**ONTARIO BAR ASSOCIATION**

**The Fundamentals of Franchise Law in Ontario**

**BUYING AND SELLING A UNIT FRANCHISE[[1]](#footnote-1)**

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**1. INTRODUCTION**

Franchising, as a business model, has existed in Ontario for decades. Franchising, at its core, is a form of business investment and ownership structure that facilitates the distribution and sale of goods or services. In a franchise, the franchisor generally develops a business system, in association with a trade-mark, and licenses the use of that business system to a franchisee. The license will typically be for a limited period of time and will require the franchisee to conform the business to the standards of the system and pay some form of consideration. The consideration for a franchise license will usually be a combination of an initial franchise fee and ongoing payments in the nature of royalties, often based on gross sales of the goods and/or services associated with the franchise system.

The emergence of the franchise model as a successful form of business model in Ontario has also come with an increase in franchisee resales. In a franchisee resale, an existing franchisee of the franchisor is selling one or more already operational franchise units to a prospective purchaser which becomes the new franchisee. If structured properly, a franchisee resale can be desirable for the prospective purchaser, the existing franchisee, and the franchisor. For example, a franchisee resale could result in reduced start-up costs for a purchaser, an opportunity to exit the business for a seller, and a more engaged franchisee for the franchisor.

Although a franchisee resale is similar to any bricks-and-mortar asset or share purchase transaction, there are unique franchise-related considerations. This paper will highlight key considerations relating to franchisee resales, including the regulatory landscape in Ontario, considerations when providing independent legal advice, the franchisor’s role, how to conduct franchise-specific due diligence, and tips for effectively drafting the purchase agreement. This paper is intended to be a summary of certain key issues and considerations in the context of a franchisee resale. You may encounter additional issues and considerations that are not addressed in this paper.

**2. The Regulatory Environment that Governs Franchising in Ontario**

The franchising business model is regulated in Ontario through the *Arthur Wishart Act (Franchise Disclosure), 2000*.[[4]](#footnote-4) While there are nuances in the Act, at a high level, it imposes a pre-sale disclosure requirement on the franchisor, a post-sale duty of good faith and fair dealing, and a protected right to associate. Failure to comply with any of these obligations gives rise to significant remedies for franchisees. Franchisees cannot contract out of the rights granted to them or grant a waiver of the obligations imposed on franchisors under the Act.

The Act arose from a perceived imbalance of power between franchisors and franchisees, both in the negotiations leading to a franchise agreement and during the course of the franchisor-franchisee relationship. The Act is intended to address these perceived informational and bargaining asymmetries. Although the Act sets out specific requirements governing the franchise relationship, unlike other jurisdictions, such as the United States, it does not create a mechanism for regulatory oversight and there is no registration requirement for franchisors or disclosure documents. Rather, the legislation creates a self-governing system under which franchisees are given private rights of action in the event the franchisor does not comply with its statutory obligations.

**3. Providing Independent Legal Advice on Franchisee resaleS**

Whether required by the franchisor or upon the recommendation of a lawyer, the prospective purchaser or the existing franchisee may seek independent legal advice in connection with a franchisee resale. Generally, independent legal advice is warranted when there is a need to “ensure that decisions made by the client are understood and free from any possible improper influence from the other contracting parties.”[[5]](#footnote-5) The need for independent legal advice most commonly arises when one party may be at risk of not fully understanding the transaction or its consequences.[[6]](#footnote-6) Although not required by the Law Society of Upper Canada’s *Rules of Professional Conduct,* the best practice when a lawyer is acting against a self-represented person is to urge the unrepresented person to obtain independent legal advice.[[7]](#footnote-7) In the franchise context, it is not uncommon for the prospective purchaser and existing franchisee to be unrepresented in a franchisee resale transaction. However, as a condition to obtaining the franchisor’s consent to the transaction, the parties may be required to seek out and obtain independent legal advice.

