

Beyond the Franchisor: Who Really Bears the Risk Under Section 7(1)?

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Ontario's franchise disclosure regime is one of the most protective in Canada, and at its core sits section 7(1) of the [Arthur Wishart Act \(Franchise Disclosure\), 2000](#) (the "Act"). This provision creates liability for a wide range of individuals, either based on a misrepresentation contained in a disclosure document or as a result of the franchisor's failure to comply with the disclosure regime prescribed by the Act. Furthermore, for those found to be liable in a section 7(1) action, the liability is joint and several. As courts continue to strictly enforce the Act, directors, officers, brokers, agents, and signatories must understand that personal liability is now a central risk in franchise operations.

The Franchise Disclosure Document ("FDD") is the cornerstone of franchise regulation in Ontario: it is a comprehensive document containing all of the information that a franchisor must provide to a prospective franchisee to enable the prospective franchisee to make an informed investment decision. Because of the consumer protection nature of the Act, it imposes strict disclosure obligations on franchisors. The FDD must include all material facts, required financial statements, copies of agreements relating to the franchise to be signed by the prospective franchisee, and statements and other information as prescribed. Additionally, the FDD must include a mandatory certificate, signed by the Franchisor (if not incorporated) or by a combination of directors and/or officers of the Franchisor (if incorporated) in which the signatories certify that the FDD complies with the Act, as required.

Section 7(1): Who Can Be Liable?

Section 7 of the Act gives franchisees a statutory right to claim damages if they suffer a loss resulting from any misrepresentation contained in the FDD or in a statement of material change, or from any failure by the franchisor to meet its disclosure obligations under Section 5 of the Act. Under this very important section, the following parties can be liable:

- (a) the franchisor;
- (b) the franchisor's agent;
- (c) the franchisor's broker;
- (d) the franchisor's associate; and
- (e) every person who signs the disclosure document or statement of material change.

7(1)(a) The Franchisor

A franchisor's liability under section 7(1)(a) is the clearest and most well-established of all the parties. Courts in Ontario have

repeatedly held that where a franchisor fails to provide proper disclosure, whether through incomplete information, piecemeal delivery, or being involved in the grant of the franchise, it will be directly and automatically liable for the resulting losses.

Notably, there is no leading Ontario decision devoted specifically to analyzing whether liability attaches to a franchisor under s. 7(1)(a). This is less a gap in the jurisprudence than a reflection of the statutory scheme: a franchisor's liability for disclosure deficiencies is effectively assumed under the Act and rarely contested. As a result, courts have focused more heavily on delineating the scope of secondary liability under s. 7(1), particularly with respect to franchisor's associates and signatories under ss. 7(1)(d) and (e), where personal exposure requires closer interpretation, as discussed below. The case law nevertheless makes clear that a franchisor may be liable for damages under s. 7 in addition to, and alongside, the rescission and restitution remedies available under s. 6 of the Act, subject to the prohibition against double recovery.

7(1)(b) Franchisor's Agent

Section 7(1)(b) also captures a "franchisor's agent," a category intended to include individuals who act on the franchisor's behalf in the franchise sales process. Agents may include franchise development staff, sales representatives, consultants, or other individuals who communicate information, assist with the delivery of disclosure materials, or otherwise represent the franchisor in dealings with prospective franchisees.

While Ontario courts have not yet applied s. 7(1)(b) to impose liability on an individual specifically as a franchisor's agent, the functional role of agents has repeatedly been scrutinized under the closely related and broader "franchisor's associate" category. Courts have consistently treated employees and representatives who exercise judgment, communicate with franchisees, or participate materially in the grant of the franchise as falling within s. 7(1)'s framework, even if their title is not formally "agent."

This lack of case law stands in stark contrast to the extensive jurisprudence on franchisor's associate liability under section 7(1)(d). The absence of similar analysis for franchisor's agent liability suggests the provision has rarely been invoked in practice. However, the practical effect is that anyone who acts on the franchisor's behalf in the sales process must exercise care: if they relay information, answer questions, or help facilitate the grant of the franchise, they risk personal exposure under the Act.

7(1)(c) Franchisor's Broker

Section 7(1)(c) also imposes liability on a "franchisor's broker," a category designed to capture third-party intermediaries who assist in the sale of a franchise. The definition is again left relatively vague: a broker is any person (other than the franchisor, its associates, or its agents) who markets, or otherwise offers to grant, or arranges for the grant of a franchise. This could include consultants, sales organizations, franchise matchmaking services, and any compensated intermediary who connects prospective franchisees with the franchisor.

