

# The Case Against the Use of Wrap-Around Disclosure Documents in Canada

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Canada is the most logical first step in international expansion for U.S.-based franchisors. Because the Province of Ontario is the most populous of the Canadian provinces, it is a natural target market for franchisors expanding from the United States, as well as from other Canadian provinces. Contrary to reasonable expectations, Ontario actually increases the burden on U.S. and other foreign franchisors offering franchises in the province, mostly by failing to import U.S. concepts like the Uniform Franchise Offering Circular (UFOC) and by ignoring for the most part important “foreign franchisor” features of the legislation in Alberta, the only other province regulating franchising.

The upshot is that lawyers counseling their clients about compliance with Ontario’s franchise legislation must think twice about using the quick fix of adding an Ontario addendum to a U.S.-modeled UFOC or using a “wrap-around” of the UFOC, that is, “sandwiching” the UFOC between an Ontario-specific face page and other pages containing Ontario-specific disclosure information. Although an addendum or wrap-around may comply with Alberta law (we discuss this issue below), the specific requirements of Ontario’s franchise legislation require a franchisor to add to and change a considerable portion of the body text law of the UFOC itself, often to such an extent that it may be easier simply to create from the outset a new, Ontario-specific disclosure document.

This article begins with a review of the differences between Ontario and Alberta franchise legislation before examining the use of UFOC-like documents.

## Is It a Franchise?

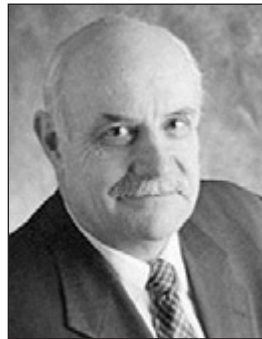
Ontario’s Arthur Wishart Act (Franchise Disclosure), 2000 (the Wishart Act),<sup>1</sup> defines a franchise as follows:

“[F]ranchise” means a right to engage in a business where the franchisee is required by contract or otherwise to make a payment or continuing payments, whether direct or indirect, or a commitment

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to make such payment or payments, to the franchisor, or the franchisor’s associate, in the course of operating the business or as a condition of acquiring the franchise or commencing operations and,

(a) in which,

(i) the franchisor grants the franchisee the right to sell, offer for sale or distribute goods or services that are substantially associated with the franchisor’s, or the franchisor’s associate’s, trademark, service mark, trade name, logo or advertising or other commercial symbol, and

(ii) the franchisor or the franchisor’s associate exercises significant control over, or offers significant assistance in, the franchisee’s method of operation, including building design and furnishings, locations, business organization, marketing techniques or training, or

(b) in which,

(i) the franchisor, or the franchisor’s associate, grants the franchisee the representational or distribution rights, whether or not a trade-mark, service mark, trade name, logo or advertising or other commercial symbol is involved, to sell, offer for sale or distribute goods or services supplied by the franchisor or a supplier designated by the franchisor, and

(ii) the franchisor, or the franchisor’s associate, or a third person designated by the franchisor, provides location assistance, including securing retail outlets or accounts for the goods or services to be sold, offered for sale or distributed or securing locations or sites for vending machines, display racks or other product sales displays used by the franchisee.<sup>2</sup>

The significant elements of this definition are: (1) a payment or continuing payments; (2) substantial association with the franchisor’s trademark;<sup>3</sup> and (3) an offer of significant assistance with, or the exercise of significant control over, the operation of the franchisor’s business. Not all three are necessary to meet the test of a “franchise” under the Wishart Act. So long as the payment element is present, a grant of distribution rights and location assistance, whether or not a trademark element is involved, is also a “franchise” and subject to the provisions of the Wishart Act, including its disclosure requirements. These types of ventures are more commonly known as “product distributorships” or “business opportunity ventures” and most often involve the distribution of brand name goods or services, the source of which is provided by the franchisor through locations or vending machines serviced by the franchisee.

