

The Purpose of Disclosure: The Opinion of the Ontario Courts 披露的目的：安大略省法院的意见

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When a franchise law requires disclosure, how should it be read? Should the reader focus more on the spirit of the law or the precise words used in the text? A case from Canada suggests that judges tend to consider the harm being remedied by the law, in other words the purpose of the law.

特许经营法中所要求的披露, 如何来解读? 读者是应该更注重这项法律的精神还是法条中使用的精确的词汇? 从加拿大的一个案例可以看出, 法官更倾向于考虑给予损害以法律的救济, 换句话说, 就是法律的目的。

Back in August of 2008 the Ontario Superior Court of Justice released its decision in *4287975 Canada Inc. v. Imvescor Restaurants*.¹ In this case the franchisee paid \$15,000.00 to the franchisor before receiving a disclosure document for an upscale full service restaurant location. The franchisee then did not sign the franchise agreement until almost six months later. The payment of the \$15,000.00 in advance of the delivery of a disclosure document was a breach of Ontario's *Arthur Wishart Act (Franchise Disclosure), 2000*.²

2008年8月, 安省高级法院公布了第4287975号 *Canada Inc. v. Imvescor Restaurants* 的判决。在这个案件中, 针对一项高级全套服务餐厅特许经营, 被特许人在收到披露文件之前, 向特许人支付了\$15,000.00。被特许人直到近六个月之后才签署特许经营协议。在交付披露文件之前所支付的\$15,000.00的款项违反了安省2000年制定的 *Arthur Wishart 法案 (特许经营披露)*。

In Ontario's disclosure laws provides two types of remedies for breaches. One remedy is rescission. The franchisee simply has to give a notice to the franchisor and the franchisor is required to compensate the franchisee for all expenses incurred, including losses. The other remedy is to sue for damages for misrepresentation. In the later case the franchisee has to prove a number of things, including the amount of the damages claimed. Rescission is thus the preferred remedy.

安省的披露法律中为违约提供了两种救济。一种是撤销合同, 被特许人只需通知特许人, 特许人就需要赔偿被特许人一切相关开销, 包括损失。另一种是以误述为由诉至法院要求赔偿。后一种情况被许可人需要提供一系列事实和证据, 包括损失的索赔金额。因此, 比较而言, 被许可人更愿意选择撤销合同作为救济手段。

There are two types of rescission. If a disclosure document was never provided, the notice can be given up to 2 years after the franchisee entered into the franchise agreement. But if the franchisor failed to deliver the disclosure document within the time required, or if it was incomplete, the notice must be given within 60 days after eventually receiving the disclosure document.

特许经营法对撤销合同规定了两种情况。如果特许人从未提供披露文件, 则被特许人可在签订特许经营合同之日起两年内均可以向特许人发出通知撤销合同。但是如果特许人未在规定时间内提供披露文件, 或披露文件不完整, 则撤销合同的声明需在最终收到披露文件的60天内提出。

[Just before the expiry of the two year limitation period for rescission for non-disclosure] a noted franchise litigator brought an action [on behalf of the franchisee] (asking how to interpret the rescission provisions in

¹ Available online at: <http://www.canlii.org/en/on/onpsc/doc/2008/2008canlii41163/2008canlii41163.html>

² S.O. 2000, c. 3, Section 5(1). Available online at: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00a03_e.htm.

these circumstances). In this case when the disclosure document was delivered late (that is after the money had been paid instead of 14 days before it was paid) the franchise agreement had not yet been signed so there was nothing to rescind based on the late disclosure. He argued that therefore the franchisee had no rescission remedy, and that the franchisee should thus be allowed to rescind the franchise agreement before the 2 year deadline, otherwise the franchisee would never have any rescission remedy.

[在因未披露而要求解约的两年限制期满之前], [代表被特许人的]某知名特许权诉讼律师提起诉讼, (询问在该案情况下如何解释解约条款。若披露文件延迟提供 (即钱已支付而非支付之前十四天), 而基于延迟披露可撤销的特许经营协议尚未签订, 因此没有合同可以撤销。据此, 他辩称, 被特许人没有撤销合同的救济, 因此被特许人应该被准许在 2 年期满前撤销特许权协议, 否则被特许人将得不到任何解约的救济。

At trial the judge said that the purpose of the Act is to ensure that franchisees have full information in a timely fashion in order to make a decision. In this case the franchisee had six months to review the document. It also had the option of not entering into the franchise agreement. Therefore it had no right of rescission for a failure to deliver a disclosure document.

审判时法官指出, 此法案的目的在于确保被特许人能够及时得到全部信息以做决定。在这个案例中, 被特许人有六个月的时间来审查文件, 当然他也可以选择 不签订该特许权经营协议。因此他没有基于提交披露文件失败而要求撤销合同的权利。

The franchisee was unhappy with this and appealed. The decision of the Court of Appeal was released in mid-April.³ The franchisee lost again.

被特许人不服判决结果, 提起上诉。上诉法院的判决于四月中旬公布。被特许人再次败诉。

The Court of Appeal said:

“The Act, interpreted in the light of this modern interpretive approach, is clear that a rescission remedy is available to the franchisee in two separate situations, and that the two situations are not to be blurred into one. This interpretation is further bolstered by the purpose of the Act, which is in part to ensure that the franchisee has at least fourteen days to review a disclosure document before signing an agreement.

.....

The appellant had ample time to review the disclosure document before executing the franchise agreement, and had it rescinded even after the sixty day period but prior to the signing of the agreement, it would have been entitled to a refund of \$15,000 already paid, under its common law right to relief.”

上诉法院判决如下:

“遵循现代的法律解释方法对本法案进行解释, 很明显被特许人在两种不同的情况下可以获得撤销合同的救济。而这两种情况不可以混为一谈。该法案的目的, 即确保被许可人在签订特许经营协议前至少有 14 天的时间来审查披露文件, 同样支持了该解释。

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³ Available online at: <http://www.canlii.org/en/on/onca/doc/2009/2009onca308/2009onca308.html>

上诉人在签订特许权经营协议之前有充足的时间来审查披露文件，即使超过 60 天期限，被特许人只要在协议签订之前选择放弃签订该特许经营协议，根据普通法规定的救济权利，被特许人也有权要求返还其已支付的\$15,000。

The remedy of rescission is certainly intended to be a powerful remedy to encourage franchisors to make proper disclosure. But the remedy is subordinate to the purpose of the legislation, to correct a harmful practice. The overall purpose of this franchise legislation is primarily to ensure that the franchisee has sufficient time to make an informed decision about whether to buy the franchise.

该撤销合同的救济在鼓励特许人做出适当披露方面确实是一种有力的救济方式。但是，该救济方式为了纠正损害行为，应与该立法的宗旨相一致。该特许经营权法的总体目的是从根本上确保被特许人有充足的时间和信息来决定是否购买特许经营权。

The franchisee had full information and ample time, and that was what was important to the judges.

对于法官来说最重要的是，被特许人掌握全部信息并有充分的时间。