

Who is an “officer” for the  
purposes of preparing a  
Franchise Disclosure Document  
under the *Arthur Wishart Act*  
and *Regulations*

Presented by

Andrae Marrocco | Dickinson Wright LLP

# The role of an “officer” under the Act

---

[If selected by the franchisor] sign the certificate certifying the veracity and completeness of the Franchise Disclosure Document (“**FDD**”)

Section 7 of the Regulations

# The potential consequences for an “officer” under the Act

---

The franchisee has a statutory right of action for damages against officers who signed the certificate where it suffers loss because of: (a) misrepresentation in the FDD, or (b) noncompliance with FDD requirements

Section 7 of the Act

# Why does this matter to the franchisor

---

1. FDD must set out particular information pertaining to the officers

# Why does this matter to the franchisor

---

The business background of the directors, the general partners and the officers of the franchisor, including,

- the name and current position of each person,
- a brief description of the prior relevant business experience of each person,
- the length of time each person has engaged in the line of business associated with the franchise, and
- the principal occupation and the employers of each person during the five years immediately preceding the date of the disclosure document.

Section 2. 2. of the Regulations

# Why does this matter to the franchisor

---

1. FDD must set out particular information pertaining to the officers.
2. Franchisor may decide to have officers sign the certificate.

# Who is an “officer?”

---



*Danforth-Woodbine Theatre Ltd vs Loblaws Inc.*

---

Ordinary dictionary meaning

VS

*Ontario Business Corporations Act* definition

# Ordinary dictionary meaning, legal dictionary meaning and commentary

---

- A holder of a senior post in a society, company, or other organization: ‘a chief executive officer’ – Oxford Dictionary
- A person appointed by the board of directors of a firm, such as a president, CEO, vice president, etc., to manage the day-to-day business of the firm and to carry out the policies set down by the board – BusinessDictionary.com
- A person appointed or elected to some position of responsibility or authority in the government, a corporation, a society, etc. – Dictionary.com

# Ordinary dictionary meaning, legal dictionary meaning and commentary

---

- A person employed in connection with the administration and management of a department.
- The chairman and any vice-chairman of the board of directors, the president, any vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the general manager and any other person designated an officer by by-law or by resolution of the directors, and any other individual who performs functions for a company similar to those normally performed by an individual occupying any of those offices.
- The chairperson of the board of directors, the president, a vice-president, the secretary, the treasurer, the comptroller, the general counsel, the general manager, a managing director, of an entity, or any other individual who performs functions for an entity similar to those normally performed by an individual occupying any of those offices.

Daphne Dukelow, eds, *Dictionary of Canadian Law*, 4<sup>th</sup> ed (Toronto: Carswell 2011) *sub verbo* “officer”;

# *Ontario Business Corporations Act perspective*

---

**Subsection 1(1) of the OBCA**, “officer” means an officer designated under section 133 and includes the chair of the board of directors, a vice-chair of the board of directors, the president, a vice-president, the secretary, an assistant secretary, the treasurer, an assistant treasurer and the general manager of a corporation, and any other individual designated an officer of a corporation by by-law or by resolution of the directors or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any such office

# Considerations in light of the *Securities Act*

---

# Conclusion

---

- Senior position or a position of responsibility or authority within a corporation.
- An individual who is part of the management team that oversees the management and administration of the corporation's affairs.
- An individual appointed or designated by the board of directors or the bylaws.
- Chairman or vice-chairman of the board, president, vice-president, chief executive officer, secretary, treasurer, general manager, managing director, controller, general counsel.
- OPEN ENDED...