The definition of “franchise” under Alberta’s Franchises Act (the Alberta Act)<sup>4</sup> differs significantly. The Alberta definition follows below:

“[F]ranchise” means a right to engage in a business

(i) in which goods or services are sold or offered for sale or are distributed under a marketing or business plan prescribed in substantial part by the franchisor or its associate,

(ii) that is substantially associated with a trademark, service mark, trade name, logotype or advertising of the franchisor or its associate or designating the franchisor or its associate, and

(iii) that involves

(A) a continuing financial obligation to the franchisor or its associate by the franchisee and significant continuing operational controls by the franchisor or its associate on the operations of the franchised business, or

(B) the payment of a franchise fee.<sup>5</sup>

Both Alberta and Ontario require some sort of payment. The Alberta Act, unlike the Wishart Act, excludes from the definition of “franchise fee” payments made by the franchisee for reasonable amounts of goods or services at reasonable bona fide wholesale prices.<sup>6</sup> This exception allows the franchisee to purchase inventory necessary for the operation of a business opportunity venture or product distributorship without becoming a franchisee.

The Alberta Act, in turn, defines a “marketing plan or system” as follows:

“[M]arketing or business plan” means a plan or system that specifies a material aspect of conducting business, including, without limitation, any one or more of the following:

- (a) price specification, special pricing systems or discount plans;
- (b) sales or display equipment or merchandising devices;
- (c) equipment to be used to perform services;
- (d) sales techniques;
- (e) promotional or advertising materials or co-operative advertising;
- (f) training relating to the promotion, operation or management of the business;
- (g) operational, managerial, technical or financial guidelines or assistance.<sup>7</sup>

So long as one of these elements represents a material aspect of the franchised business, the first element of the definition of “franchise” under the Alberta Act is satisfied. The Wishart Act contains no such concept in its definition of “franchise.”

The bottom line is that a “franchise” in Ontario may not be one in Alberta, and vice versa, although the majority of traditional business format franchises will be a “franchise” under both Alberta and Ontario laws.

### What and How to Disclose?

Unlike the UFOC Guidelines, which establish uniform disclosure requirements that comply with the FTC Rule and the twelve full-registration states that require disclosure (subject to the inclusion of state-specific addenda),<sup>8</sup> the disclosure requirements under the Wishart Act and the Alberta Act differ markedly from each other and from the UFOC Guidelines. Although the regulations under the two provincial disclosure statutes<sup>9</sup> enumerate substantially similar items to be included as part of the required disclosure, the Alberta Act provides that a franchisor has met its obligation if its disclosure document is “substantially complete.”<sup>10</sup>

Furthermore, the Alberta Act expressly permits a franchisor to use a document authorized under the franchise law of a jurisdiction outside the province as its Alberta disclosure document as long as it contains supplementary information necessary to meet Alberta’s requirements.<sup>11</sup> This presumably includes UFOCs “authorized” in a state

within the United States. Alberta thus literally invites the use of an addendum or wrap-around document.

For this reason, many franchisors coming into Alberta, including those from Ontario and the United States, use their existing disclosure document as the base document, supplemented by a wrap-around document or addendum containing Alberta-specific requirements. Many franchisors limit the information in the Alberta addendum or wrap-around document to designating Alberta law as the governing law, identifying Alberta as the venue for resolving claims,<sup>12</sup> setting forth certain prescribed statements,<sup>13</sup> and identifying modifications attributable to differences in currency between Alberta and the jurisdiction from which the disclosure document originates. As noted below, however, the disclosure document will not meet Alberta’s disclosure requirements if only these changes are made.

