

## Legal update

### The Supreme Court of Canada addresses the validity of perpetual contracts

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#### August 2017 Litigation

On July 28, 2017, the Supreme Court of Canada dismissed the appeal of a Quebec Court of Appeal ruling in an action brought by Uniprix against its member pharmacists. The action related to the interpretation and effect of a renewal clause in the contract of affiliation entered into between Uniprix and the member pharmacists. Uniprix argued, among other things, that the contractual interpretation proposed by the member pharmacists was contrary to Quebec public order because it would result for Uniprix in a contract having perpetual effects.

The Supreme Court of Canada's decision in [Uniprix inc. v. Gestion Gosselin et Bérubé inc.](#)<sup>1</sup> is relevant for many reasons, but especially because of the court's teachings on the validity of perpetual contracts.

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#### Nature and term of the contract between Uniprix and the member pharmacists

First off, the majority of the judges noted that the contract between Uniprix and the member pharmacists was a contract of affiliation, i.e. an innominate contract, governed by the general provisions of the *Civil Code of Québec* (CCQ).

Under the clause at issue, a member pharmacist could leave the agreement by notifying Uniprix six months before the expiration of the agreement term (sixty (60) months) of its intention to do so, and if such prior notice was not sent, the agreement would be deemed renewed in accordance with the terms and conditions then in effect. However, Uniprix did not have a similar right under the clause to leave the agreement by sending six (6) months' prior notice.

The majority of the Supreme Court found that the trial judge had not made any error in concluding "that the contract of affiliation is for a fixed term and that, under clause 10, the member pharmacists have a unilateral option to renew the contract every five years and Uniprix is unable to oppose such a renewal. Because the contract is not for an indeterminate term, Uniprix may not resiliate it on reasonable notice."<sup>2</sup>

#### The validity of perpetual contract in Quebec civil law

However, because the contract did not allow Uniprix to oppose the renewal of the contract or terminate it without cause, Uniprix argued that the result was a contract whose effects were perpetual and therefore contrary to Quebec public order.

The majority, after pointing out that, when the Civil Code of Lower Canada was in force, nothing prevented contracting parties from binding themselves in perpetuity,<sup>3</sup> concluded that the current provisions of the C.C.Q. placing limits on certain specific contracts types did not contain a general provision prohibiting perpetual contracts in Quebec civil law.<sup>4</sup>

The court acknowledged, however, that, under certain circumstances—particularly, when a contract “affect(s) an individual person and freedom” or is a contract of adhesion—a clause that makes a contract perpetual could be found to be contrary to public order or abusive.<sup>5</sup>

However, in the opinion of the court, the renewal clause in the contract entered into between Uniprix and the member pharmacists was valid because, in a commercial context where a contract is duly negotiated between the parties, “the fact that a contract leaves the option to renew entirely to the discretion of one of the contracting parties does not offend public order.”<sup>6</sup>

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## Footnotes

1. 2017 SCC 43.
2. *Id.*, para 68.
3. *Id.*, paras 74-78.
4. *Id.*, paras 79-87.
5. *Id.*, paras 91 and 93.
6. *Id.*, para 92.

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