

## Franchise Review April 2017

MARCH 30, 2017 7 MIN READ

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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 take a look at the decision of one Ontario judge who chose to adopt an "informed decision" approach in determining whether a franchisor met its disclosure requirements. We also note the introduction of legislation to bring real estate corporations to Ontario and we report on the demise of Ontario's *Bulk Sales Act*. In our FAQs, we delve into some common concerns for those considering offering franchises in Québec.

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## Legislation

### Private right of action under CASL is coming into force

**Dominic Mochrie, Paul Kotschorek**

Private remedies under CASL foreshadow an increased class action risk.

### B.C.'s *Franchises Act* now in force

**Dominic Mochrie, Paul Kotschorek**

Have you updated your national FDD to include B.C.?

### French language requirements for public signage in Québec

**Kelly Moffatt, Nicolas Nadeau Ouellet, Alexandre Fallon, Juliette Cong Liu, François Laurin-Pratte**

Since November 2016, new regulations require signage with English trademarks to display a French-language description of the business or other presence of French.

### Ontario Private Members' Bill proposes real estate corporations

**Dominic Mochrie, Paul Kotschorek**

A Private Members' Bill may finally bring real estate corporations to Ontario.

### Rewards points to become more rewarding for Ontario consumers

**Andraya Frith, Christine Jackson**

While not yet in force, an amendment to Ontario's *Consumer Protection Act* will soon prohibit the expiry of consumer rewards points based on the passage of time alone.

### Bill 791: Will rewards points become more rewarding for Québec consumers?

**Andraya Frith, Christine Jackson**

Will Québec quickly follow Ontario? A bill in Québec also seeks to prohibit the expiry of rewards points.

### Repeal of Canada's last bulk sales legislation: Ontario's *Bulk Sales Act*

**Dominic Mochrie, Paul Kotschorek**

And then there were none – Canada’s only remaining bulk sales legislation has been repealed.

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## Franchising in the courts

### *Mendoza v Active Tire & Auto Centre Inc.* – The role of an “informed decision” in rescission

**Gillian Scott, Stephanie Henry**

Is there a new standard for disclosure compliance? An Ontario court adopts an “informed decision” approach.

### Ontario court affirms franchisee’s obligation to pay percentage rent

**Gillian Scott, Paul Kotschorek**

An Ontario court affirms that percentage rent does not constitute a franchise fee.

### The rise and fall of the franchise class action

**Evan Thomas**

The dearth of franchise class actions tells a tale.

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## Québec

### Franchisors: Beware of consumer class actions

**Éric Préfontaine, François Laurin-Pratte, Gillian Scott**

Consumer assumptions are putting franchisors to the test. At the authorization stage of a class action, Québec courts are not willing to unpack whether a contractual relationship exists between a franchisor and customers of its franchisees.

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## Alberta/B.C.

### Suppliers' termination obligations clarified in *Cellular Baby* decision

**Gillian Scott, Paul Kotschorek**

The British Columbia Court of Appeal provides guidance for suppliers seeking to terminate dealer agreements.

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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:

- What disclosure is legally required to be provided to a potential franchisee in Québec?
- So I have a pre-contractual duty to inform. What are the risks associated with inadvertent non-compliance with this duty and how can I mitigate such risks?

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## Kudos

### Publications

- Andraya Frith, Éric Préfontaine and Gillian Scott authored “La Belle Province: A practical business guide to key legal issues when franchising in Québec,” *American Bar Association Franchise Law Journal*, Fall 2016
- Jennifer Dolman co-authored “The Role of Equity in Franchise Law,” *Ontario Bar Association*, November 17, 2016
- Jennifer co-authored the Who’s Who Legal Franchise 2016 Roundtable, October 2016
- Christine Jackson co-authored “The Purchase and Sale of Franchises and Franchise Systems,” *Ontario Bar Association*, November 17, 2016
- Christine co-authored “Buying and Selling a Unit Franchise,” *Ontario Bar Association*, February 8, 2017
- Evan Thomas authored “Recent Developments in Canadian Franchise Class Actions,” *American Bar Association’s Franchise Law Journal*, Winter 2016, (Vol. 35, No. 3)

### Speaking engagements

#### Upcoming

Canadian Franchise Association National Convention, Niagara Falls, Ontario, April 2-4, 2017

- Christine will facilitate the roundtable session, “How to Establish & Maintain a Meaningful Franchisee Advisory Council”

Ontario Bar Association dinner program, Toronto, Ontario, April 12, 2017

- Dominic Mochrie will present “Disclosing in an AllStar World: Should Franchisors Change their Disclosure Practices?”