The scope of disclosure, the format of the disclosure document, and the means of disclosure are significantly different in Ontario. Furthermore, the Wishart Act contains no express provision that permits the use of a preexisting document from another jurisdiction. Consequently, most franchise lawyers in Ontario believe that it is difficult, if not impossible, to use an addendum or a wrap-around in the Province of Ontario and still comply with the Wishart Act. This belief is based principally on statements in the Wishart Act and its disclosure regulation that certain items of disclosure must appear together within the disclosure document,<sup>14</sup> that the disclosure document must be “one document, delivered . . . as one document at one time,”<sup>15</sup> and that all information must be clearly and concisely set out in the document.<sup>16</sup>

### The UFOC in Alberta and Ontario

The UFOC Guidelines require the disclosure of specific information and documents in twenty-two broad categories called “Items.” In the United States, federal and state legislation also requires the UFOC to include any material fact that is necessary in order to make the information in the UFOC not misleading.<sup>17</sup>

Alberta and Ontario, however, require significant additional disclosures. Both provinces require a franchisor to disclose all “material facts” and to include in the disclosure document all proposed “franchise agreements,” specified financial statements, and other specified information and documents, including a certificate of full disclosure.<sup>18</sup> The Alberta Act and the Wishart Act both define “material fact” broadly as including any information about the business, operations, capital, or control of the franchisor or its “associate,” and any information about the franchise system, that would reasonably be expected to have a significant effect on the value or price of the franchise to be sold or a purchase decision.<sup>19</sup>

Both statutes define a franchisor’s “associate” as a person:

- (a) who controls or is controlled by the franchisor, or who, together with the franchisor, is under the common control of another person, and
- (b) who is either directly involved in granting the franchise, or who exercises significant operational control over the franchisee and is owed a continuing financial obligation by the franchisee.<sup>20</sup>

Finally, in both Acts, “franchise agreement” means any agreement that relates to a franchise between the franchisor or its associate and a franchisee or prospective franchisee, and therefore includes agreements signed after the franchise is granted.<sup>21</sup>

Because of these differences, a franchisor may need to make significant modifications to its standard UFOC, including:

Even though the UFOC may comply with U.S. federal and state disclosure and antifraud laws, both Alberta and Ontario require the disclosure of additional “material” facts. For example, has a distant upstream owner of the franchisor recently been charged with securities fraud? Is a distant downstream “nonmanagerial” employee who is involved in the franchise selling process also involved as a debtor in insolvency proceedings?

Changes may have to be made to the information in various Items of the UFOC in order to reflect commercial practices and the different economies of Alberta or Ontario.

The statements required by Section 4 of the Ontario Regulation<sup>22</sup> must appear at the beginning of the Ontario disclosure document, and the Alberta Act’s rights of rescission and to claim damages must be included in the Alberta disclosure document.<sup>23</sup>

Both the Alberta and the Ontario disclosure documents must include a certificate of full disclosure.<sup>24</sup>

Disclosure regulations in both provinces require certain specific disclosures that differ (often considerably) from each other and their approximate counterparts in the UFOC Guidelines.

**The sidebar on page XYZ** briefly summarizes the additions or changes to the UFOC information that these regulations require.

Although neither Alberta nor Ontario require that a disclosure document present information using the same ordering as appears in the disclosure regulation, it would be prudent and helpful to add a page to the UFOC cross-referencing the UFOC Items with the section numbers of the disclosure regulation.

### **Modifying the Standard UFOC for Use in Alberta and Ontario<sup>25</sup>**

A franchisor will have to make many changes to conform a UFOC to the requirements of Alberta or Ontario law. Most franchisors with UFOCs will naturally want to make these changes by adding a province-specific addendum to their standard UFOC. They can then avoid the commercial and administrative risks and costs of preparing, issuing, and updating varying disclosure documents for different jurisdictions. These franchisors and their counsel understand U.S. federal and state requirements for preparing a UFOC and updating it on a regularly scheduled basis, and most have implemented appropriate formal procedures to help them comply with these requirements. They are used to these procedures and believe that their “Canadian UFOC” will fit nicely into the procedures. They also believe that it is less expensive to prepare a province-specific addendum to their “standard UFOC” than it is to develop a separate Alberta- or Ontario-specific disclosure document. This is not always the case, however, for a number of reasons.

