

May 11, 2018

Law Commission of Ontario
Class Actions: Objectives, Experiences and Reforms Project
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Via Email: LawCommission@lco-cdo.org

To the Law Commission of Ontario:

Re: CFA's Submission to the Commission in Response to its Consultation Paper on Class Action Reform

The Canadian Franchise Association ("CFA") is the voice of more than 700 franchise system members and over 40,000 franchisees from many of Canada's best-known and emerging franchise brands. The CFA advances and supports the franchise community, advocating on the issues that impact franchising in Canada. The members of the CFA have substantial experience with class actions in franchising and we are grateful for the opportunity to contribute by addressing one issue raised in the Consultation Paper that is of great importance to our members.

Multi-Jurisdictional Class Actions

In Canada, many franchise systems are national or interprovincial in scope, with franchisees operating in several provinces. Where a proposed class action deals with franchise law issues and implicates the entire franchise network of a particular franchise system, there is a potential for multiple class proceedings dealing with the same or similar issues in several provinces. CFA is concerned about the negative impact of, and added burden imposed by, a multiplicity of class proceedings dealing with the same or similar issues for national franchise systems.

In addition to dramatically increasing the legal costs for the parties (who must litigate multiple cases in multiple jurisdictions), multiple class proceedings raise concerns about inconsistent judicial findings on system-wide issues. Inconsistent findings can be particularly troubling given the importance of brand consistency and uniform standards across a national franchise system. Competing class proceedings in multiple jurisdictions may also further exacerbate the tensions that class proceedings inherently cause in franchise systems.¹

Alberta and Saskatchewan have amended their class proceedings legislation to more directly confront the realities of national class actions.² British Columbia has also proposed amendments to their class proceedings legislation, which received third reading on April 26, 2018.³ CFA urges the Commission to recommend similar amendments to Ontario's legislation. In particular, CFA submits that Ontario's class proceedings statute address national class actions in two distinct ways.

First, Ontario should adopt the approach of these other provinces in setting out the standard for an Ontario court to assume jurisdiction over a national class action. In CFA's view, the criteria set out in the Alberta, Saskatchewan and British Columbia statutes are appropriate and there is value in Ontario taking a consistent approach to this issue. Indeed, in CFA's experience, there is value in having a uniform approach to national issues across Canada's provinces.

Second, Ontario should also adopt the approach of these other provinces in expressly permitting Ontario courts to decline to certify a class proceeding where one already exists in another province. In CFA's view, Ontario courts

¹ See, e.g., *1250264 Ontario Inc. v. Pet Valu Canada Inc.*, 2013 ONCA 279.

² *Class Proceedings Act*, S.A. 2003, c. C-16.5, ss. 5 and 9.1, and *The Class Actions Act*, S.S. 2001, c. C-12.01, ss. 6 and 6.1.

³ *Bill 21 – Class Proceedings Amendment Act*, 2018, British Columbia.

should decline jurisdiction over a national class action where another jurisdiction is clearly more suitable. Additionally, as noted above, CFA believes that, as a general rule, a multiplicity of related proceedings should be avoided wherever a single proceeding can appropriately accommodate the interests of all parties.

Conclusion

CFA is grateful for this opportunity to contribute to the important work that the Commission is undertaking. Please let us know if you would like us to expand on any of our views.

Yours Truly,

A handwritten signature in blue ink, appearing to read "Ryan J. Eickmeier", with a long horizontal flourish extending to the right.

Ryan J. Eickmeier
Vice President, Government Relations & Public Policy
Canadian Franchise Association