

**The 16th Annual Franchise Law Conference**  
**Beyond the Basics: In-Depth and Cross-disciplinary Topics in Franchise Law**  
*Franchise Law*



In-Person

Webcast

**Date:** Thursday, November 17, 2016 | 8:45 am to 4:45 pm  
(Reception to follow)

**Location:** Twenty Toronto Street Conferences and Events  
20 Toronto Street, 2<sup>nd</sup> Floor, Toronto

**Program Chairs:** **Derek Ronde**, Cassels Brock LLP  
**Jonathan Mesiano-Crookston**, Goldman Hine LLP



Please see accreditation chart listed [HERE](#)

The OBA has been approved as an Accredited Provider of Professionalism Content by The Law Society of Upper Canada.

The OBA Franchise Law Section invites you to the 16th Annual OBA Franchise Conference where the very latest developments and emerging trends in this constantly evolving area of law will be presented by a stellar faculty of speakers. This year, the conference will focus on advanced disclosure issues, the future of franchise class actions in Canada, insolvency/bankruptcy as an obstacle and a tool, the role of equity in franchising law, practical tips on buying and selling unit franchises, and trends in U.S. franchise law and how they translate to Canada.

The Conference will also host a series of round-tables on franchise-related topics, the granting of the Markus Cohen Q.C. Memorial Award, and the popular Annual Legal & Legislative Update, rolling up all the developments in franchise law and jurisprudence over the past year.

Join your colleagues for a full day of learning and networking at this well attended and highly informative event.

8:15am Registration and Coffee

8:45am Welcome and Opening Remarks

8:50am **Advanced Disclosure Issues**

**Joseph Adler**, Hoffer Adler

**Allan Dick**, Sotos LLP

**Sarita Dankner**, National Vice-President, Legal, Sobeys

Hear from the experts on advanced issues relating to disclosure documents including:

- How to manage disclosure when a franchisor does not have a site in mind?
- Does a franchisor have to provide material facts particularly within the knowledge of the franchisee?
- Are electronic or copies of signatures acceptable?
- Can disclosure documents be pre-signed before they are finalized? Are these valid?
- What are the ethical obligations when a U.S. client asks Canadian counsel to rubber-stamp a disclosure document they have drafted?
- What should be done when a client wishes to produce a disclosure document that is clearly deficient or misleading?

10:00am Presentation of the Markus Cohen, Q.C. Memorial Award

10:10am Networking Break

10:30am **Breakout - Workshops** (choose one of two 60 minute workshops)

**[ A ] What is the Future of Franchise Class Actions in Canada?**

**Jill Knudsen**, Macdonald Sager Manis LLP

**Margaret Waddell**, Phillips Gill LLP

Franchise class proceedings in Ontario have had disappointing results for plaintiffs in recent years. Decisions in Quizno's, Tim Hortons, Pet Valu, GM, and Pillar and Post indicate that franchise class actions are a doubtful proposition. Explore this issue with respect to:

- What these proceedings have, and have not achieved and whether the problems with these claims were systemic or case-specific
- Class action mechanisms as compared to alternative proceedings
- What issues in-house practitioners should consider when responding to a class action

- What concerns arise when considering to bring interim motions to strike or for summary judgment which can both narrow the issues, but might be used to unnecessarily prolong litigation and put financial pressure on the plaintiffs
- The conflicts that can arise while representing a class action with respect to the various class parties

**[ B ] Insolvency/Bankruptcy as an Obstacle and a Tool for Franchise Situations**

Solicitor:

**Todd Greenbloom**, Blaney McMurtry LLP

Practical experience:

**Steven Goldman**, Goldman Hine LLP

Trustee/manager:

**Sheldon Title**, MNP Ltd., CA

Explore the intersection of bankruptcy/insolvency and franchise law including:

- How is each party to a franchise agreement affected by the other going bankrupt?
- Is there anything that each party can do in order to mitigate its damages or risk in these situations?
- How can the *Bankruptcy and Insolvency Act* be used to deal with business failures, or as a tool in certain litigation situations?
- Franchisors' concerns about protecting their brand when a franchisee goes bankrupt and the closure of a business location is likely
- Disclaimers of franchise agreements by trustees, to whom the franchise agreement might ultimately be assigned by the trustee in bankruptcy
- What rights the franchisor may have to control the ultimate assignee of the agreement
- Franchisees' concerns of continuation of supplies, support and training when a franchisor goes bankrupt
- Continued protection and preservation of the brand by the trustee while the system is in bankruptcy
- What will happen to the system if it passes into the hands of a purchaser of the system
- Ethical issues such as using the bankruptcy process to transfer assets from a failing entity to a related one, bypassing creditor claims, or when a client who is not

**PROGRAM REGISTRATION IS ONLINE** [www.oba.org/pd](http://www.oba.org/pd)

Questions? [pd@oba.org](mailto:pd@oba.org)

