Toronto Law Journal

Elected Municipal Officials lose out on the Sweeping Protections of Absolute Privilege afforded to Members of Parliament and the Provincial Legislatures: *Gutowski v. Clayton*

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The Ontario Court of Appeal's decision in *Gutowski* v. *Clayton*[1] (*"Gutowski")* delivers a clear message that the extensive speech immunity protections afforded by the common law defence of absolute privilege will not extend to statements made by municipal councilors in council meetings.

In *Gutowski*, a municipal councilor brought an action in defamation against the appellants, fellow municipal councilors in the County of Frontenac, which stemmed from statements made by the appellants in a regular council meeting.[2] The appellants brought a motion under Rule 21.01(1)(a) of the *Rules of Civil Procedure*[3] for a determination before trial of whether the defence of absolute privilege should be extended to protect statements made in municipal council meetings.[4] The appellants unsuccessfully argued the motion and the appeal, with both courts agreeing that the defence of qualified privilege, but not absolute privilege, applies to statements made by municipal councilors in council meetings.[5]

The Court of Appeal held that the appellants did not show that it is "plain and obvious" that the defence of absolute privilege "extends to the speech of municipal councilors made in the course of municipal council meetings."[6] With no factual or expert evidence admissible on the motion, the Court noted that "a Rule 21 motion is not the appropriate vehicle"[7] to decide whether the common law definition of absolute privilege should extend to statements made by municipal councilors in council meetings on the basis of necessity.

However, the Court went on to discuss as a principle of law the question of whether the right to freedom of expression was sufficient in and of itself to extend an absolute privilege to municipal council meetings.

The appellants argued that statements made during council meetings are akin to statements made in the federal and provincial parliaments and should be protected by way of a similar speech immunity.[8] The absolute privilege enjoyed by members of the legislatures and Parliament, encompassed under the umbrella of "parliamentary privilege," secures the right of parliamentarians to speak and debate freely in

[1] *Gutowski v. Clayton*, 2014 ONCA 921 (CanLii) ("*Gutowski*").
[2] *Ibid*. at para. 3.
[3] *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
[4] *Gutowski, supra* note 1 at para. 10.
[5] *Ibid*. at paras. 5 to 8.
[6] *Ibid*. at para. 28.
[7] *Ibid*.
[8] *Ibid*. at para. 9.

parliamentary proceedings with immunity from civil or criminal action.[7] The Court rejected the appellants' argument on the basis that municipal councils lack a legislative underpinning for an absolute privilege and lack the self-regulation controls over proceedings and members that are present in the provincial legislatures and Parliament.[8] The appellants tried and failed to compare and analogize "the federal and provincial legislatures to municipal councils, while ignoring the machinery in the former to deal with defamatory remarks without resort to civil litigation."[9]

Dual Public Interests in Parliamentary Privilege

The "machinery" present in the legislatures and Parliament that secures complete speech immunity to its members, reflects the dual public interest of freedom of speech/freedom of debate and the freedom from outside interference in the affairs of Parliament and the legislatures.[10] Integral to the concept of parliamentary privilege is the need for legislatures and Parliament to have "complete control over their own proceedings and their own members.[11]

As explained by the Supreme Court of Canada in *Canada (House of Commons) v. Vaid,*[12] parliamentary privilege is an important part of the "general public law of Canada" and is "inherited from the Parliament at Westminster by virtue of the preamble to the *Constitution Act, 1867* and in the case of the Canadian Parliament, through s. 18 of the same *Act*."[13] The Court of Appeal in *Gutowski* noted that the privilege is further provided to federal parliamentarians by virtue of the *Parliament of Canada Act*, sections 4 to 6 and the *Legislative Assembly Act*, section 37.[14] No similar legislative speech immunity provisions exist for municipal officials.[15]

1. The Public Interest in Freedom of Speech

Parliamentary privilege has its roots in Article 9 of the English *Bill of Rights 1689,*[16] which states that the "freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament."[17] Parliamentary privilege is essentially the "cornerstone of parliamentary democracy"[18] in that it secures the protection of elected members of Parliament to speak freely and debate freely on all proceedings in the legislatures and Parliament without risk of civil or criminal liability or

