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An "AllStar" win for franchisors after much-anticipated Ontario Court of Appeal decision

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The Ontario Court of Appeal (ONCA) has released its much-anticipated decision in *Raibex Canada Ltd. v. ASWR Franchising Corp.* and franchisors can finally breathe a sigh of relief.

On January 25, 2018, the ONCA released *Raibex Canada Ltd. v. ASWR Franchising Corp.*, 2018 ONCA 62, completely overturning the controversial lower court's motion decision (the Motion Decision). The Motion Decision called into question the common industry practice of franchisors providing a disclosure document to prospective franchisees and entering into a franchise agreement prior to identifying a specific site for the franchise. As noted in our previous Osler Update**,** the Motion Decision raised the serious concern that it was simply not possible for a franchisor to provide adequate disclosure to a prospective franchisee prior to identifying a site and signing a lease. With its January 25 decision, the ONCA has now restored confidence in the use of this prevalent industry practice.

In another victory for franchisors, the Court emphasized the "important legislative distinction" between the 60-day and two-year rescission remedies (the Rescission Remedies) under sections 6(1) and 6(2) of the *Arthur Wishart Act (Franchise Disclosure), 2000* (the AWA) and warned against frustrating clear legislative intent by conflating the Rescission Remedies. The Court further noted that rescission is an "extraordinary remedy" and stated that "imperfect disclosure does not necessarily stand in the same position" as no disclosure, the latter being found only where the franchisee has been effectively deprived of the opportunity to make an informed investment decision. As such, the ONCA may be signalling to lower courts that they should not be too quick to find "material deficiencies" that would entitle a franchisee to the two-year remedy under section 6(2) of the AWA when the 60-day remedy under section 6(1) of the AWA should apply. In any event, franchisors who have been growing increasingly troubled by the lowering threshold of what constitutes a "material deficiency" in a disclosure document can take some comfort from this case, which quite clearly raises that threshold.