BLOG

Court of Appeal revives franchisor's non-solicitation claim (F45 Training Canada Limited v. 2685802 Ontario Limited)

Franchise | Litigation & Dispute Resolution

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Franchise agreements usually contain restrictive covenants that are intended to prevent a franchisee from starting a competing business in the same premises or down the street. While terms that are in restraint of trade are viewed by the courts with a critical eye, they will be upheld where they are neither ambiguous nor unreasonable based on the nature of the business relationship between the parties, as demonstrated by the Court of Appeal for Ontario decision in*F45 Training Canada Limited v. 2685802 Ontario Limited*, 2026 ONCA 775.

The appellant was a franchisor that operated group fitness studios known as F45, which provided "High Intensity Interval Training".

In March 2019, the respondents entered into a five-year franchise agreement to operate an F45 studio in Whitby, Ontario.

In October 2024, shortly before the expiry date, the respondents advised the franchisor that they would not renew the franchise agreement.

That same month, the franchisees signed a franchise agreement with an F45 competitor, The Yard Gym ("TYG"), extended the lease for the same premises, and messaged their members about the "rebranding" of the business. They offered to exchange F45 memberships for TYG memberships. They also told prospective investors that they expected 98% of the studio's 300 members to stay with them.

F45 applied for an injunction to enforce two restrictive covenants in the franchise agreement:

- A non-competition clause which prohibited the franchisees, for two years, from involvement in any business "similar to or competitive with" the franchise business within 10 kilometres of their premises or any other F45 facility.
- A non-solicitation clause which prohibited diverting "any business or customer of the Franchise Business to any other competitive establishment, by direct or indirect inducement or otherwise."

An interpretation clause in the franchise agreement provided that a "similar to" or "competitive with" business included, but was not limited to, a gymnasium and group classes including crossfit, resistance training, yoga and pilates, indoor cycling, dance fitness, martial arts, outdoor bootcamp classes, or "any exercise class or regime which is similar to, or a variation of" any of them.

The application judge dismissed F45's application, finding that the non-competition clause was ambiguous. In particular, the words "similar to" or "competitive with" were, in the judge's view, overly broad, there was a reference to an Operations Manual that the franchisor could amend at any time, and the listed activities were too generic.

The application judge also found the non-solicitation clause ambiguous because it did not specify whether "any business or customer" meant current, former or prospective members, and because the words "competitive establishment" and "otherwise" were vague. Having found both covenants ambiguous, the judge did not consider their reasonableness.

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The Court of Appeal unanimously allowed the appeal on the basis that the covenants were not in fact ambiguous.

Restrictive covenants are presumptively invalid because they are in restraint of trade. The exception is where they are found to be reasonable as between the parties and with respect to the public interest: *Elsley v. J.G. Collins Ins. Agencies*, 1978 CanLII 7 (SCC), at pp. 923-928; *Shafron v. KRG Insurance Brokers (Western) Inc.*, 2009 SCC 6, at paragraphs 15-17. Whether a restrictive covenant is reasonable is an issue to be determined only after the court is satisfied that the covenant is not ambiguous.

A covenant with an unresolved ambiguity as to activity, time or geography is unenforceable: *M & P Drug Mart Inc. v. Norton*, 2022 ONCA 398, at paragraph 36. However, before concluding that ambiguity exists, a court must interpret the covenant in the context of the agreement as a whole and the surrounding circumstances.

The Court of Appeal referred to the Supreme Court of Canada's cautionary words in *Elsley*, at pp. 923-924, that a covenant is not to be examined "in a disembodied manner, as if it were some strange scientific specimen under microscopic scrutiny." Identifying an ambiguity where none exists, after applying the principles of contractual interpretation, is an extricable error of law.

Applying those principles, the Court of Appeal found that neither covenant at issue was ambiguous. Restrictions on "similar" businesses are routinely interpreted by reference to the franchisor's business, and the phrase was understandable with reference to the enumerated categories. "Gymnasium" plainly meant a gym, and the listed activities, while broad, were not ambiguous given that F45's own programs incorporated many of them. The Court commented that a broad, open list is not the same thing as an ambiguous one. Further, the franchisor could not unilaterally change the character of the business by amending its Operations Manual.

The non-solicitation clause was likewise clear when read with the provisions giving the franchisor ownership of the studio's goodwill and all past and present member information. "Any business or customer" was co-extensive with that proprietary interest, and "or otherwise" simply guarded against circumvention by indirect means.

Relying on section 134(1) of the *Courts of Justice Act*, the Court of Appeal then determined the reasonableness of the restrictive covenants, as it viewed the record before it to be sufficiently complete to do so.

The non-competition clause was found to be unenforceable as it was overbroad. F45's protectable interest was a "one-stop shop" full fitness system, but the clause prohibited involvement in *any* group classes devoted solely to activities such as dance, yoga or outdoor exercise that F45's model was designed to replace. The Court suggested that while the 10-kilometre radius might have been justified, it was the scope of activities that proved fatal. The Court also emphasized that reasonableness was not determined by the way a covenant was breached, so the obviously competitive nature of the TYG business could not save the overbroad clause.

The non-solicitation clause, by contrast, was reasonable and enforceable.

Citing *H.L. Staebler Company Ltd. v. Allan*, 2008 ONCA 576, the Court of Appeal noted that a suitably restrained non-solicitation clause is more likely to strike a reasonable balance than a non-competition clause.

Citing *Lyons v. Multari*, 2000 CanLII 16851 (ON CA), the Court of Appeal reiterated that where a ban on solicitation is sufficient, an outright ban on competition will typically be unenforceable. The franchisees' messages to F45 members offering inducements to join their new studio were clearly in breach.

As the record was insufficient to determine the full extent of the breach of a clause expiring in November 2026 (after the appeal was heard), the extent of the breach and the appropriate remedy were remitted to the Superior Court of Justice for determination.

The decision shows that an assessment of whether a restrictive covenant is ambiguous requires full contextual interpretation. Merely finding that some words are capable of more than one meaning in the abstract is not enough, and a finding of ambiguity made without reading the clause against the agreement as a whole is an error. However, defeating an ambiguity argument is only half the battle to enforce a restrictive covenant. An otherwise clearly worded covenant may still be unreasonable if activity restrictions are not tailored to the specific business model being protected. Non-solicitation covenants are far more likely to be enforced where the agreement vests ownership of customer information and goodwill in the franchisor.

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