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[7] House of Commons Procedure and Practice
Second Edition, 2009: Rights and Immunities of Individual Members: Freedom of Speech, found at http://www.parl.gc.ca.
[8] *Gutowski, supra* note 1 at paras. 16 to 19.
[9] *Gutowski v. Clayton*, 2014 ONSC 2908 (CanLii) at para. 69.
[10] See *A v. The United Kingdom* [2002] ECHR 35373/97 at para. 66 for a summary of the UK Government's position on the dual public interests involved in parliamentary privilege.
[11] *Gutowski, supra* note 1 at para. 16.
[12] *Canada (House of Commons) v. Vaid*, [2005] 1 SCR 667, 2005 SCC 30 (CanLII).
[13] *Ibid.* at para 29.
[14] *Gutowski, supra* note 1 at para. 16.
[15] *Ibid.* at para. 19.
[16] *Ibid.* at para. 16; Joint Committee on Parliamentary Privilege (UK) – First Report, March 1999 (online edition), at Ch. 2, para. 36 found at http://www.publications.parliament.uk/pa/jt199899/jtselect/jtpriv/43/4306.htm ("UK Joint Committee Report")
[17] UK Joint Committee Report, *ibid.* at Ch. 2, para. 36.
[18] *Ibid.* at Ch. 2, para. 36.

any interference from the court.[19] The immunity from civil or criminal liability is wide and absolute[20] and members of the legislatures and Parliament who make statements knowing that they are untrue are as protected as much as a member who acts "honestly and responsibly."[21] The comparable principle, which exists at common law with respect to judicial proceedings, involves the same overriding freedom of speech rationale:

> The public interest in the freedom of speech in the proceedings, whether parliamentary or judicial, is of a high order. It is not to be imperilled by the prospect of subsequent inquiry into the state of mind of those who participate in the proceedings even though the price is that a person may be defamed unjustly and left without a remedy.[22]

Certainly, as advanced by the appellants, a compelling argument exists that elected municipal councilors, charged with representing their constituents and governing municipal affairs, should equally enjoy an absolute freedom to speak freely, without fear of civil or criminal liability during council meetings as do their provincial and federal counterparts. In *Prud'homme* v. *Prud'homme ("Prud'homme")*,[23] the Supreme Court of Canada, discussing the role of elected municipal officials and how the restriction of their speech impacts the "vitality of municipal democracy," cited Professor P. Trudel, who wrote that:

> [TRANSLATION] Municipal democracy is based on confrontation between views and on open, and sometimes vigorous and passionate, debate. Discussion about controversial subjects can occur only in an atmosphere of liberty. If the rules governing the conduct of such debates are applied in such a way as to cause the people who participate in them to fear that they will be hauled before the courts for the slightest breach, the probability that they will choose to withdraw from public life will increase.[24]

The Court of Appeal in *Gutowski* recognized the importance of municipal councilors exercising their freedom of expression in their role as elected members of municipal government but stopped short of finding that this was sufficient to extend to municipal councilors the same absolute privilege afforded to their federal and provincial counterparts. The Court of Appeal instead held that "the right to freedom of expression in public discourse"[25] only "underpins the extension of *qualified privilege* to municipal councilors"[26] and did not advance the position of the appellants. If councilors act reasonably, with no malice, then they will not attract civil liability for defamation. In *Prud'homme*, the Supreme Court of Canada affirmed this concept, which has been repeatedly applied in the UK and Canada[27], explaining:

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[19] *Ibid*. at Ch. 2, para. 36.
[20] *Ibid*. at Ch. 2, para. 38.
[21] *Ibid*. at Ch. 2, para. 38.
[22] *Ibid*. at Ch. 2, para. 39.
[23] *Prud'homme* v. *Prud'homme*, 2002 SCC 85.
[24] *Ibid*. at para. 42, citing Professor P. Trudel, "Poursuites en diffamation et censure des débats publics. Quand la participation aux débats démocratiques nous conduit en cour" (1998), 5 *B.D.M.* 18, at p. 18.
[25] *Gutowski, supra* note 1 at para. 11.
[26] *Ibid*. at para. 11; See also *Prud'homme v. Prud'homme*, *supra* note 26 at para.'s 43, 45, 49 and 53 for the Supreme Court of Canada's finding that the defence of qualified privilege extends to statements made by municipal councilors in council meetings.
[27] *Ibid*. at para. 6.

> Accordingly, while elected municipal officials may be quite free to discuss matters of public interest, they must act as would the reasonable person. The reasonableness of their conduct will often be demonstrated by their good faith and the prior checking they did to satisfy themselves as to the truth of their allegations.[28]

2. The Public Interest in Control and Self-Regulation

Parliamentary privilege also encompasses the legislatures' and Parliament's freedom to have "complete control over their own proceedings and their own members."[29] The corresponding self-regulation measures ensure that the "far reaching privilege" of freedom of speech in the legislatures and Parliament is used responsibly by members.

