



Canadian Franchise
Association™

**THE AUTHORITATIVE VOICE
OF FRANCHISING IN CANADA**

**UNIFORM FRANCHISES ACT AND REGULATIONS
REPORT OF THE UFA WORKING GROUP**

Presentation Outline

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- **The Franchise Business Model**
- **Why Franchise Disclosure Legislation?**
- **Project Background**
- **The B.C. Experience**
- **Project Status**
- **Key Issues of Research**
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Introductions

Introductions



Peter Snell

- Partner at Gowling WLG based in Vancouver
- Secretary & General Counsel – CFA Board of Directors since 2011
- Chair of the UFA Central Working Group
- Member of the B.C. Ministry of Justice Advisory Group

Introductions



Larry Weinberg

- **Partner at Cassels Brock & Blackwell LLP based in Toronto**
- **Chair of Legal & Legislative Affairs Committee – CFA Board of Directors**
- **Chair of the UFA Consultative Group**

Introductions



Lorraine McLachlan

- **President & CEO, Canadian Franchise Association (CFA) since 2006**
- **Primarily involved in advocacy and GR, issues analysis, strategic planning, media relations, and enhancement of public awareness of franchising and CFA**

Introductions



Ryan Eickmeier

- **Vice President, Government Relations & Public Policy, Canadian Franchise Association (CFA)**
- **Responsible for advocating for favourable public policy to support franchising in Canada**

Franchising in Canada

About CFA



CFA represents the franchise industry, which includes:

- **Over 1,300 Franchise Brands and 78,000 Franchised Locations that:**
 - **Directly and indirectly support over 1,000,000 jobs**
 - **And contribute over \$68 Billion to the Canadian economy each year.**

CFA Members – Franchise Systems



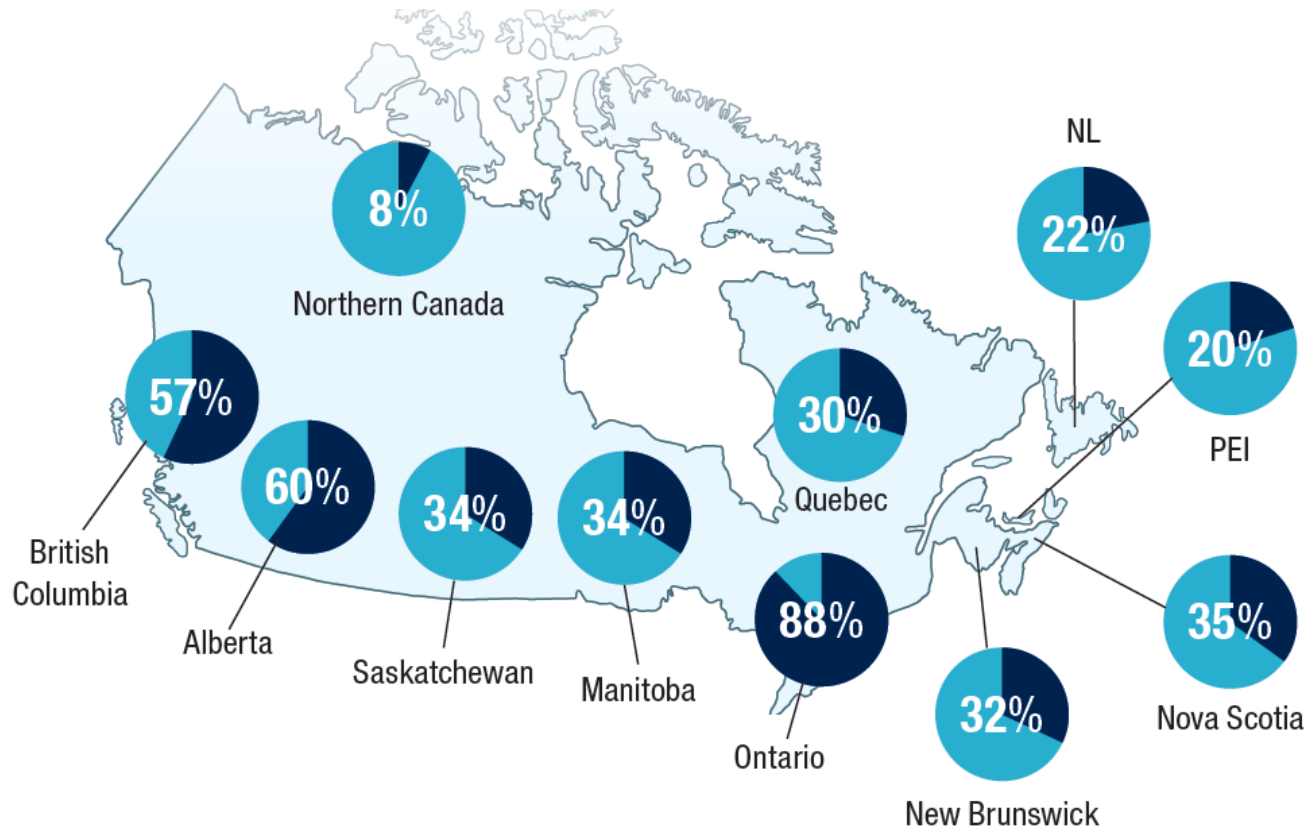
... and many more!