**(a) Considerations for Providing Independent Legal Advice in the Context of Franchisee Resale**

Although every transaction is different, when providing independent legal advice in the context of a franchisee resale, there are a number of important matters to be considered and discussed with the client. One of the most important matters that the lawyer should discuss with his or her client is the scope and limits of his or her engagement. For example, the lawyer should discuss with his or her client whether the lawyer will be conducting any due diligence, whether the lawyer will review the contents of the disclosure documents to identify any deficiencies, whether the lawyer will consider and/or comment on the commercial terms of the franchise agreement, and whether the lawyer will be reviewing the purchase agreement, etc. Realistically, where the lawyer has been engaged late in the process to provide independent legal advice on a franchisee resale transaction, the scope of the review will likely be narrow. This may be due to the timing of the transaction, the client’s risk tolerance, or the client’s budget. A lawyer is often on a limited retainer to review documents, explain the documents and their consequences, and ensure that the client has understood them.[[8]](#footnote-8) The lawyer will not usually be retained to conduct extensive due diligence or negotiate better or different terms on behalf of the client.

If the lawyer’s scope of engagement includes a review of the purchase agreement, the lawyer should review its terms with the client and consider providing the client with a clear summary of the terms. While the scope of the lawyer’s review will depend on the client’s objectives, it will generally be important to highlight: (i) the structure of the transaction (i.e., asset versus share sale); (ii) the purchase price, any adjustments and how it will be paid; (iii) which assets are being purchased/sold versus which assets are being retained by the seller; (iv) what liabilities are being assumed by the purchaser; (v) whether the assets are being properly conveyed (including, whether there is any security to be discharged); and (vi) the existence of any confidentiality or non-competition covenants.

If the scope of the lawyer’s engagement includes a review of any disclosure document and any terms of the franchise agreement, the lawyer should first advise the client of the franchisor’s and franchisee’s key rights and obligations under the Act. These rights and obligations include the post-sale duty of good faith and fair dealing, the franchisee’s right to associate, the franchisor’s pre-sale disclosure obligations, and the franchisee’s statutory rescission and misrepresentation remedies.[[9]](#footnote-9) If the franchisor has an obligation to provide a disclosure document under the Act, the lawyer should review its contents with the client and identify any deficiencies.

In reviewing the disclosure document, the lawyer should assess whether it complies with the disclosure requirements prescribed in the Act. For example, the lawyer should ensure the documents contains all prescribed material facts, prescribed statements and information, the franchisor’s financial statements, the franchisor’s certificate, copies of all proposed franchise agreements and other agreements relating to the franchise to be signed by the prospective franchisee, and all other “material facts”. “A material fact” is defined by the Act as including information about the business, operations, capital, or control of the franchisor or franchisor’s associate, or about the franchise system that would reasonably be expected to have a significant effect on the value or price of the franchise to be granted or the decision to acquire the franchise. In addition to identifying any deficiencies in the disclosure document, the lawyer should consider highlighting the following for the client: (i) the franchisor’s level of experience and resources; (ii) whether the list of historical litigation raises any red flags; (iii) whether the fees are unusually high or low for the type of franchise system; (iv) what types of restrictions there are with respect to the purchase and sale of goods and services; (v) what form of exclusive territory, if any, the franchisee will receive; (vi) whether the franchisor’s trade-marks are registered; and (vii) the list of existing and former franchisees. Alternatively, if a franchisor is relying on a disclosure exemption, the lawyer should review the exemptions relied on by the franchisor carefully with the client.[[10]](#footnote-10)

When reviewing the franchise agreement and any ancillary agreements, some of the key provisions to consider highlighting for the client include: (i) the term and any renewal terms of the franchise agreement, including whether it is long enough for the purchaser to recoup its initial investment, and whether the term of the franchise agreement concords with (i.e., does not exceed) the term of any ancillary lease or sublease; (ii) whether the franchise agreement grants the purchaser an exclusive territory, and if not, whether having one is important to the success of the business; (iii) any conditions or restrictions on transfer, renewal, or termination of the franchise agreement, and whether these would be feasible for the purchaser; (iii) how the franchisor intends to use the advertising fund, if any, and whether the purchaser will receive advertising materials; (iv) if and/or how the franchisor intends to share and/or use volume rebates; (v) whether there are any additional costs to be borne by the purchaser in the event the franchisor changes the franchise system; and (vi) whether there are any non-competition provisions which limit the purchaser’s ability to engage in a similar business once the franchise agreement ends.[[11]](#footnote-11)

