

Time to Pay Up: Ontario Court of Appeal Upholds Lower Court Decision on Royalties Owed During the Overholding of a Franchise Agreement

Derek Ronde

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In a 2021 decision, *Coffee Time Donuts v. 2197938 Ontario Inc.*, the Ontario Superior Court of Justice examined the enforceability of contractual obligations in a franchise relationship where the franchise agreement has expired but the parties have continued to operate in a “business as usual” manner. The Court held that, subject to limitation period issues, a franchisee was still responsible for paying royalties if it continued to use the franchisor’s brand name and suppliers after the expiry of a franchise agreement. In other words, the obligation to pay ran in conjunction with the so-called “overholding” scenario. Our summary of this decision can be found [here](#).

The franchisee appealed this decision to Ontario Court of Appeal but the appeal was unanimously rejected by the Court. A copy of the decision can be found [here](#). The Court upheld the lower court’s finding that the franchise agreement was continued by the conduct of both parties after the term of the written agreement expired. This conduct including continued purchases from exclusive suppliers, continued use of the system’s “Coffee Time” branding, and some limited royalty payments. The Court further upheld the calculation of damages based on the evidence submitted by the parties.

This appellate level decision reaffirms the view that despite the expiration of a franchise agreement, if the parties continue to operate in an overholding scenario whereby substantive terms of the agreement are still followed, the obligation to pay royalties may continue. This ought to provide some reassurance to franchisors where an overholding scenario has arisen due to unfortunate or unforeseen circumstances in the franchise relationship.

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