First, there are significant economic differences between the two countries and many differences between the U.S. disclosure requirements and those of Alberta or Ontario. These require the franchisor and its counsel to spend considerable time and money gathering and analyzing additional facts, and preparing and reviewing an addendum or wrap-around document. Therefore, the hoped-for cost savings may be seriously eroded or even lost. Second, both Alberta and Ontario require the disclosure document to be clear and concise.<sup>26</sup> If the changes are so extensive that the reader must continually flip back and forth between the body text of the UFOC and the text of the addendum or wrap-around, then the document is likely neither clear nor concise.<sup>27</sup> For this reason, it would be much safer to change the actual text of the UFOC to create a province-specific disclosure document. Third, unlike the UFOC, an Alberta or Ontario disclosure document is “evergreen,” and must be updated to reflect all material facts as they exist on the date that it is delivered to the prospective franchisee.<sup>28</sup> Fourth, Section 6(1) of the Ontario Regulation requires that the information referred to in that section (much of which is distributed across Items 1 to 22 of the UFOC) must be “presented together in one part of the document.” Although an Ontario addendum or wrap-around to a UFOC is arguably still “one part of the document,” franchisors will face the claim that the addendum or wrap-around has separated the required information into two different, and often inconsistent, parts of the disclosure document, violating the “presented together” rule and possibly also violating the “clear and concise” rule.<sup>29</sup> Finally, we have already noted that although Alberta specifically permits a franchisor to use a suitably modified “home state” disclosure document as an Alberta disclosure document,<sup>30</sup> Ontario did not include a similar provision in its disclosure legislation. A number of Canadian franchise lawyers suggest that this omission was deliberate, and for this reason conclude that a franchisor should never use a “home state” disclosure document (however modified) as an Ontario disclosure document.<sup>31</sup>

### **Modifying the UFOC for Use Elsewhere in Canada**

Although franchisors are not legally obliged to use a disclosure document to offer franchises in Canada outside of Alberta and Ontario, franchisors are finding it more and more common for prospective franchisees outside of Ontario and Alberta to require a disclosure document before the prospective franchisee will move forward in the process. These prospects want, and believe that they are entitled to, the same level of disclosure as their counterparts in Ontario and Alberta. The use, however, of a disclosure document in the ten common law provinces and territories<sup>32</sup> that do not regulate franchising may present common law fraud problems for a franchisor.

Under Canadian common law, a franchisor has no duty to disclose material facts that are within its knowledge but are unknown to a prospective franchisee, even if the franchisor knows that the prospective franchisee has formed a wrong impression that would be corrected by disclosure.<sup>33</sup> If, however, the franchisor by word or deed makes an

untrue statement of material fact, or omits a material fact that is necessary to make a statement not misleading in the circumstances in which it is made, then the franchisee may rescind the franchise contracts. Furthermore, if the misstatement or omission was made fraudulently or negligently, or amounted to a collateral warranty, then the franchisee may also recover damages.<sup>34</sup> It follows from these common law rules that before a franchisor uses its UFOC or Alberta or Ontario disclosure document to offer franchises within these ten provinces and territories, it will have to change the information in the "standard" disclosure document to make it geographically relevant to, and reflective of commercial and economic reality in, the province where the franchisee's unit will be located. These changes may be made by using a wrap-around document or a province-specific addendum to the UFOC, as long as the resulting disclosure document as a whole is reasonably clear and concise.<sup>35</sup>

## Conclusion

A UFOC is a valuable tool when creating a disclosure document for use in Canada. Although the information contained in the UFOC mirrors much of the information required by Ontario and Alberta disclosure laws, the UFOC does not contain all of the information that must be disclosed under those laws. Because Ontario, rather than Alberta, is more often the initial target market for U.S. franchisors expanding into Canada, the creation of a "new" disclosure document, rather than a modified one, should form a part of the franchisors' expansion plans. This new disclosure document will then be geographically relevant to, and reflective of the commercial reality of, the Ontario market and a document that is easily adapted to the markets for the remaining provinces. In particular, it will serve as the ideal base document for a suitable Alberta wrap-around or addendum and for suitable wrap-arounds or addenda for the other Canadian provinces and territories not yet regulated through franchise legislation.