After reviewing the purchase agreement, disclosure document and franchise agreement, it is best practice for the lawyer to provide the client with a written report summarizing the lawyer’s findings. Based on the lawyer’s retainer, such a report could include some or all of the following: (i) a summary of the franchisor’s and franchisee’s key rights and obligations under the Act; (ii) the scope and limits of the review, including any diligence conducted; (iii) a summary of the review of the franchise disclosure document, including any deficiencies, peculiarities, exemptions relied on by the franchisor, and other key areas of interest for the franchisee; (iv) a summary of the review of the purchase agreement, franchise agreement and ancillary agreements, including the key terms of the transaction; (v) a confirmation that you are not providing business or financial advice; and (vi) a summary of the right of rescission and a strong recommendation that your client seek legal advice promptly if they have issues in the future, so as not to be time-barred.[[12]](#footnote-12)

**(b) The Challenges and Risks of Providing Independent Legal Advice in the Context of a Franchisee Resale**

Before being retained to provide independent legal advice, it is important to be aware of the associated challenges and risks. Independent legal advice is typically short and transactional in nature. There is often no pre-existing relationship between the lawyer and the client, and the amount of time spent with the client is often minimal. It may also be among the first times the client has met with a lawyer, or the client may be reluctant about obtaining legal advice. Independent legal advice may also be a time consuming process with low remuneration. As a result, there tends to be a mistaken tendency to view these sessions as simple matters requiring minimal attention.[[13]](#footnote-13) However, the standard of care for independent legal advice is identical to that which applies for any other type of legal retainer. Regardless of the relative complexity or size of the matter, the lawyer still owes the client duties of competence, quality of service, candour, and honesty.[[14]](#footnote-14) A lawyer who does otherwise violates his or her professional obligations under the *Rules of Professional Conduct* and risks a professional liability claim. Take the following example: a lawyer was retained by a prospective purchaser to give advice about franchise law in the context of a franchisee resale, but failed to inform the client of its rescission right. If a rescission claim arises and the client fails to exercise its rescission right within the two year statutory period under the Act, it is very likely that the client will start a claim against the lawyer due to the omission in the advice.

In light of these challenges and risks, the scope of the lawyer’s retainer should be clearly outlined with the client. This includes allocating a sufficient amount of time to complete the review and ensuring that the retainer reflects the work to be done. The lawyer should be upfront with the client to ensure that they have realistic expectations of the legal services that will be provided. The lawyer must also assess whether it is possible to meet the standard of care in the circumstances, taking into account the client’s budget and the amount of work needed to ensure the client fully understand the transaction and its consequences. If it is not possible to meet the standard of care, consider whether to decline the retainer or negotiate an extended retainer for any services outside of this scope.

**4. The Role of the Franchisor**

**(a) Consent of the Franchisor**

The franchisor has a keen interest in overseeing the franchisee resale because of the ongoing nature of the relationship between a franchisor and a franchisee. Typically, the franchise agreement requires the franchisor to consent to any transfer or assignment of the franchisee’s rights and obligations, any transfer or assignment of substantially all of the assets used in the operation of the franchised business, or any change of control in the ownership of the franchisee.

Many, if not most, franchise agreements provide that the franchisor’s consent will only be granted if certain conditions are met. These conditions vary, but generally include: (i) the existing franchisee providing sufficient notice to allow the franchisor to evaluate the business background, net worth, financial capability, and character and experience of the prospective purchaser; (ii) payment of a transfer fee by the existing franchise and/or the prospective purchaser; (iii) the prospective purchaser having the necessary rights to the premises; (iv) the prospective purchaser completing any training and paying any training fees; (v) execution by the prospective purchaser of the franchisor’s then-current form of franchise agreement and ancillary agreements; (vi) the existing franchisee having substantially complied with all provisions of the franchise agreement and any other agreement between franchisor and the existing franchisee; (vii) the payment of any outstanding monetary obligations owed by the existing franchisee to the franchisor; (viii) the existing franchisee delivering a release of the franchisor; and (ix) the existing franchisee and/or the prospective purchaser conducting any necessary renovations to the franchised premises to bring it in line with the franchisor’s then-current current image.