The constitutional and legislative history of parliamentary privilege does not include protections afforded to municipal councils, which are "creatures of the Legislature"[30] and lack the internal mechanisms for self-regulating their processes as do provincial legislatures and Parliament.[31] This lack of a legislative framework of control and self-regulation acts as a significant bar to the extension of the law of absolute privilege to statements made by municipal councilors in council meetings. As Justice Beaudoin, the motion judge in *Gutowski,* explained:

> While sections 223.2 and 223.4 of the Municipal Act, 2001, S.O. c. 25 now provide municipalities with the opportunity to Institute codes of conduct and to appoint integrity commissioner's, no such Code of Conduct existed and no integrity commissioner was appointed in the County of Frontenac. These potential safeguards are optional for municipalities which is a key distinction between municipalities and legislatures. Since these safeguards are optional and are not a standard feature across the province, let alone the country, it is impossible to make a pronouncement on the issue of privilege for municipal speech in the absence of any evidence of the effect of such measures.[32]

Given the subordinate nature of municipal bodies, the lack of legislative provision for absolute speech immunity, the optional and unstandardized nature of municipal government internal safeguard mechanisms[33], it is unlikely, absent legislative reform that the law of absolute privilege will extend to protect the speech of municipal councilors.

The Court of Appeal has however left the door slightly ajar for those who support the notion that municipal politicians should be treated equally to their federal and provincial counterparts. The court found that on the Rule 21 motion there was no factual or expert evidence admissible on the issue of whether there was any necessity to extend the common law defence of absolute privilege. In light of this, perhaps there is a last chapter of this tale left to be told.

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[28] *Prud'homme, supra* note 26 at para. 45.
[29] *Gutowski, supra* note 1 at para. 16.
[30] *Gutowski, supra* note 1 at para. 19.
[31] *Ibid.* at paras. 16 to 19.
[32] *Gutowski v. Clayton, supra* note 12, at para. 65.
[33] *Gutowski, supra* note 1 at paras. 16 to 19.

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Judicial Recognition of Risk Assessment, *R. v. Michaud*

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The Ontario Court of Appeal has recently released its decision in *R. v. Michaud*, 2015 ONCA 585 (*"Michaud"*). This decision is of importance as the Court's endorsement of the hybrid model of *ex ante / ex post* legislation has the effect of recognizing the role of risk assessment as a legal necessity. Risk assessment has always had an important role in business models and compliance. Now, however, the Ontario Court of Appeal has recognized the legislature's codification of such a model.

PRO-ACTIVE EX ANTE CONSTRAINTS

Michaud was a commercial truck driver and under s. 68.1(1) of the *Highway Traffic Act* and s. 14(1) of an equipment regulation, he was required to equip his truck with a speed limiter set to a maximum speed of 105 km/h. Michaud interfered with the proper operation of the speed limiter which was set at 109.4 km/h. He was charged and admitted to the facts.

The Justice of the Peace at the first instance acquitted Michaud on the basis that the legislation infringed his right to security of the person and thereby violated s. 7 of the *Charter*. The trial justice found that expert evidence did not establish the use of speed limiters increased safety and decreased accident rates, and that the maximum speed stipulated by the legislation was arbitrary.

On appeal, the Ontario Court of Justice admitted fresh expert evidence, found no *Charter* violation, and set aside the trial decision.

Michaud appealed to the Court of Appeal, which found that while the legislation deprived him of his s. 7 *Charter* right to security of the person, the infringement of his s. 7 rights was justifiable under s. 1 of the *Charter* given the contextual factors of safety regulation, including risk assessment and regulation design. In other words, the *ex ante* (or deterrent) provision of the legislation overreached in its effect, in that it applied to all truck drivers including compliant truck drivers that did not require a speed limiter as they necessarily obeyed speed limits in the first instance. This effect was considered to be overly broad by the court, but its overbroad application was justified.

The objective of improving highway safety was pressing and substantial and rationally connected to the speed limiter legislation in a proportionate manner that minimally impaired drivers' right to security. The public benefits associated with improved highway safety exceeded the detrimental effects on the s. 7 right of truck drivers.

