



**Canadian
Franchise**
Association®

Growing Together

**PROPOSED CHANGES TO THE *ARTHUR WISHART ACT (FRANCHISE
DISCLOSURE), 2000***

December 30, 2024

Hon. Todd McCarthy, K.C.
Minister of Public and Business Service Delivery and Procurement
College Park, 5th Floor,
777 Bay St,
Toronto, Ontario
M7A 2J3

Email: todd.mccarthy@ontario.ca

RE: Proposed Changes to the Arthur Wishart Act

Dear Minister:

The Canadian Franchise Association (CFA) appreciates the opportunity to comment on changes we believe are necessary to the *Arthur Wishart Act (Franchise Disclosure), 2000* (AWA or Act). We believe that these changes will help the Ontario economy grow by injecting certainty into the regulation of franchising in Ontario.

General Background on the Franchise Business Model:

Many franchise brands that are recognized in Ontario, across Canada, and throughout the world are owned and operated by franchisees who live and work in their local communities. Local franchise business owners are in business for themselves, but not by themselves. By buying a franchise, the local franchisee runs their own small business while gaining access to a proven business concept, brand, and processes. In addition, the franchisor provides the franchisee with ongoing support and assistance to ensure the long-term success of the franchise, which leads to the long-term success of the franchise system as a whole. The strength of the franchise model lies in this foundational franchisor-franchisee relationship.

While many people first think of fast food when they think of franchising, the reality is any business can be franchised if it has a history of success and a tried-and-true formula that can be standardized and replicated in new locations. The franchise business model can be found in more than 60 different commercial sectors in Canada, including automotive, travel and hotel, real estate, retail, grocery, pharmacy, senior care, education, health and fitness, a variety of different services, and more.

What is Franchising?

Franchising is a business relationship in which an owner (the franchisor) grants a license (through a franchise agreement) to a third party (the franchisee) allowing them the right to use the franchisor's operating system, proprietary methods and know-how, brand name(s) and trademark(s), copyrighted materials, products, and marketing techniques. Under this model, the franchisee owns and runs their own business while capitalizing on and using a proven business concept with the support and assistance of the franchisor.

Many businesses (and small ones in particular) that wish to expand often do not have access to adequate sources of capital, and so expansion through franchising is very often their only way to develop a chain. The franchisor will recruit the franchisee, who will be investing their own capital (often some combination of cash savings and borrowed funds) to develop, open and operate the business. In addition, this model provides to the franchisor the benefit of ensuring that an owner/operator is running the business on a day-to-day basis.

The franchisor will need to invest relatively significant amounts on launching a franchise expansion program, which usually includes obtaining specialized legal, accounting and consulting advice to ensure that the franchise agreement is appropriate for the circumstances, and to comply with Ontario franchise laws.

In exchange for the license granted to the franchisee, the franchisor typically collects from the franchisee an upfront initial fee and ongoing fees, which are usually based on a percentage of the franchisee's revenues, for the continuing use of the franchisor's trademarks, processes and knowledge. As a result, the franchisee's success, which is often a by-product of being heavily involved and invested in the business, leads to the success of the franchisor.

Although many franchised brands are recognized across the country, and around the world, their local stores are owned by franchisees who live and work in their communities. As such, the franchise business model has provided many entrepreneurs with the opportunity to start and operate successful small businesses. But for the ability to license the use of a business system through franchising, most franchisees would never be able to start a successful business.

In summary, the economic opportunity that franchising has provided to franchisors, franchisees, and their respective employees and local communities cannot be underestimated. Growth through franchising has been, and remains, a powerful tool to expand economic opportunity and prosperity here in Ontario and around the world.

Franchise Industry in Ontario:

The franchise industry in Ontario is made up of nearly 32,000 franchised establishments¹ that support over 850,000 franchise-related jobs². Those franchises were estimated to have contributed \$52.29 billion to Ontario's GDP³ and \$6.85 billion in provincial taxation in 2023⁴.

Background Information on the AWA:

The AWA was enacted primarily to provide consumer protection for franchisees in the province of Ontario. Passed in 2000 and put into effect in 2001, the AWA defines exactly what a franchise is and demands a policy of "fair dealing" between the franchisor and franchisee. In addition, the AWA creates a complex and detailed regime of pre-contractual disclosure, not unlike that found under Ontario's securities legislation, with which the franchisor must comply in order to grant a franchise in Ontario. It also imposes significant liability on franchisors who fail to achieve such compliance.

Simply stated, franchising can be extremely complicated for both franchisees and franchisors, and the penalties for non-compliance can be extremely steep. The objective of the changes we are proposing is therefore to provide clarity to both parties on what is required to comply, so that their respective risks and potential liability can be properly assessed without constantly having to resort to the courts for the guidance that is currently missing from the body of the AWA and its Regulations, and which is desperately needed.