In addition to ensuring that the conditions for consent have been met, the franchisor will likely want to review the purchase agreement prior to providing its consent to the franchisee resale transaction. While the scope of the franchisor’s review will depend on the system and the franchisee resale transaction, at a minimum the franchisor will be interested in ensuring that the assets and obligations being purchased and assumed by the prospective purchaser are properly conveyed, that terms of the purchase agreement are consistent with the franchise agreement, and that the assets being transferred are those necessary to permit the prospective purchaser to operate the franchised business post-closing. In addition, the franchisor will want to ensure that the purchase agreement does not purport to sell any assets owned by the franchisor (e.g., goodwill, trade-marks, the manual, system software, customer lists, or any other proprietary aspect of the franchise system).

**(b) Obligation to Provide Franchise Disclosure Document**

Unless a franchisor can rely on an exemption from disclosure, it must prepare and deliver a disclosure document to the prospective purchaser. As noted above, the disclosure document must comply with the requirements prescribed in the Act. For example, the disclosure document must contain all prescribed material facts, prescribed statements and information, the franchisor’s financial statements, franchisor’s certificate, copies of all proposed franchise agreements and other agreements relating to the franchise to be signed by the prospective franchisee, and all other material facts. The disclosure document must be provided to the prospective purchaser at least 14 days before the earlier of (i) the signing by the purchaser of the franchise agreement or any other agreement relating to the franchise, and (ii) the payment of any consideration relating to the franchise. In Ontario, the 14 day disclosure period excludes the day on which the prospective purchaser receives the disclosure document, effectively making the disclosure period 15 days. If the franchisor fails to disclose (or fails to adhere to the required timing and/or delivery requirements), the franchisee may rescind the franchise agreement and obtain the return of all monies paid and equipment purchased as well as sue for damages.

The disclosure document provided to a resale franchisee (i.e., the prospective purchaser) must be customized for the particular franchisee resale transaction. The following is a non-exhaustive list of the types of information in the standard disclosure document that may need to be customized in the context of a franchisee resale: (i) the specific location of the franchise, protected territory and any lease related documents will be known and must be disclosed; (ii) if certain resale financial terms were previously agreed to, these terms should replace the initial franchise deposits and franchise fees set out in the standard disclosure document; (iii) the list of costs associated with the establishment of a new franchise will be different since the prospective purchaser of an existing franchise location will not bear the same start-up costs as part of continuing the operation of the franchise as will a new franchisee; (iv) if the prospective purchaser is required to renovate the franchise as a condition of resale, the costs associated with such renovation will need to be included in the disclosure document; (v) if an estimate or annual operating costs or earnings projection is provided, those figures applicable to a prospective purchaser will likely differ from those of a new franchise since they will generally be known from historical information specific to the location being purchased; (vi) the terms and conditions of financing arrangements may differ for a prospective purchaser; (vii) the description of training or other assistance offered to a prospective purchaser will almost always be different than the training or other assistance provided to a new franchisee; and (viii) the restrictions or conditions relating to termination, renewal or transfer may be different in respect of a particular prospective purchaser as opposed to a new franchise. There may be additional material facts unique to the franchisee resale transaction that need to be included in the disclosure document. Each franchisee resale will require careful consideration of any unique facts that must be reflected in the disclosure document.

In certain circumstances, the franchisor may be exempt from its obligation to provide a disclosure document in the context of a franchisee resale, commonly referred to as the “resale exemption”. Under this exemption, a franchisor’s disclosure obligation does not apply “to the grant of a franchise by a franchisee ... if the grant of the franchise is not effected by or through the franchisor”. [[15]](#footnote-15) Under the Act, a franchise is not deemed to be granted by or through a franchisor

merely because: (a) the franchisor has a right, exercisable on reasonable grounds, to approve or disapprove the grant; or (b) a transfer fee must be paid to the franchisor in an amount set out in the franchise agreement or in an amount that does not exceed the reasonable actual costs incurred by the franchisor to process the grant.[[16]](#footnote-16) If the franchisor is involved in the transaction in any other manner, there is a risk that the resale exemption will not apply. The onus is on the franchisor to establish that the resale exemption applies.

