**Act**") that would modernize the authorized methods for delivery of disclosure documents by allowing delivery by electronic transmission or courier. These amendments have not yet been approved and are currently open for comment by interested parties.

Under the Act, franchisors are required to deliver a disclosure document to prospective franchisees that sets out all material facts about the franchise being offered. The disclosure document is of fundamental importance to both parties. Franchisors must deliver the disclosure document to prospective franchisees at least 14 clear days prior to a franchise agreement being signed or any payment being made in respect of a franchise. Disclosure documents are also routinely provided to existing franchisees in circumstances such as renewal.

As the law currently stands, franchisors are required to deliver the disclosure document personally or by registered mail. Of course, in 2016, businesses more commonly rely on other methods to deliver important documents. The Act also provides that other delivery methods may be prescribed by regulation, and the proposed amendment does precisely this.

If approved, the proposed amendment to Sections 12 and 13 of *Ontario Regulation 581/00* (the "**Amendment**") would allow franchisors to deliver disclosure documents by prepaid courier or by electronic transmission, such as email. In order for a franchisor to deliver a disclosure document by electronic transmission, the Amendment would require that the document be delivered in a form that enables the recipient to view, store, retrieve and print it; that it contain no links to external documents or content; and that it contain an index for each separate electronic file of the document setting out the file name and, if the file name is not sufficiently descriptive, a statement of the subject matter. Electronic delivery of a document would not be effective until the franchisor received an electronic acknowledgement of receipt.

A second change proposed by the Amendment would permit a franchisee to deliver notice of rescission to the franchisor by prepaid courier. Under the Act, a prospective franchisee may be permitted to rescind a franchise

agreement in the event that the disclosure document or a material change statement provided by the franchisor was not provided in accordance with the Act.

The proposed Amendment would bring Ontario up to speed with most other provinces that currently have franchise disclosure legislation. Manitoba, New Brunswick and Prince Edward Island have long allowed electronic delivery of franchise disclosure documents. British Columbia's Franchises Act, which passed third reading in late 2015 but is not yet proclaimed, would allow delivery of disclosure documents by email. Alberta stands alone in not prescribing any particular means for the delivery of disclosure documents.

The proposed Amendment is an important step that offers increased speed and efficiency of delivery and reduced transaction costs for franchisors. The changes come partially in response to lobbying by franchisors and their advocates, including the Canadian Franchise Association, along with other interested parties such as the Ontario Bar Association.

The draft Amendment is posted on the government's Regulatory Registry website until May 2, 2016. McMillan has submitted comments to the Ministry of Government and Consumer Services on the Amendment and would be pleased to submit comments on behalf of clients on request. Interested parties may review the full text of the draft Amendment, and may provide comments directly if they wish, at <http://www.ontariocanada.com/registry/view.do?postingId=21482>.

by Tim Hughes and Robert E. Glass

#### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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