

Franchise Law

REVIEW

October 2011

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.

Best Practices

The Duty of Fair Dealing in Franchising – Practical Tips for Franchisors

The duty of fair dealing in Canadian franchise law has very practical applications to the manner in which franchisors and franchisees deal with each other as well as to franchise agreements and related documents. Documents should be reviewed regularly to ensure compliance. [More on osler.com](#)

Franchising in Ontario

Ontario Court of Appeal Confirms no Disclosure Document Necessary where Franchise Has Term of One Year or Less and Franchisee Pays no Non-Refundable Franchise Fees

In considering the meaning of the “short duration/no-franchise fee” exemption under the *Arthur Wishart Act*, the Ontario Court of Appeal has confirmed that a franchisor is not required to provide a franchisee with a disclosure document where the franchise agreement has an express term of one year or less and where the franchisee does not pay any non-refundable fees in exchange for the right to become a franchisee. Osler represented Suncor in successfully dismissing this \$200 million proposed class action. [More on osler.com](#)

Pet Valu – A Franchisor’s Ability to Settle Commercial Issues with Individual Franchisees while under the Shadow of a Class Action

A decision of the Ontario Superior Court of Justice has restricted the rights of franchisors and potential class member franchisees to contract independently with each other while under the shadow of an on-going class action. Although the decision is arguably limited in its application due to its unique facts and circumstances, it could seriously restricts the ability of individual class member franchisees to release any future rights they might eventually have to damages or settlement funds in a franchise class action. [More on osler.com](#)

Courts Reject Technical Defences and Allow Rescission

In two recent decisions, the Ontario Courts rejected technical defences advanced by franchisors and ordered rescission of the transactions as well as damages. These decisions are consistent with the trend of franchisee-friendly decisions as well as the remedial purpose of the Act. Franchisors should continue to take the obligation to disclose seriously and should ensure that their procedures for interacting with prospective franchisees comply with the remedial spirit driving the Courts’ interpretation of the Act. [More on osler.com](#)

Kudos

Osler has more lawyers recommended than any other law firm for Franchising Law in the 2011 edition of the *Canadian Legal Expert Directory*, with the following lawyers recognized: Frank Zaid, Jennifer Dolman, Andraya Frith, Dominic Mochrie, Colin Feasby and Silvana Conte.

Jennifer Dolman, Andraya Frith, Larry Lowenstein and Frank Zaid were selected to appear in the 2012 edition of *Best Lawyers in Canada* for franchise law.

Jennifer Dolman was named Toronto Franchise Law Lawyer of the Year by *Best Lawyers 2012*.

Frank Zaid, Andraya Frith and Jennifer Dolman were selected to appear in the Franchise chapter of *Who’s Who Legal: Canada 2011*.

Frank Zaid, Andraya Frith, Jennifer Dolman and Dominic Mochrie were selected to appear in the 2011 *International Who’s Who of Franchise Lawyers*. Jennifer Dolman was the only Canadian franchise lawyer chosen to participate in this publication’s 2011 franchise roundtable.

Andraya Frith is a new member of the American Bar Association’s Forum on Franchising Women’s Caucus Governing Committee for 2012-2013.

Jennifer Dolman co-presented on “Unique Circumstances in Litigating Franchise Class Actions” at the Canadian Institute’s 12th Annual National Forum on Class Actions Litigation in Toronto on September 21, 2011.

Franchising in Alberta

Alberta Court Confirms New Rights for Trustees of a Bankrupt Franchisee

The Alberta Court of Appeal recently confirmed that, pursuant to the *Bankruptcy and Insolvency Act*, a trustee in bankruptcy may apply to the Court to sell a franchise to a third party, even if the franchisor objects to that sale.

[More on osler.com](#)

Franchising in Québec

Bill 24 Proposes New Requirements for Consumer Contracts of Credit

On June 7th, 2011, Bill 24, *An act to combat consumer debt overload and modernize consumer credit rules*, was tabled in the National Assembly of Québec. The Bill will affect merchants which provide consumers with contracts of credit such as contract for loan of money, open credit contract and instalment sale contract and debit card contract. [More on osler.com](#)

Frequently Asked Question

Can I use the disclosure document provided to prospective new franchisees for resale transactions?

No. A disclosure document which has been prepared for delivery to a prospective new franchisee will likely require revisions if delivered to a prospective franchisee purchasing an established franchise from an existing franchisee or purchasing a corporately owned and operated outlet. [More on osler.com](#)

Seminars

On September 15, 2011 Osler's Privacy Group hosted the webinar *Canada's Anti Spam Law Coming into Force*. Andraya Frith moderated the panel that included Patricia Wilson, Michael Fekete, and Nicole Kutlesa. The webinar was recorded and will be available for downloading from osler.com by early November, under the [News & Resources](#) section.

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. These seminars deal with current trends and recommended practices in the preparation of franchise agreements and disclosure documents. 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.

For more information please contact:

Frank Zaid
Co-Chair
416.862.6415
fzaid@osler.com

Jennifer Dolman
Franchise Litigation
416.862.5911
jdolman@osler.com

Nathalie Beauregard
Québec
514.904.8121
nbeauregard@osler.com

Andraya Frith
Co-Chair
416.862.4718
afrih@osler.com

Colin Feasby
Alberta
403.260.7067
cfeasby@osler.com

Dominic Mochrie
Commercial Franchising
416.862.5994
dmochrie@osler.com

osler.com

Toronto
Montréal
Calgary
Ottawa
New York

Who, Where & What

Upcoming Speaking Engagements

On October 19, 2011, Nicole Kutlesa will be speaking on the impact of Canada's new anti-spam legislation on email marketing programs at "Find the Formula: Grow Your Business with Email Marketing and Social Media" in Toronto. The event is sponsored by Constant Contact as part of national Small Business Week.

On October 20, 2011, Jennifer Dolman will be co-presenting on "Regaining your Trademark after Abandonment or Misappropriation" at the ABA's 34th Annual Forum on Franchising in Baltimore.

On November 2, 2011, Andraya Frith will be moderating a plenary session entitled "The Increasing Difficulty of Preparing and Using Disclosure Documents" and Jennifer Dolman will be co-presenting on "Does a Decision to Arbitrate Still make Sense?" at the OBA's 11th Annual Franchise Law Conference in Toronto.

On February 2, 2012, Andraya Frith will be co-chairing the Canadian Franchise Association Ontario Region Legal Day.

Papers

Dominic Mochrie and Andraya Frith co-authored an article in the October 2011 issue of LJM's Franchising Business & Law Alert entitled "What Canada's New Anti-Spam Legislation Means for Franchisors".

Jennifer Dolman co-authored "Regaining Your Trademark After Abandonment or Misappropriation", for the 34th Annual American Bar Association Forum on Franchising, October 19-21, 2011.

Jennifer Dolman co-authored "Does a Decision to Arbitrate Still Make Sense?", for the Ontario Bar Association's 11th Annual Franchise Law Conference, November 2, 2011.