

Franchise Review April 2018

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Osler's Franchise Review includes legislative updates, commentaries on recent cases and frequently asked questions as well as news on our team. In this edition, we look at new EU privacy standards that may apply to Canadian businesses, proposed new restrictions on advertising to children and what private equity investors should keep in mind when purchasing a franchise system. We also have updates on some recent key cases in Ontario, Québec and Western Canada. In our FAQs, we continue our series looking at common concerns for those considering offering franchises in Québec.

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Legislation

Batten down the hatches: The GDPR wind is about to blow *Patricia Kosseim, Megan Ferrier*
The EU's General Data Protection Regulation (GDPR), which comes into force on May 25, 2018, has been dubbed "the most important change in data privacy regulation in 20 years" and it can apply to companies operating outside of Europe. [Read more](#)

Government of Canada: Leave those kids alone *Andraya Frith, Lucas Versteegh* Franchisors in the food and restaurant industry should prepare for restrictions on their ability to advertise. The proposed *Child Health Protection Act* is a private Member's bill that aims to prohibit certain food and beverage marketing directed at children. [Read more](#)

OPC issues warning: Affiliate marketing industry must comply with privacy requirements *John Salloum, Paul Kotschorek* The Office of the Privacy Commissioner of Canada (OPC) published a warning for affiliate marketers after an international study found significant violations of privacy law and the rules regarding unsolicited communications. Given the OPC's warning, franchisors would be wise to review their affiliate marketing practices to ensure compliance with applicable laws. [Read more](#)

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Private equity and franchising

Private equity's untapped opportunity in Canadian franchising *Andraya Frith, Dominic Mochrie, Christine Jackson* The franchise business model is used in virtually all industries and represents a growing and important sector of the Canadian economy with many potential deal opportunities. However, these huge potential upsides come with significant traps for the unwary. We set out some key issues that PE firms should consider when evaluating an investment opportunity in a franchise system. [Read more](#)

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Franchising in the courts

Rescission decision emphasizes potential disclosure exposure *Gillian Scott, Eleanor Vaughan* In this recent Ontario decision, the court granted rescission and re-emphasized the requirements that financial statements be up to the standard of at least a review engagement and that financial projections must be accompanied by underlying information in order to substantiate the projections. [Read more](#)

No summary judgment for franchisee in *Hepburn v. AlarmForce* *Dominic Mochrie, Paul Kotschorek* Overbreadth, insufficient evidence and intertwined issues prevented summary judgment in this Ontario Superior Court case involving material changes and disclosure requirements. [Read more](#)

An "AllStar" win for franchisors after much-anticipated Ontario Court of Appeal decision *Dominic Mochrie, Andraya Frith, Jennifer Dolman, Lucas Versteegh* The Ontario Court of Appeal has released its much-anticipated decision in *Raibex Canada Ltd. v. ASWR Franchising Corp.* and franchisors can finally breathe a sigh of relief. [Read more](#)

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Québec

Breach of the franchise agreement: No automatic compensation for the franchisor *Éric Préfontaine, François Laurin-Pratte* The Québec Superior Court confirmed that a franchisor is not liable for a franchisee's failure to be profitable. On the other hand, when a franchisee is in breach of the franchise agreement and ceases to operate, a franchisor cannot claim lost profits without adequate evidence. [Read more](#)

The validity of non-refundable franchise fees *Éric Préfontaine, François Laurin-Pratte, Josy-Ann Therrien* A clause requiring a non-refundable franchise fee is entirely valid. The mere fact that franchisees spoke to a journalist about their bad experience with a franchisor does not constitute actionable defamation. [Read more](#)

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Alberta/British Columbia

Notable decisions in Alberta and British Columbia *Thomas Gelbman, Catherine Hamill* These recent decisions provide guidance for franchisors in avoiding vicarious liability and defending against claims of duress. [Read more](#)

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Frequently asked questions – Franchising in Québec

Franchisors looking to expand business operations into Québec need to be mindful of the key differences in the franchise model in order to effectively tap into this potentially lucrative market and avoid legal issues.

[View our responses](#) to the following questions:

1. Are automatic renewal clauses in franchise agreements valid under Québec law?
2. If my standard franchise agreement is in English, is it necessary to translate it into French for my Québec franchisees?

