

# LegalEase®

A straightforward look at law and business

Sorbara, Schumacher, McCann LLP is a fourteen-lawyer local law firm with offices in Kitchener and Guelph specializing in all areas of business law

## Red Light Photographs

In 2000, the Ontario Government launched a pilot project to test the effectiveness of red light cameras in Toronto, Ottawa, Hamilton, Peel Region, Halton Region and Waterloo Region.

The red light camera system is comprised of a camera enclosed in a housing unit and mounted on a pole at an intersection. Sensors are embedded in the road to trigger the camera as a vehicle approaches a red light. A picture is taken as the vehicle nears the intersection and another is taken after the vehicle enters the intersection. The date, time, location and speed of the vehicle, among other information, are superimposed on the photograph. The photograph is then developed and sent to a provincial offenses officer. The officer examines the photograph to determine if the evidence is sufficient to justify sending a ticket to the owner of the vehicle in question. If the officer determines that a charge should be laid, he or she will then certify the photographs for use in court and will lay a charge against the owner. The potential penalty is a fine and a loss of 3 driver demerit points.


After the first two years of the pilot project, regulators found that the total number of collisions resulting in personal injuries and fatalities in intersections within the affected areas was reduced by 7%. The Provincial Government

offered municipalities the opportunity to extend the pilot project for an additional 2 years and introduced the same to other regions in Ontario. Since that time, the McGuinty government has authorized municipalities to use red light cameras on a permanent basis.

Despite this legislative acceptance of red light cameras, the Ontario Court of Appeal recently overturned a conviction obtained on the basis of red light camera evidence from a local intersection. In *Regional Municipality of Waterloo v. Jin-Di Yan*, a driver had been caught by a red light camera system installed at the intersection of Homer Watson Boulevard and Pioneer Drive in Kitchener. A provincial offenses officer examined the pictures, certified them and issued a ticket. The driver was convicted and a fine was issued. The driver appealed his conviction

The Court of Appeal ruled that the photographic evidence was inadequate and quashed the conviction. In coming to this conclusion, the Court reviewed the special legislative schemes in place to determine the admissibility of evidence obtained by red light cameras. In order to be admissible, the regulations set out that a photograph must be certified and must have imprinted upon it the date

and time of the offense as well as the location at which the photograph was taken. In this case, the Court noted that the photographs did not meet these requirements. Although a provincial offenses officer had certified the photographs in question, the date, time and location of the offense were imprinted in a code that could not be ascertained by any ordinary person charged with the offense. As a result, the photographs were found to be inadmissible against the driver.

The Court did confirm that the use of codes on traffic tickets is permissible under the *Highway Traffic Act* but clarified that these codes will only be permissible if the individual charged with the offense is able to decipher and understand the code. It is critical that a person charged with an offense has an understanding of what offense he or she has been charged with and the circumstances that led to the laying of the charge. As a result of this ruling, regulators will likely have to make changes to the current red light camera system, or at a minimum, provide a guide for deciphering the codes used on the photographs. Until these changes are made, drivers may continue to have grounds to challenge tickets issued on the basis of red light camera photographs. 

## THE INSIDE LOOK!

### Individual Pension Plans

Effective Retirement Strategies for Owner-Managers **pg 2**

### Announcements

What's new in our office **pg 3**

### Roundabouts

Increasing Traffic Safety in Waterloo Region **pg 4**

### Same-Sex Marriages

The Supreme Court of Canada rules on this controversial issue **pg 5**

### Construction Liens Against Landlord and Tenants

Know Your Rights and Obligations **pg 6**

### Franchise Agreements

New Disclosure Obligations for Franchisors **pg 7**

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# Individual Pension Plans

Many small business owners or senior executives are often forced to use after tax dollars to fund their retirement savings. One alternative that may be available to owner-managers and executives is an Individual Pension Plan ("IPP"). IPPs are not yet well known, but can provide significant retirement benefits for owner-managers and executives.