The policy rationale is clear. Because intermediaries often play a significant role in shaping the franchisee's understanding of the opportunity, the Act holds them equally liable for any misrepresentation or disclosure deficiency. A broker who circulates materials, promotes the system, or helps advance negotiations is treated as a participant in the disclosure process and is therefore subject to the same statutory obligations as the franchisor. The result is that brokers must take care not to repeat, endorse, or distribute inaccurate or incomplete information, and should ensure that all representations align with the franchisor's authorized disclosure.

7(1)(d) Franchisor's Associates

A franchisor's associate is another party that can be held liable under section 7(1)(d) of the Act, and includes any person who influences or controls the franchisor and is directly involved in the grant of the franchise. Ontario courts interpret "involvement"

broadly, capturing not only those who speak to franchisees, but also individuals who prepare, review, endorse, or sign disclosure materials on the franchisor's behalf.

2483038 Ontario Inc. v. 2082100 Ontario Inc., [2022 ONCA 453](#) ("**248 Ontario**") is a leading case wherein the Court of Appeal upheld a finding that the franchisor's sole director was personally liable as a franchisor's associate. The disclosure document contained the director's signature and promotional representations, but the mandatory certificate confirming compliance with the Act was left unsigned; a defect the Court confirmed was a fatal flaw, amounting to no disclosure. Because the director signed and endorsed the disclosure content, the Court held that he had made representations "for the purpose of granting or marketing the franchise," thereby squarely meeting the statutory definition of an associate. Importantly, *248 Ontario* establishes the two-part test that must be met for an individual to qualify as a franchisor's associate: (1) the person must control or be controlled by the franchisor (or be under common control); and (2) the person must either be directly involved in granting the franchise through reviewing/approving it or making representations, or exercise significant operational control over the franchisee with a continuing financial obligation.

In *Presse Café Franchise Restaurants Inc. v. La Libelula*, [2024 ONSC 6177](#), the Court emphasized that Section 7(1)(d) is intended to lift the corporate veil to implicate people who could otherwise shield themselves behind a shell company, and found individuals liable based on their involvement in reviewing and approving the franchise application and making representations about the franchisor's offerings. Importantly, in *WP (33 Sheppard) Gourmet Express Restaurant Corp. v. WP Canada Bistro & Express Co.*, [2010 ONSC 2644](#), the court held there is no requirement for a franchisor's associate to be a director or officer, emphasizing that the focus is on the nature of the parties' involvement in the franchise relationship.

It is important to be aware that this franchisor's associate category is intentionally broad: anyone who touches the disclosure process, or plays a role in facilitating the franchise sale, risks being personally exposed under s. 7(1).

7(1)(e) Every Signatory to the Disclosure Document or Statement of Material Change

Section 7(1)(e) imposes one of the clearest and most unforgiving forms of liability: *any person who signs the disclosure document or a statement of material change is automatically exposed to joint and several liability*. There is no need to prove involvement in the sale process, knowledge of deficiencies, or intent; this provision is intended to incentivize the signatories to ensure the contents of the disclosure documents are accurate.

Liability is automatic once the person signs, regardless of their level of involvement in the franchise sale: in *248 Ontario*, the Court held that a signatory assumes direct personal responsibility for the contents of the FDD, and that the mere act of signing is sufficient evidence of involvement in the grant of the franchise, even if the individual never interacted with the franchisee.

This liability must be understood in light of the Act's mandatory certificate requirement. The FDD must include a certificate certifying compliance with the Act, signed by the franchisor if unincorporated, or by a prescribed combination of directors and/or officers if incorporated. Only these parties are authorized to sign the certificate, though an unauthorized signatory could nevertheless attract liability under section 7(1)(e). Most importantly, by requiring directors and officers to sign, the Act expressly removes the protection of the corporate veil: signatories assume personal responsibility for the accuracy and completeness of the disclosure and cannot rely on the corporate form as a shield against liability; a fact confirmed by

Why Section 7(1) Exposure Matters

Section 7(1) has fundamentally altered the personal liability landscape in Ontario franchising, and understanding this shift is essential for anyone involved in franchise disclosure. Courts continue to interpret the Act broadly and purposefully, demonstrating that the corporate veil provides little real protection to individuals who take part in the disclosure process. Individuals who sign, contribute to, or participate in preparing franchise disclosure must assume that their role carries real and potentially significant consequences. The

only practical safeguard is disciplined governance: rigorous oversight of disclosure practices, careful control over communications with prospective franchisees, and a culture that treats accuracy and compliance as essential. In today's environment, vigilance is no longer optional for directors, officers, employees, and all others who play any part in franchise disclosure.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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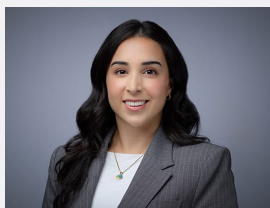


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