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Kudos

Speaking Engagements

Upcoming

Canadian Franchise Association National Convention, Ottawa, Ontario, April 22-24, 2018

- Dominic Mochrie will present “Assisting Struggling Franchisees – Ensure Your Good Deed Goes Unpunished”
- Jennifer Dolman will host the roundtable “It Went Viral – How Franchisors Have Handled This”

International Franchise Association Legal Symposium, Washington, D.C., May 6-8, 2018

- Jennifer Dolman will co-present the workshop “Stop Invading My Space: Encroachment Issues in Franchising”

American Bar Association 41st Annual Forum on Franchising, Nashville, Tennessee, October 10-12, 2018

- Gillian Scott will be a panelist in the workshop “In Sync: What In-House Counsel and Business Clients Expect from Their Outside Counsel”
- Jennifer Dolman will co-present the Intensive Fundamentals Workshop “The Most Common Post-Relationship Disputes”

Past

Ontario Bar Association Franchise Law Section’s Program “An All-Star Decision?” Toronto, April 18, 2018

- Andraya Frith was a speaker in this program addressing the widely anticipated Ontario Court of Appeal decision in *Raibex Canada Ltd. v. ASWR Franchising Corp.*

Ontario Bar Association 17th Annual OBA Franchise Conference, Toronto, Ontario, November 16, 2017

- Dominic Mochrie presented the workshop “Rise of the Machines: Advising Franchisors on Implementing Technology”
- Evan Thomas co-presented the “Annual Legal and Legislative Update”

American Bar Association 40th Annual Forum on Franchising, Palm Desert, California, October 18-20, 2017

- Andraya Frith co-presented the workshop “Canadian Fundamentals of Franchising”

Media

Andraya Frith was interviewed for and featured in “[The New Class](#)” of Legal Eagles in the *Franchise Times*, April 2018.

Recognition

Acritas Stars™, 2018

- Dominic Mochrie and Jennifer Dolman are recognized as Star Lawyers

Best Lawyers in Canada, 2018

- Andraya Frith, Christine Jackson, Dominic Mochrie, Gillian Scott, Jennifer Dolman and Larry Lowenstein are recognized in the area of Franchise Law

Canadian Legal Lexpert Directory, 2018

- Andraya Frith, Jennifer Dolman and Dominic Mochrie: Most Frequently Recommended (Tier 1) in Franchise Law – Franchisor
- Colin Feasby, Gillian Scott, Larry Lowenstein and Tamara Prince: Repeatedly Recommended (Tier 3) in Franchise Law – Franchisor
- Tamara Prince: Repeatedly Recommended (Tier 3) in Franchise Law – Franchisee
- Franchise Group rankings: Toronto office recognized as Most Frequently Recommended (Tier 1) Calgary office recognized as Consistently Recommended (Tier 2) Montréal office recognized as Repeatedly Recommended (Tier 3)

Chambers Canada: Canada's Leading Business Lawyers, 2018

- Andraya Frith, Jennifer Dolman and Dominic Mochrie are recognized in the area of Franchising – Andraya Frith and Jennifer Dolman are ranked in Band 1 and Dominic Mochrie is ranked in Band 2
- Franchise Group is ranked in Band 1

Chambers Global: The World's Leading Business Lawyers, 2018

- Andraya Frith is ranked in Band 4, one of only two Canadians ranked for Franchising
- Franchise Group is ranked in Band 4

Franchise Times, 2018

- Jennifer Dolman, Dominic Mochrie, Gillian Scott and Andraya Frith are recognized as “Legal Eagles” by North American franchise peers in the *Franchise Times'* annual review for their work in the franchise arena

Who's Who Legal Thought Leaders: Franchise 2018

- Jennifer Dolman is named as an expert in Franchising

Legal Community Involvement

- Jennifer Dolman continues as the Chair of the Ontario Bar Association's Franchise Law Section for the 2017-2018 term
- Andraya Frith is on the Executive of the Ontario Bar Association's Franchise Law Section for the 2017-2018 term and is currently serving as Continuing Education Liaison
- Christine Jackson is a member of the Ontario Bar Association's Consumer Law Committee

- Jennifer Dolman is on the Canadian Franchise Association's Convention Committee
- Andraya Frith and Dominic Mochrie are members of the Canadian Franchise Association Legal and Legislative Committee
- Christine Jackson is a Co-Chair and Gillian Scott is a member of the Canadian Franchise Association Franchise Law Day Committee
- Gillian Scott is a member of the Canadian Franchise Association Education Advisory Committee
- Jennifer Dolman recently completed a five-year term as a Topics and Articles Editor for the American Bar Association Franchise Law Journal
- Andraya Frith is a member of the American Bar Association Publications Committee
- Dominic Mochrie is a member of the International Franchise Association's Legal and Legislative Committee
- Andraya Frith is a member of the International Franchise Association Legal Symposium Task Force (2017-2018)
- Jennifer Dolman is a regular skills instructor at The Advocate's Society

Publications

Jennifer Dolman, Lindsay Rauccio and Lauren Harper co-authored "Ontario Court of Appeal signals partial summary judgment may become a rarity in Ontario," Osler, Hoskin & Harcourt LLP, November 29, 2017

Andraya Frith, Dominic Mochrie and Paul Kotschorek co-authored "Ontario releases Changing Workplaces Review Final Report: Franchising gets more than it bargained for," Osler, Hoskin & Harcourt LLP, May 24, 2017

Andraya Frith, Dominic Mochrie and Gillian Scott are co-editors of the *Canadian Franchise Guide, Second Edition*, published by Carswell

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