

## Oh Snap!: Franchisors May Be Liable for Human Rights Complaints Initiated By Employees of Franchisees in British Columbia

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In *Reid v. Snap Fitness Cloverdale*<sup>1</sup>, the British Columbia Human Rights Tribunal held that a franchisor who is not directly involved in the employment of a human rights complainant may nevertheless attract liability under the BC *Human Rights Code* (the *Code*). Although no liability was found in this case, the Tribunal indicated that a franchisor is a proper party to a complaint unless it can point to provisions in the franchise agreement or other facts which would demonstrate to the Tribunal that the franchisor does not wield sufficient influence over the franchisee employer.

In this case, the human rights complainant was a membership advisor at a fitness club, a “Snap Fitness” franchise location in Surrey, BC, who suffered injuries in a motor vehicle accident which impacted her ability to perform certain physical tasks. The complainant’s direct manager had provided accommodation for her injuries, which were suffered prior to her employment at Snap Fitness, and had otherwise given her positive feedback. However, the complainant was subsequently terminated from her employment. She alleged that her termination was due to her medical issues and limitations. These allegations were supported by text messages from the owner/operator of the franchise location, which stated “...u can’t mop/vacuum/put away weight” and “...the job is too heavy for u and I’m increasing the cleaning duties & with your injuries...”

The complainant commenced her complaint against the individual owner, the franchise corporation, the international franchisor, and its Canadian subsidiary (together with the international franchisor, “Snap Fitness”), alleging they had discriminated against her on the basis of her physical disability.

Snap Fitness moved to dismiss the complaint against the international franchisor and the Canadian subsidiary on the basis they were not the complainant’s employer and the complaint did not further the purposes of the *Code*. The Tribunal dismissed their motion, making it clear that the *Code* applied to any “person”, and not just to an “employer”: so long as the subject of the complaint has the ability to interfere with or influence the employment relationship, they are subject to the *Code* as it applies to employment relationships. The Tribunal had made it clear in previous decisions that liability may be found where a franchisor has the ability to interfere with and influence the franchisee’s employment relationship with its employees and fails to do so (i.e., fails to prevent the discrimination).

In deciding this case, the Tribunal noted that the complainant’s evidence was that her work was directed

and controlled according to Snap Fitness policies and directives. Correspondence regarding her employment was on Snap Fitness letterhead; their logo was on her cheques; her employer's email address was at a "snapfitness.com" domain; Snap Fitness monitored the location; and job postings for the location prominently referred to Snap Fitness and not to the franchise corporation.

The Tribunal was clear that each franchise relationship will be governed by the franchise agreement. In this case, Snap Fitness, which bore the onus to prove that they were not proper parties to the complaint, had provided only two pages of that agreement to the Tribunal. In the face of the complainant's evidence that Snap Fitness had some level of influence, and their inability to determine the full extent of that influence or otherwise rebut the complainant's contention, the Tribunal was not satisfied that Snap Fitness' inclusion as a party would not further the purposes of the *Code*, and declined to exercise its discretion to dismiss the complaint.

This case illustrates that even where franchisors are not considered to be "joint employers" (as discussed elsewhere in this newsletter), they may be vulnerable to human rights complaints against their franchisees, particularly where the franchise agreement or franchise disclosure document discloses that it wields significant influence over its franchisees.

Franchisors in BC should ensure that their franchise agreements do not unduly prescribe or interfere with their franchisees' employment practices. In the event that they are named in any human rights complaints by franchisees' employees, franchisors should be prepared to fully argue that their influence over franchisees' employment practices is not sufficient to confer liability on the franchisor in the event of a human rights complaint, and to ensure that they supply the tribunal with a sufficient record to support that argument.

[A link to the full decision can be found here.](#)

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<sup>1</sup> *Reid v. Snap Fitness Cloverdale and others*, 2017 BCHRT 181