American Bar Association International Law Section Spring Meeting, Washington, DC, April 28, 2017

- Andraya will present “Examination of Ethics Issues in the Context of Cross-Border Franchise Transactions”

International Franchise Association Legal Symposium, Washington, DC, May 7-9, 2017

- Andraya will present “Ch-Ch-Ch-Changes: Implementing System Changes, Upgrades and New Directions Under Existing Franchise Agreements”

- Dominic will present “RedditandWeep? Protecting Your Brand and Reputation on Social Media – A Continuum of Approaches from Engagement to Litigation.”

International Bar Association/International Franchise Association Joint Conference, Washington, DC, May 10, 2017

- Andraya will present the Canadian franchise law update for the “News from Around the World” plenary

Lexpert Professional Development, 2<sup>nd</sup> Annual Duties of Good Faith: An Update on Law, Toronto, Ontario, June 14, 2017

- Jennifer will present the Franchise Law Update  
Canadian Franchise Association Law Day Conference, Toronto, Ontario, September 2017

- Christine will co-chair the conference  
ABA Forum on Franchising, Palm Desert, California, October 18-20, 2017

- Andraya will present “Fundamentals In Canadian Franchise Law”

## Past

Ontario Bar Association, Institute, February 8, 2017

- Christine presented the workshop “Buying and Selling a Unit Franchise”  
Ontario Bar Association, Annual Franchise Law Conference, November 17, 2016

- Jennifer co-presented the workshop, “The Role of Equity in Franchise Law”

- Christine presented the workshop “The Purchase and Sale of Franchises and Franchise Systems”

## Media

Jennifer Dolman was interviewed for and quoted in “Canada Still Scores as Franchise Destination” by Janet Guttzman, *Canadian Lawyer*, October 31, 2016

Jennifer Dolman was interviewed for and quoted in “Appeal court finds in favour of franchisee in Fido dispute” by Michael Benedict, *The Lawyers Weekly*, February 24, 2017

## Recognitions

*Acritas Stars™*, 2017

- Jennifer is recognized as a Star Lawyer  
*Chambers Global: The World's Leading Lawyers for Business*, 2017

- Andraya is one of two Canadian lawyers individually ranked as a leading franchise lawyer
- Osler ranked in Franchising (Band 4)  
*Chambers Canada: Canada's Leading Business Lawyers*, 2016-2017

- Andraya, Dominic and Jennifer are recognized in the area of Franchising – Andraya and Jennifer are ranked in Band 1 and Dominic is ranked in Band 3  
*Franchise Times*, 2011-2016

- Jennifer, Dominic and Gillian were recognized as “Legal Eagles” by North American franchise peers in the *Franchise Times'* annual review for their work in the franchise arena  
Markus Cohen, Q.C. Memorial Award – Franchise Law

- Evan received this award, which recognizes outstanding scholarly contributions by an Ontario Bar Association member to the development of franchise law, for his article “Recent Developments in Canadian Franchise Class Actions”

*The Canadian Legal Lexpert Directory, 2016*

- Andraya and Jennifer are listed as Most Frequently Recommended in the area of Franchising Law – Franchisor
- Dominic is listed as Consistently Recommended in the area of Franchising Law – Franchisor
- Gillian is listed as Repeatedly Recommended in the area of Franchising Law – Franchisor

*Who’s Who Legal Thought Leaders: Franchise 2017*

- Jennifer is named as expert

## Legal community involvement

- Christine joined the Ontario Bar Association’s Consumer Law Committee
- Jennifer is a member of the ExpertWomen database ([expertwomen.ca](http://expertwomen.ca))

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