An IPP is a defined benefit pension plan that is created for an individual owner-manager by the corporation for which he or she is employed. One of the major benefits of an IPP is that the Canada Revenue Agency permits a one-time past service benefit contribution upon creation. This past benefit contribution is calculated on the basis of the owner-manager's annual T4 income from the corporation dating back to January 1, 1991. For the owner of a long-term business or an executive with long-standing service, this can often amount to hundreds of thousands of dollars.

After the initial past service funding, the corporation must then make regular annual contributions to the IPP on behalf of the owner-manager. The initial contribution, the administrative costs required to create the IPP, any interest owing on funds borrowed by the corporation to fund the IPP and the ongoing annual contributions are all tax deductible to the corporation.

There are limits on the amounts that can be contributed to an IPP each year. However, these annual maximums are calculated on a graduated scale based in large part on the age of the individual and will typically increase by 7.5% per year. This will result in a significant advantage over a traditional RRSP since the latter is subject to a yearly maximum of \$16,500 (for 2005) that only increases with inflation. The net result is that an individual will be able to contribute far more to an IPP than he or she would have been permitted to contribute to a traditional RRSP.

Consider the following example. Mr. Smith is 49 years old and earns a salary of

approximately \$100,000 per year from his manufacturing business, which he started about 15 years ago. He has maximized his RRSP contributions in the past. The following table compares an IPP plan to his RRSP plan and assumes that the assets in each plan grow at the same rate.

Comparison of an IPP to an RRSP:

	IPP	RRSP
Past Service Deposit (fully deductible)	\$102,982	nil
Total Permitted Contributions	\$1,163,624	\$644,130
Asset Value at Retirement	\$3,470,536	\$2,218,906


Another feature of the IPP is that it provides certainty with respect to the retirement income. The amounts to be paid out on retirement are based upon the actuarial calculations completed at the outset of the plan and are paid as any annuity would be. If the individual retires early, the IPP rules permit an additional lump sum payment to the plan by the corporation in order to maintain the scheduled retirement income payments. This lump sum payment is also tax deductible to the corporation. Further, periodic contributions to top-up the plan during poor markets are also permitted.

One final feature of the IPP is that it allows for deferral of income taxes between generations when it is created for a family business. That is to say, an IPP created for the owner of a family business will allow for the transfer of plan assets to the next generation provided that the children are also involved in the family business and are members of the plan.

In order to be eligible for an IPP, an individual must be an owner-manager or key executive and earn T4 income from an incorporated corporation that is taxable under the *Income Tax Act*. While there are no other formal requirements, an IPP is not advantageous or economically viable for individuals under the age of 40 or those with T4 income less than \$100,000.00.

Despite the numerous advantages to an IPP, there are drawbacks. For instance, the assets held in an IPP are "locked in" and are less accessible than those held in a traditional RRSP. There are no spousal IPPs similar to spousal RRSPs. In addition, annual contributions to an IPP are mandatory while those to an RRSP are voluntary. The assets held in an IPP are also not eligible for the Home Buyers Plan or the Life Long Learning Plan. Lastly, IPPs are more complex than traditional RRSPs and they carry with them some start up and ongoing administrative expenses compared to other retirement savings investment vehicles.

IPPs are clearly not appropriate for everyone. However, an IPP may be an effective retirement strategy for entrepreneurs, business owners and key executives whose incomes support a more sophisticated tax deferral program.

We would like to acknowledge and thank John Lunz and Paco Sanchez of Arca Financial Group for their contribution to this article. Arca Financial Group is an independent financial firm that services individual and corporate clients. For more information about Arca Financial Group, you can visit their website at [www.arcafinancial.com](http://www.arcafinancial.com) or contact John or Paco at their new Waterloo office at 237 Labrador Drive, Waterloo, (519) 745-8500 or toll free 1-877-745-8500. 



LegalEase is circulated seasonally to over 1,000 businesses and individuals in and around Waterloo Region and Wellington County. If you would like more information about LegalEase or are interested in contributing to upcoming issues, please feel free to contact Justin Heimpel at our Kitchener office.

