

## 21st Annual OBA Franchise Law Conference

### Franchise Law



In Person Webcast

**Date:** Tuesday, November 29, 2022 | 9:00 am to 4:30 pm

**Location:** OBA Conference Centre  
20 Toronto Street, 2nd Floor, Toronto



This program contains:

[Accreditation Chart](#)

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

According to data collected by the Canadian Franchise Association, franchising in Canada is the 12<sup>th</sup> largest sector of the economy, employing nearing 2 million Canadians and contributing over \$100B each year to the economy. Franchised businesses come in all forms, shapes, and sizes – ranging from those that operate on large multi-national scale to small, local roots, businesses. The way we live and operate is rapidly changing, impacting all sectors and industries on a number of fronts. As usual, these changes present challenges and opportunities, resulting in shifts and trends, and forcing new and different forms of business. The aim of this year's annual conference is to examine the current and emerging legal issues and challenges facing across all industries of the franchise sector. The sessions will explore a variety of inter-jurisdictional topics such as the differences in operation of legislation and varying practices across the provinces, the benefits and challenges of bringing US or international franchises into Canada, and the different considerations for how to navigate the franchise relationship, disclosure, and rescission issues.

**Program Chairs:** **Andrae Marrocco**, McMillan LLP  
**Stephanie Sugar**, McCarthy Tétrault LLP

9:00 am Welcome and Opening Remarks

9:10 am Presentation of Markus Cohen Memorial Award

9:15 am **Plenary: The Future of Franchising Across Canada**

**Clark Harrop**, Dale & Lessmann LLP

**Michael Melvin**, McInnes Cooper

**Peter Snell**, Cassels Brock & Blackwell LLP

**Moderator: Andrae Marrocco**, McMillan LLP

What is the future of franchising across Canada, and how are practitioners across the country approaching and dealing with current and emerging issues?

Following pandemic lockdowns that accelerated the digitization of commerce and the rollout of new technologies within franchise systems, the period of optimism that followed is already clouded by new threats to the global economy. In the current uncertain environment, franchise systems and their counsel must continue adapting to new challenges.

**Enforcing franchise agreements post-Covid:** In response to the business challenges of the pandemic, many franchisors allowed franchisees to experiment with new products and service models, modified hours of operation and other deviations from system standards. How should franchisors should go about enforcing system standards after relaxing them, and how to deal with the impending wave of franchise sales as government support programs are wound down.

**Digitization of commerce:** In response to pandemic lockdowns, franchise systems experimented with online and direct-to-consumer sales, delivery and curbside pick-up, ghost kitchens and other new business models. The panel will discuss some lessons learned during the pandemic and will highlight the legal issues that continue to emerge from the digitization of commerce, including territory and exclusivity issues, franchisor's reservation of rights and good faith.

**Emerging challenges for franchise systems:** With the impact of the pandemic now receding, it now appears the global economy may be heading into a recession. The panel will discuss emerging threats and opportunities for franchise systems, including remote support, supply chain concerns, privacy and cyber security threats, trademarks, and Quebec's Bill 96.

10:15 am Health Break

10:30 am Breakout Workshops (*choose one of three workshops*)

**[A] Quebec's Legislative Changes and Franchising in Quebec**

**Julia Kappler**, Gowling WLG

**Frédéric Gilbert**, Fasken

The session will focus on the recent changes to the language laws in Quebec, their impacts on franchising, and discussion of other issues to be aware of when operating in Quebec.

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

## [B] Franchise Disclosure Battlegrounds and Debates

**David Altshuller**, Teplitsky, Colson LLP

**Andraya Frith**, Osler, Hoskin & Harcourt LLP

**Ben Hanuka**, Law Works PC

This session will canvass recent appellate decisions in Ontario involving alleged deficiencies in franchise disclosure documents and will focus on several key practice points that remain as unresolved issues related to the preparation of an FDD. The session will discuss the relationship between claims for misrepresentation and disclosure deficiencies. In particular, this session will explore the impact of the *Freshly Squeezed* and *Fit for Life* decisions, the approach to leasing and site selection disclosure and commercial practices, the subjective versus objective standards when assessing material deficiencies the ability to disclaim unknown material facts and whether courts have created a new standard of “negative disclosure”.

## [C] Franchising 101

**Jason Brisebois**, Sotos LLP

**Briana Maguire**, Fasken

This session aims to help new legal practitioners advise their start-up franchisor and franchisee clients and will outline important considerations and key challenges when advising prospective franchisees on their investment in a new franchise system. From understanding the initial considerations of franchising a business, including dealing with unproven franchise concepts, preparing the first franchise disclosure document, and managing the sales process, this session will flag important considerations that both new franchisors and their counsel should be aware of.

