

Federal Court



Cour fédérale

Date: 20250708

Docket: T-494-24

Citation: 2025 FC 1194

Ottawa, Ontario, July 08, 2025

PRESENT: Madam Justice Gagné

PROPOSED CLASS PROCEEDING

BETWEEN:

MARCI DEANE

Plaintiff

and

CANADA POST CORPORATION

Defendant

ORDER AND REASONS

I. Overview

[1] The Plaintiff, Ms. Marci Deane, seeks to have her action against Canada Post Corporation certified as a class proceeding on behalf of the following class:

All legal persons and natural persons residing in Canada who, on or after June 23, 2022, used Canada Post's Snap Ship, Ship Online, and Shipping Manager and were charged a fuel surcharge, except an Excluded Individual.

An Excluded Individual means the Defendant's officers, directors, and employees, and the lawyers for the Plaintiff and the Defendants, and the judicial officer(s) that have presided over this action.

[2] Ms. Deane alleges that three of Canada Post's online services breach subsections 52(1.3) ("*drip pricing*") and 54(1) ("*double ticketing*") of the *Competition Act*, RSC 1985, c C-34 [the Act]. She alleges that those online services fail to disclose the full price of shipping by only later adding a "fuel surcharge". This breach gives rise to Ms. Deane's civil action against Canada Post under section 36 of the Act.

[3] Ms. Deane maintains that she satisfies all the required legal elements for certification: (a) there is a reasonable cause of action; (b) there is an identifiable class; (c) there are common questions of law and fact; (d) a class proceeding is the preferred procedure; and (e) she is an appropriate representative plaintiff for the Class.

[4] Canada Post opposes certification, arguing the Statement of Claim discloses no viable cause of action. First, all pricing information is prominently disclosed on a single webpage, during a single stage of the purchasing process. Second, customers are unable to complete their purchase without observing the fuel surcharge. Third, Ms. Deane, just like all Class members who have business accounts with Canada Post, agreed to contractual terms and conditions disclosing that fuel surcharges may apply to the shipping services, and that incorporates the schedule of those charges by reference. Additionally, all Class members who have consumer accounts agreed to contractual terms and conditions disclosing that any "Additional Terms" form

part of the agreement, which includes the fuel surcharge as stated in Canada Post's Consumer Prices Guide on its website.

II. Background

[5] Canada Post operates the country's postal service. It offers regular mail service, registered mail service, and shipping services.

[6] Canada Post offers its shipping services or discloses the price of its shipping services on various online platforms: (a) Find-A-Rate; (b) Snap Ship; (c) Shipping Manager; (d) Electronic Service Tool [EST]; (e) Express Order Entry [EOE]; and (f) Ship Online.

[7] This proposed class proceeding relates to three of Canada Post's shipping services only: Snap Ship, Ship Online and Shipping Manager. They are online tools used to create, pay for, and print shipping labels to send parcels anywhere in the world.

[8] Since Canada Post's Find-A-Rate online platform has some relevance to the issues raised by this motion, although not a shipping tool, it will also be summarily discussed below.

A. *Snap Ship*

[9] Snap Ship is a platform for Canada Post's Solutions for Small Business [SfSB] customers who deposit fewer than 25 items per week. Since Ms. Deane is a small business owner, she has

been enrolled in Canada Post's SfSB program and its predecessor, VentureOne™, for over 15 years and has used the Snap Ship service at least 66 times since 2018.

[10] Users of SfSB are party to a commercial contract with Canada Post, which comprises its Terms and Conditions, Canada Postal Guide and the SfSB Pricing Guide. They must create an account and log on to their account in order to choose a shipping option.

[11] In her Amended Statement of Claim, as well as in her Memorandum of Fact and Law, Ms. Deane presents what she describes as a screenshot of the page from the Snap Ship platform that is prompted after the user logged on and entered the shipping information for the intended recipient. As seen below, Canada Post displays shipping options with a corresponding price for each of the options — which Ms. Deane views as the first lower price:

Personal Business Our company Shop Tools

Delivery dates are guaranteed if your item ships before today's cutoff time.
All services include tracking and delivery confirmation.

Choose a shipping service

Sort By: Cheapest Fastest

<input type="radio"/> Expedited Parcel™ Guaranteed Delivery : Feb 2, 2024 Liability coverage (Free up to \$100). Carbon-Neutral Shipping ⓘ	\$11.99 \$13.40
<input type="radio"/> Regular Parcel™ Estimated Delivery : Feb 5, 2024 Carbon-Neutral Shipping ⓘ	\$11.99 \$13.40
<input type="radio"/> Xpresspost™ Guaranteed Delivery : Feb 2, 2024 Liability coverage (Free up to \$100).	\$12.47 \$13.90
<input type="radio"/> Priority™ Guaranteed Delivery : Feb 1, 2024 Liability coverage (Free up to \$100). Free one-time on-demand pickup available in most locations ⓘ	\$26.90 \$28.74

[Continue](#)

[12] Canada Post, on the other hand, states that when users log in to their account, all pricing information, including the fuel surcharge, is prominently disclosed on a single webpage, during a single stage of the purchasing process.

[13] At the hearing, the Court viewed a short video of the entire process of purchasing a shipping service on Snap Ship. It appears that the above screenshot is not a separate page but rather one of 5 boxes within a single page, comprising the 4 different successive stages that the user must go through to complete a transaction, as well as a Summary box.

[14] Therefore, neither party presents an adequate description of the purchasing process.

