

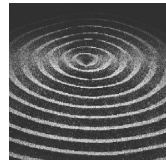
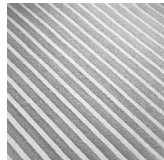
It's Not All About the *Wishart Act*: Consumer Protection Laws Relevant to Franchising

CANADIAN FRANCHISE ASSOCIATION
Ontario Region Legal Day
March 3, 2009
The Old Mill, Toronto

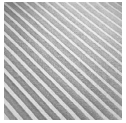
Richard D. Leblanc

MILLER THOMSON LLP

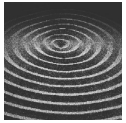
Barristers & Solicitors, Patent & Trade-Mark Agents



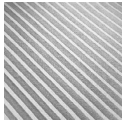
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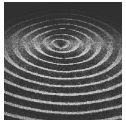
Overview of topics covered



- Privacy and Spam
- Consumer Packaging and Labelling
- Quebec Language Laws
- Consumer Protection Laws
(personal development services and direct agreements)



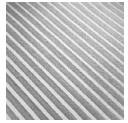
Privacy - Laws



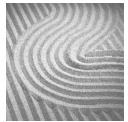
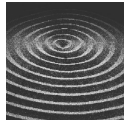
- Laws which governs use of personal information (PIN) in the private sector:



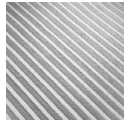
- *Personal Information Protection and Electronic Documents Act (Canada) (PIPEDA)*
- *Personal Information Protection Act (BC and Alberta)*
- *Loi sur la protection des renseignements personnels dans le secteur privé (Quebec)*



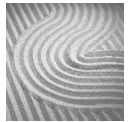
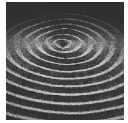
Privacy - Basic Requirements



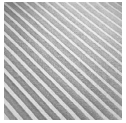
- Implement a statutorily compliant privacy policy
- Appoint a privacy director
- Collect, use and disclose PIN in compliance with the privacy policy and applicable laws



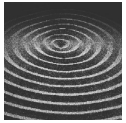
Privacy - Franchisee Information



- Sensitive PIN may be disclosed by Zee at disclosure stage
- Consent may be implied from voluntary disclosure
- Express consent is recommended



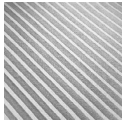
Privacy - Franchisee Information (cont'd)



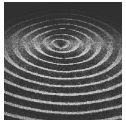
Form of consent should set out purposes:



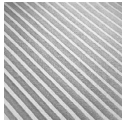
- Assess suitability of candidate
- Transfer to third party (consumer reporting agency)
- Transfer to an associate of franchisor
- Use for statistical or marketing purpose
- Administration of franchisee
- Sale or transfer of franchisor
- Any other reasonable purpose



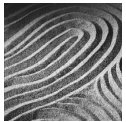
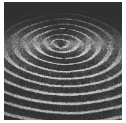
Privacy - Consumer information



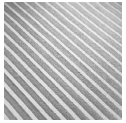
- Consumer PIN may be collected for online sales, service, warranty, marketing and administration
- PIN is also collected in surveys, contests, promos, gift cards
- Data may be transferred to franchisor for use in marketing.
- Data may be outsourced for order processing, technical support, payroll or may be sold or rented to marketers and data brokers
- PIN may be transferred when system is sold.



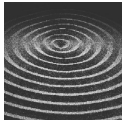
Privacy - Consumer information (cont'd)



- Consent is mandatory (implied or express)
- Form of consent should set out purposes and anticipated uses
 - Sales, after sales service, warranty etc.
 - Enhance customer experience and services
 - Transfer info to third party for processing
 - Transfer info out of country for processing
 - Disclosure to and transfer to Franchisor
 - Disclosure to and transfer to 3rd party upon sale of unit franchise or franchise system
 - Any other reasonable purpose



Privacy-Purchase and Sale of Franchise



- Individual who has disclosed PIN must have provided consent to transfer of PIN

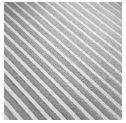


- Privacy policy should state that PIN may be disclosed to a transferee of the business

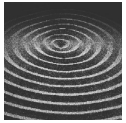


- Consent, including terms of use of website should set out this possibility

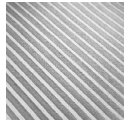
- PIPA (BC and Alberta) exempt certain disclosure for due diligence purposes



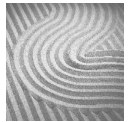
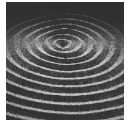
Privacy - Employee PIN



