

The rise and fall of the franchise class action

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The [recent settlement in the *Zwaniga v Johnvince Foods* class action](#) concludes yet another of the dwindling number of franchise class actions before the Canadian courts, highlighting the risks of class actions in general and franchise class actions in particular.

The case

In 2011, the plaintiffs, the Zwanigas, commenced a proposed class action against Revolution Food Technologies, a vending machine distributor, and Johnvince Foods, a vendor of candies and confections. A companion class action was also commenced against the directors of Revolution.

The plaintiffs had a distribution agreement with Revolution for the distribution of candies and peanuts through vending machines supplied by Revolution. Johnvince Foods, the distributor of Planters peanuts in Canada, granted Revolution a licence to use the Planters trademark and sell Planters products. Revolution used this licence to promote its distributorship business but managed and directed the distributorship business on its own.

The plaintiffs brought claims against both Johnvince Foods and Revolution under the *Arthur Wishart Act* for rescission and damages based on alleged misrepresentations and breaches of the statutory duty of fair dealing. The plaintiffs alleged that Johnvince Foods was a franchisor's associate of Revolution. Johnvince Foods brought and obtained summary judgment dismissing the action against it on the basis that it did not control Revolution. This dismissal was upheld on appeal.

Although the proposed class actions continued against Revolution and its directors, by 2017 Revolution had been dissolved and its directors lacked any insurance to respond to the claims. The parties agreed to settle the proposed class actions on the basis of distributing approximately \$63,000, less approved legal fees and other amounts, to class members who filed claims. The court certified the cases for settlement purposes and approved both the settlement and class counsel's fee of just more than \$10,000.

After deductions for legal fees and other amounts, the amount available to the 342 class members was approximately \$47,000 – about \$135 per class member.

Takeaway

Although the settlement decision does not establish any new legal principles, the settlement itself extends the declining trend in class actions by franchisees against franchisors over the past decade. Since 2002, there have been 15 franchise class actions commenced in Ontario. Of these, eight were started during the years 2008 to 2010. None have commenced since

2013, and only three are known to still be before the courts. Furthermore, although most franchise class actions have been certified, all of those that have proceeded to judgment have ended in victory for the franchisor and, in this case, the minimal recovery for class members under the settlement can hardly be seen as a win for the class members.