While on its face the resale exemption seems relatively straightforward, courts have interpreted the exemption narrowly; franchisors are cautioned when trying to rely on it. While this area is still developing, courts have determined that the resale exemption was not available, where: (i) the franchisor was involved in the mechanics of the transaction (e.g., the franchisor brought the existing franchisee and the purchaser together for meetings, hosted the meetings at its facilities and prepared the contracts between the parties);[[17]](#footnote-17) (ii) the franchisor imposed conditions for its approval of the transaction that were not expressly set out in the franchise agreement (i.e., requiring a spouse to sign a guarantee);[[18]](#footnote-18) (iii) the franchisor required the purchaser to successfully pass an interview with the franchisor, undergo training from both the existing franchisee and the franchisor, assume the rights and obligations of the existing franchisee under the premises lease as sole tenant in place of the franchisor, and enter into a general security agreement, which was not a requirement that the existing franchisee was required to comply with;[[19]](#footnote-19) (iv) the franchisor required that the purchaser sign documents that were not originally signed by the existing franchisee (i.e., requiring the purchaser to sign an undertaking of car wrapping in connection with its obligation to bring the franchise into compliance with the then-current Retail Marketing Plan).[[20]](#footnote-20) Conversely, the Ontario Court of Appeal determined that the resale example was available in the recent *MEDIchair* decision. In this decision, the court held that the franchisor could benefit from the resale exemption because it had little involvement in the sale of the franchise. The franchisor gave its required approval for the transfer, took a transfer fee, and obtained personal covenants from the shareholders of the purchaserand a guarantee from the purchaser.[[21]](#footnote-21) The application judge specifically noted that “[w]here a franchisor takes a passive role, merely agrees to the sale, and does little else beyond providing some documents, the disclosure requirements under s. 5 of the Act are not triggered.”[[22]](#footnote-22) Accordingly, whether or not the resale exemption is available is highly fact dependent and needs to be assessed on a case-by-case basis.

**5. Unique Franchise Considerations when Conducting Due Diligence**

The same due diligence principles that apply to a general business acquisition also apply to a franchisee resale transaction. The ultimate goal of the due diligence is the same, namely to identify risks, minimize post-closing surprises, and ensure that the prospective purchaser is acquiring the business that it has bargained for. The scope of the due diligence will vary depending on whether the transaction is structured as an asset-based transaction or a share-based transaction.

In an asset-based transaction, the prospective purchaser can choose to purchase some or all of the assets and liabilities of the franchise. As a result, due diligence will generally focus on identifying: (i) where the value of the business lies (e.g., inventory, personal property, real property, intangibles, receivables, prepaid, expenses, books and records, licenses, etc.); (ii) whether any other party has an interest in the assets (e.g., third parties with security interests in the assets); (iii) any restrictions on transferring the assets to the prospective purchaser (e.g., third party consents, notifying government authorities, etc.); and (iv) identifying the liabilities and obligations that the purchaser will assume. In contrast, in a share-based transaction, the prospective purchaser is purchasing shares in the corporation under which the existing franchisee is operating the franchise. Unlike in an asset-based transaction, the purchaser cannot choose which assets and liabilities of the franchise to assume. As a result, due diligence will generally focus on identifying: (i) the equity in the shares being acquired; (ii) the capitalization of the target; (iii) whether there are restrictions on transferring the shares; (iv) whether any third party consents or notifications are required to transfer the shares; and (v) the assets and liabilities of the corporation being acquired.

