

Franchise Law

REVIEW

February 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.

Franchise Legislation

Ontario Considers Radical Amendment to Franchise Disclosure Law

The Ontario government is considering radical changes to the *Arthur Wishart Act (Franchise Disclosure)*, 2000. [More on osler.com](#)

New Brunswick's Franchise Legislation Now in Effect; Manitoba Still Pending

New Brunswick is now the fourth Canadian province with in-force franchise legislation; Manitoba is still pending. [More on osler.com](#)

Other Legislation

New Anti-Spam Legislation Casts a Wide Net

On December 15, 2010, Parliament passed Bill C-28, which will regulate the transmission of commercial electronic messages. While this will regulate "spam" emails, the Act goes further and creates a new consent-based regime that applies to almost all electronic messages for a commercial purpose. [More on osler.com](#)

Tougher Safety Standards for Consumer Products

Bill C-36, the *Canada Consumer Product Safety Act* was passed by Parliament on December 14, 2010 and will become law upon receiving Royal Assent. The legislation includes new regulation of the sale, import, labelling and advertising of most consumer products and their components, parts or accessories that franchisors should be aware of. [More on osler.com](#)

Best Practices

As of February 1, 2011 there are four provinces in Canada which have enacted franchise legislation (Alberta, Ontario, Prince Edward Island and New Brunswick), with a fifth province likely to bring its franchise legislation into force later this year (Manitoba). This raises the question as to whether franchisors can or should use a national disclosure document in Canada. [More on osler.com](#)

Franchising in the Courts

Franchisors Facing Class Action Certification Should Consider Summary Judgment Option

While the common features of a franchise agreement may work to a franchisor's detriment in resisting class action certification, amendments made to Ontario's summary judgment rule, which came into effect in January 2010, provide more options to franchisors. [More on osler.com](#)

Kudos

Frank Zaid received the Markus Cohen, Q.C. Memorial Award for Excellence in Franchise Law for a chapter he co-authored on hotels in the publication *International Franchising – A Practitioner's Guide* (Globe Law and Business and the International Bar Association, 2010) at the Ontario Bar Association's 10th Annual Franchise Law Conference in November 2010.

Frank Zaid was named Toronto Franchise Lawyer of the Year by *The Best Lawyers in Canada 2011*.

Jennifer Dolman and Frank Zaid have been selected as 2011 *Franchise Times* Legal Eagles.

Andraya Frith presented at the Ontario Bar Association program "*Franchise Law Primer: A Practical Roadmap*" held in Toronto on February 3, 2011.

Who, Where & What

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

Dominic Mochrie and Andraya Frith are co-presenting papers at the International Franchise Association's 44th Annual Legal Symposium in Washington DC on May 15 to 17, 2011. Dominic is presenting "*Technology and Franchising*" and Andraya is presenting "*To Err is Human: Remediating Mistakes in the Pre-Sale Disclosure Process.*"

1250264 Ontario Inc. v. Pet Valu Canada Inc.

Volume rebates continue to be a volatile area for franchisors as a Pet Valu franchisee wins a certification decision. This decision is another victory for franchisees seeking to use class action litigation as a forum to bring about change in their relationships with franchisors. [More on osler.com](#)

Inadequate Disclosure of Rebate Practices Increases Risk of Franchisee Class Actions

A recent Ontario Superior Court decision to certify a franchisee class action based on alleged inadequate disclosure of supplier rebates highlights the importance to franchisors of following best practices for the disclosure of rebates and shows the willingness of the Ontario courts to certify franchisee class actions to “level the playing field” between franchisors and franchisees. [More on osler.com](#)

Selah and 1470256 Ontario Inc. v. Timothy's Coffees of the World Inc., (Ontario Court of Appeal)

While the Ontario Court of Appeal dismissed the franchisor's appeal in all respects in *Selah and 1470256 Ontario Inc. v. Timothy's Coffees of the World Inc.*, and left the trial judge's findings intact, its decision did little to expand upon some very important legal principles which were considered in the case. [More on osler.com](#)

Franchising in Québec**Civil Code Creates an Exception to a General Rule in Contractual Matters**

Québec's Civil Code creates an exception to the general rule applicable in contractual matters which provides that a party to a contract cannot terminate it unless the party demonstrates that the other party failed to perform its obligations.

[More on osler.com](#)

Seminars

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 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.

Frank Zaid is co-chairing a Business Solutions Roundtable on “*Best Practices in Administering Advertising Funds*” at the International Franchise Association's 51st Annual Convention in Las Vegas on February 16, 2011.

Frank Zaid is a workshop panellist on “*Franchising in Regulated Industries*” at the International Franchise Association/ International Bar Association's 27th Annual IBA/IFA Joint Conference on May 18, 2011 in Washington, DC.

Jennifer Dolman was the Chair and spoke on February 8, 2011 at the Ontario Bar Association Franchise Law Section dinner program on “*Ethical Issues for Franchise Lawyers*.” Jennifer will be presenting “*Pulling the Reins in on Franchisees' Fair Dealing and Right to Associate Claims*,” at the Canadian Franchise Association's Ontario Regional Legal Day, March 2, 2011. Jennifer is also presenting “*Recent Trends in Franchise Injunctions and Why You Should Care*,” at the Canadian Franchise Association's National Convention, April 3 to 5, 2011.

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.

For more information on Osler's Franchise Law Group, visit our Franchise home page on [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 Beaugard
Québec
514.904.8121
nbeaugard@osler.com

Dominic Mochrie
Commercial Franchising
416.862.5994
dmochrie@osler.com
Toronto
Montréal

Andraya Frith
Co-Chair
416.862.4718
afri th@osler.com

Colin Feasby
Alberta
403.260.7067
cfeasby@osler.com

[osler.com](#)
New York