RISK ASSESSMENT AS A CORE CONCEPT

The design of the safety regulations contained in the *Highway Traffic Act* and associated regulation in issue were of the "hybrid" variety, meaning that they had an "*ex ante*" (or precautionary) element and an "*ex post*" (or deterrent element). The *ex ante* element of the legislation imposed a speed limited requirement that would prevent a certain kind of operation of the truck (i.e. speeding), while the *ex post* element addressed safety issues in deterring unsafe behaviour (i.e the threat of a ticket for the deliberate interference with the speed limiter). The Court of Appeal recognized the benefit of a hybrid model as it achieves the objective of highway safety and is "this is entirely appropriate where human life or safety is at stake, and where there is scientific uncertainty as to the precise nature or magnitude of the possible risk."[1]

An *ex post* model will set the standard, and if the standard is breached, prosecution can occur after the fact. An *ex ante* model attempts to prevent the harm from occurring in the first instance, by requiring prior approval from a regulator.[2]

This is not the first decision where a Canadian court has recognized the role of risk assessment. In June, 2011, Canadian energy company Niko Resources Ltd. ("Niko"), pled guilty and paid a fine of more than $9 million pursuant to the *Corruption of Foreign Public Officials Act*[3] as a result of bribes paid to Bangladeshi official. Niko was placed on probation and was required to develop a compliance procedure based on a risk assessment:

> The company will develop these compliance standards and procedures, including internal controls, ethics and compliance programs on the basis of a risk assessment addressing the individual circumstances of the company…[4]

Ex ante regulations will likely increase in use in certain sectors which will require compliance programs as they are enforced *ex post*, certainly when safety issues are at stake. Indeed, the Court of Appeal noted in its decision:

> There is good reason to favour ex ante rules where human life or safety is at stake and where there is scientific uncertainty as to the precise nature or magnitude of the possible harms. In such cases, regulators utilize a "precautionary principle," which the authors of Risk Management note, "tackles the problem of an absence of scientific certainty in certain areas of risk, and directs that this absence of certainty should not bar the taking of precautionary measures in the face of possible irreversible harm" (1:40). The Supreme Court has recognized the precautionary principle in the context of environmental protection regulations: 114957 Canada Ltee v. Hudson (Town), [2001] 2 S.C.R. 241.

Although the problem of over-inclusiveness would not arise if the legislature had chosen to penalize speeding truck drivers instead of preventing them from speeding in the first place, the regulator has determined that the objective of highway safety is best met by a hybrid regulation that couples an *ex ante* precaution with an *ex post* consequence.[5]

In our view, we will begin to see a shift in both the legislature's crafting of rules and policy, as well as an increased use of risk assessment and compliance programs within business policy. As the Court of Appeal noted, a hybrid model "combines the effectiveness of both approaches" in that these rules are proactive and protective.

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[1] *Michaud,* at para 126.

[2] Archibald, T.L., Jull, K., Roach, K.W., *Regulatory and Corporate Liability: From Due Diligence to Risk Management* (Toronto: Canada Law Book, 2015) (*"Risk Management")*, page 2-2.

[3] S.C. 1998, c. 34.

[4] In the Court of Queen's Bench of Alberta Judicial District of Calgary, between Her Majesty the Queen and Niko Resources Ltd., Agreed Statement of Facts (June 23, 2011).

[5] *Michaud,* paras. 102-103, citing *Risk Management*, *supra* note 2 at 2:15:30

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Materiality in Franchise Disclosure*

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Provincial franchise legislation across Canada imposes a primary obligation on franchisors to provide prospective franchisees with a disclosure document setting out all material facts. In Ontario the *Arthur Wishart Act (Franchise Disclosure), 2000*[1] ("AWA"), requires the delivery of a disclosure document that contains all material facts, including prescribed material facts, no less than 14 days before the signing of a franchise or related agreement or the payment of any consideration. The general regulation under the AWA[2] prescribes a menu of particular material facts that must be disclosed.

The difficulty in determining what must be set out in a disclosure document lies in the definition of material fact itself. "Material fact" is defined in s. 1(1) of the AWA to include:

> "any information about the business, operations, capital or control of the franchisor or franchisor's associate, or about the franchise system, that would reasonably be expected to have a significant effect on the value or price of the franchise to be granted or the decision to acquire the franchise".

Unlike the definition of material fact in the other four provincial franchise statutes,[3] the definition in the AWA is inclusive rather than exhaustive. Alberta, PEI, New Brunswick and Manitoba legislation define material fact to "mean" rather than include the listed types of information. The AWA definition is open-ended and thus admits greater uncertainty as to what constitutes a material fact.

