

A Crash Course in Good Faith: Lessons for Franchisors & Franchisees From *Avante v. BMW*

Andrew Boyes

October 15, 2025

A recent decision of the Ontario Superior Court of Justice's decision in *Avante Automobile (2017) Corporation v. BMW Canada Inc.*¹ provides another reminder to franchise parties that their statutory duties of fair dealing and good faith may come under close scrutiny when dealing with the termination of the franchise relationship. Franchise parties should be keenly aware of their obligations under the termination clauses in their franchise agreements and if there are any verbal agreements that alter those obligations, they should be properly documented.

Background

In 2012, Serpa Automotive (2012) Corporation (the Dealer) - a predecessor corporation of the plaintiff, Avante Automobile (2017) Corporation – purchased a BMW dealership in Newmarket, Ontario.

Conditional within the Letter of Intent (LOI) and the subsequent Retailer Agreement offered to the Dealer by BMW Canada (BMW) was the requirement that the dealership undergo significant renovations to meet BMW's new facility standards. According to the initial LOI, these renovations were required to be completed by February 1, 2014. The Retailer Agreement carried a term of 24 months to be extended until December 31, 2015, subject to completion of the renovations. Both the LOI and the Retailer Agreement also carried termination provisions whereby BMW could terminate the relationship on written notice if the Dealer had not satisfied the requisite terms and conditions. The termination provisions included a 15-day cure period.

However, seemingly unbeknownst to the principal of Serpa Automotive, the premises was subject to an agreement from an Ontario Municipal Board settlement that required the consent of the building's surrounding residential neighbours before any significant changes could be made to the property. Although these conditions would likely have been discovered through a title search on the property, none was completed. The Dealer's counsel characterized this oversight as a "lapse" on the plaintiff's part.

Progress on the renovation proceeded slowly, eliciting concern from BMW. A second LOI was delivered to the Dealer which set out a timetable for construction, followed by a series of letters citing the termination provision but nevertheless pushing the deadline for the renovation's completion to June of 2014. This deadline was pushed yet again by way of an oral agreement with BMW's President to April of 2015. This final extension was never formally documented aside from several emails acknowledging that it had been

granted.

Despite substantial progress, April 2015 came and went without completion of the renovation. The Dealer continued to operate the dealership and, in December of 2015, provided BMW with a revised construction timeline extending into April of 2016. However, in March of 2016, representatives of BMW informed the principal of Serpa Automotive that they would not be extending any further Retailer Agreements and that they wished to end the relationship between the parties. BMW committed to co-operating with the Dealer as it pursued a buyer for the dealership.

Following several unsuccessful attempts to sell the dealership for \$21 million and \$21.6 million, the business was ultimately sold for \$15 million. The Dealer brought an action against BMW alleging that BMW's failure to renew the Retailer Agreement and its conduct throughout the relationship had breached contractual, statutory and common law obligations, forcing Serpa Automotive to sell the dealership at a reduced price. The Dealer claimed damages as the difference between the prospective purchase price under the unsuccessful attempts to sell the dealership and the actual sale price obtained.

The Court's Decision

The Court held that BMW had breached its statutory duty of fair dealing under s. 3 of the *Arthur Wishart Act, (Franchise Disclosure), 2000*² in failing to properly document the extension to April 2015 and by failing to abide by the termination procedures outlined in the Retailer Agreement. It found that the parties had continued to operate and deal with each other with respect to the dealership as if the Retailer Agreement had remained in force until March of 2016. Accordingly, BMW was obligated to follow its Retailer Agreement with regard to terminating the dealership, which would have provided the Dealer with the opportunity to cure the reasons given for termination.

However, the Court ultimately dismissed the Dealer's claims for damages, concluding that the actual sale price of the dealership reflected fair market value more accurately than the failed offers from other buyers. Similarly dismissing claims for punitive damages, the Court concluded that there were no net recoverable damages with which to award the plaintiff, effectively amounting to a dismissal of the action.

Key Takeaways

Despite the Court's decision on damages, this case provides yet another reminder that franchise parties will be under scrutiny in respect of franchise agreement terminations, and if the parties do not properly document any changes to existing rights and timelines, they may face arguments of bad faith conduct. When the franchise relationship becomes precarious, franchise parties should ensure that their messaging and conduct is clear and unambiguous.

Cassels

¹ [2025 ONSC 87.](#)

² SO 2000 c.3.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.