

## Got Mold? Got No Damages! The Alberta Court of Queen's Bench Casts a Critical Eye on a Franchisee's Rescission Damages Claim

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A recent decision of the Alberta Court of Queen's Bench provides support for the view that courts should carefully review the veracity of damages claims in franchise statutory rescission claims and that the onus of proving damages in such claims continues to rest with the rescinding franchisee.

### Background

In *1777453 Alberta Ltd. v. Got Mold Disaster Recovery Services Inc.*, 2019 ABQB 259 (Got Mold) a franchisee brought an action for recovery of its net losses arising out of a claim for statutory rescission under Alberta's *Franchises Act*. The defendant consented to a finding of liability but claimed that plaintiff had suffered no "net loss," which is the measure of damages for rescission under the *Franchises Act*. The issue of damages went to a separate hearing before the Court of Queen's Bench.

Both parties filed significant evidence in respect of the damages issue and served expert reports regarding the damages claim. The experts provided opinions that differed by roughly \$200,000. The court examined the qualifications, methodology, and conclusions of the experts as part of its analysis.

The disagreement between the parties focused on a series of expenses claimed by the plaintiff in arriving at its net loss calculation. The expenses included significant management fees incurred by the plaintiff's operators, high fees for accounting services and advertising and promotion services, and various set-up expenses.

### The Court's Decision

The Court confirmed that the burden of proof remained on the plaintiff to demonstrate that it had a net loss from the acquisition, set up and operation of the franchise. The Court held that the term "net loss" meant the total sum of the franchisee's wasted expenditures *actually incurred* in the acquisition, set up, and operation of the business. Interestingly, the Court also held that in calculating the net loss, the franchisee may, in certain circumstances, be required to account for profits made after the rescission of the agreement. This was relevant in the circumstances of this case because the franchisee continued to operate its business after rescission.

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In calculating the net loss, the Court permitted the defendant to “normalize” or “rationalize” the plaintiff’s claim in order to prevent the franchisee from incurring expenses that “do not fall within the scope of the mischief” that the statutory rescission provision was aimed at remedying. In other words, the court was concerned with the franchisee’s claim accurately reflected the real profitability of the business. In that regard, the Court preferred the defendant’s expert’s view in respect of disallowing the management fee, accounting and advertising services, and set-up expense-related claims.

The Court also extended the time frame for the calculation of the net loss to include the post-rescission period, commenting “on the facts, [the franchisee] accepted training, materials, supplies and a methodology from Got Mold. [The franchisee] then used that education and those resources in continuing their business and earning a profit,” and stating, “It is important to note that [the franchisee] admitted that the equipment purchased while operating as a Got Mold franchise is now being used by [the franchisee’s new business].”

The Court held that the plaintiff was unable to prove any net losses and the action was dismissed.

## **Key Takeaway**

Although the statutory rescission regime in Alberta is less detailed than those in other provinces (focusing on net loss rather than a standard four-part damages calculation), the decision in Got Mold provides general reassurance to franchisors that Canadian courts will view rescission damages claims with a critical eye, particularly where there are inflated expenses being claimed as part of net losses and the former franchisee continues to use franchise assets as part of a new business.

Find the full decision [here](#).

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