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PRODUCTION COORDINATOR: Jessie Ramsay
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SPRING 2016

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NEW FRANCHISE LEGISLATION IN BRITISH COLUMBIA

BY JORDAN FORSYTH

*Commercial Law, Corporate Law,
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Until now there has been no legislation in British Columbia which specifically addresses franchise law despite the ever-increasing popularity of the franchise structure as a business model. However, on October 20, 2015, Bill 28 - Franchises Act passed Third Reading in the BC Legislature, meaning that it has been fully approved and will come into force once the government has drafted related regulations and the business community has been provided with a transition period to become familiar with the new requirements. The new Franchises Act will be largely consistent with legislation already in place in five other provinces in Canada (Alberta, Ontario, New Brunswick, P.E.I. and Manitoba all have franchise legislation modeled on the Uniform Franchises Act developed by the Uniform Law Conference of Canada).

The introduction of the Franchises Act is an important development in BC franchise law, especially given the imbalance of power that can exist between a multi-national franchisor corporation and an individual with limited resources who is faced with what is often an onerous and lengthy "franchise agreement" drafted by the franchisor's legal team.

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WAXING YOUR BOARD: LIABILITY ON THE SLOPES

BY JACOB R. PARKINSON, B.A.(H), L.L.B.

Associate



This past winter has been one of the best in recent memory for snow conditions on the local mountains. While out enjoying sunny days, blue skies and fresh powder, few people have ever taken a break to read the fine print found on the back of a lift-ticket. You might be surprised to learn just how far reaching the effect of that fine print can be.

This is the law of waiver and what is commonly referred to as the "ticket defence". The Courts have consistently upheld this as a complete defence in order to strike out the claims of injured people. These types of cases are becoming increasingly more common given the growing popularity of such adventure sports as mountain biking, bungee jumping and zip-lining.

In one case, an experienced skier signed a release when she obtained her ski pass. She was subsequently injured when she was run over while trying to get onto the chairlift, resulting in a dislocated hip. The allegation was that the employee had been negligent in not stopping the chairlift. The Court ruled that the skier had signed a release with clear wording, which released the ski hill from any liability. As a result, she had no claim for damages. As she had signed the document, it was not necessary to prove that she had actually read it.

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Some of the major new requirements that will come into effect when the Franchises Act comes into force include the following:

- The franchisor must provide a “disclosure statement” setting out specified information about the franchise at least 14 days before the earlier of the signing of the agreement or the payment of any consideration by the franchisee to the franchisor;
- The above 14-day “cooling off” period will permit prospective franchisees to withdraw any commitment to proceed with the franchise agreement within that period;
- Perhaps the most significant aspect of the new Franchises Act will be the ability for a franchisee to rescind the franchise agreement within 60 days after receipt of a disclosure statement if the franchisor failed to disclose a material fact in the statement, as well as a right of rescission for a period of two years from the date of the franchise agreement if the disclosure statement was never actually given to the franchisee;
- In addition, if rescission is permitted due to inadequate disclosure, the Franchises Act will impose very onerous restitution obligations pursuant to which the franchisor must:
 - return any money received from the franchisee other than payment for items like inventory, supplies and equipment;
 - purchase back any current inventory, supplies and equipment from the franchisee; and
 - compensate the franchisee for any other losses incurred in the course of setting up and running the franchise (which could be very significant if almost two years have passed!).

Before signing a franchise agreement, whether before or after the new Franchises Act comes into force, it is critical that prospective franchisees receive professional legal advice. A franchise agreement is just like any other agreement in that both parties need to understand and agree on all aspects of the agreement. ■



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WAXING YOUR BOARD: LIABILITY ON THE SLOPES

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Moreover, while you might expect that a contract releasing someone from liability would be signed, the Courts have ruled that a signature is not necessary. In these cases the consent of the party is based on ‘notice’. It is for this reason that there is wording on lift tickets and other posted signs at ski hills in bold underlined capitals, or highlighted, so that the operator can argue skiers are on notice.

However, this fine print is not a blank cheque for operators to carry on their activities without any regard to safety. In some cases, the Courts will still find liability where there is “gross negligence”. One can often read between the lines in these cases that the Courts are concerned about fairness and an abuse of power by the person drafting the waiver.

In one instance, which made its way up to the Supreme Court of Canada, a visibly intoxicated person entered a competition on a ski hill to race over-sized inner-tubes. He made it through the first heat, suffering a cut over his eye, but was then seriously injured in the second heat. The Supreme Court of Canada ruled that the promoter of a dangerous sport owed a duty of care to take all reasonable steps to prevent him from participating in the sport when it was aware that he was visibly intoxicated. The Court ruled that the waiver in that case had not been brought to his attention.

Nonetheless, the ticket defences are successful in often surprising circumstances. One recent example that made its way up to the British Columbia Court of Appeal involved two people colliding on a zip line. While one person was stuck on the line, the tour operator negligently placed a second person on the zip line, leading to a collision between them, resulting in serious injuries. In that case, the Court of Appeal ruled that the release was enforceable and the claim for damages was therefore dismissed.

