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What Happens When a Franchise Agreement Ends, Part Two: Cancellation

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In some cases, a franchise relationship ends after many years of business. At the point of termination, the parties must wrestle with a number of issues, including customers, inventory, and (as we reviewed in Part 1) the impact of any post-termination restrictive covenants.

In other cases, however, the franchise relationship barely gets off the ground. Remember, Section 13 of the Alberta *Franchises Act* states that, if a franchisor fails to give a prospective franchisee a complete "disclosure document," then the franchisee may rescind (or cancel) the franchise agreement and end the relationship. However, the franchisee must send the cancellation within certain time limits: either 60 days after receiving the disclosure document, or within 2 years after the franchisee is granted the franchise, whichever occurs first.

A failure to give complete disclosure allows the franchisee to cancel. So what does it mean to give complete disclosure?

Under the *Act*, a franchisor must make a number of disclosures, including (but not limited to):

- Basic information about the name and address of the franchisor and the length of time the franchisor has operated the business;
- The names of the directors, general partners and officers of the franchisor who will have management responsibilities;
- Details on convictions for the previous 10 years relating to the franchisor and its associates, and any of the directors, general partners and officers of the franchisor;
- Lawsuits or pending lawsuits involving misrepresentation, and unfair or deceptive acts or practices;
- Details of any bankruptcy or insolvency proceedings, voluntary or otherwise;
- The names, mailing addresses and phone numbers of all existing franchisees presently operating an outlet in Alberta under the same trade name as the franchise being offered, and the addresses and phone numbers of those outlets; and

- Financial statements of the franchisor, among other information.

If proper disclosure is *not* made, a franchisee may cancel and recover any net losses incurred in acquiring, setting up and operating the franchised business.

In *1448244 Alberta Inc. v. Asian Concepts Franchising Corporation*, 2013 ABQB 221 (CanLII), an Alberta court reviewed a franchisee's claim that it did not receive proper disclosure. Specifically, the franchisee alleged that the disclosure document was deficient and therefore not 'substantially complete' within the meaning of the *Act* because the document was signed by only *one* director. The Regulations are clear that a disclosure document must include a certificate that is to be signed by at least *two* officers or directors of the franchisor. The fundamental question: Does the lack of two signatures to the disclosure document provided by the franchisor mean that it is not 'substantially complete' within the meaning of the *Act*?

Described another way: the *substance* of the disclosure document itself was not challenged in this case. The only complaint was that the certificate, which accompanies the disclosure document, was only signed by one, instead of two, directors.

The Alberta Court of Appeal reviewed this situation in 2008 in the *Hi Hotel* case. In that case, the certificate accompanying the disclosure document contained *no* signatures, and was therefore found not to be "substantially complete" within the requirements of the *Act*. In the *Asian Concepts* decision, the Court concluded that a disclosure document with only one signature was deficient, since it deprived the franchisee of a potential cause of action against a second signatory to the disclosure document. This finding opened the door for the franchisee to recover losses incurred in acquiring, setting up and operating the franchised business. The Court confirmed: "…the lack of misrepresentation, or the lack of reliance on representations, are irrelevant to the issue at hand. What matters is whether the disclosure document which was provided was substantially complete or not. And when the statute requires two signatories responsible for and liable for the required disclosure, yet only one is provided, the disclosure statement cannot be said to be 'substantially complete.' This is plain and obvious."

What are the lessons? Franchisors in Alberta should take care to ensure that the disclosure document follows the strict requirements of the *Act* and Regulations, both as to form and substance. Seemingly minor gaps in compliance can result in serious consequences for the franchisor. Franchisees, on the other hand, will be reviewing compliance with a careful eye in situations where the franchisee wishes to extricate itself and end the relationship. Of course, both parties should always seek appropriate legal advice when entering into and concluding franchising relationships in Alberta.

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