

The Writing's On The Wall: The Ontario Superior Court of Justice Rejects An Attempt To Enjoin A Franchise Agreement Termination Based On Unauthorized Product Use

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In *Kalbow Restorations Inc. v. Goodbye Graffiti Inc.*,¹ the Ontario Superior Court of Justice rejected an attempt by a franchisee (Kalbow) to seek injunctive relief preventing the franchisor (Goodbye Graffiti) from terminating the parties' franchise agreement.

The Court held that the applicable standard to in respect of the first step of the "RJR MacDonald" injunction test was that of the franchisee establishing that it had a "strong *prima facie* case" that the franchisor had improperly terminated the franchise agreement. In applying that standard, the Court held that the franchisee could not meet that threshold. Specifically, the Court found the evidence supported the proposition that Kalbow had committed several "Incurable Material Defaults" under the franchise agreement that entitled Goodbye Graffiti to terminate the agreement. Specifically, the defaults involved the franchisee's use of unapproved chemicals as graffiti-removal products, which was a core element of the franchised business. The franchisor elicited a number of damning admissions from the principal of the franchisee in respect of the franchisee's conduct in this regard. The Court rejected the franchisee's claims that it had stopped the practice several years earlier, stating that the Judge "was not so persuaded" based on the evidentiary record.

In respect of the second part of the injunction test, namely whether the franchisee would suffer irreparable harm if the injunction is not granted, the Court held that the franchisee did not establish irreparable harm, finding that any harm would likely be compensable in damages if the matter is tried. The Court also found that there was no loss of goodwill because the goodwill of the business accrued to the franchisor, not the franchisee.

On the third part of the test – the balance on convenience between the franchisor and the franchisee – the Court held that "if an injunction is granted and Kalbow loses at trial, Goodbye Graffiti will have been required to let Kalbow carry on business under its name and trademarks for years, and, based on the record before me, will almost certainly not be able to collect from Kalbow." The Judge again found in favour of the franchisor.

In addressing additional issues raised on the motion, the Court rejected the franchisee's allegation that the franchisor behaved improperly during the audit that uncovered the franchisee's misconduct, stating, "[t]o

the extent there was a business disturbance, it was caused at least in good part by this conduct on the part of Kalbow.” Further, the Court declined to give weight to “hearsay” allegations that other franchisees were using unauthorized products, stating “whether other franchisees were engaged in acts that arguably violated their respective agreements with Goodbye Graffiti is not relevant to the underlying question of whether Goodbye Graffiti was entitled to terminate the Agreement with Kalbow.” Lastly, the Court disagreed with the assertion by the franchisee that the termination was a tactical attempt to gain control of the franchisee’s profitable business, noting that the parties had agreed to a renewal a short time earlier and the franchisor could simply have declined the renewal.

The decision in *Goodbye Graffiti* provides some reassurances to Ontario franchisors that Ontario courts will uphold franchisor terminations and reject attempts to enjoin such terminations if there are reasonable grounds for termination. This case is particularly helpful in that the franchisee misconduct is operational rather than financial, meaning that a failure to abide by authorized products provisions in franchise agreements can support a valid and enforceable termination (or at least resist an attempt to enjoin the termination).

¹ Kalbow Restorations Inc. v. Goodbye Graffiti Inc., 2025 ONSC 3696 (CanLII), <<https://canlii.ca/t/kcwds>> (*Goodbye Graffiti*).