Cassels

The *Midas* Touch: Ontario Court Relies on Franchise Case to Apply Ontario Employment Legislation to California Employment Case

Christopher Horkins

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In *McMichael v The New Zealand & Australian Lamb Company*, the plaintiff, a former VP of operations at a lamb processing facility owned by the defendant in Los Angeles, sued the defendant for wrongful dismissal and moved for summary judgment. Although employed in the United States by an American company, the plaintiff chose to bring his action in Ontario, in reliance upon on Ontario's employment laws, on the basis that his employment agreement was expressly governed by Ontario law.[1]

From a franchising perspective, the case is interesting for its reliance on the Ontario Court of Appeal's 2010 decision in *Landsbridge Auto Corp. v Midas*, which held that Ontario's *Arthur Wishart Act (Franchise Disclosure), 2000* (the Wishart Act) could be applied to franchises located outside of Ontario if the franchise agreement contained a valid choice of law provision in favour of Ontario law.[2]

The *Midas* Principle

Midas arose from a franchisee class action on behalf of franchisees of Midas Canada Inc.

While the class proceeding was ongoing, several of the franchisees' agreements came up for renewal and Midas, in accordance with standard industry practice, requested a full and final release as a condition of the renewal. The release would have required the franchisees to release their claims as class members. At issue was whether, and to what extent, the non-waiver and right of association provisions under sections 11 and 4 of the Wishart Act precluded Midas from requiring such a release, including from franchisees operating outside of Ontario.

For the non-Ontario franchisees, the issue before the Court was whether a choice of law provision selecting Ontario law meant that the franchisees received the full benefit of the Wishart Act, notwithstanding that the Act expressly applied to franchises "operated wholly or partly in Ontario." Despite prior Superior Court case law finding otherwise,[3] the Court of Appeal held that the choice of Ontario law reflected an intention by the parties to have Ontario law apply "as if the business of the franchise was operated in Ontario." As long as that choice is "bona fide and legal, and there is no reason for avoiding the choice on the ground of public policy," then the law will govern the contract.

The Application of the *Midas* Principle Outside of Franchising in This Case

In this case, similarly, the plaintiff sought to benefit from the provisions under Ontario's *Employment Standards Act* on the basis of a choice of law provision. The defendant opposed this because section 3(1) of that Act provided that, like the Wishart Act, the Act only applied to employment performed in Ontario or as a continuation of work performed in Ontario. Following the same logic as the Court of Appeal in *Midas*, the Court held that the *Employment Standards Act* did apply to the plaintiff's employment notwithstanding that he was employed by a US company and performed all of his work in California.

Key Take-Away Principle

This case highlights the importance, in franchising and otherwise, of careful drafting when it comes to choice of law provisions. Parties should be careful to ensure that they are not accidentally adopting the application of onerous provisions in the law of other jurisdictions by way of a contractual provision. Courts will generally not decline to apply such laws on the basis that the statutes purport to only apply to activity within their territorial jurisdiction.

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[1] *McMichael v The New Zealand & Australian Lamb Company*, 2018 ONSC 5422, <http://canlii.ca/t/hv6ph>
[2] *Landsbridge Auto Corp. v. Midas Canada Inc.*, 2010 ONCA 478
[3] See: *Nazarinia Holdings Inc. v 2049080 Ontario Inc.*, 2010 ONSC 1766, <http://canlii.ca/t/28vkw>