- Accounting
- Advertising
- Financial Services
- Computer/Software Services
- Education/Training
- Franchise Consulting Services
- Insurance
- Lawyers
- Payroll/HR Services
- Publishers/Publications



... and many more!

CFA Members



*Results add to more than 100% due to multiple responses.

Where are CFA members operating?

Franchise businesses vary greatly in size, from local start-ups, to mature, well-known, multi-national brands

33% of CFA members are franchise brands that have fewer than 15 franchise locations, while less than 20% of CFA members have more than 100 outlets

... and many more!

Franchises can be found in over 50 different industry sectors that can be broadly condensed and classified into the following categories:

Automotive	4%
Business to Business	12%
Children's Products & Services	6%
Consumer Products & Services	20%
Food	40%
Health/Fitness/Senior Care	10%
Retail	8%

... and many more!

The Franchise Business Model

The Franchise Business Model

The relationship between franchisor and franchisee is carefully outlined in a contractual agreement

The franchisor seeks to provide tools for the franchisee to attempt success for themselves, such as:

- **An established or emerging brand**
- **Recognized products and services**
- **Structure and assistance**

The Franchise Business Model

The entrepreneur (franchisee) invests money and time to work within that structure to operate and grow a business

Like any business, success is never guaranteed, however the advantage of being a franchisee is owning a business that already has (or is seeking to establish) a proven business format, a successful track record, and a recognized brand

The Franchise Business Model

Franchisors provide training and ongoing support to their franchisees

Compliance with the franchisor's brand standards and requirements are to ensure franchisees deliver products or services that meet the established standards for consistency in customer service and experience

The Franchise Business Model

Franchisees are solely responsible for implementing the franchisor system, the activities of their business, and executing the day-to-day operations of the business.

Responsibilities in implementing the franchisors system include:

- **Employee hiring & terminations**
- **Training**
- **Promotions**
- **Health and safety**

The Franchise Business Model

The balance between franchisor and franchisee is **critical** to the success of the model, and both parties involved

Franchising provides benefits for both franchisor and franchisee

The Franchise Business Model

Franchisor seeks:

- Ability to use franchisees capital and business drive to expand their brand more rapidly
- i.e., train and support franchisees, market and advertise the brand, improve quality of goods and services, and build the brand in the marketplace

Franchisee seeks:

- Higher chance of success than in a non-franchised business
- Shorter time to open
- Initial training and ongoing support
- Selling power of a known or emerging brand
- Network of peers to provide advice and moral support

Why Franchise Disclosure Legislation?

Why Franchise Disclosure Legislation?

The purpose of Franchise Disclosure Legislation is to regulate the franchise marketplace and protect both prospective franchisees and the franchisor

The law is remedial and is intended to address the perceived imbalance of power in the franchisor-franchisee relationship, and adopts three key principles:

Why Franchise Disclosure Legislation?

- 1. The obligation imposed on franchisors to provide pre-sale disclosure (and on renewal and transfer)**
- 2. The duty of good faith and fair dealing imposed upon franchisors and franchisees**
- 3. The right of franchisees to associate**

Why Franchise Disclosure Legislation?

