

## Time to Face the Facts: *Raibex* Appeal Decision Provides Support to Dismiss Summary Judgment Motion Where Potential Material Facts in Dispute

October 9, 2018

On May 14, 2018, in *1680690 Ontario Inc. v. Print Three Franchising Corporation*,<sup>1</sup> the Ontario Superior Court of Justice dismissed a motion for summary judgment in a statutory rescission case on the basis that the evidentiary record did not provide the Court with the necessary evidence to fairly and justly adjudicate the issue. Specifically, the franchisee plaintiffs were seeking (a) a declaration that the franchise agreement was validly rescinded under the provisions of the *Arthur Wishart Act (Franchise Disclosure)*, 2000<sup>2</sup> and (b) payment for rescission damages for the alleged failure to meet disclosure obligations by the defendant franchisor, Print Three.

In making its decision, the Court relied heavily on the Ontario Court of Appeal's recent decision in *Raibex Canada Ltd. v. ASWR Franchising Corp.*<sup>3</sup> in drawing the conclusion that the facts of this case are "very important" for the Court's determination of "whether the plaintiffs have been deprived of an opportunity to make an informed decision on their purchase". Because there were potential material facts in dispute, the Court was unable to resolve the conflicts to arrive at a fair and just decision.

The Court relied on the Court of Appeal's analysis in *Raibex* of the applicable provisions of the *Wishart Act*, which she said provides the court a "framework of analysis that is of **great assistance to the determination of this action**" [emphasis added]. The Court highlighted the importance of a facts-based analysis in determining whether disclosure was adequate under the provisions of the *Wishart Act*.

### Key Takeaways

*Raibex* provides a helpful precedent for franchisors in that it establishes that any judicial determination regarding rescission should focus on the specific facts of the case before the court. This facts-based analysis is critical in determining whether a disclosure document provided a prospective franchisee with material facts sufficient to make an informed investment decision. The decision in *Print Three* indicates that Ontario courts are taking heed of the *Raibex* precedent, particularly in cases where the franchisee is seeking summary judgment on a limited factual record rather than a trial.

If you have any questions concerning the *Raibex* decision or its application on summary judgment motions relating to disclosure obligations, please contact Geoffrey B. Shaw, Christopher Horkins, Danielle DiPardo, or any other member of the Cassels Brock Franchise Litigation Group.

# Cassels

[A copy of our e-lert prepared on the Court of Appeal's decision in \*Raibex\* can be found here.](#)

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<sup>1</sup> 2018 ONSC 1191 ("*Print Three*").

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

<sup>3</sup> 2018 ONCA 62 ("*Raibex*").

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