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Franchisors Facing Class Action Certification Should Consider Summary Judgment Option

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A common contract shared by dozens of individual franchisees may be viewed as a perfect vehicle for class action certification. In the last five years, there have been many successful class action certification motions alleging breaches of the *Arthur Wishart Act (Franchise Disclosure), 2000*, S.O. 2000, c. 3 (*Wishart Act*) against franchisors. In the summer of 2010, the Ontario Court of Appeal held that "a dispute between a franchisor and several hundred franchisees is exactly the kind of case for a class proceeding" (*Quizno's Canada Restaurant Corporation v. 2038724 Ontario Ltd. v. 2038724 Ontario Ltd.*, 2010 ONCA 466 at para. 62).

While the common features of a franchise agreement may work to a franchisor's detriment in resisting class action certification, amendments made to Ontario's summary judgment rule, which came into effect in January 2010, provide more options to franchisors.

That is precisely what occurred in a [recent decision](#) of the Ontario Superior Court of Justice in *TA&K Enterprises Inc. v. Suncor Energy Products Inc.*, 2010 ONSC 7022, in which [Larry Lowenstein](#) and [Jean-Marc Leclerc](#), Partners in the [Osler Litigation Group](#) and [Adam Hirsh](#), Associate, [Osler Litigation Group](#), represented Suncor Energy Products Inc. (Suncor).

Justice Perell rejected arguments that Suncor was required to pay claimed damages of \$200 million due to an alleged failure to deliver a disclosure document to franchisees, holding that a "one year, no non-refundable franchise fee" exemption prescribed by the *Wishart Act* applied.

It took less than one year from the launch of the claim to obtain summary judgment. What is the moral of the story? Franchisors should consider seeking summary judgment in franchise class actions. By doing so, a class action can be stopped in its tracks at an early stage, giving franchisors increased business certainty in a cost-effective manner.

The plaintiff has appealed Justice Perell's decision to the Ontario Court of Appeal.

For more information, please contact any member of our [Franchise Group](#).