The issue appears to have been put to rest somewhat. The Ontario Court of Appeal, in *6792341 Ontario Inc. v. Dollar It Ltd.*,[4] held that the head lease for the franchise's business premises, which had not been included in the franchisor's disclosure document, was material. The sublease, to which the franchisee was a party, contained provisions in which the franchisee acknowledged that it had received a copy of the head lease, was familiar with its terms and agreed to be bound by them. MacFarland J.A. concluded that it was absurd, given the acknowledgement, to suggest that the head lease was not material and did not need to be disclosed (¶ 39).

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[1] S.O. 2000, c. 23.
[2] O. Reg. 581/00.
[3] Alberta: *Franchises Act*, RSA 2000, c. F-23; Prince Edward Island: *Franchises Act*, R.S.P.E.I. 1988, c. F-14.1; New Brunswick: *Franchises Act*, S.N.B. 2007, c. F-23.5; Manitoba: *The Franchises Act*, C.C.S.M., c. F156.
[4] 2009 ONCA 385.

Similarly, in *1159607 Ontario Inc. v. Country Style Food Services Inc.,*[5] the court determined that the franchisor's negotiation of an agreement with its landlord that provided for early termination of the head lease for the franchise's business premises was a material fact. The disclosure provided to the franchisee did not contain the sublease but merely stated that one would be coming in due course. No mention was made of the agreement with the landlord. The court concluded that the franchisor deliberately withheld "critical information that would have an impact on a franchisee's decision to renew" (¶ 108). In the court's view, withholding such a material fact made "the disclosure completely inadequate and tantamount to no disclosure" (¶ 109).

In coming to this conclusion, the court relied on the decision in *1518628 Ontario Inc. v. Tutor Time Learning Centres, LLC,*[6] where the franchisor failed to disclose its discovery of serious problems with the franchise's finances and overall management prior to the plaintiff's purchase of the franchise from the previous franchisee. The court concluded that the franchisor's findings were material facts that were required to be disclosed to a prospective franchisee in the position of the plaintiff (¶ 63) and that, given the circumstances of the case, the franchisor never provided the franchisee with a disclosure document as required by the AWA (¶ 73).

Franchise legislation has a relatively short history in Canada. Franchisors have been working since to transition into the new statutory disclosure regime, with greater and lesser degrees of compliance. Many of the cases interpreting the statutory disclosure obligations have dealt with more obvious omissions, such as failures to include items specifically prescribed by regulation. Ontario cases have tended to focus not so much on the materiality of omissions but on their consequences, and in particular on whether a franchisor's individual or cumulative failures to meet the legislated disclosure requirements entitle a franchisee to rescind its franchise agreement within 60 days of receiving a disclosure document or within the longer two-year period following the execution of the agreement.

We will continue our discussion of Materiality in Franchise Disclosure in subsequent articles in this series.

**This is the first in a series of articles on materiality in Franchise Disclosure*.

[5] 2012 ONSC 881, aff'd 2013 ONCA 589.
[6] [2006] O.J. No. 3011 (S.C.J.).

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What's on the Menu? Regulations Under Menu Labelling Law Clarify Caloric Posting Requirements

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The anticipated draft regulations under the newly passed *Healthy Menu Choices Act* (the Act) were released last month by the Ontario government. The draft regulations will support the implementation of the Act which will require restaurant chains and other food service providers with 20 or more locations operating under the same (or substantially the same) name in Ontario to make changes to the information they display on menus regarding standard food and drink items.

The draft regulations are aimed at clarifying the requirements for caloric posting, including providing guidance on where caloric information must be posted, what constitutes a standard food item, certain prescribed statements that must be posted and possible exemptions. The draft regulations are based on consultations the Ministry of Health and Long-Term Care undertook with key partners in the summer of 2015. The Ministry also sought additional public comments on the draft regulations that were due by October 26, 2015.

Overview of the Legislation

The Act received Royal Assent on May 28, 2015, but will not come into force until January 1, 2017. Once in force, the Act will require restaurant chains and other food service providers with 20 or more locations in Ontario operating under the same (or substantially the same) name to display the number of calories of all standard food or drink items on their menus. This includes not only quick-service restaurants, but also convenience stores, grocery stores and other businesses that sell meals prepared for immediate consumption, either on the premises or elsewhere.

The Act will require the display of the number of calories of each variety, flavour and size of food and drink items that are offered with standardized portions and content. The calorie content and prescribed information must be displayed on one or more signs, on each menu where the standard food item is listed and, if the standard food item is on display, on the food's label or tag.

We previously wrote about the requirements and potential impacts of the Act in an Osler Update in December 2014 and again in May 2015.

