

## **‘The Works’ Doesn’t Include Further Appeals: Supreme Court of Canada Dismisses Leave Application in a Case Determining That A Pleading Can Sometimes Constitute A Notice of Rescission**

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The Supreme Court of Canada (SCC) recently dismissed the application for leave to appeal the Court of Appeal for Ontario decision in *2352392 Ontario v. MSI*.<sup>1</sup> That case, which held that a pleading could constitute a notice of rescission in the specific circumstances of the case, therefore remains good law.

The Court of Appeal had held that in that particular case, a third-party claim brought by a franchisee against a franchisor in a court proceeding was sufficient to constitute a notice of rescission for the purposes of section 6(3) of the *Arthur Wishart Act (Franchise Disclosure) 2000*.<sup>2</sup> The Court went on to note that proceeding in this way is anomalous, and not the ideal or recommended approach. Our detailed summary of the Court of Appeal decision can be found [here](#).

While the Court of Appeal decision constitutes a departure from the conventional wisdom that a pleading will not ordinarily constitute a notice of rescission, and therefore gave many franchisors pause, it is not entirely surprising that the SCC declined to grant the franchisor in this case leave to appeal. The SCC only grants leave to appeal where it considers the case to involve matters of national importance, rather than focusing on whether or not the underlying decision was correct or reasonable. Further, the SCC has not granted leave to appeal to a case turning on the interpretation of provincial franchise legislation in many years.

Franchisors can continue to take solace in the Court of Appeal’s cautionary words that the use of a third party claim to provide notice of rescission was “anomalous, and certainly not the ideal or recommended approach” and that a written notice of rescission delivered prior to commencing litigation is “the normal and preferable procedure,” all as referred to in our previous update ([linked above](#)).

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<sup>1</sup> 2020 ONCA 237, <http://canlii.ca/t/j614p>

<sup>2</sup> S.O. 2000 c. 3 (the “*Wishart Act*”).

# Cassels

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