

Franchise Law

REVIEW

October 2010

This latest issue contains legislative updates, commentaries on recent cases, practice tips as well as news on our team. Please feel free to pass it on to colleagues you think would find it interesting.

Franchise Legislation

New Brunswick Franchise Legislation to Come into Force in Early 2011

The New Brunswick Legislature has announced that its *Franchises Act* will come into force on February 1, 2011. For information on the content of the *Franchises Act* and associated regulations, please review our Osler Update of July 6, 2010,

New Brunswick Publishes Franchise Legislation Regulation. Franchisors offering franchises in that province must consult their franchise counsel in order to prepare an appropriate form of disclosure document. [More on osler.com](http://www.osler.com)

Other Legislation

Arrival of the HST – Key Facts for Franchisors

On July 1, 2010, the harmonized sales tax came into effect in Ontario and British Columbia, joining New Brunswick, Nova Scotia and Newfoundland, which had already introduced the HST. The HST, which is administratively similar to the federal goods and services tax, replaced the GST and provincial sales taxes in those provinces. [More on osler.com](http://www.osler.com)

Best Practices

Working with an Independent Franchise Association

Many franchisors are confronted, often unexpectedly, with the prospect of the formation of an independent franchise association by their franchisees. Franchise associations have frequently been analogized to labour unions and franchisors consider that acknowledging and negotiating with franchise associations is akin to acknowledging and negotiating with a labour union. [More on osler.com](http://www.osler.com)

Franchising in the Courts

Court Again Finds a Deficient Disclosure Document is no Disclosure Document

Springdale Pizza Depot is the latest instalment in the growing line of cases warning franchisors that a deficient disclosure document will be considered to be no disclosure document at all. The case has also put to rest the theory suggested by some franchise practitioners that in a sale of an existing franchise, the vendor franchisee is responsible for disclosing to the purchaser. [More on osler.com](http://www.osler.com)

Kudos

Jennifer Dolman, Andraya Frith and Frank Zaid have been included in *Who's Who Legal: Canada 2010* in the Franchise category.

Frank Zaid and Jennifer Dolman sit on the executive of the Ontario Bar Association's new Franchise Law Section. Frank Zaid is the past Chair and Jennifer Dolman is the Programme Coordinator.

Jennifer Dolman and Dominic Mochrie are members of the Planning Committee for the 2011 Canadian Franchise Association Ontario Region Law Day which is being held at the Old Mill in Toronto on March 2, 2011.

Jennifer Dolman, Andraya Frith, Larry Lowenstein and Frank Zaid have been selected for inclusion in the 2011 edition of the *Best Lawyers in Canada* for the practice of Franchise Law.

Jennifer Dolman will be a panellist in a discussion on whether class actions are the right forum for franchise disputes at the 10th Annual OBA Franchise Law Conference on November 4, 2010. Dominic Mochrie will be co-presenting at the same conference on the topic of advanced issues in disclosure document preparation.

Jennifer Dolman moderated a webinar titled "The Implications of the Quizno's Court of Appeal Decision on Your Franchise System" for the Canadian Franchise Association on July 29, 2010.

Frank Zaid moderated a webinar titled "Midas Canada Court of Appeal Decision – Implications on Your Franchise System" for the Canadian Franchise Association on September 14, 2010.

Injunction Enjoining Interference with Franchisees' Right to Associate

The Ontario Superior Court of Justice in *1318214 Ontario Limited et al v. Sobeys Capital Incorporated* granted an interlocutory injunction, restraining Sobeys from terminating franchise agreements and taking possession of the franchisees' stores; and requiring the franchisees to comply with the franchise agreements while the injunction is in effect and to not withdraw any further amounts from their "Price Chopper" businesses or bank accounts for legal and/or accounting fees without the prior order of the Court. [More on osler.com](#)

Interlocutory Injunction Granted Forcing Franchisees to Continue Paying Royalties

Franchisors who pursue interlocutory injunctions to protect their franchise systems should get some comfort from the Ontario Divisional Court's dismissal of the franchisees' motion for leave to appeal in *Bark & Fitz Inc. v. 2139138 Ontario Inc et. al.* [More on osler.com](#)

People Operating Closely-Held Franchisors Take Greater Personal Risk

People operating closely-held franchisors should take steps to protect personal assets given comments made in a recent decision by the Ontario Superior Court. [More on osler.com](#)

Clear Contractual Breaches by a Franchisee are Sufficient Grounds to Deny a Franchisee an Injunction to Stop a Termination

In the recent Ontario Superior Court of Justice decision in *C.M. Takacs Holdings Corp. V. 122164 Canada Ltd. (c.o.b. New York Fries)*, the court sent a strong message that a franchisor is justified in terminating a franchisee that fails to abide by its contractual responsibilities concerning the payment of amounts due under the franchisee agreement. [More on osler.com](#)

Contractual Ambiguity may Result in a Franchise Agreement Interpretation that is Unfavourable to a Franchisor

Franchisors must be extremely careful when drafting franchise agreement provisions as any ambiguity in the franchise agreement could be interpreted in favour of franchisees. [More on osler.com](#)

Franchising in Québec

Commercial Advertising in Accordance with the Charter of the French language

Interpreting the *Charter of the French language* (the Charter) can sometimes be a dilemma for franchisors who wish to advertise their products in the Province of Québec. [More on osler.com](#)

Who, Where & What

Seminars

Osler Webinar Best Practices in Canadian Franchise Law

Over the past few months, the Osler Franchise Law Group has been conducting no-fee in-house seminars with some of our established franchisor clients on best practices in Canadian franchise law.

If you are interested in having us present a seminar for your franchise company, law firm, or other franchise service supplier, please contact any member of the Osler Franchise Law Group.

We are planning to conduct a webinar entitled "*Best Practices in Canadian Franchise Law*" that will offer a particular focus on U.S.-based franchisors and their local counsel. If you wish to sign up for our advance invitation list, please send an e-mail to: seminars@osler.com.

Frequently Asked Questions

Employees Versus Independent Contractors – What's the Difference and Why Should I Care?

Answer on [osler.com](#)

About Us

Osler's Franchise Law Group has worked with more than 400 franchise systems in virtually every product and service category to help franchisors build large, successful businesses domestically and internationally. With franchise experts in Toronto, Montréal and Calgary, our practice is national in scope and we have the experience and resources needed to help ensure the success of any client – from a Canadian start-up to a leading franchisor entering the Canadian market.

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