In the context of a franchisee resale, in addition to the due diligence that would be performed in a general business acquisition, the due diligence will generally include franchise-specific due diligence focusing on: (i) an understanding of the franchise business model generally; (ii) how franchising is regulated in Ontario and the rights and obligations of the prospective purchaser under the Act; (iii) the franchisee-franchisor relationship; (iv) the rights and obligations of the prospective purchaser under the franchise agreement; (v) the strength of the franchise system; and (vi) the historical operations of the franchised unit to be acquired. The disclosure document, (if required) and the franchise agreement should be the focus of the franchise-specific due diligence process. These documents offer insight into the overall health of the franchise system and the terms and conditions upon which the purchaser will hold a licence with the franchisor.[[23]](#footnote-23) A review of the proposed franchise agreement is critical to franchise-specific due diligence, as it will govern the prospective purchaser’s ability to operate the franchised business.[[24]](#footnote-24) If the prospective purchaser is entering into the then-current form of franchise agreement, the prospective purchaser should consider whether any of the terms have a negative impact on operating the franchised business post-closing, such as any increases of fees and payments, limited renewal rights, or termination, and any restrictive non-competition or non-solicitation provisions.[[25]](#footnote-25) If the transaction involves the assignment of the existing franchise agreement, the prospective purchaser should ensure that the remaining term and any renewal rights are sufficiently long to recoup its investment in the franchise.[[26]](#footnote-26)

**6. Unique Franchise Considerations when Drafting the Purchase Agreement[[27]](#footnote-27)**

Many of the considerations that apply when drafting a purchase agreement for a general business acquisition also apply in the context of a franchisee resale. The key considerations for purchase agreements are the same, namely properly identifying the parties, clearly identifying the purchased and excluded assets, ensuring that the assets are properly conveyed, setting out the purchase price, any mechanisms for adjustment and timing of payment, establishing a closing date, and including any necessary representations, warranties, covenants and conditions for closing. In the context of a franchisee resale, in addition to the terms that would be included in the purchase agreement for a general business acquisition, the purchase agreement will generally be reviewed for the following franchise-specific issues: (i) the name of the vendor is the same as the name of the franchisee; (ii) the assets to be purchased include all of the assets that the prospective purchaser will need to operate the franchised business post-closing, including the franchise agreement, any lease agreements, and service agreements; (iii) the assets to be purchased do not include any assets owned by the franchisor; (iv) the assets to be purchased are properly conveyed, including the discharge of any encumbrances; (v) the franchisor’s consent is a condition precedent to the closing of the transaction; and (vi) it is clear whether the prospective purchaser will take an assignment of the existing franchisee’s franchise agreement or be required to enter into the franchisor’s then-current form of franchise agreement as a condition precedent to the closing of the transaction.

**7. Conclusion**

A franchisee resale transaction shares many of the same characteristics of general business acquisition. Nonetheless, a franchisee resale is unique in some respects. It is important to have an understanding of the franchise business model, the regulatory landscape in Ontario, the relationships between the parties involved in the transaction, and the nature of the assets at stake. This understanding will help lawyers to effectively interact with franchisors, and give independent legal advice that is tailored and realistic based on the client’s expectations. It should also inform the lawyer’s approach to the due diligence process and the drafting of the purchase agreement. Knowledge and consideration of these elements will help to mitigate against any risks associated with the transaction and, ultimately, help with realizing the potential advantages of the franchisee resale for the prospective purchaser, the existing franchisee, and the franchisor.

