Dealer termination case reinforces fair dealing obligations under franchise legislation

October 27, 2025

In *Avante Automobile (2017) Corporation v. BMW Canada Inc.*, 2025 ONSC 87, the Ontario Superior Court of Justice held that BMW Canada breached its statutory duty of fair dealing under the *Arthur Wishart Act* when it failed to properly document a deadline extension and follow contractual termination procedures. While the Court found BMW liable, it dismissed the dealer's damage claims, finding that the actual sale price obtained on a subsequent purchase reflected fair market value more accurately than failed higher offers.

The decision reinforces that franchise relationships remain subject to fair dealing scrutiny even when parties operate informally and highlights the importance of proper documentation in franchise modifications.

Background

The predecessor corporation to Avante Automobile purchased a BMW dealership in Newmarket, Ontario in 2012. The transaction included specific facility renovation requirements under BMW's new standards, with completion required by Feb. 1, 2014. The Retailer Agreement carried a 24-month term extending to Dec. 31, 2015, subject to renovation completion, and contained standard termination provisions with a 15-day cure period.

The dealership premises was subject to an Ontario Municipal Board agreement requiring consent from neighbouring residential properties for significant changes. This restriction was not discovered as no title search was completed before purchase, causing construction delays.

BMW granted several deadline extensions: first to June 2014 through formal correspondence and a second Letter of Intent, then to April 2015 through an oral agreement with BMW's president. The final extension was documented only through email confirmations, not formal amendments to the agreement.

Despite substantial progress, renovations remained incomplete by April 2015. BMW terminated the relationship in March 2016, committing to cooperate with the dealer's

sale efforts. After unsuccessful attempts to sell for $21M, the business ultimately sold for $15M.

The decision

The dealer brought an action alleging that BMW's failure to renew the agreement and its conduct throughout the relationship breached contractual, statutory, and common law obligations, forcing a sale at reduced value.

BMW's breach of fair dealing

The Court found that BMW breached its statutory duty of fair dealing under section 3 of the *Arthur Wishart Act* by failing to properly document the April 2015 extension and by not following the termination procedures outlined in the Retailer Agreement. The Court determined that the parties had continued to operate as if the agreement remained in force until March 2016, requiring BMW to follow its contractual termination procedures, which would have provided the dealer with an opportunity to cure the grounds for termination.

No recoverable damages

Despite finding BMW's procedural breaches, the Court dismissed the dealer's damage claims. The Court concluded that the actual $15M sale price reflected fair market value more accurately than the unsuccessful $21M offers from other buyers. The Court also dismissed claims for punitive damages, effectively resulting in dismissal of the action with no net recoverable damages.

Key takeaways

- **Documentation requirements**: Verbal modifications to franchise agreements, particularly deadline extensions, must be properly documented through formal amendments, not just email confirmations.
- **Termination procedures remain mandatory**: Even when parties operate informally beyond contract terms, franchisors must still follow contractual termination procedures under fair dealing obligations.
- **Fair market value controls**: Courts will scrutinize damage calculations, with actual sale prices given more weight than unsuccessful higher offers in determining fair market value.
- **Fair dealing scrutiny applies throughout**: *Arthur Wishart Act* obligations continue to apply even during informal extensions of franchise relationships.
- **Due diligence essential**: Title searches remain critical before facility modification commitments to identify potential restrictions that could affect compliance timelines.
- **Broader application in franchise law**: While this case involved automotive dealers subject to different dispute resolution mechanisms, similar fair dealing scrutiny would likely apply in other franchise networks, including those subject to National Automobile Dealer Arbitration Program (NADAP) arbitration.

The decision demonstrates that while courts will closely examine fair dealing breaches in franchise terminations, successful damage claims require realistic market value assessments supported by actual transaction evidence rather than speculative offers.

BLG can assist

Our lawyers are well equipped to assist with drafting or reviewing franchise agreements, managing relationships with franchisees, or representing clients in litigation and dispute resolution. Please reach out to the author below, or any lawyer from BLG's Franchise Licensing & Distribution or Contract Disputes groups.

By

Bevan Brooksbank

Expertise

Franchise Licensing & Distribution , Contract Disputes, Commercial Litigation, Disputes, Corporate & Shareholder Disputes

---

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from

BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.