## Announcements

The partners and staff of Sorbara, Schumacher, McCann LLP are pleased to announce that Patrick MacMillan has joined the firm as a family law associate in our Guelph office.

Patrick was born and raised in Hamilton, Ontario and completed his undergraduate degree at Carleton University. Patrick earned his law degree from the University of Western Ontario and was called to the Ontario bar in July 2004.



**Patrick MacMillan**

Patrick looks forward to working in Guelph and becoming involved in the local community. Please feel free to contact Patrick at either office to discuss your family law needs.

We are also proud to announce two significant anniversaries in 2004. Our office manager, Jennifer Forcellini, celebrated her 20th



**Jennifer Forcellini**

anniversary with the firm in November. Jennifer has been indispensable to the firm over the years and has tackled virtually every task within the


office including our accounting, computer and human resources matters. Her loyalty, dedication and hard work have been very much appreciated. In recognition of this anniversary, the firm will be sending Jennifer and her husband, Peter, on a Caribbean cruise later this year. We would like to take this opportunity to once again recognize and thank Jennifer for her many contributions to our success.

In addition, Brian McCann, our family law partner in the Guelph office, celebrated his 15th year with the firm in 2004. Brian has spent the past 30 years practicing family law in the City of Guelph. His dedication and commitment to the profession have helped to make him one of the most recognized and respected family law practitioners within the



**Brian McCann**

community. Brian is a valued member of our firm and we thank him for his continuing commitment to provide excellent service to our clients.

On December 18, 2004, the firm gathered at Manhattans Pizza Bistro & Jazz Club in Guelph for our annual Christmas Party. Manhattans was kind enough to close the restaurant to accommodate our party for the second straight year. The food, atmosphere, and music were excellent and a great time was had by all. 



In 1966, the United Kingdom introduced a new element to their transportation system by developing the modern roundabout. Since that time, many countries have adopted roundabouts as a common form of traffic intersection. In 2004, two roundabouts were constructed in the Region of Waterloo. One is located at Ira Needles Boulevard at Erb Street in the City of Waterloo and another is located at the Can-Amara Parkway at Townline Road in the City of Cambridge. A further 5 roundabouts are presently proposed to be constructed in the Region in the near future.

Proponents of the roundabout system point out a number of benefits. Roundabouts have fewer conflict points in comparison to conventional intersections. Speeds are reduced and are more consistent, allowing drivers more time to react to potential collisions. Pedestrians crossing the street need only cross one direction of traffic at a time, allowing for increased safety. Modern roundabouts also typically result in less negative environmental impacts than a signalized intersection because they create shorter delays to motorists and shorter vehicle queues, thereby reducing idling periods. Drivers approaching a roundabout tend to arrive in a slow "rolling" pace rather than the typical stop/start driving experienced at signalized intersections. This results in lower fuel consumption.

It appears that roundabouts are here to stay in Waterloo Region. Hopefully, we can all take advantage of them and increase traffic safety across the Region.

The Regional Municipality of Waterloo has posted detailed instructions regarding proper driving techniques on its website. The information set out below is a summary of these instructions.

**Turning Right (Exiting at the First Exit Around the Roundabout)**

1. Unless posted otherwise, use only the right lane if there are multiple approach lanes.
2. Use your right hand signal.
3. Reduce your speed.
4. Keep to the right of the splitter island.

**Roundabouts**

5. Watch for cyclists and allow them to enter the roadway in front of you.
6. Watch for and yield to pedestrians in the crosswalk or waiting to cross.
7. Move up to the yield line and wait for an acceptable gap in traffic. Do not enter next to someone already in the roundabout as that vehicle may be exiting at the next exit.
8. Within the roundabout, do not stop except to avoid a collision; you have the right-of-way over entering traffic. Always keep to the right of the central island and travel in a counterclockwise direction.
9. Keep to the outside of the circulatory roadway within the roundabout and continue to use your right turn signal through your exit. If there are multiple exit lanes, use the right-hand lane. Maintain a slow speed.
10. Watch for and yield to pedestrians in the crosswalk or waiting to cross.