The Franchise Disclosure Document (FDD) is a legal obligation to disclose all material facts, including those enumerated in the Act & Regulations

Why Franchise Disclosure Legislation?

The disclosure document will typically include information about the franchisor mandated by the Act and/or Regulations, including:

- **Business background**
- **Litigation history**
- **Financial statements**

Why Franchise Disclosure Legislation?

It will also include information about the franchise offer, such as:

- **Costs to develop the franchise business or other fees**
- **Copies of proposed franchise agreements**
- **Training and assistance programs**
- **List of current and former franchisees**

Why Franchise Disclosure Legislation?

To date, six provinces have enacted franchise legislation:

- **Alberta – 1972 (revamped in 1995)**
- **Ontario - 2001**
- **Prince Edward Island – 2007**
- **New Brunswick - 2011**
- **Manitoba - 2012**
- **British Columbia - 2017**

Why Update the Uniform Franchises Act (UFA)?

Why Update the UFA?

CFA has requested the ULCC consider amendments to its *Uniform Franchises Act and Regulations* ('UFA')

Goal: CFA wishes to achieve, when updating legislation as well as when future legislation is introduced in new jurisdictions, an appropriate balance between the intent of legislation and practical use, through:

- **Consistency**
- **Usability across existing jurisdictions**
- **Best practices**

Why Update the UFA?

There has been developments in case law and an evolution of franchising that has caused a need for the UFA to be updated

In CFA's work with various governments in the development of franchise legislation, jurisdictions have been hesitant to adopt some of the more evolutionary recommendations because of inconsistency between recommendations under consideration and the UFA

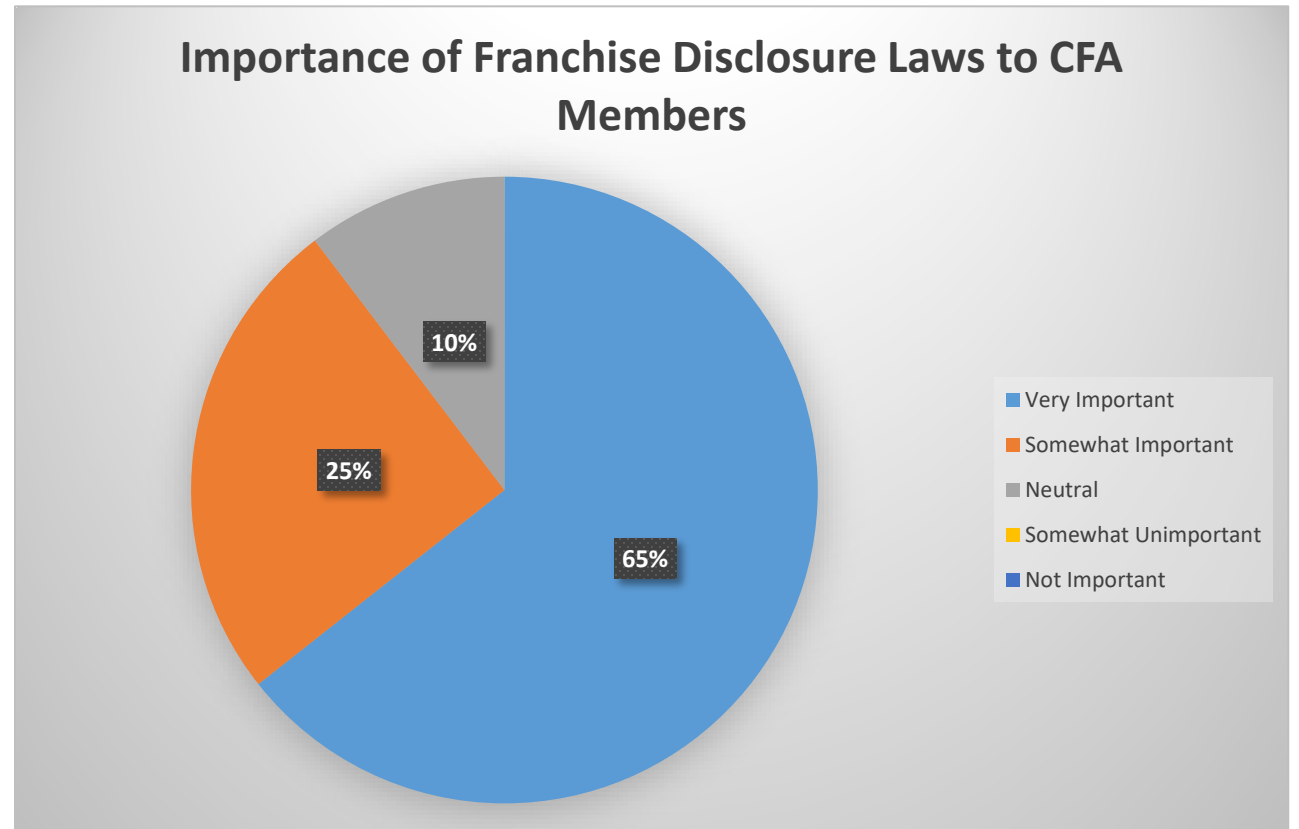
Why Update the UFA?