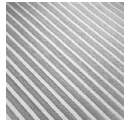
- Not protected under PIPEDA
- Alberta, BC and Quebec Acts apply to employee PIN
- Employee PIN can be disclosed without consent upon prior notice provided that disclosure is reasonable for purposes of establishing, managing or terminating the employee relationship
- Obtain consents at outset of employment relationship



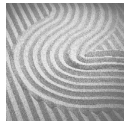
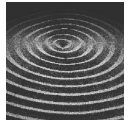
Privacy – Spam



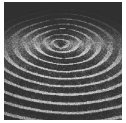
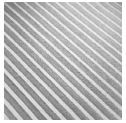
- Unsolicited commercial email
- S.2 of PIPEDA exempts the name, title or business address or telephone number of an employee of an organization from PIN, but not email
- 2004 decision of privacy commissioner found that email is not exempt
- May be exempt if in a public directory and purpose of disclosure is related to the directory's purpose



Privacy – Spam

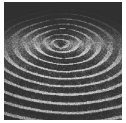
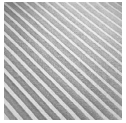


- Commercial enterprises may adopt defensive practices:
 - publish a compliant privacy policy
 - indicate how and why email addresses are collected and managed
 - Covenant not to share email addresses with any third party
 - Covenant not to store email addresses or other private information online and in accordance with security measures set out in privacy policy
- Conservative government announced intention to pass anti-spam legislation



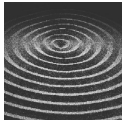
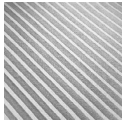
Consumer Packaging and Labelling

- Consumer prepackaged products imported into or sold in Canada must comply with the federal *Consumer Packaging and Labelling Act*
- Specifies the information to be provided on all prepackaged products and provides for standardized container sizes, warnings and information symbols.
- Product quantities must be disclosed in metric measurements and language on the packaging must be in both French and English



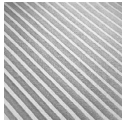
Consumer Packaging and Labelling

- Name and address of the importer of a product as well as the country of manufacture must be identified.
- Label must contain:
 - A declaration identifying the product's common or generic name in both English and French;
 - The net quantity of the product in both English and French;
 - The identity and principal place of business of the person by or for whom the product was manufactured.
- U.S. franchisors whose franchisees are required to sell prepackaged products to consumers must be certain that such products are properly marked and labelled for sale in Canada.

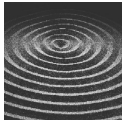


Quebec Language Laws

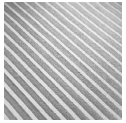
- Charter of the French Language: goal to make French the normal and everyday language of work, instruction, communication, commerce and business
- Imposes specific rules on businesses operating in Quebec
- Business names, signs, posters, commercial advertising, etc. must be translated into French (in the Province of Quebec)
- Product labels, their instructions, manuals, warranty certificates as well as restaurant menus and wine lists must be in French. Other languages may be used provided the official language is more prominent.
- Catalogues, brochures, folders, commercial directories and other such publications, as well as computer software, must be in the official language



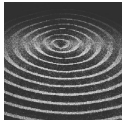
Quebec Language Laws (cont'd)



- Franchise agreements and contracts must be in French unless the parties agree in writing in the document that an English version may be used
- Communications to employees
- Some companies may obtain exemption from Office de la Langue Francaise



Consumer Protection Laws



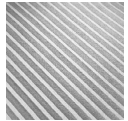
- *Consumer Protection Act, 2002* (Ontario) came into effect July 30, 2005
- Governs transactions between suppliers and consumers
- Consumer: individual acting for personal, family or household purposes not for business purposes



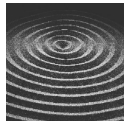
Consumer Protection Laws

-Personal Development Services

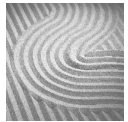
- services for health and fitness, diet
- modelling and talent (including photo shoots relating to modelling and talent)
- martial arts, sports, dance, and similar activities



Consumer Protection Laws



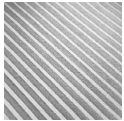
-Personal Development Services (cont'd)



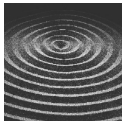
- CPA Applies where payment in advance is required; and



- the contract's total obligations exceed \$50.



Consumer Protection Laws



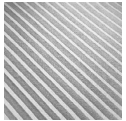
-Personal Development Services (cont'd)



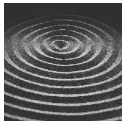
What does the Act require?