**Going Straight Ahead (Exiting Halfway Around the Roundabout)**

1. Unless posted otherwise, use either lane if there are two approach lanes. Do not use any turn signals on approach.
2. Reduce your speed.
3. Keep to the right of the splitter island.
4. Watch for cyclists and allow them to enter the roadway in front of you.
5. Watch for and yield to pedestrians in the crosswalk or waiting to cross.
6. Move up to the yield line and wait for an acceptable gap in traffic. Do not enter next to someone already in the roundabout, as that vehicle may be exiting at the next exit.
7. Within the roundabout, do not stop except to avoid a collision; you have the right-of-way over entering traffic. Always keep to the right of the central island and travel in a counterclockwise direction.
8. Maintain your position relative to other vehicles. Stay to the inside if you entered from the left lane, or stay to the outside if you entered from the right lane.
9. Do not overtake other vehicles or cyclists when in the roundabout.

10. When you have passed the last exit before the one you want, use your right turn signal and continue to use your right turn signal through your exit. Maintain a slow speed.
11. When exiting from the inside lane, watch out for leading or adjacent vehicles on the outside that continue to circulate around the roundabout.
12. Watch for and yield to pedestrians in the crosswalk or waiting to cross.
13. Unless posted otherwise, use the left-hand lane if there are two approach lanes. Use your left turn signal.

**Turning Left or Making a U-turn (Exiting More Than Halfway Around the Roundabout)**

1. Reduce your speed.
2. Keep to the right of the splitter island.
3. Watch for cyclists and allow them to enter the roadway in front of you.
4. Watch for and yield to pedestrians in the crosswalk or waiting to cross.
5. Move up to the yield line and wait for an acceptable gap in traffic. Do not enter next to someone already in the roundabout, as that vehicle may be exiting at the next exit.
6. Within the roundabout, do not stop except to avoid a collision; you have the right-of-way over entering traffic. Always keep to the right of the central island and travel in a counterclockwise direction.
7. Maintain your position relative to other vehicles. Stay to the inside. Do not change lanes until you are ready to exit.
8. Do not overtake other vehicles or cyclists when in the roundabout.
9. When you have passed the last exit before the one you want, use your right-turn signal and continue to use your right-turn signal through your exit. Maintain a slow speed.
10. When exiting from the inside lane, watch out for leading or adjacent vehicles on the outside that continue to circulate around the roundabout.
11. Watch for and yield to pedestrians in the crosswalk or waiting to cross.


### Other Tips

When car drivers approach a roundabout, they should be weary not to overtake large vehicles such as trucks and buses. Large vehicles may have to swing wide on the approach or within the roundabout. Watch for their turn signals and give

them plenty of room especially since they may obscure other conflicting users.

If you are in a roundabout when an emergency vehicle is approaching, proceed to beyond the splitter island of your exit before pulling over. If you haven't entered the roundabout yet, wait until

the emergency vehicle has passed before entering. These steps will help to clear the roundabout for the emergency vehicle.

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## Same-Sex Marriages

Most Canadians have likely heard about the recent Supreme Court of Canada ruling regarding same-sex marriages. The Court was asked by the Federal government to give its opinion on proposed legislation which would remove an opposite sex requirement from the definition of marriage. Parliament has created this legislation in response to a number of lower court decisions throughout the country in which courts have ruled that the common law definition of marriage, which provides that marriage is a union between a man and a woman, is unconstitutional and violates the equality rights provided for in the *Charter of Rights and Freedoms*.

