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CANADIAN FRANCHISE GUIDE

Osler, Hoskin & Harcourt LLP

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This work contains more than 2,000 pages from one of the country's leading franchise law firms. You will find reliable guidance to help your clients achieve their business goals, whether they intend to start a franchise, expand their franchise in Canada or internationally, bring or defend business critical franchise litigation or buy or sell an existing franchise system.

What's New in this Update:

This release features updates to the case law and commentary in Chapter 16—Leading Franchise Decisions.

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Highlights

Franchise Disputes: Case Law & Commentary—Restrictive Covenants—

The Court applied the three-part test for granting a prohibitory interlocutory injunction, requiring the applicant to demonstrate that: (1) it has a *prima facie* case; (2) it would be exposed irreparable harm if the injunction if not granted; and (3) that the balance of convenience falls in the applicant's favour. In rejecting the motion, the Court held that it would be "hazardous" to support the assertion that a breach of the initial franchise agreement in 2017, which had since been replaced by a new franchise agreement in 2022, may be invoked to recoup punitive damages to prolong the term of the non-competition clause in the 2022 contract. The Court noted that these damages were contested, and at this stage it is not possible to say conclusively that these amounts are necessarily owing to the franchisor. The *prima facie* case criterion was therefore questionable. Turning to the second criterion, the punitive damages constituted easily quantifiable/reparable damages and were not so serious to the point of justifying an order for an interlocutory injunction. The Court concluded that it would not be appropriate or in the interests of justice to grant the interlocutory injunction sought by the franchisor: *Groupe Urgence Sinistre GUS inc. c. Transport Daniel Ruest (2005) inc.*, 2025 QCCS 1409.

Franchise Disputes: Case Law & Commentary—Leading Franchise Decisions—

The British Columbia Supreme Court reviewed a decision of the Labour Relations Board that applied the four factors considered in common employer declarations. The four factors are: (a) there must be more than one entity carrying on business; (b) the entities must be under common control or direction; (c) the entities must be engaged in associated or related activities or businesses; and (d) there must be a labour relations purpose served by making the declaration. In its decision, the Board focused on the degree of control Sobeys exercised over the Franchisees, not between the Franchisees themselves. The Board found substantial control by Sobeys over the Franchisees, including financial, contractual, and operational aspects. The Board concluded that maintaining the pre-existing bargaining structure served a valid labour relations purpose, consistent with the Code's objectives. The Court held that the Board was not required to find control among the Franchisees to make a common employer declaration, and that the Board's approach was within its expertise and policy discretion. The decision suggests that substantial control by a franchisor over franchisees may be sufficient for a finding common employer declaration: *1315949 B.C. Ltd. v. British Columbia (Labour Relations Board)*, 2025 BCSC 1483.