## Endnotes

1. S.O. 2000, c.3.
2. Wishart Act, *supra* note 1, § 1(1).
3. Neither the Wishart Act nor its disclosure regulation (O.Reg. 581/00) give any meaning to the term "substantial association." See, however, *Marshall v. Little Mac Enterprises Ltd.*, 2000 Carswell Alta, aff'd [2000] A.J. No. 1682, where the Alberta Court of Queen's Bench considered "substantial association" as used in the definition of "franchise" in Alberta's disclosure legislation.
4. R.S.A. 2000, c.F-23.
5. Alberta Act, *supra* note 4, § 1(1)(d).
6. Alberta Act, *supra* note 4, § 1(1)(f) reads as follows, in part: "franchise fee" . . . does not include (i) a purchase of or an agreement to purchase a reasonable amount of goods at a reasonable bona fide wholesale price, (ii) a purchase of or an agreement to purchase a reasonable amount of services at a reasonable bona fide price. . . ."
7. Alberta Act, *supra* note 4, § 1(1)(l).
8. The twelve registration states are California, Hawaii, Illinois, Indiana, Maryland, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Texas, Virginia, and Washington.
9. Alberta's disclosure regulation is A.Reg. 240/95; Ontario's disclosure regulation is O.Reg. 581/00.
10. A. Reg. 240/95 § 2(4). To date there is only one reported case where an Alberta court considered § 2(4): *Emerald Developments Ltd. v. 768158 Alberta Ltd.*, 2001 ABQB 143; [2001] A.J. No. 232.

11. A.Reg. 240/95 § 2(2) says: "A franchisor may use a document authorized under the franchise law of a jurisdiction outside Alberta as its disclosure document to be given to a franchisee, if supplementary information is included that sets out any material changes to the document from that jurisdiction so that it complies with the requirements of this Regulation."

12. Alberta Act, *supra* note 4, § 17.

13. Alberta Act, *supra* note 4, §§ 19 and 20.

14. O.Reg. 581/00 § 4 requires that prescribed statements appear together at the beginning of the document, and § 6 requires, among other things, that all information pertaining to the costs associated with the establishment and operation of the franchise and the assumptions underlying any earnings projections or cost estimates be presented "together in one part of the document."

15. Wishart Act, *supra* note 1, § 5(3).

16. Wishart Act, *supra* note 1, § 5(6).

17. *See, e.g.*, New York General Business Law, Art. 33, s.687(2). Some U.S. lawyers we have talked to interpret such legislation to require disclosure of material facts that are not logically connected to any of the matters described in UFOC Items 1 to 22. Others we have talked to maintain that a fact that is not encompassed within Items 1 to 22 need not be disclosed, even if it might influence a prospective franchisee's decision to acquire the franchise. We understand that state administrators often exercise their "blue sky" powers by requiring franchisors to include additional information in their UFOCs, for example, special risk warnings.

18. Alberta Act, *supra* note 4, § 4(3) and A.Reg. 240/95 §§ 2(1), 2(3), and Schedules 1 and 2; Wishart Act, *supra* note 1, § 5(4) and O.Reg. 581/00 Part II.

19. Alberta Act, *supra* note 4, § 1(1)(o); Wishart Act, *supra* note 1, § 1(1).

20. Alberta Act, *supra* note 4, § 1(2); Wishart Act, *supra* note 1, § 1(1). Note that the Wishart Act definition clarifies that "directly involved" in granting a franchise means being involved in reviewing or approving the grant, or making representations to the prospective franchisee on behalf of the franchisor for the purpose of marketing, granting, or otherwise offering the franchise. Note also that the Wishart Act definition refers to "direct or indirect" control, so that franchise counsel's due diligence inquiries must include determining whether any indirect upstream or downstream individuals or entities are involved in granting the franchise or exerting operational control over the franchise business.

