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The Cost of Doing "Biznex": Quebec Superior Court Rules on Contractual Clarity During Negotiations

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A recent franchise decision from the Superior Court of Québec highlights that franchisors should clearly disclose anticipated costs when negotiating with a prospective franchisee. In *Placements Biznex inc. c. Sobeys Québec inc.*[1], the Court awarded damages to a prospective franchisee after determining that contractual ambiguity regarding equipment costs should favour the prospective franchisee. The province of Quebec does not have a statutory disclosure regime that would address matters like the cost of setting up a franchise.

By way of background, on May 7, 2009, the prospective franchisee, Les Placements Biznex (Biznex) signed a letter of intent (LOI) with Sobeys Québec inc. (Sobeys) to establish a franchised convenience store under Sobeys' "Voisin" brand on land already owned by Biznex. The LOI included the steps necessary to establish a "Voisin" franchise, including the financing and acquisition of equipment to operate the franchise.

The equipment financing component proved to be contentious; the parties disagreed with respect to who bore the financial responsibility for equipment acquisition under the LOI. From Biznex's perspective, Sobeys was responsible for equipment financing since it marketed the franchise to Biznex as "turnkey" and conducted all equipment negotiations on Biznex's behalf. For its part, Sobeys interpreted the LOI as requiring the prospective franchisee to finance the equipment. In considering the evidence put forward by the parties, the Court noted credibility concerns with regards to Sobeys' witness, who failed to answer simple questions and was deemed by the Court to be non-credible.

In reaching its decision to award damages to Biznex, the Court held that from the outset of the relationship, Sobeys was aware of the equipment financing misunderstanding and had multiple opportunities to clarify its interpretation of the LOI to Biznex. Instead, Sobeys opted to remain silent on the matter. By failing to address the ambiguity, the Court determined that Sobeys did not meet its disclosure obligations to Biznex. Further, the Court determined that the LOI did not specify which party was responsible for equipment financing, and therefore the ambiguity favoured Biznex.

The case provides guidance for franchisors in Quebec, who are encouraged to determine whether there is any ambiguity regarding the prospective franchisee's financial responsibilities prior to signing a letter of intent, and to resolve it if it exists.

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[1] *Placements Biznex inc. c. Sobeys Québec inc.*, 2017 QCCS 3681 (CanLII)

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