



## eLaw - Business Law Update

May 2010 - No. 42

ISSN 1916-3908

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## Local Limitation Laws Apply to Foreign Arbitral Awards: SCC

Enforcement of foreign arbitration awards has been constrained by the Supreme Court of Canada decision in [Yugraneft Corp. v. Rexx Management Corp.](#), 2010 SCC 19, released May 20, 2010. The court confirmed that local limitation rules (in this case a two-year limitation period under the Alberta *Limitations Act*) applied to the enforcement of a Russian arbitral award. Given the increasing use of international arbitration as "the dispute resolution mechanism of choice for international commercial disputes," the decision is expected to have business ramifications for both Canadian and foreign companies. These articles discuss the significance of the decision for the business community:

- [Provincial Limitation Periods and Foreign Arbitral Awards](#), posted May 24, 2010 on The Court;
- [Local Limitations in International Commercial Arbitration](#), Osler Update, May 25, 2010.

## Fair Market Value a Judgment Call: MBQB

The court faces the difficult task of determining the fair market value of common shares at a valuation date nearly 15 years before the date of trial in [Cholakis v. Cholakis](#), 2010 MBQB 116. The court notes that "the problem 'defies being reduced to a set of rules for selecting a method of valuation, or to a formula or equation which will produce an answer with the illusion of mathematical certainty.' " It concludes, nevertheless, that in the particular factors of the case, the DCA (direct capitalization approach), and not DCF (discounted cash flow), is the preferred method for estimating the 1995 market value of the principal asset, a building. The court also concludes that there were no unusual circumstances that would justify the application of a minority discount to the value of the plaintiff's common shares.

## Franchisee's Remedy for Repudiation of Contract: MBQB

The plaintiff franchisees were successful in their negligent misrepresentation and breach of contract claims against the franchisor in [TRC Enterprises v. Tobmar Newstands Inc.](#), 2010 MBQB 112. The court found that entering into a valid lease was key to the franchise agreement between the franchisor and franchisee. Since the franchisor failed to enter into a valid lease, the court ordered rescission of the agreement and return of all of the monies paid by the franchisee. The court also found there was no basis to award damages, as the contract had ended. As noted in last month's update, proposed new franchise legislation, giving franchisees the right to recover losses caused by misrepresentation, is aimed at exactly this scenario. The following item discussing recent franchising issues is also relevant.

## Franchise Review

Osler's May 2010 e-Review, [Franchise Review](#), is worth a look. It contains several informative articles on recent developments in franchise law, including:

- [Manitoba's Draft Franchise Legislation](#) - an overview of the differences (both positive and negative) between [Bill 15](#) and existing legislation in Ontario;
- [Best Practices](#) - which contains an article on franchise disclosure; and
- [Franchising in the Courts](#) - a review of recent Ontario case law on franchising.

## Consumer Protection Enhancement

As [announced](#) May 11, 2010, the province plans to overhaul consumer protection measures in its five-year plan, "Let's Make a Better Deal." The detailed plan can be found at [Manitoba's Plan for Better Consumer Protection](#). Among other things the plan will introduce programs and legislation concerning payday loan rate limits; enhanced vehicle, cell-phone contract, and real-estate condition disclosure; fairer collection practices; and stronger enforcement.

[Bill 34](#), *The Consumer Protection Amendment Act (Negative Option Marketing and Enhanced Remedies)*, introduced May 11, 2010, is the first piece of legislation under the plan. It proposes amendments to [The Consumer Protection Act](#), including a prohibition on negative option marketing and an increase in the maximum fine for offences under the Act.

## GST Cancelled for Advance Ruling Certificates

On April 26, 2010 the Competition Bureau [announced](#) that, following a recent Canada Revenue Agency decision, it will no longer charge GST on applications for Advance Ruling Certificates under the merger provisions of the *Competition Act*. Parties who paid GST for Advance Ruling Certificates are eligible for a refund if they submit a claim within two years from the date of payment. See the Canada Revenue Agency [website](#) for further details and the claim forms.

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