Examples of practical implications of the current disclosure legislative environment include:

- **Too much uncertainty about what to disclose**
- **Lack of clarity in existing Regulations**
- **Disconnect between sophistication of new franchisors and legal requirements**
- **Contrast with US requirements which are finite**
- **Uncertainty leads to ever-growing length of the FDD**

Why Update the UFA?

In a recent survey, 90% of CFA's membership claimed that Franchise Disclosure Laws are 'Very Important' or 'Somewhat Important' to their businesses



Why Update the UFA?

Members also expressed their frustrations with the current franchise disclosure environment, illustrated in the commentary below:

- *“Franchise disclosure legislation is too cumbersome, causes many delays, is expensive and frustrating”*
- *“Differing requirements among provinces add unnecessary costs and time wasted.”*

Why Update the UFA?

Case law that has evolved since 2001 has highlighted the need for greater certainty in the franchise disclosure process:

- ***“Franchise Agreement”***
 - ***Three for One Pizza***
 - ***Philthy McNasty’s***
- ***“Franchisor’s Associate”***
 - ***First Choice Hair Cutters***
 - ***Dollar IT***
 - ***Dig This Garden***

Why Update the UFA?

Case law that has evolved since 2001 has highlighted the need for greater certainty in the franchise disclosure process:

- *“Obligation to disclose”*
 - *Dollar It*
 - *Springdale Pizza*
 - *Trillium Motors v. GM*
 - *Raibex*

Why Update the UFA?

Case law that has evolved since 2001 has highlighted the need for greater certainty in the franchise disclosure process:

- *What is the purpose of Section 6 (1) in light of the recent case law?*
 - *Global Diaper*

The BC Experience

The BC Experience

British Columbia's *Franchises Act* is the sixth province to enact franchise disclosure legislation, which came into force in February 2017

CFA worked with the government in the development of franchise legislation to advocate for a uniform approach, balanced with best practices

However, as many jurisdictions start by following the UFA looking to implement best practices, many of CFA's more evolutionary recommendations were not adopted because of the inconsistency between those recommendations and the UFA

The BC Experience

What we learned:

- *Drafting conventions can impact the content and style of the legislation*
- *Governments are open to input and guidance from outside parties with experience*

The BC Experience

What we learned:

- *ULCC Model Act and Model Regulation used as a starting point*
- *Comparative chart of legislation from different jurisdictions developed*
- *Differences and similarities highlighted*

The BC Experience

What we learned:

- *ULCC Model Act and Model Regulation no longer the “gold standard”*
- *Areas that the BC Government was not willing to break new ground, e.g.:*
 - *Risk Warnings*
 - *“Other Agreements”*
 - *Finite list of items for disclosure*

The BC Experience

BC Experience highlighted the need to revisit the ULCC Model Act and Model Regulation

Project Status

Project Status

CFA's report sets out the UFA Central Working Group's draft policy recommendations for amendments to modernize the UFA

CFA's Working Group Report is guided by two committees:

- **UFA Central Working Group**
- **UFA Consultative Working Group**

UFA Central Working Group

The UFA Central Working Group ('Working Group') is a collection of some of Canada's foremost franchise lawyers, including representation from the BC Ministry of Justice and Attorney General's office

Working Group members provide expert experience and knowledge, highlighting and discussing problematic areas in current legislation

UFA Central Working Group

Name	Firm	Home Province
Peter Snell (Chair)	Gowling WLG	British Columbia
Clark Dalton	ULCC	
Clark Harrop	McDonalds Restaurants of Canada Ltd.	Ontario
Darrell Jarvis	Fasken Martineau DuMoulin LLP	Ontario
David Kornhauser	MacDonald Sager Manis LLP	Ontario
David Shaw	Blake Cassels & Graydon LLP	Ontario
Daniel So	McKenzie Lake Lawyers LLP	Ontario
Michael Melvin	McInnes Cooper	New Brunswick
Renee Mulligan	Ministry of Justice and Attorney General	British Columbia

UFA Consultative Working Group

The UFA Consultative Working Group (‘Consultative Group’) is a collection of franchisors, franchisees, lawyers, and franchise consultants from across the country

The Consultative Group will be leveraged to review draft recommendations and provide feedback to the Working Group

The Consultative Group includes two CFA member lawyers who participated in the original ULCC/UFA consultations –

- **Ned Levitt & Frank Zaid**

UFA Consultative Working Group

Name	Firm/Franchise Brand	Province
Larry Weinberg (Chair)	Cassels Brock & Blackwell LLP	Ontario
Stephane Teasdale	Cassels Brock & Blackwell LLP	Ontario
Ned Levitt*	Dickinson Wright LLP	Ontario
Frank Zaid*	FRANlegal Support Services	Ontario
Bruno Florinani	Lapointe Rosenstein Marchand Melancon LLP	Quebec
Peter Viitre	Sotos LLP / Vice Chair, OBA Franchise Laws Section	Ontario

UFA Consultative Working Group

Name	Firm/Franchise Brand	Province
Nicole Merrick	Taylor McCaffrey	Manitoba
Ellery Lew	Witten LLP	Alberta
Dawn Mucci	Lice Squad	Ontario
Dan Steward	Pillar to Post Home Inspections	Ontario
J. Perry Maisonneuve	Northern Lights Consultants Group	Ontario
Gary Prenevost	FRANNET	Ontario
Jennifer Dolman	Osler, Hoskin & Harcourt LLC	Ontario

Key Issues and Subjects of Research

Key Issues and Subjects of Research

The following is a brief summary of the collection of work developed by CFA's Legislation and Regulations Review Subcommittee

The committee analyzed the UFA and compared to other jurisdiction's Franchise Legislation to determine best practices, balanced with a uniform approach to franchise legislation across the country

Recommended Amendments - *Uniform Franchises Act*

- Amendments to various definitions within the UFA;
- Limiting the scope of “material fact” disclosure;
- Expanding the amount of auditing and review standards that are acceptable with regards to financial statements (i.e., US Standards);
- Implementing ‘Substantial Compliance’;
- Revising language used in various exemptions to eliminate uncertainty;
- Implementing a mature franchisor exemption; and
- Adding a section to address obligations of prospective franchisees if they rescind the agreement

Recommended Amendments - *Uniform Franchises Act Regulations*

- **Revisions to risk warnings;**
- **Amendments to various definitions;**
- **Implementing an option for alternative methods of delivery;**
- **Adopting language used in various other provincial legislation, especially with respect to disclosure regarding advertising, territory, licenses and permits; and**
- **Removing mandatory mediation**

Proposed Methods & Work Schedule

Next Steps

The information provided is intended only as general information

Changes may be made to the proposed recommendations as new developments occur and/or at the discretion of the Working and Consultative Groups between June 30, 2017 and the final submission of the report

Central Working Group

- **Bi-weekly meetings beginning in September 2017**
- **Written comments due 1 week before meeting and distributed to committee 4 days in advance of meetings**

Consultative Working Group

- Monthly meetings beginning late September 2017
- Draft recommendations from central working group to be provided 1 week in advance of meetings
- Comments to be delivered back to the central working group 3 days following each meeting

Questions/Comments?

Thank You



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