

Franchise Law

REVIEW

May 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

Manitoba's Draft Franchise Legislation

Manitoba is in the queue to become Canada's next province to enact franchise legislation with Bill 15, *The Franchises Act*, which was introduced into the province's legislature on April 6, 2010. [More on osler.com](#)

Other Legislation

New Canadian Payments Association Preauthorized Debit Rule Now in Force

The new rule requires that all preauthorized debit agreements entered into after February 28, 2010 must include new disclosure items that were not previously required. [More on osler.com](#)

Workplace Violence and Harassment: Bill 168 to Impact Franchise Systems

On June 15, 2010, amendments to the Ontario *Occupational Health and Safety Act* will come into force which will impose heightened obligations upon employers, including franchisee and franchisor employers. [More on osler.com](#)

Payment Card Industry Data Security Standard - The Importance of Compliance for Franchisors and Franchisees

Franchisors participating in the payment card system need to understand the PCI Standard and manage risks accordingly. Failing to comply with the PCI Standard can attract significant liability. [More on osler.com](#)

Best Practices

Insolvency Changes North of the Border

Franchisors are not immune to today's economic challenges and may be experiencing financial difficulties, resulting in the need to consider restructuring and possibly bankruptcy options. [More on osler.com](#)

Franchise Disclosure – Two Sides of the Story

Complying with the disclosure requirements mandated by provincial franchise disclosure legislation may be sufficient from the perspective of a rescission or damages claim under the provincial statute. However, by providing extra disclosure, franchisors can reduce the likelihood of a dispute down the road. [More on osler.com](#)

Kudos

Andraya Frith received a Lexpert Rising Stars award on November 12, 2009.

Frank Zaid is featured on the cover of the May 2010 edition of *Lexpert Magazine*.

Congratulations to **Dominic Mochrie**, our Franchise & Distribution Group's newest partner!

Frank Zaid was listed as a 2010 "Legal Eagle" in *Franchise Times Magazine*, one of only 8 Canadian lawyers.

Who, Where & What

Upcoming Speaking Engagements

Frank Zaid will be moderating and presenting at two workshops at the 43rd International Franchise Association's Legal Symposium in Washington, D.C. titled "Dealing With Thorny Transfer Issues"

Dominic Mochrie and **Andraya Frith** will be conducting roundtable discussions at the IFA Legal Symposium in Washington, D.C.

Frank Zaid will be moderating "Franchise Law is Not All About the Wishart Act: 6 Commercial Law Topics of Concern to Franchise Lawyers" at the Ontario Bar Association's Franchise Law Section Spring Dinner on May 26, 2010.

Andraya Frith will be presenting at the OBA dinner on the topic of "Consumer Protection Legislation – How is it Affecting Franchise Documents and Operations?"

Franchising in the Courts

Damages Awarded for Breach of Duty of “Fair Dealing”

In *Salah v. Timothy’s Coffees of the World Inc.*, the Superior Court of Justice of Ontario allowed a franchisee to sue the franchisor for damages for the franchisor’s breach of the statutory duty of fair dealing for the first time. [More on osler.com](#)

Franchisors May Be Liable If They Take Actions That Undermine Franchisees’ Exclusivity Clauses

A recent Ontario Superior Court of Justice decision reinforces the idea that franchisors should be careful not to undermine the territorial exclusivity they grant to their franchisees. [More on osler.com](#)

Franchisees May Be Denied Injunctions To Stop A Franchisor’s Denial of A Renewal

A franchisor’s right to decline the renewal of its agreements with franchisees was recently upheld by an Ontario court as an injunction to prevent the non-renewal was not granted. [More on osler.com](#)

Court Follows Two-Year Rescission Trend; Deficient Disclosure Means No Disclosure

Melnychuk v. Blitz Limited, a decision of the Ontario Superior Court of Justice, illustrates the types of deficiencies in a disclosure document which will cause a court to declare that a franchisor never provided a disclosure document at all.

[More on osler.com](#)

Court Refuses to Find that a Dealership is a Franchise Based on Provision of Training Alone

The Ontario Superior Court of Justice recently found that a dealership agreement did not constitute a franchise agreement simply by virtue of the fact that the defendant manufacturer required the plaintiffs to attend a five day training program on the manufacturer’s products. [More on osler.com](#)

Franchising in Québec

Franchisors with franchisees in Québec should be aware that the province’s new consumer protection legislation will come into force on June 30, 2010. The legislation introduces a number of new rules that could impact consumer offerings in the province, including regulation of certain consumer contracts, the use of security deposits, the sale of prepaid purchase cards (i.e., gift cards), and the sale of extended warranties. Franchisors with franchisees in the province should ensure that they are familiar with the new legislation.

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

We are thinking about using social media to promote our brand with consumers and to attract new franchisees to our system. Are there legal issues we should be taking into consideration?

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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