21. Alberta Act, *supra* note 4, § 1(1)(e); Wishart Act, *supra* note 1, §§ 1(1) and 5(4)(c).

22. The following statements must appear together in one section at the beginning of the disclosure document:

A commercial credit report is a report which may include information on the franchisor's business background, banking information, credit history and trade references. Such reports may be obtained from private credit reporting companies and may provide information useful in making an investment decision.

Independent legal and financial advice in relation to the franchise agreement should be sought prior to entering into the franchise agreement.

A prospective franchisee is strongly encouraged to contact any current or previous franchisees prior to entering into the franchise agreement.

The cost of goods and services acquired under the franchise agreement may not correspond to the lowest cost of the goods and services available in the marketplace.

23. Alberta Act § 9 (right of action for damages for misrepresentation) and §§ 13 and 14 (cancellation rights) must be quoted verbatim in the disclosure document.

24. The Ontario certificate of disclosure extends to inclusion of material facts, statements, and other information required to be disclosed, although the Alberta certificate is limited to certifying to the inclusion and truth of material facts required to be disclosed.

25. See Arthur J. Trebilcock & Lawrence M. Weinberg, *Arguments For and Against Converting American Documents to Canadian*, in FRANCHISING: LATEST LEGAL AND BUSINESS STRATEGIES (Insight Information Co., Toronto 2003).

26. Wishart Act, *supra* note 1, § 5(6). Although the Act does not attempt to define “clear and concise,” the authors suggest that General Instruction 150 of the UFOC Guidelines provides a very appropriate definition. Neither the Alberta Act nor A.Reg. 240/95 specifically impose a “clear and concise” requirement, but the requirement arises by necessary implication from § 2(a) of the Act (the “purpose statement”).

27. In Ontario the franchisee might then be able to rescind or to assert a statutory claim for damages; see Wishart Act, *supra* note 1, §§ 6 and 7. The situation is less clear in Alberta. There the franchisee cannot rescind unless the lack of clarity and conciseness is so great that the document either is not a “disclosure document” in the first place (Alberta Act, *supra* § 13(b)) or else amounts to a misrepresentation at common law (Alberta Act, *supra* note 4, §§ 1(1)(q) and 9).

28. Alberta Act, *supra* note 4, § 4(3) and A.Reg.240195 § 2(1); Wishart Act, *supra* § 5(4). Note that the franchisor must notify the prospective franchisee of any material change that occurs after disclosure is made but before the grant is complete; see Alberta Act, *supra* note 4, §§ 4 and 5; Wishart Act, *supra* note 1, § 5(5).

29. Wishart Act, *supra* note 1, § 5(6).

30. A.Reg. 240/95 § 2(2).

31. Although the authors disagree with this conclusion (because the Ontario legislation does not specifically prohibit using a suitably modified home state disclosure document as an Ontario disclosure document), they acknowledge that the issue can be decided only by an Ontario court or by a suitable amendment to the Ontario legislation.

32. British Columbia, Manitoba, New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon. Quebec is a civil law jurisdiction with codified laws and is not discussed in this article.

33. *Bell v. Lever Brothers Ltd.*, [1932] A.C. 161 (H.L.); *Smith v. Hughes* (1871), L.R. 6 Q.B. 597 (“Yup, them’re good oats.”).

34. *Hedley Byrne & Co. v. Heller & Partners Ltd.*, [1964] A.C. 465 (H.L.); *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87. There are several other exceptions to the common-law “no need to disclose” rule, the most pertinent to this article being a requirement to disclose any subsequently known fact that materially changes what has already been asserted. Note also that a person may represent a statement of facts simply by conduct, without ever saying a word; therefore, if a franchisor knows that its conduct has misled a prospective franchisee, then Canadian common law requires the franchisor to either correct the impression given or be bound by that impression.