11:20 am Break

11:40 am **Roundtables** (*in-person attendees: choose one of eight roundtables; #9 topic for virtual participation*)

1. Real estate and leasing issues: litigating lease terminations and trends in practice post-COVID.  
**Sukhdeep Sidhu**, KMB Law
2. Employment debates: Is “Joint Employer” a practical risk and debate in Canada?  
**Dina Awad**, Dentons Canada LLP
3. National franchising: practicalities and legalities of advising on local laws and legislation for national franchisors expanding outside of your jurisdiction.  
**Todd Greenbloom**, Blaney McMurtry LLP
4. Giving clean reps: best practices in advising clients facing compliance risks.  
**Rory McGovern**
5. Considering exemptions: how to use and rely on exemptions, and the risks and benefits of (potentially) unnecessary disclosure.  
**John Mather**, DMG Advocates LLP

6. Litigating FDDs: discussion of red flags and practice of reviewing and analyzing FDDs for non-compliance.  
**Jonathan Mesiano-Crookston**, Goldman Hine LLP
7. Advertising the brand: Legal issues surrounding marketing in franchising.  
**Tanya Keggin**, Hoffer Adler LLP
8. Franchising 101: Resources for new franchise lawyers: discussion of precedents, topics, resources and connecting with new members of the franchise bar  
**Andrew MacIver**, Siskinds
9. **For Virtual Participants:** Best practices for disclosure: use of disclaimers and delivery of documents.  
**Idan Erez**, Hoffer Adler LLP

12pm to 12:20 pm Lunch Break

12:20 to 12:45 pm Round Table 2

*(in-person attendees: choose one of eight roundtables from the morning session; extended lunch break for virtual participation)*

1:00 pm **Plenary: Injunctions and Restrictive Covenants**

**Jennifer Dolman**, Osler, Hoskin & Harcourt LLP

**Sara Diament-Zeldin**, Shoppers Drug Mart

**Moderator: Stephanie Sugar**, McCarthy Tétrault LLP

Restrictive covenants are an important feature in many franchising agreements, and injunctions are often sought for interim enforcement of restrictive covenants and non-competes. Recent case law across Canada has sparked a debate about the extent of enforceability of these clauses, the parties they may (or may not) apply to, and the shifting evidentiary standards for what is required to obtain an injunction. The panel will discuss these issues and tensions in the law, how to draft clauses to maximize enforceability, and what is necessary to advance claims for enforcement.

2:00 pm Break

2:15 pm Breakout Workshops (*choose one of three workshops*)

## [D] Cross-Border Franchising

**Joseph Adler**, Hoffer Adler LLP

**George Eydt**, Hodgson Russ LLP

What are the top business and legal considerations when assessing whether a system is ready to expand from Canada to the United States or from the United States to Canada? This session will assist in-house and private counsel to navigate key aspects of U.S. and Canadian franchise law, to address issues regarding the conversion of Franchise Agreements and FDDs and other related cross border issues, including assessing system readiness and selecting the best format for expansion.

## **[E] Changes to Privacy and Regulatory Laws Impacting Franchising in Canada**

**Martha Harrison, McCarthy Tétrault LLP**

**Mitch Koczerzinski, McMillan LLP**

There have been many significant legislative changes over the past twelve months that will impact doing business in Canada, including for the franchise industry. This session will discuss recent and anticipated changes to privacy, competition, trade and other laws across Canada.

## **[F] How to Bake the Cake, aka Structuring a Franchise System**

**David Kornhauser, Macdonald Sager LLP**

**David Shaw, Dale & Lessmann LLP**

You've landed your first franchisor client – Congratulations. In order to prepare the franchise documentation, you may have to first structure the franchise system. To do this, you will have to understand, and may need to provide advice on, a myriad of legal issues including intellectual property (trademarks, copyright, software licensing), privacy, leasing, tax, guarantees, sale of goods, and general business law services such as incorporations, shareholder agreements and financing arrangements (as applicable). Lawyers have an obligation to be knowledgeable and competent in the areas of law in which they practice. As well, a lawyer must understand their role in not only drafting the franchise documentation but also in preparing the franchise disclosure document and providing advice on the delivery requirements relating to the disclosure document.

3:10 pm Break

3:20 pm **Annual Legal and Legislative Update**

**Adrienne Boudreau, Sotos LLP**

**Christopher Horkins, Cassels Brock & Blackwell LLP**

4:20 pm Closing Remarks