Specific Application to Franchisors

Franchisors should be aware that the Act defines a person who owns or operates a regulated food service premise as a "person who has responsibility for and control over the activities carried on at the regulated food service premise, and *may* include a franchisor, a licensor, a person who owns or operates a regulated food service premise through a subsidiary and a manager of a regulated food service premise, but does not include an employee who works at a regulated food service premise but is not a manager." While the draft regulations provide guidance on the obligations restaurant chains and other food service providers will have under the Act, they do not address the issue of franchisor liability for compliance by their franchisees. Accordingly, as addressed in our previous Osler Updates, it remains too early to know with certainty how the Act will be applied to franchisors. However, it appears that a franchisor's exposure to liability for compliance with the Act will likely be tied to the level of control (if any) it has over the activities carried on at the regulated food service premise.

Further Guidance on What Constitutes a "Standard Food Item"

Caloric content must be posted for all "standard food items," which is defined in the Act as a food or drink that is sold or offered for sale in servings that are standardized for portion and content. The draft regulations further require that the standard food item must be a "restaurant-type food or drink item," which is defined as a food or drink item that is either served in a regulated food service premise or processed and prepared primarily in a food service premise, and is intended for immediate consumption without further preparation by a consumer.

While the definition of "standard food item" remains fairly broad, the draft regulations provide for certain exemptions from what constitutes a "standard food item." In particular, the following food or drink items are exempt from the definition of "standard food item":

- food or drink items offered for sale for less than 90 days per calendar year (consecutively or non-consecutively)
- self-serve condiments that are available free of charge and are not listed on the menu
- food or drink items that are prepared specifically for inpatients of a hospital, private hospital or psychiatric facility, or residents of a long-term care home or retirement home
- food or drink items that are prepared on an exceptional basis, in response to a specific customer request, and that deviate from the standard food items offered by the food service premise

Additional Clarity on Where Caloric Information Must be Posted

The Act requires the caloric content of each standard food item to be posted on all menus. The definition of "menu" is broad and includes drive-through menus, online menus,

advertisements and promotional flyers. The draft regulations clarify the definition of "menu" by exempting online menus, menu applications, advertisements and promotional flyers if they do not list prices for standard food items, or if they do not list standard food items available for delivery or takeout.

The draft regulations also specify how calorie information is to be displayed on menus, including requirements for where calories are displayed and the size, format and prominence of the display. The draft regulations give additional guidance for standard food items that are intended to be shared among customers, that are available in a number of flavours, varieties or sizes, or that are offered with the option of adding standard supplementary items such as toppings. Specific instructions are also given for food service premises that offer food or drink items that customers serve for themselves and for food service premises that serve alcohol.

The draft regulations require that the number of calories in a standard food item be determined by either (a) testing in a laboratory or (b) a nutrient analysis method. The person who owns or operates the regulated food service premise must reasonably believe that the method will accurately estimate the number of calories in the standard food item. As noted above, under the Act the person who owns or operates the regulated food service premise *may* include a franchisor.

Requirement to Post Contextual Statement

In addition to the posting of certain caloric and other information, the draft regulations require that restaurant chains and other food service premises post one or more signs at every regulated food service premise that contain the following information: "The average adult requires approximately 2,000 to 2,400 calories per day; however, individual needs may vary." Where the standard food items are targeted at children, the following alternative information may appear in place of the above statement: "The average child aged 4 to 9 years old requires approximately 1,200 to 2,000 calories per day, and the average child aged 10 to 13 years old requires approximately 1,500 to 2,600 calories per day; however, individual needs may vary."

At least one sign must be posted so that it is readily visible by, and legible to, every individual in the regulated food service premises where customers order food and drink. Restaurant chains and other food service premises can be exempted from this requirement if the contextual statement appears on every menu in the premise and is on every page of the menu, in close proximity to the standard food items listed, and in at least the same size and prominence as the name or price of the menu items.

Possible Exemptions

The draft regulations provide for certain exemptions to the application of Section 2 (Information to be Displayed) of the Act. In particular, restaurant chains and food service premises may be exempt from the obligations imposed by the Act if they operate for less than

60 days in a calendar year, or if they are located in a school, private school, correctional institution or childcare centre.

Conclusion

The Act will have a significant impact on a number of food service providers, including fast food restaurants, convenience stores, grocery stores, bakeries and coffee shops as well as entertainment venues like movie theatres, amusement parks and bowling alleys. Food service providers and franchisors should take action now to review their systems and develop an action plan for compliance with the Act and the draft regulations.