35. We have suggested above that General Instruction 150 of the UFOC Guidelines provides a useful definition of “clear and concise.”

## Changes Required by Disclosure Requirements in Ontario and Alberta

UFOC Guidelines	Additions/Changes Required by Ontario’s Disclosure Regulation	Additions/Changes Required by Alberta’s Disclosure Regulation
Item 1	Item 1 Instructions iv. and v. do not apply. If franchisor is a subsidiary, disclose name and principal address of its parent. Item 1 Instruction 1E vi. does not apply; disclose all federal, provincial and municipal licenses, registrations, and other authorizations needed to operate franchise. Note that an out-of-province franchisor must appoint an agent authorized to accept service in Ontario on behalf of franchisor.	Item 1 Instructions iv. and v. do not apply.
Item 2	Also provide Item 2 information about all directors and all officers and general partners of franchisor. Disclose their relevant business experience and how long each has engaged in the line of business associated with the franchise.	Also provide Item 2 information about all (not just principal) officers of franchisor who will have management responsibilities relating to the franchise.
Item 3	Disclosure requirements are quite different from those in Item 3 (for example, civil judgments are not limited to a ten-year period). Usually Item 3 must be completely rewritten.	Disclosure requirements are quite different from those in Item 3 (for example, civil judgments are not limited to a ten-year period). Usually Item 3 must be completely rewritten.
Item 4	Disclosure requirements are much more extensive than those in Item 4 (for example, disclosure is extended to directors of the franchisor and to directors of the franchisor’s associates). Usually Item 4 must be completely rewritten.	Disclosure requirements are much more extensive than those in Item 4 (for example, disclosure is extended to directors of the franchisor and to directors of the franchisor’s associates). Usually Item 4 must be completely rewritten.
Item 5	Also disclose fees and payments received by franchisor’s associate before franchisee’s business opens.	Also disclose fees and payments received by franchisor’s associate before franchisee’s business opens.
Item 6	No change.	No change.
Item 7	Also disclose the assumptions underlying the estimate of “additional funds.”	Also disclose all assumptions underlying the estimate of “additional funds,” or else delete the estimate of “additional funds” and state instead, “additional funds will be required to finance operations until a positive cash flow is produced.”
Item 8	Also disclose obligations to purchase/lease from franchisor’s associate, or suppliers approved by associate, or under associate’s specifications. Also disclose whether rebates are shared directly or indirectly with franchisees, and franchisor’s policy, if any, regarding rebates.	Also disclose obligations to purchase/lease from franchisor’s associate, or suppliers approved by associate, or under associate’s specifications. Also disclose whether rebates are shared directly or indirectly with franchisees.