As with any legal claim, there may be strict time limitations at play within which a person must act or be barred from bringing forward a claim. You should consult a lawyer for specific legal advice.

This is all to say take care out there, and keep your edges sharp! ■

To learn more about Jacob R. Parkinson, his areas of practice and to view other articles written by lawyers at our firm, visit us online at www.bakernewby.com.



WHO GETS THE RING?

BY JASON FILEK
Associate



I've heard it said that an engagement ring is one of the most important pieces of jewelry a woman will ever own. It likely will also be one of the most expensive pieces of jewelry that she will ever own. When purchased, love is in the air, and if the proposal is accepted, it is anticipated that the bride-to-be will wear this important and expensive ring for the rest of her life.

Before popping the question, it is doubtful that much thought is ever given to another question, which is not romantic, but is a reality. That question is: What happens to the ring if the engagement ends, and the previously happy couple does not make the journey down the aisle?

As we have all seen from television, magazines and our own personal experience, engagement rings come in all shapes and sizes, and with an equally wide range of value. The higher the value, the more likely there is to be a dispute over who will keep the ring if the engagement ends.

Believe it or not, this issue has actually been litigated through the courts of this country. However, the various jurisdictions throughout the country have taken different approaches to this issue, which can be

summarized as follows: First, the court will consider who ended the engagement as the principal factor in deciding who is entitled to the ring. In other words, whoever ended the engagement is not entitled to the ring.

Secondly, some courts have treated the ring as a gift, which cannot be taken back. In other words, the ring becomes the property of the person who received it. In this approach, it does not matter who ended the relationship, and there is no return of the ring.

Thirdly, some courts have held that when an engagement ends, the parties should be restored to their pre-engagement positions. In other words, the ring will be returned, unless there was an agreement to the contrary. This is the approach that has been taken in cases decided in British Columbia courts.

In closing, I wonder whether Kanye West considered these issues prior to popping the question to Kim Kardashian, considering that engagement ring has been reportedly valued upwards of \$3,000,000 US, and her previous marriage lasted only 72 days! ■

NEWS RELEASE

TRUTH AND RECONCILIATION IN PRACTICE

In late 2015, the Benchers of the Law Society of British Columbia have unanimously agreed that addressing the challenges arising from the Truth and Reconciliation Commission of Canada's findings and recommendations is one of the most important and critical obligations facing the country and the legal system today. To the Truth and Reconciliation Commission, reconciliation is about establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country. In order for that to happen, there has to be awareness of the past, acknowledgment of the harm that has been inflicted, atonement for the causes, and action to change the behaviour.

The Truth and Reconciliation Commission of Canada's final report contains 94 recommendations to guide Canada towards this goal of reconciliation.

Recommendations 27 and 28 speak specifically to the legal profession.

Recommendation 27 calls upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown Relations. Recommendation 28 calls upon law schools in Canada to require all law students to take a course in Aboriginal people and the law.

The Benchers recognize that reconciliation goes beyond these two recommendations to include a number of legal issues currently impacting Aboriginal communities. These include child welfare, overrepresentation of Aboriginal people in custody and the need for enhanced restorative justice programs, the disproportionate victimization of Aboriginal women and girls, Aboriginal rights and title (including treaty rights, the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, unresolved residential school claims, and issues concerning jurisdictional responsibility for Aboriginal peoples. While the majority of the recommendations contained in the final report are not directly aimed at lawyers, their implementation largely depends on the engagement of lawyers. Accordingly, the Law Society of British Columbia will begin to implement key initiatives. ■

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INTRODUCING

WE WOULD LIKE TO TAKE A MOMENT TO INTRODUCE YOU TO SOME OF OUR NEW ASSOCIATES AT BAKER NEWBY LLP



JESSIE RAMSAY

Jessie Ramsay was born in New Westminster but grew up in Chilliwack, BC. Jessie graduated with her Juris Doctor from the Peter A. Allard School of Law at the University of British Columbia in 2014. Throughout her time at law school Jessie held several executive positions within the Law Students' Society and the Indigenous Law Students' Association. Jessie completed her summer and full-time articles with Baker Newby LLP and joined them as an Associate upon her call in 2015. Jessie works out of our Chilliwack office and her main areas of practice are Family Law, Personal Injury Law and Aboriginal Law.



BRIAN VICKERS

Brian Vickers was born and raised in Abbotsford, British Columbia. Brian graduated with his Juris Doctor from Thompson Rivers University in 2014. While attending law school, Brian was elected the Vice President of Academics for Thompson Rivers University's inaugural Society of Law Students. Brian began articles with Baker Newby LLP shortly thereafter and joined the firm as an Associate upon his call in 2015. Brian works out of our Chilliwack office and his main practice areas are Commercial and Civil litigation.



ALVIN BAJWA

Alvin Bajwa was born in Vancouver, BC and grew up in Maple Ridge, BC. He completed his Bachelor of Arts degree at Simon Fraser University and his Juris Doctor at the University of Manitoba.

Alvin practices in Construction Law, Commercial Litigation, and Personal Injury Law. He completed his articles with Baker Newby and was called to the bar in 2015. He is based in the firm's Abbotsford office.



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