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The new Franchises Act: Managing the risks of a new statutory regime

On February 1, 2017, BC's first [Franchises Act](#) (the "Act") comes into force, introducing fundamental changes to franchise law in our province. For lawyers who practice any franchise law, here are some tips to help you recognize and manage certain risks associated with the new Act. Of course, taking a legal education course on the new law is strongly recommended.

Get educated

A comprehensive review and thorough understanding of the Act and its [regulations](#) is essential to avoiding mistakes. When educating yourself about the new law, pay particular attention to:

- the extensive and complex disclosure requirements for franchisors;
- the enhanced entitlements and remedies for franchisees in relation to disclosure, including the right to rescind and/or sue for damages; and
- the severe consequences for franchisor's for failing to comply with the disclosure requirements.

There is also the challenge of determining which jurisdiction's franchise law applies – BC's or another province's – given that each province has different and unique franchise requirements. For example, if the franchisor is in Ontario but the franchisee intends to operate the business in BC, BC franchise law will apply.

Resist any temptation to dabble

There is now no question that franchise law is a challenging and complex area of the law, with many pitfalls for the "dabbler". The inexperienced lawyer who tries to bring in a few thousand

dollars by reviewing or preparing a franchise agreement or disclosure document may see those dollars (and more) disappear in payment of a deductible if a negligence claim is paid.

Identify, flag and diarize limitations and deadlines

The Act imposes a number of new limitations and deadlines that create, for instance, time limits that must be met for delivery of a disclosure statement, delivery of a statement of material change, and rescinding the franchise agreement. The most effective means of ensuring that necessary steps are taken, and in time, for both substantive limitations and other deadlines is to implement systems. For tips on effective systems, see [Beat the Clock](#), Risk Management Tips 1 through 17 starting at page 11.

Clarify responsibilities between lawyer and accountant

With the financial matters that must be addressed in light of the Act's new disclosure document, your client will likely require both legal *and* financial advice. If your franchise client retains an accountant or any other professional, be sure to define and confirm in writing your respective responsibilities clearly, both with the client and the other professional.

Implement checklists and other systems to ensure proper disclosure

Given the Act's heightened obligations to obtain and disclose material facts and other information, systems are vital. Implementing the routine use of checklists, questionnaires and other systems will help you ensure that no step or requirement is overlooked or missed. They are particularly invaluable in relation to complex matters.

Communicate with your client and confirm your advice

Spend the necessary time with your client to explain the Act's disclosure obligations and/or entitlements. When advising your franchisor client of the risks and consequences of failing to meet their disclosure obligations, explain the importance of adequate record retention practices. It is critical that your client appreciate that as a franchisor, it will be required to provide evidence of what disclosure was given to a franchisee, and when. Confirm that advice in writing. And beware of assuming that your client already understands this requirement – or any other aspect of franchise law – simply because he or she is more sophisticated or business-savvy.

A final note of caution: Buy excess insurance if you are at risk

Although the \$1 million policy limit offers generous financial protection for the majority of lawyers, it may not be enough to protect a franchise lawyer who has given negligent advice.

[Excess insurance](#), available on the commercial market, extends the policy limit. Buy it if you are at risk.