

# Keep It Simple

As Alberta streamlines franchise regulations, will the other Canadian provinces follow suit?

BY ANDREW A. CAFFEY

IT WASN'T LONG ago that Alberta had a reputation among the franchise community as the single most difficult jurisdiction in the world in which to qualify to sell a franchise. This sparsely populated Rocky Mountain province is the only jurisdiction in Canada to regulate franchise sales, and the administrators routinely put applicants through a picky, mind-boggling examination of their proposed disclosure documents. A 1980 statute, administered by the Alberta Securities Commission Agency, required registration as well as pre-sale disclosure of all material facts related to the offering.

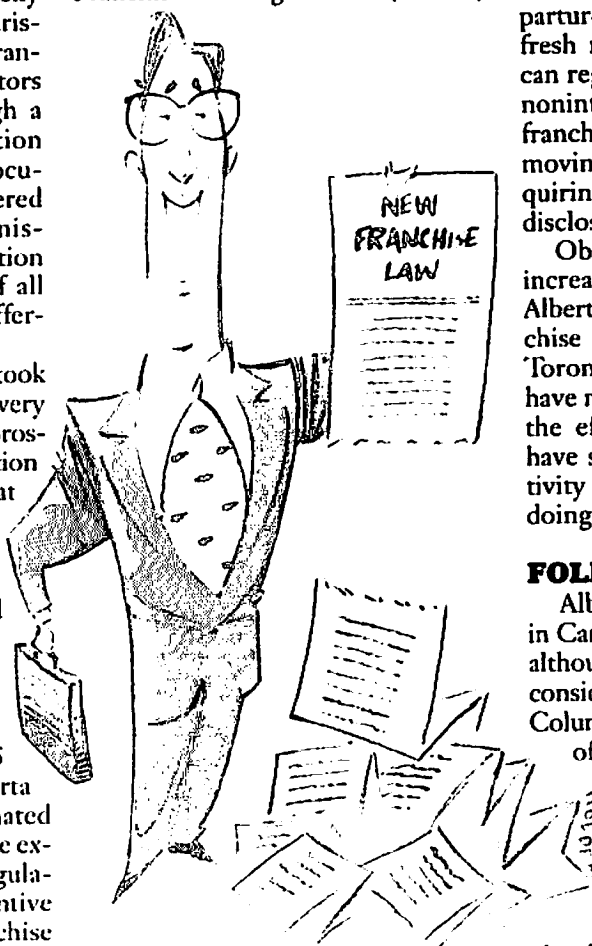
Alberta franchise examiners took their broad discretionary power very seriously. If a franchisor had a prospect who wanted to open a location in Edmonton, for example, that franchisor would hear the bad news from its attorney: The legal fees for the six- to nine-month registration process would cost anywhere from \$10,000 to \$15,000.

The result? Franchisors stayed away in droves.

All that changed in late 1995 with the advent of the new Alberta Franchises Act. This act eliminated the registration requirement, the expensive review by provincial regulators, regulation of the substantive provisions of the proposed franchise agreement, and the other policies enforced by the Securities Commission under the former law. The new act provides for a greatly simplified system:

- A pre-sale disclosure document must be given to prospective franchisees at least 14 days before the prospect signs any agreement relat-

ing to the franchise or pays any money relating to the franchise. New regulations specify the contents of the disclosure document, which is as full and complete as the Uniform Franchise Offering Circular (UFOC)



used in the United States.

- Civil remedies are available to franchisees injured by violations of the new act's requirements. If a franchisor neglects to deliver a disclosure document, the franchisee has the right to back out of the franchise agreement. If a franchisee suffers a

loss because of a misrepresentation in a disclosure document, he or she can sue the franchisor for damages.

Self-regulation of the franchise community may be in Alberta's future. Under the new act, Alberta authorities may designate "one or more bodies to govern franchising and to promote fair dealing among franchisors and franchisees." While the act offers no details, the governing body may require membership by franchisors and franchisees and may adopt bylaws to ensure fair dealing among members.

The act marks a substantial departure from the past and offers a fresh model of how a government can regulate franchising, yet remain nonintrusive. It has streamlined the franchise expansion process by removing the delay and expense of requiring the government to review disclosure documents.

Observers report the new act has increased the level of franchising in Alberta. According to Canadian franchise attorney Ned Levitt of the Toronto firm Levitt, Beber, "We have no statistics yet to demonstrate the effect of the new act, but we have seen a definite increase of activity among our franchisor clients doing business in Alberta."

## FOLLOWING THEIR LEAD?

Alberta remains the only province in Canada that regulates franchising, although legislation has recently been considered by Ontario and British Columbia. The question on the minds of a lot of Canadians is whether other provinces will follow Alberta's lead.

"I think the new act is a realistic and sensible approach to franchise regulation, and it's being studied closely here in Ontario," says Levitt, who is a member of the Franchise Sector Working Team that's conducting the study in Ontario. "If Ontario adopts franchise regulation—and that is a strong possibility in the next two years—then other provinces are highly likely to follow Ontario's lead."

Regardless of what's happening in

Ontario, the new Alberta Franchises Act has opened a small window on Canada's regulatory future. According to franchise attorney Alex S. Konigsberg of the law firm Lapointe Rosenstein in Montreal, "The new act is a major improvement. Alberta may be a small province in political terms, but it was the one province where the franchise relationship was regulated and registration required. I believe the changes in Alberta confirm we will not see in Canada's future the type of franchise registration requirements and laws that have been adopted in the United States."

The new act has created an intriguing new concept, an appointed self-governing body, but the regulators have not yet fleshed it out. "Self-government means different things to different people," says Levitt, "and it's not at all clear in the new act what form it may take. Self-government was the only subject in the act not addressed by detailed regulations. For now, all we have is the bare-bones description in the statute."

The Canadian Franchise Association has taken an important step toward self-regulation by requiring its members to provide a full disclosure document, the *Information Circular Guide*, to prospective franchisees. The guide includes basic information about the franchisor, its trademarks, shareholders and directors; existing franchisees; the franchise investment; the franchisor's litigation and bankruptcy history; and disclosures summarizing the franchise documents.

In rolling back the former law and regulating franchises with a lighter touch, Alberta is pointing to a bright regulatory future for franchising throughout Canada, one of the world's most active franchise marketplaces. □

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