The Supreme Court of Canada was asked to consider two proposed provisions with respect to same-sex marriages. The first provision re-defines marriage, for civil purposes, as the "union of two persons to the exclusion of all others". This removes any requirement for married people to be of the opposite sex. The second provision provides that nothing in the new Act affects the freedom of officials of religious groups to perform marriages that are not in accordance with their religious beliefs. This is an attempt to codify an officiant's right to refuse to perform marriages for same-sex individuals if such a marriage is inconsistent with the officiant's beliefs.


With respect to the first provision, the Court ruled that the federal government has the authority to create legislation which deals with the capacity to marry and that legislation which extends the capacity to marry to persons of the same sex is consistent with the *Charter*. With respect to the second provision, the Court ruled that the federal government does not have the authority to create legislation relating to who

may perform marriages as this subject matter is within the jurisdiction of the provincial governments across Canada. However, the Court confirmed that the freedom of religion as guaranteed in section 2(a) of the *Charter* is broad enough to protect religious officials from being compelled by the state to perform civil or religious same-sex marriages that are contrary to their religious beliefs.

Parliament tabled its proposed legislation in the House of Commons on February 1, 2005. We anticipate that, despite the Supreme Court of Canada's guidance, constitutional and related issues surrounding this legislation will be the subject of further debate and litigation in the months and years to come.

Likewise, a recent Ontario Superior Court of Justice ruling has cleared the way for same-sex divorces in Canada. In *M.M. v. J.H.*, the Court was asked to strike down the definition of "spouse" in the *Divorce Act* in order to permit the granting of the first same-sex divorce. In that case, the two same-sex parties had been married in Ontario but had since separated and were seeking a divorce. However, because the definition of "spouse" in the *Divorce Act* referred only to "either of a man or a woman who are married to each other", the parties were unable to obtain a divorce. Both parties and a representative of the Attorney General of Canada were in agreement that the current definition of spouse in the Act was unconstitutional and they asked the Court to make a ruling that said definition was of no force and effect. The Court did, in fact, rule that the existing definition of "spouse" was unconstitutional and of no force and effect and, on that basis, it granted a divorce to the parties in the normal course. The Court further ruled

that the definition of "spouse" in the *Divorce Act* should be amended to mean "either of two persons who are married to one another".

If this case is any indication, it appears likely that, as same-sex marriages become more prevalent, so too will cases involving same-sex divorce and other issues arising from the dissolution of same-sex relationships. It remains to be seen how the courts and Parliament will respond to these issues although these recent developments suggest that there will be a continued emphasis on equal treatment under the law. 

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# Construction Liens Against Landlords and Tenants

The main feature of the *Construction Lien Act* is that it creates a lien upon the interest of the owner of a premises in favour of the person who supplied services or materials to an improvement on the premises for an owner, contractor or subcontractor for the price of the services or materials provided. Many people presume that the Act creates a right to a lien against the interest of the registered owner of the property in all circumstances. This is not necessarily the case. In fact, contractors who supply services or materials to tenants of the owner of the premises (as is often the case with large commercial shopping centres) are not automatically entitled to a lien against the landlord's interest and are often left with only a lien against the tenant's leasehold interest in the property.

The term "owner" is defined in the Act to mean any person having an interest in a premises at whose request and, upon whose credit, or on whose behalf, or with whose privity and consent, or for whose direct benefit, an improvement is made to the premises. This includes tenants who have a leasehold interest in the premises. Therefore, when a contractor is retained by the tenant to carry out an improvement, its right to a lien is, as a matter of course, against the tenant's leasehold interest only. Section 19 of the Act provides a mechanism through which a contractor that completes services on behalf of a tenant can also obtain a right to a lien against the interest of the landlord/registered owner. This section provides that, "where the interest of the owner to which the lien attaches is leasehold, the interest of the landlord shall also be subject to the lien to the same extent as the interest of the owner if the contractor gives the landlord written notice of the improvement to be made, unless the landlord, within fifteen days of receiving the notice from the contractor, gives the contractor written notice that the landlord assumes no responsibility for the improvement to be made".


