

Cassels

A Fixed Term of Forever: The Supreme Court of Canada Rules on the Validity of Perpetual Renewal Clauses in Quebec

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Franchise agreements often contain automatic renewal provisions. However, can an agreement be renewed automatically where the effect is to put the parties in an endless cycle of renewal? The Supreme Court of Canada recently said yes and confirmed the validity of a clause providing for the automatic renewal of a fixed term contract. In *Uniprix*,¹ the appellant, Uniprix inc. (Uniprix), and the respondent companies (the Pharmacists) entered into a contract of affiliation in 1998 for a fixed term of five years. The contract contained an automatic renewal clause, which was triggered twice, once in 2003 and again in 2008. The clause was entirely for the benefit of, and could only be triggered by, the Pharmacists. In 2012, Uniprix sent the Pharmacists a notice of non renewal, purporting to terminate the contract.

The Trial and Quebec Court of Appeal Decisions

The Pharmacists took the position that they could renew the contract, while Uniprix argued that it could oppose the renewal and terminate the contract upon the expiry of the term. The issue for Uniprix was that this could have the effect of binding the parties in perpetuity, contrary to public order. Both the trial judge and the Quebec Court of Appeal concluded that the renewal clause was clear and that it reserved for the Pharmacists an option to unilaterally renew the contract, which is legal, despite that it may have a perpetual effect.

The Supreme Court of Canada Decision

The Supreme Court dismissed the appeal, concluding that the trial judge made no palpable and overriding error in interpreting the contract. The unilateral renewal option was found to be consistent with the other provisions of the contract, the circumstances surrounding its execution, and the parties' conduct. Despite bearing some similarities, the Court distinguished the contract from a franchise agreement, specifically finding that Uniprix had been created for the benefit of the Pharmacists, who specifically joined together for the purpose of developing their practices. Uniprix would serve its members until the members (i.e., the Pharmacists) themselves decided to withdraw from the group. Further, twice, in 2003 and 2008, Uniprix recognized that the Pharmacists' silence bound the parties for an additional five-year term. In addition, nothing in Quebec law precludes the parties from agreeing on such a mechanism, despite its perpetual effects. Such a mechanism is not contrary to public order.

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On dissent, Justice Côté, raised an interesting question: Can a contract properly be characterized as having a fixed term of five years where that term does not apply to one of the contracting parties who is effectively bound in perpetuity? In the words of Justice Côté, “a court should not forever wed two parties in an unhappy marriage where only one of them has the avenue for exit, in the absence of express vows to that effect.” In characterizing the term of a contract, perpetuity should not be inferred.

Key Take-away Principle

Whether you are dealing with a commercial agreement or a franchise agreement, careful attention needs to be paid to ensure that renewal provisions are not drafted in such a way as to have a perpetual effect at the sole discretion of only one of the contracting parties. If the language of the renewal clause is clear, it will not require an interpretive exercise in order to be applicable, despite having a perpetual effect. Ensuring that renewal provisions are expressly limited will prevent against inadvertent perpetual agreements.

¹ [Uniprix inc. v. Gestion Gosselin et Bérubé inc.](#), [2017] S.C.J. No. 43