

Franchise Law

REVIEW

September 2012

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

It's Showtime in Manitoba!

Manitoba is mere days away from becoming the fifth Canadian province with franchise legislation. *The Franchises Act* and *Franchises Regulation* come into force on October 1, 2012. On and after that date, franchisors granting franchises to be operated partly or wholly in Manitoba must ensure their disclosure documents are compliant with the new legislation. [More on osler.com](http://moreon.osler.com)

Franchising in Ontario

Settlement Agreements: Steps to Protect Enforceability

The decision in *Dodd v. Prime Restaurants of Canada Inc.* acts as a caution to franchisors to ensure their franchisees are fully informed and properly advised prior to entering into settlement agreements. Without such steps, franchisors may find releases rendered ineffective against subsequent statutory claims. [More on osler.com](http://moreon.osler.com)

In or Out? A Bold Re-Opening of the Opt-Out Period in a Franchise Class Action

Justice Strathy's decision in the *1250264 Ontario Inc. v. Pet Valu Canada Inc.* franchise class action set aside certain opt-out notices obtained from potential franchisee class members as a result of the "irreparable impairment" of the opt-out process.

[More on osler.com](http://moreon.osler.com)

What Happens When an Ontario Franchise Disclosure Document is Delivered Electronically?

In the recent decision in *Vijh et al v. Mediterranean Franchise Inc. et al*, the Ontario Superior Court of Justice answered the question of what happens if a franchisor delivers an Ontario franchise disclosure document electronically. The court rejected the franchisee's argument that the two year rescission remedy should be available for the "much less significant" breach of the method of delivery requirement and reaffirmed that the two year rescission right is reserved for the much more serious situation where no disclosure document is provided at all or where there is a material deficiency with the contents of the document. [More on osler.com](http://moreon.osler.com)

Burnett Management Inc. v. Cuts Fitness For Men Reminds Franchisors That They Must Have Their Disclosure Documents in Shape

Burnett v. Cuts serves as an important reminder to franchisors - in particular American franchisors operating in Canadian provinces with franchise disclosure legislation - of the significant risks of failing to provide proper disclosure to prospective franchisees and of keeping franchisees and prospective franchisees "in the dark."

[More on osler.com](http://moreon.osler.com)

Kudos

Jennifer Dolman, Andraya Frith and Frank Zaid are recognized in *Best Lawyers of Canada 2013* for franchise law.

Jennifer Dolman and Frank Zaid are recognized in the 2012 *Canadian Legal Lexpert Directory* as most frequently recommended for franchise law.

Andraya Frith is recognized in the 2012 *Canadian Legal Lexpert Directory* as consistently recommended for franchise law.

Dominic Mochrie and Larry Lowenstein are recognized in the 2012 *Canadian Legal Lexpert Directory* as repeatedly recommended for franchise law.

Jennifer Dolman, Andraya Frith and Frank Zaid are recognized in *Who's Who Legal Canada 2012* for Franchise.

Jennifer Dolman, Andraya Frith, Frank Zaid and Dominic Mochrie are recognized in *The International Who's Who of Franchise Lawyers 2012*.

Jennifer Dolman has joined the Editorial Board for the *ABA Franchise Law Journal*.

Andraya Frith has joined the Executive of the Ontario Bar Association Franchise Law Section.

Dominic Mochrie is a member of the Planning Committee for the International Franchise Association's Annual Legal Symposium for 2013 and 2014.

How the Limitation Periods in the *Arthur Wishart Act* and the *Limitations Act* Work Together

The Philthy McNasty appeal decision confirms that franchisees bringing claims for rescission damages may avail themselves of both the two-year time limit set out in the *Arthur Wishart Act* and the two-year general limitation period under the *Limitations Act*. The limitation period for rescission damages claims does not begin to run until the expiry of, or a franchisor's rejection of, the claims set out in a Notice of Rescission.

[More on osler.com](#)

Franchising in Quebec

Does a Franchisor Have an Obligation to Maintain Brand Strength?

In an unprecedented decision, Justice Tingley of the Quebec Superior Court held that the Dunkin' Donuts franchisor in Quebec fundamentally breached its franchise agreements with its Quebec franchisees by failing to adequately support its brand and stem the tide of the "Tim Hortons phenomenon" in that province. [More on osler.com](#)

Franchising in Alberta

The Ongoing Perils of Inaccurate Disclosure - Invalidation of Post-Termination Restrictive Covenant

The Alberta decision in *Mapleleaf Franchise Concepts, Inc. v Nassus Framework Ltd.*, serves as a reminder to all franchisors and their principals to ensure that they provide an accurate disclosure document to prospective franchisees. This case led to the invalidation of a post-termination restriction; it could have been much worse.

[More on osler.com](#)

Best Practices

The Case For Mediation of Franchise Disputes

As a result of a number of developments in the franchise legal and business community, we are seeing many initiatives to direct franchise disputes into mediation at an early stage. Franchisors should take note of these developments and carefully consider including mediation provisions in their franchise documents.

[More on osler.com](#)

Frequently Asked Questions

What is the current state of Canadian law regarding pricing practices between franchisors and franchisees?

While the practice of price maintenance has been reduced from a criminal offence to a reviewable practice under Canada's competition/anti-trust laws, any franchisor that is considering setting resale prices or maximum resale prices for its franchisees must undertake a review of the likely anti-competitive effects of the practice before doing so. Otherwise, the franchisor may find itself involved in a hearing before the Competition Tribunal. [More on osler.com](#)

Andraya Frith is co-chairing the Ontario Bar Institute 2013 of Continuing Professional Development – Franchise Law Section entitled "Wishart 101 – The Fundamentals of Ontario Franchise Law" in Toronto on February 8, 2013.

Dominic Mochrie is now a member of the Steering Committee of the ABA Forum on Franchising's International Franchise & Distribution Division.

Who, Where & What

Publications & Papers

Since June 2012, Jennifer Dolman has been writing a weekly Franchise online column for the Financial Post Entrepreneur section. Her posts can be found at: <http://business.financialpost.com/author/fpjenniferdolman/>.

Frank Zaid wrote "Franchise Disputes in Canada", LJN's *Franchising Business & Law Alert*, vol. 18, no. 11 (August 2012).

Frank Zaid continues to write his monthly "Questions and Answers" column in *Canadian Business Franchise* magazine (Kenilworth Media Inc.).

Frank Zaid is the managing editor (1983 – current) for the *Canadian Franchise Guide*, a monthly loose-leaf service published by Carswell.

Frank Zaid authored *Canada: The International Franchise Lawyer's Guide to adapting foreign franchise documents for expansion to Canada*, (July 2012).

Frank Zaid authored *The Case for Mediation and Arbitration of Franchise Disputes*, Ontario Bar Association Franchise Law Section Focus on Franchising, vol. 3, no. 2 (April 2012).

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