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**ANNOTATED ONTARIO BUSINESS  
CORPORATIONS ACT**

**Stephen N. Adams, Q.C.**

**Release No. 91, February 2019**

This is the most complete and current resource available covering the broad range of issues essential to operating an incorporated Ontario company.

**What's New in this Update:**

This release includes updates to the legislation under the Related Legislation tab including updates to the *Co-operative Corporations Act*, R.S.O. 1990, c. C.35 - Amended by S.O. 2018, c. 17, Sched. 9. This release also features case law annotations under the *Arthur Wishart Act (Franchise Disclosure)*, 2000 under the Related Legislation tab.

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- **Arthur Wishart Act (Franchise Disclosure), 2000 - Section 4 - Right to Associate** - No matter how generously one reads that pleading, it was difficult to see how a claim under s. 4 could be sustained as against any of the defendants except TDL. In order to be an associate of TDL's for the purposes of s. 4, there must be material facts that could establish a serious level of control by the alleged associate. Although the plaintiffs asserted that RBI, as the parent and holding company for TDL, asserted control over it, there were no material facts pleaded to support that assertion. A parent company is not an "associate" for these purposes merely by virtue of being a parent company. The Court of Appeal has held that a parent company or other alleged associate must be found to "direct and control the composition and structure of the franchise network, the products that will be distributed by it in Canada, the pricing of those products, and marketing initiatives and spending". Payment of a license fee for use of a computer system is hardly the kind of direct control of the franchise system described by the Court of Appeal in *Addison Chevrolet*. There was nothing in the Franchise Agreement or otherwise in the Statement of Claim that could suggest that it was RBI, and not TDL, that really ran the Tim Hortons franchise business and that directed and controlled the pricing, marketing, and other initiatives of the business: *1523428 Ontario Inc. / JB&M Walker Ltd. v. TDL Group*, 2018 ONSC 5886.
- **Arthur Wishart Act (Franchise Disclosure), 2000 - Section 6 - Rescission for Late Disclosure** - The motion judge found the omission so significant and material as to constitute no disclosure and to justify rescission under s. 6(2). The motion judge properly identified that the key factual issue was whether the franchisor provided earnings projections at a meeting in 2010. However, having found that the paper record was inadequate to resolve the issue, he erred in concluding that it was in the interests of justice to decide the disputed factual issue using the fact-finding powers under r. 20.04(2.1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, and then in determining the issue without oral evidence. Justice van Rensburg observed that because the central factual issue on which liability depended required oral evidence, the balance of the motion judge's conclusions respecting liability and damages must fall: *2212886 Ontario Inc. v. Obsidian Group Inc.*, 2018 ONCA 670.