The contractor must give this notice in writing prior to the commencement of the work. Although there is no prescribed form of notice, the Regulations to the Act provide an example of a form that may be used. It is recommended that contractors use the form provided for in the regulations for this purpose. In any event, the notice must, at a minimum, include: the name of the landlord and reference to its capacity as landlord; details of the contract with the tenant; a description of the improvement to be made; a sufficient description of the premises; a reference to the contractor and tenant by name and by capacity; words sufficient to make it clear that the contractor is looking to the landlord's interest in the land in addition to that of the tenant; words sufficient to make it clear that the landlord must give written notice back to the contractor within 15 days if it wants to disclaim responsibility for the improvement to be made; and further wording to make it clear to the landlord when the 15 day period commences.

The form may be served personally or in any other method permitted by the rules of court, or by registered mail to the last known address of the landlord as indicated on the registered land documents. If the form is mailed, service is deemed to be effective on the fifth day following the date on which it was mailed. Since the landlord has fifteen days in which to respond to the notice, it is good practice for contractors to deliver the notice well in advance of their commencement of the work. That way, if the landlord delivers a notice to the contractor to disclaim responsibility for the work, the contractor can then decide whether or not it wishes to continue with the project with the knowledge that its right to a lien will be limited to the tenant's leasehold interest.

If the contractor fails to deliver this notice in accordance with section 19, or if the landlord disclaims liability pursuant to said section, the contractor will not have a right to a lien against the landlord's interest in the premises unless it

can demonstrate that the landlord falls within the definition of "owner" set forth in the Act. That is to say, if the contractor can demonstrate that the improvement was made at the landlord's request and upon the landlord's credit, or on the landlord's request, or with the landlord's privity and consent, or for the landlord's direct benefit, it will also be entitled to a lien against the landlord's interest in the premises.

There has been a number of cases on this issue and it appears that the courts are generally unwilling to find that the landlord is an "owner" under the Act except in the clearest of cases. In the absence of a written contract between the contractor and the landlord, significant direct dealings between the contractor and the landlord, or a clear agency relationship between the landlord and the tenant, the contractor will likely be unsuccessful in demonstrating that the landlord meets the statutory definition of "owner". In those circumstances, the contractor is entitled only to a lien against the leasehold interest of the tenant, which is typically far less valuable and is more tenuous than a lien against the interest of the landlord.

It is, therefore, very important for contractors to be mindful of the provisions of section 19 of the Act and to comply with them prior to the commencement of work for a tenant. Landlords, on the other hand, must be sure to acknowledge section 19 notices immediately and respond to the same within the times prescribed in the Act. In addition, landlords must be mindful that their interest in the land could still be subject to a lien by the tenant's contractor if its contractual or other dealings with the tenant are sufficient to establish them as an "owner" under the Act. 

## Franchise Agreements

Most contractual relationships contain express or implied terms which obligate the parties to deal with one another in good faith. Often times, this duty and other protections to help level the balance of power between the parties are also prescribed by statute.

The franchisor /franchisee relationship is no exception to this general rule. Franchising is extremely popular in the Ontario marketplace as it gives individuals the opportunity to operate their own businesses and at the same time rely upon the experience, expertise and goodwill of established franchisors. Responsible franchisors can offer sound investment opportunities and provide effective support and advice to the careful investor. However, investors considering a franchise operation must have access to sufficient information about the franchise in order to make an informed decision about the opportunity. In this regard, potential franchisees are often vulnerable to the franchisor because they are dependent upon the franchisor to provide complete and accurate disclosure of information.

In order to help protect potential franchisees and to otherwise regulate the franchisor/franchisee relationship, the Ontario government enacted the *Arthur Wishart Act (Franchise Disclosure), 2000*. The Act governs franchise agreements which provide for the operation of a business either partly or wholly in Ontario. The Act expressly provides that every franchise agreement imposes on each party a duty of fair dealing in its performance and enforcement. This duty of fair dealing is defined to include the duty to act in good faith and in accordance with reasonable commercial standards. The Act further provides to a party to a franchise agreement a right of action for damages against another party to the franchise agreement who breaches this duty of fair dealing.

