

If Franchisor fails to deliver a Disclosure Document to a prospective Franchisee (or delivers a seriously deficient document¹) within the time specified under the Act, Franchisee will have the right, in accordance with subsection 6(1) of the Act, to rescind the franchise agreement at any time in the 60 days following Franchisor's delivery of the document. Furthermore, in accordance with subsection 6(2) of the Act, if Franchisor does not deliver the document at all (or delivers a seriously deficient document such that it is deemed that there has been no disclosure at all), Franchisee's right to rescind runs for two years from the date it signed the franchise agreement.

¹ See for example the decision of the Court of Appeal (Ontario) in 6792341 Canada Inc. et al. v. Dollar It Limited et al. whereby the Court of Appeal stated, in allowing the Applicant franchisee's appeal that "[D]isclosure under the Act is not optional. A franchisor is mandated to provide a prospective franchisee with a disclosure document – one document – delivered as required by s. 5(2) – as one document at one time. The content of the disclosure document is mandated by s. 5(4) of the Act and Part II of the regulations passed pursuant to the Act. When key information is missing, a properly informed decision is not possible." The missing information and documentation included a duly signed certificate certifying that the disclosure document was complete and accurate, financial statements or balance sheet, details or a copy of the lease, information on a company related to the franchisor, prescribed statements pertaining to the advertising fund, description of the territory, description on the franchisor's policy on proximity between franchisees, description of licenses, registrations, authorizations or other permissions required in order to operate the franchise and a description re: volume rebates. At paragraph 76 the Court stated: "Here the deficiencies were material and they were many. In such circumstances, the only reasonable conclusion is that the franchisor never provided the disclosure document within the meaning of s. 6(2). Accordingly the franchisees in the instant case had the right to rescind the franchise and related agreements when they did."