Item 9	Also disclose material obligations of the franchisee under any agreements that are proposed to be signed by the franchisee after the franchise is granted (example: a release to be signed as a condition of renewal).	Also disclose material obligations of the franchisee under any agreements that are proposed to be signed by the franchisee after the franchise is granted (example: a release to be signed as a condition of renewal).
Item 10	Item 10 Instructions ii. and ix.(c) do not apply; add disclosure of all open account payments and state either the nominal or the effective annual borrowing rate.	Item 10 Instructions ii and ix(c) do not apply; add disclosure of all open account payments and state either the nominal or the effective annual borrowing rate.
Item 11	Also disclose any training or other assistance offered by franchisor's associate, whether training is mandatory, and who bears cost. Also disclose the advertising fund information required by Section 6(1)6 of the Regulation.	No change.
Item 12	Also disclose the franchisor's policy, if any, regarding the matters in Items 12A to 12D.	Also disclose the franchisor's policy, if any, regarding the matters in Items 12A to 12D.
Item 13	Change Items 13A and 13B to reflect Canadian equivalents.	Change Items 13A and 13B to reflect Canadian equivalents.
Item 14	Change Item 14 information to reflect Canadian copyright and patent application/registration equivalents.	Change Item 14 information to reflect Canadian copyright and patent application/registration equivalents.
Item 15	Also disclose Item 15 information about the principals of a corporate franchisee.	No change.
Item 16	Also disclose any requirements, restrictions, or conditions imposed by the franchisor's associate.	Also disclose any requirements, restrictions, or conditions imposed by the franchisor's associate.
Item 17	Regulation Section 6(1)18 requires "a description of all restrictions or conditions" relating to termination, renewal, or transfer; do the remarks in the summary column of Item 17 provide an adequate description? Add the ADR disclosure required by Section 5 of the Regulation. Note the effect of Wishart Act Sections 10 and 11 on contractual choices of law, venue, and forum.	Note the effect of the Alberta Act Sections 17 and 18 on contractual choices of law, venue, and forum.
Item 18	No change.	No change.
Item 19	Earnings "projections" or annual cost estimates, if provided, must have a reasonable basis (see comment in right-hand column of this row); that basis and any assumptions underlying the projection or estimate must be stated in the disclosure document. <sup>1</sup>	Note that A.Reg. 240/95, Sch.1, s. 16 refers to earnings information given by or on behalf of the franchisor "or its associate." Item 19 Instruction iv. does not apply in Alberta, but the authors suggest that an earnings forecast or projection that is prepared and presented in accordance with the requirements of Section 4250 of the Handbook of the Canadian Institute of Chartered Accountants (CICA is the Canadian equivalent of the AICPA) will have a reasonable basis.
Item 20	Expand Item 20D information to franchisor's world-wide operating territory, and summarize reasons for closure.	Expand Item 20B information to include all types of franchises (e.g., unit franchises, area development franchises, subfranchises, etc.) and all franchisor-owned outlets that operate under the same trade name as the franchise being offered, and include franchisee home addresses and tele phone numbers as well as outlet addresses and telephone numbers. Expand Item 20D information to include franchisor-owned units and all types of franchises in franchisor's world-wide operating territory that operate under same trade name as franchise being offered, and summarize reasons for closure. Expand Item 20E information to cover all types of franchises in franchisor's world-wide operating territory that operate under same trade name as franchise being offered.
Item 21	Only statements prepared in accordance with Canadian GAAP and GAAS are permitted. If franchisor is willing to risk a rescission claim (60-day limitation period), it may use its audited U.S. statements if it includes a reconciliation of U.S. GAAP to Canadian GAAP and discloses the material differences between U.S. and Canadian GAAS.	Since the use of "foreign" GAAP and GAAS is permitted if those principles and standards are at least equivalent to Canadian GAAP/GAAS, include a reconciliation of U.S. GAAP to Canadian GAAP and disclose the material differences between U.S. and Canadian GAAS if they affect the financial statement.
Item 22	Add any agreements relating to the franchise that are to be signed by the franchisee "down the road."	Add any agreements relating to the franchise which are to be signed by the franchisee "down the road."
Item 23	Although no Receipt is required, we recommend obtaining a Receipt. The form of Receipt must be changed to reflect Ontario's different delivery timing requirements, and the FTC five-business-day contract delivery rule does not apply.	Although no Receipt is required, we recommend obtaining a Receipt. The form of Receipt must be changed to reflect Alberta's different delivery timing requirements, and the FTC five-business-day contract delivery rule does not apply.

Note that O.Reg. 581/00 § 6(1) 3 deals with "earnings projections," but nowhere in the Wishart Act or Regulation is that term defined. The Handbook of the Canadian Institute of Chartered Accountants uses the term "earnings claim" to refer to actual, summary, average, or some other statistic of historical earnings information presented as indicating past performance, and uses the terms "forecast" or "projection" to refer to future-oriented earnings information. The UFOC Guidelines use the term "earnings claim" in a broader sense to encompass both historic and future-oriented earnings information. The authors recommend that "earnings projection" as used in Section 6(1)3 of the Regulation be interpreted in the Item 19 sense, and that the presentation rules in Section 16 of Schedule I to the Alberta disclosure regulation be followed.