In addition, the Act provides a clear obligation upon franchisors to provide prospective franchisees full and complete disclosure regarding the franchise opportunity. This disclosure must be provided in the form of a "disclosure document" as defined in the Act which must be delivered at one time not less than 14 days before the earlier of the signing by

the prospective franchisee of the franchise agreement or the payment of any consideration by the franchisee on account of the franchise agreement. The disclosure document must contain: all "material facts" regarding the franchise opportunity; copies of financial statements as prescribed; copies of all agreements relating to the franchise to be signed by the prospective franchisee; statements as prescribed for the purposes of assisting the prospective franchisee in making informed investment decisions; and any other information or documentation which may be prescribed. Material facts are defined in the Act to include any information about the business, operations, capital or control of the franchisor or about the franchise system, that would reasonably be expected to have a significant effect on the value or price of the franchise or the decision to acquire the franchise. Franchisors are also obligated to provide to prospective franchisees a written statement as to any material change to the business, operations, capital or control of the franchisor or the franchise system that would reasonably

**Franchise (continued on page 8)**



## Franchise (continued from page 7)

be expected to have a significant effect on the value or price of the franchise or the decision to acquire the franchise.

While the aims of these disclosure requirements are commendable, the Act has been criticized by many for the ambiguity of some of these requirements. Critics have complained that it may be difficult for either party to know or understand their respective rights and obligations with respect to disclosure of necessary information, documentation or "material facts".


This ambiguity is especially problematic in light of the consequences that can result from inadequate disclosure. In this regard, the Act provides that a franchisee may rescind the franchise agreement, without penalty or obligation, no later than 60 days after receiving the disclosure document, if the franchisor failed to provide the disclosure document or a statement of material change within the times prescribed by the Act or if the contents of the same did not meet the requirements of the Act. Further, if a franchisor fails to deliver a disclosure document at all, the franchisee may rescind the franchise agreement, without penalty or obligation, at any time within two years after entering into the franchise agreement. The Act further provides that, in the event of a breach of the disclosure requirements, the franchisor and the "franchisor's associates" (a defined term which includes the principals in control of the corporation) are jointly and severally liable to the franchisee for reimbursement of any franchisee fees paid on account of the franchise agreement and for losses sustained by the franchisee on account of the franchise.

In a recent decision, the Ontario Superior Court of Justice permitted a franchisee to terminate a franchise agreement for this very reason. In that case, the franchisor provided the franchisee with disclosure prior to the completion of the franchise agreement. This disclosure included the business' mission

statement, ownership information, merchandise concept, customer service details, store design and locations of other stores. The franchisor was, however, unaware of the requirements for a disclosure document under the Act and did not, therefore, comply with the same. The franchisee learned of the disclosure requirements after the fact and opted to rescind the franchise agreement some fourteen months after the same had been entered into on the basis that the franchisor had failed to provide the franchisee a disclosure document. The Court found that the franchisor and its principals were jointly and severally liable to the franchisee.

In this case, the franchisor was located outside Ontario and was unaware of the requirements of Ontario law. It is important to note that Ontario's disclosure requirements are among the most stringent in the world so it is quite likely that disclosure which is "normal" in other jurisdictions may be inadequate in Ontario. In addition, the Act prohibits parties from waiving the rights provided for in the Act or restricting the application of the law of Ontario or restricting jurisdiction or venue to a forum outside Ontario.

The above-mentioned case demonstrates that Ontario courts will strictly interpret and enforce the requirements of the Act. Since the consequences for inadequate disclosure can be significant, it is important that franchisors and potential franchisees are well aware of their respective rights and obligations with respect to franchise agreements.

The corporate/commercial lawyers at Sorbara, Schumacher, McCann LLP have a great deal of experience with franchise agreements and would be pleased to review the same with you or discuss any questions or concerns you may have about this type of business relationship. 

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