In particular, the main goal of the franchisor's disclosure obligation is to ensure that each prospective franchisee in Ontario has sufficient information to make a fully informed decision about whether to invest in a given franchise. However, the AWA has, since its enactment, suffered from numerous gaps and ambiguities that make it unreasonably difficult for franchisors to know what, precisely, they need to disclose in order to comply with the AWA's requirements and thus to avoid claims by their franchisees for breaches

¹ Canadian Centre for Economic Analysis, Canadian Franchise Industry Economic Outlook 2023 (Canadian Franchise Association, 2023), Table 5

² *Ibid*, Table 8

³ *Ibid*, Table 7

⁴ *Ibid*, Table 13

of the Act. Moreover, since the AWA is generally considered to be remedial legislation enacted for the benefit of franchisees, Ontario courts have typically resolved any such gaps and ambiguities against the franchisor, thereby placing an inordinate amount of risk on entrepreneurs who desire to expand by way of this method of doing business.

The combined effect of this uncertainty and the potentially large sums that franchisors can be and have been required to pay to franchisees in the event of a breach has, over the years, had a dampening effect on the expansion of existing Ontario small businesses by way of franchising, as well as on the entry of foreign franchise systems into the Ontario market.

In order to alleviate this unreasonable risk, we are recommending a number of changes to the AWA that are designed to provide certainty to franchisors without materially diminishing the amount or quality of the information being provided to franchisees.

Help the Ontario Economy Grow:

What is certain is that the lack of clarity under the AWA is a significant disincentive to small business expansion in this province. In addition, brands from outside of Ontario perceive the current AWA as a barrier to entering the market. Striking a balance between the legitimate needs of franchisees for investment information and providing clarity to franchisors on the information they need to provide is thus imperative to the goal of helping franchising grow in Ontario and allowing this commercial engine to continue its rich history of job creation in Ontario, and to assuring the fiscal and other benefits that it brings to all levels of Canadian government and society at-large.

Proposed Recommendations:

1. Limit the Definition of “Franchisor’s Associate” to Exclude True/Mere Employees and Unaffiliated Entities to the Franchisor.
2. Amend the Definition of “franchise” to make clear that the mere purchase of reasonable amount of inventory or services at *bona fide* wholesale prices does not, in and of itself, satisfy the payment element of the definition.
3. Clarify that the AWA only applies to franchises operating in Ontario, even if the franchise agreement mandates the law of Ontario as its governing law.
4. Provide clarity on what financial statements will meet the financial statement requirements in the event of an amalgamation of two or more corporations when the corporation resulting from the amalgamation is a franchisor.
5. Permit the disclosure of the franchisor’s parent company’s financial statements where the parent company provides a guarantee to the franchisees.
6. Limit the amounts from which a franchisee is compensated on rescission to its “net losses” from acquiring, setting up and operating the franchise.
7. Clarify that waivers and releases given by franchisees in accordance with the settlement of any action, claim, or dispute be expressly excluded from the non-waiver provision.
8. Add a new section to the AWA to address the franchisee’s obligations on rescission.
9. Clarify the ability to use Material Change Statements to supplement or correct FDDs.
10. The exemption on transfers by a franchisee should be updated.

11. Introduce a “substantial compliance” standard to the franchisor’s disclosure obligations.
12. Add the franchisor’s Address for Service (a purely technical amendment).
13. Make the required list of Material Facts closed/finite.

Please see the accompanying document “CFA Recommendations to Amend the Arthur Wishart Act” for detailed information on our recommendations. It is important that the detailed information for each recommendation is reviewed in its entirety for the background, context and importance of the proposed recommendations.

Conclusion:

We sincerely appreciate the opportunity to provide this submission and proposed recommendations to the AWA. The CFA would welcome any opportunity for further involvement in the development of the proposed changes to the AWA. Within the ranks of the CFA’s members are some of Ontario’s most experienced franchise lawyers, including those that represent mostly franchisors, those that represent mostly franchisees, and those that represent both. In addition, the CFA has franchisors and franchisees from over 60 different industry segments and from small and emerging companies to iconic brands.

For further information, please contact Derek Robertson, Senior Manager, Government Relations at [drobertson@cfa.ca](mailto:d Robertson@cfa.ca) or Sherry McNeil at smcneil@cfa.ca or Scott Munnoch of Temple Scott & Associates at smunnoch@tsa.ca.

Best Regards,



Sherry McNeil
President and CEO
Canadian Franchise Association

cc: Kai Nademi, Chief of Staff, kai.nademi@ontario.ca

About the Canadian Franchise Association

The Canadian Franchise Association (CFA) is the national, not-for-profit association of more than 600 corporate members representing over 40,000 franchise small business owners of more than 65,000 franchise establishments.

The CFA is the voice of the franchise community and the recognized authority on franchising in Canada. The CFA speaks for an industry that touches the lives of every Canadian, in every community across the country.

Canadian franchises contribute almost \$120 billion per year to the Canadian economy and create jobs for more than 1.9 million Canadians. They enable 78,000 Canadians to be their own boss as the owner of their own small business franchise location, serving their neighbours in communities from coast to coast

to coast. These enterprises contribute over \$15.5 billion in federal taxation revenue and pay over \$60 billion in wages each year.

CFA members represent a diverse cross-section of businesses and over 60 sectors in Canada. Our members range from very large, established franchise systems, to smaller or emerging franchise brands. Members share the conviction that their commitment to excellence improves franchising for everyone involved, including franchisors, franchisees, suppliers, and customers.