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insolvent wishes to use the bankruptcy process for tactical purposes

11:35am **Breakout - Workshops** (choose one of two 60 minute workshops)

**[ C ] The Role of Equity in Franchising Law**

**Jennifer Dolman**, Osler, Hoskin & Harcourt LLP  
**Susan Friedman**, DLA Piper

Does equity still play a role since franchise law has become largely statute-driven with the introduction of the Arthur Wishart Act (Ontario) and similar legislation in other provinces? Examine the use of equity in franchising in the following ways:

- Through the courts' granting of specific performance, injunctions, relief from forfeiture, equitable rescission, and equitable set off
- How do these remedies relate to the franchising statutes?
- What additional elements must be proven by a party to litigation that wants to obtain equitable relief from a court?
- What can be done by a party in advance, or during litigation, to increase the chances of success on such arguments?

**[ D ] Best Practices and Practical Tips on Buying and Selling Unit Franchises and Franchise Systems**

**Christine Jackson**, Osler, Hoskin & Harcourt LLP  
**Andraé Marrocco**, Dickinson Wright LLP

Canadian franchising is on the rise, and with it the purchase and sale of individual franchises as well as franchise systems as a whole. Brands such as Dollar Thrifty, Extreme Pita, Tim Hortons, Shoppers Drug Mart, Grounds Guys, Mr. Lube, Molly Maid, Prime Restaurants, New York Fries, St-Hubert, and Landing Group are just some of the franchise systems that have been acquired in Canada recently. Mergers and acquisitions of franchise systems and franchises involve unique considerations that differentiate them from acquisitions of other businesses. Attend this session to gain a greater understanding of:

- The practical implications relating to mergers and acquisitions of both franchise systems as well as individual franchises
- How to effectively conduct due diligence
- Considerations that are unique to franchising in terms of structuring the transaction and drafting the purchase agreement
- How best to mitigate risk
- How to conduct proactive due diligence and best practices for optimizing the value of a franchise system

12:35pm Break - Box Lunch Served

12:45pm **Lunch Plenary: Trends in U.S. Franchise Law and How They Translate to Canada**

**Peter Snell**, Gowling WLG  
**George Eyd**, Hodgson Russ LLP  
**Len MacPhee**, Gardere

Delve into the trends and developments of franchising law in the United States to understand how it may find application in the Canadian context in the following ways:

- The potential legislative move towards joint employer designations as between franchisors and franchisees
- The development of the good cause doctrine in relation to renewals

- Examine the foreign corrupt practice law and corporate responsibility and compliance
- Explore alternative business models gaining traction south of the border

2:00pm **Roundtables** (choose two)

**Each roundtable will explore one or more topics related to Franchising (2 x 25 min. each 5 min "travel" time)**

- Determining Materiality for Disclosure Purposes  
**David Shaw**, Blakes, Cassels & Graydon LLP
- Best Practices for Controlling Disclosure as it goes out the door  
**Jordan Druxerman**, Garfinkle Biderman
- Legal Considerations for Transfers and Renewals  
**Debi Sutin**, Gowlings WLG
- Director and Officer Liability in Franchise Law Claims  
**Jonathon Baker**, Law Studio
- Franchise Termination: What are the Alternatives  
**Dan Caldarone**, Caldarone Law
- Damages Issues in Rescission Cases  
**Ephraim Stulberg**, MDD
- Indemnities and Guarantees: Why and How?  
**Chad Finkelstein**, Dale & Lessmann LLP
- Litigating Professional Negligence in Franchise Cases  
**David Altshuller**, Teplitsky Colson LLP
  - Discuss the obligation to notify the client and insurer of errors and omissions
- Protecting the Franchise Brand and Intellectual Property Law  
**Sarah O'Grady**, Blakes, Cassels & Graydon LLP
- Retainer Agreements and Conflicts  
**Michael Kleinman**, Macdonald Sager Manis LLP
  - Discuss the issues that arise when acting for multiple franchisee plaintiffs, or franchisors (where a conflict can arise between the various directors and officers of the franchisor, and the franchisor which is often a corporate entity itself)
- Assembling your First Franchise Disclosure Document: Practical Tips and Tricks  
**Melissa Won**, McKenzie Lake Lawyers LLP

2:55pm Networking Break

3:15pm **Plenary Session: Annual Legal and Legislative Update**

**Helen Fotinos**, McCarthy Tétrault LLP  
**Chris Horkins**, Cassels Brock & Blackwell LLP

Join us for the Annual Legal & Legislative Update. This year we explore the latest developments in disclosure, good faith and restrictive covenants, as well as discuss the new British Columbia regulations coming into force in 2016/2017 and the amendments to Ontario's recent adoption of electronic disclosure.

4:30pm Closing Remarks

4:45pm Reception