- **Form:** Contract must be in writing and must be delivered to consumer in the form required under the Act.
- **Disclosure:** A required statement of consumer rights under the Act. This text is several paragraphs long and must appear on the first page of the agreement in 12 pt type unless there is a notice indicating where it will appear
- **Content:** Contract must include at a minimum, the disclosure statement, the name of the consumer, name of supplier, supplier's contact info, names of persons who solicited consumer, negotiated agreement and concluded agreement; address of facility; itemized list of services; date services to be available; reduction if services not available; statement to pay funds to a trust corporation if services not to be available; description of trade-in arrangement; total amount payable and terms of payment; currency of agreement (if not CDN); date of agreement; commencement and expiry date; requirements for renewal/extension and manner of notice.



Consumer Protection Laws



-Personal Development Services (cont'd)



Payments



- Supplier must provide at least one plan to pay membership or initial fees in **equal monthly instalments**.
- Cannot be more than one initiation fee and initiation fees cannot be more than twice the annual membership fees;
- The instalment payment may not exceed the membership or initiation fees by more than 25 %

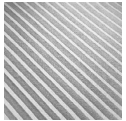


Consumer Protection Laws

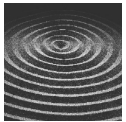
-Personal Development Services (cont'd)

Cancellation and Remedies

- Consumer may cancel the contract for any reason and request a refund within 10 days of later of receiving written copy of agreement and the day all services are available
- Consumer may also rescind contract within one year if the consumer does not receive a copy of the agreement that meets the form requirements set out in the regulations.
- Payments to be made to a trustee for if services not available
- If facilities are not available supplier must refund all payments unless consumer agrees in writing to permit trustee to retain payment
- Any refund must be paid within 15 days of cancellation.



Consumer Protection Laws



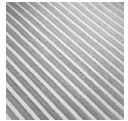
-Personal Development Services (cont'd)



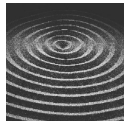
Extension or renewal:



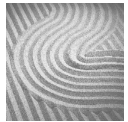
- Supplier must deliver written notice to the consumer in the form required at least 30 but no more than 90 days prior to the expiry of the contract
- Notice must set out
 - date of renewal or extension
 - requirement to deliver the notice within prescribed times
 - Supplier's contact details
 - That agreement will not be renewed/amended upon notice from consumer
- Notice to include agreement with any changes



Consumer Protection Laws



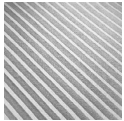
-Direct Agreements



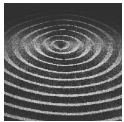
- Consumer agreements negotiated or concluded in person at a place other than supplier's place of business, at a market place, auction, trade fair, agricultural fair or exhibition (door to door sales, multi-level marketing plans)



- the contract's total obligations exceed \$50.



Consumer Protection Laws



-Direct Agreements (cont'd)



What does the Act require?



- **Form:** Contract must be in writing and must be delivered to consumer in the form required under the Act.
- **Disclosure:** A required statement of consumer rights under the Act. This text is several paragraphs long and must appear on the first page of the agreement in 12 pt type unless there is a notice indicating where it will be set out. Disclosure statement under substantially equivalent provincial legislation may be sufficient where supplier operates in several jurisdictions.
- **Content:** Contract must include at a minimum, the disclosure statement, the name of the consumer, name of supplier, supplier's contact info, names of persons who solicited consumer, negotiated agreement and concluded agreement; date and place of agreement; goods and services to be supplied; total payable and amount and frequency of payments; terms of payment; itemized list of prices including taxes and shipping; description of trade-in arrangement; dates of delivery or performance; additional rights re cancellations, returns, refunds and exchanges; currency of agreement (if not CDN); other restrictions and limitations



Consumer Protection Laws

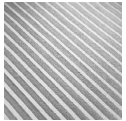


-Direct Agreements (cont'd)

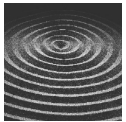


Cancellation and Remedies

- Consumer may cancel the contract for any reason and request a refund within 10 days of later of receiving written copy of agreement
- Consumer may also rescind contract within one year if the consumer does not receive a copy of the agreement that meets the form requirements set out in the regulations.
- Consumer may cancel if supplier does not make delivery within 30 days of contracted delivery date or does not begin performance of obligations within 30 days after commencement date specified
- Consumer may cancel if supplier does not make delivery or commence within 30 days of contract date where no delivery date or commencement date specified
- Any refund must be paid within 15 days of cancellation.



Consumer Protection Laws



-Direct Agreements (cont'd)



Cancellation and Remedies



- If agreement is cancelled after consumer has solicited goods and services and requested delivery within 10 days of agreement, supplier is entitled to reasonable compensation for goods and services received before earlier of 11th day and date of notice of cancellation (unless goods can be repossessed or returned)
- Consumer must take reasonable care of goods until supplier repossesses or consumer returns goods or goods are destroyed further to supplier's instructions