1. The authors wish to thank Natasha Chin, articling student at Osler, Hoskin & Harcourt LLP, for her invaluable contributions to this paper. [↑](#footnote-ref-1)
2. Christine Jackson is a Senior Associate in the Franchise & Distribution Group at Osler, Hoskin & Harcourt LLP with extensive experience in franchisors in connection with the purchase and sale of unit franchises. [↑](#footnote-ref-2)
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4. SO 2000, c 3 (the “Act”). [↑](#footnote-ref-4)
5. Ted Tjaden, *The Law of Independent Legal Advice* (Scarborough, ON: Carswell, 2000) at 4. [↑](#footnote-ref-5)
6. Ted Tjaden, *The Law of Independent Legal Advice* (Scarborough, ON: Carswell, 2000) at 1. [↑](#footnote-ref-6)
7. “Dealing with Self-Represented Litigants”, *Law Society of Upper Canada*, online: <<http://www.lsuc.on.ca/with.aspx?id=2147499412>>. [↑](#footnote-ref-7)
8. Ted Tjaden, *The Law of Independent Legal Advice* (Scarborough, ON: Carswell, 2000) at 10. [↑](#footnote-ref-8)
9. Christine Jackson, Frank Robinson & Vincent Doré, “Your First Franchise Client” (paper delivered at the Ontario Bar Association’s Your First Franchise Client, 3 February 2016, Toronto) [unpublished] at 11-12. [↑](#footnote-ref-9)
10. Christine Jackson, Frank Robinson & Vincent Doré, “Your First Franchise Client” (paper delivered at the Ontario Bar Association’s Your First Franchise Client, 3 February 2016, Toronto) [unpublished] at 11-12. [↑](#footnote-ref-10)
11. Christine Jackson, Frank Robinson & Vincent Doré, “Your First Franchise Client” (paper delivered at the Ontario Bar Association’s Your First Franchise Client, 3 February 2016, Toronto) [unpublished] at 12. [↑](#footnote-ref-11)
12. Christine Jackson, Frank Robinson & Vincent Doré, “Your First Franchise Client” (paper delivered at the Ontario Bar Association’s Your First Franchise Client, 3 February 2016, Toronto) [unpublished] at 12-13. [↑](#footnote-ref-12)
13. Ted Tjaden, *The Law of Independent Legal Advice* (Scarborough, ON: Carswell, 2000) at 8. [↑](#footnote-ref-13)
14. Ted Tjaden, *The Law of Independent Legal Advice* (Scarborough, ON: Carswell, 2000) at 8. [↑](#footnote-ref-14)
15. *Arthur Wishart Act (Franchise Disclosure), 2000*, SO 2000, c 3, s. 5(7). [↑](#footnote-ref-15)
16. *Arthur Wishart Act (Franchise Disclosure), 2000*, SO 2000, c 3, s. 5(7). [↑](#footnote-ref-16)
17. *MAA Diners Inc v 3 for 1 Pizza & Wings (Canada) Inc*, [2003] O.J. No. 430 at para 29; 120 A.C.W.S. (3d) 433 (“MAA Diners”. [↑](#footnote-ref-17)
18. *1518628 Ontario Inc v Tutor Time Learning Centres, LLC*, [2006] O.J. No. 3011 at paras 44-50; [2006] O.J. No. 3011 (“Tutor Time”). [↑](#footnote-ref-18)
19. *Brister v 2145128 Ontario Inc*, 2014 ONSC 6714 at paras 13-16, 247 A.C.W.S. (3d) 563 (“Brister”). [↑](#footnote-ref-19)
20. *2189205 Ontario Inc v Springdale Pizza Depot Ltd*, 2011 ONCA 467 (CanLII) (“Springdale”) [↑](#footnote-ref-20)
21. *MEDIchair LP v DME Medequip Inc*, 2016 ONCA 168 at paras 24-27, [2016] O.J. No. 1028 (“MEDIchair”). [↑](#footnote-ref-21)
22. *MEDIchair LP v DME Medequip Inc*, 2015 ONSC 3718 at para 12, 257 A.C.W.S. (3d) 104. [↑](#footnote-ref-22)
23. Christine Jackson & Andrae Marrocco, “The Purchase and Sale of Franchises and Franchise Systems” (paper delivered at the Ontario Bar Association’s 16th Annual Franchise Law Conference, Toronto, 17 November 2016) [unpublished] at 4. [↑](#footnote-ref-23)
24. See ***Providing Independent Legal Advice on Franchisee resales*** above for a discussion of key provisions to review. [↑](#footnote-ref-24)
25. Christine Jackson & Andrae Marrocco, “The Purchase and Sale of Franchises and Franchise Systems” (paper delivered at the Ontario Bar Association’s 16th Annual Franchise Law Conference, Toronto, 17 November 2016) [unpublished] at 9. [↑](#footnote-ref-25)
26. Christine Jackson & Andrae Marrocco, “The Purchase and Sale of Franchises and Franchise Systems” (paper delivered at the Ontario Bar Association’s 16th Annual Franchise Law Conference, Toronto, 17 November 2016) [unpublished] at 10. [↑](#footnote-ref-26)
27. While unique franchise considerations apply in the context of drafting a share purchase agreement for a franchise unit resale, for the purposes of this section our comments are limited to the preparation of an asset purchase agreement. [↑](#footnote-ref-27)