

FRANCHISE LEGISLATION IS COMING TO BRITISH COLUMBIA

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The long-discussed *Franchises Act* of British Columbia (the "**Franchises Act**") is making quick strides to becoming a reality. On October 5, 2015, Bill 38 was introduced in the B.C. Legislature. A short 15 days later, it had progressed through Committee and second and third readings, all without amendment.

The legislation will come into force on a date to be set by the Lieutenant Governor in Council, which will likely be sometime in 2016. When it does, B.C. will become the sixth province to enact laws specifically aimed at franchising. It is not yet known, however, when the related disclosure regulations will come into effect.

The Franchises Act was based in large part on the form developed by the Uniform Law Conference of Canada ("**ULCC**"), which encourages uniformity of laws throughout the Canadian provinces. The disclosure regulations are also expected to be based largely on the ULCC template franchise regulations, as well as recommendations made by the British Columbia Law Institute. The Government of B.C. has opened a public consultation on the proposed disclosure regulations.

The Franchises Act is substantially similar to franchise legislation already enacted in Alberta, Manitoba, Ontario, PEI and New Brunswick. Among other things, it:

- requires franchisors and franchisees to deal fairly with one another;
- requires franchisors to provide disclosure of financial and other information to prospective franchisees 14 days before a franchise agreement is signed or any consideration is paid to the franchisor;
- provides franchisees with a statutory right to associate with each other, free from interference by the franchisor;
- permits franchisees to rescind their franchise agreement in certain circumstances where the franchisor failed to provide adequate disclosure;
- provides franchisees with a statutory cause of action to sue franchisors for misrepresentation; and
- voids any purported waiver or release given by a franchisee of the rights conferred by the legislation.

There are, however, some provisions in the Franchises Act which are not common to existing franchise legislation in the other provinces. These provisions, which are largely a response to issues that have been litigated in those other provinces, include the following:

- disclosure documents may be delivered electronically;
- the validity of a disclosure document will not be affected by defects in its form, technical irregularities or errors, provided that they do not affect the substance of the disclosure document and that it otherwise substantially complies with the legislation;
- notwithstanding the general provision making waivers and releases void, releases given by franchisees in connection with the settlement of a specific action, claim, or dispute are not rendered void;
- certain types of confidentiality and site selection agreements may be signed prior to the franchisor's delivery of a disclosure document; and franchisors may accept deposits from prospective franchisee at any time, provided the deposit:
 - i. is under a certain amount;
 - ii. is returnable if the prospective franchisee does not enter into a franchise agreement; and
 - iii. does not oblige the prospective franchisee to enter into a franchise agreement.

Franchisors operating in B.C. but not elsewhere in Canada will need to adjust their current practices in order to meet the requirements of the Franchises Act when it comes into force. Franchisors already operating in other provinces with franchise legislation, however, will find that only minor adjustments are necessary.

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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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