[15] Although boxes 1 to 4 open in sequence (one needs to be closed for the next one to open) the Summary box is always open, but its content changes through the different purchasing stages.

[16] Once users have logged in to their account and clicked on *Create new shipment*, a first box entitled *Send From* opens for users to choose one of the pre-recorded Business profiles and enter the corresponding Sender Address, phone and email address. At that point, the Summary box is located to the right of box number 1, and it has three entries: Total before taxes at \$0.00, Estimated taxes at \$0.00, and Estimated total at \$0.00.

[17] As soon as users click on the *Continue* button at the bottom of the first box, the first box collapses and a second box entitled *Deliver to* opens for users to enter the name and address of the recipient. At that point, the Summary box is no longer visible on the right side of the page.

One would have to scroll up to the top of the page to view it, as it is static. Of note, prior to July 2023, the Summary box was dynamic, in the sense that it moved along as users were going through the different stages of the purchasing process, and therefore was always visible to users throughout the 4 stages of the purchase.

[18] Again, as soon as users click the *Continue* button, box number 2 closes and box number 3 entitled *Package* opens. Then users must select a package type. If the package type selected is *Box, mailer or triangular mailing tube*, it will prompt a few cells to open to allow users to enter the size and weight of the package.

[19] Once users click the *Continue* button, box number 4 entitled *Shipping service* opens (that is the box shown above). Users must then choose a specific service: Expedited Parcel™, Regular Parcel™, Xpresspost™ or Priority™. The Summary box is still not visible, but if users scroll up at the top of the page before choosing a shipping service, they will see that it is still exhibiting the following three entries: Total before taxes at \$0.00, Estimated taxes at \$0.00, and Estimated total at \$0.00.

[20] However, once users have clicked on one of the service options, for instance, Regular Parcel™ at \$10.79, the *Summary* box, still at the top of the page, now has six entries: Regular Parcel™ at \$14.96, SfSB savings at -\$4.17, Fuel surcharge at \$2.70, Total before taxes at \$13.49, Estimated taxes at \$1.75, and Estimated total at \$15.25 (items in bold are in bold in the *Summary* box). For SfSB customers, the discount/savings depends on the dollars (revenue) spent on shipping in the last 12 months.

[21] At the bottom of the Summary box, users are offered two options: “Add to cart” or “Cancel and return to cart”. Pressing “Add to cart” brings users to the “Checkout” page.

[22] Finally, if users click the Continue button at the bottom of box number 4, it simply closes that box without changing anything else. Users must still scroll up to the top of the page to view the completed *Summary* box.

B. *Shipping Manager*

[23] Shipping Manager is a tool for commercial customers, which are large volume mailers (spending at least \$10,000 in postage and depositing at least 1,250 items annually). Commercial customers have a negotiated contract with Canada Post. As a result, the prices for each shipping service reflect negotiated pricing under the contract and may vary across customers.

[24] Otherwise, the Shipping Manager online tool has the same display/stages as the Snap Ship described above.

C. *Ship Online*

[25] Ship Online is a tool that allows anyone to create, pay for, and print online labels, either at home or at a Canada Post Retail Post Office using a QR code, to ship across Canada or internationally. To use Ship Online, customers are required to create a profile.

[26] The display for Ship Online is the same as Snap Ship and Shipping Manager, minus all the business features and messaging; it does not have expedited parcel products, which are business products only, and the *Shipping Service* box and the *Summary* box do not exhibit a non-discounted price (that is redacted) or a Savings entry.

D. *Find-A-Rate*

[27] As stated above, Find-A-Rate is not an online shipping service. It is a page on Canada Post's website that is accessible to all customer types. This tool displays the estimated all-in price so that customers can compare and make choices. The customer enters their full shipping information (origin/destination, description of what is being shipped, weight and dimensions) and then clicks on "View rates" to see the different price estimates for their specific shipping. If users identify themselves through the "sign in" menu, they will be able to see their benefits and discounted rates. When discounts are unavailable, the rates displayed are the retail counter pricing, although users can also scroll down to a heading entitled "Solutions for Small Business members save more!" and see the first tier of discounted SfSB rates.

[28] The Find-A-Rate results page provides a link to an information page about fuel surcharges, which explains what fuel surcharges are and how they are calculated. Once customers obtain an estimate using Find-A-Rate, they are directed to a webpage that offers a choice between the Shipping Tools to place their shipment order.

E. *Fuel Surcharge*

[29] The fuel surcharge is calculated based on the price of fuel. Prior to September 5, 2022, the fuel surcharges were adjusted monthly by Canada Post, but since September 2022, they are adjusted weekly. Canada Post publishes the new surcharges a few days in advance on its website. For example, the fuel surcharges posted on Canada Post's website for April 15 to April 28, 2024, read as follows:

April 22, 2024-April 28, 2024:

Domestic Services 26.00%

USA and international Parcel Services 16.25%

USA and international Packet Services 14.25%

April 15, 2024-April 21, 2024:

Domestic Services 25.00%

USA and International Parcel Services 15.75%

USA and International Packet Services 13.75%

[30] Since the fuel surcharge is a percentage of the price of the chosen shipping service, the amount of the charge will also vary depending on the shipping service and package weight, dimensions, and destination.

III. Issues

[31] The main issue raised by this motion is whether this proceeding should be certified as a class action, that is whether the test found in Rule 334.16(1) of the *Federal Courts Rules*, SOR/98-106, is satisfied. The sub-issues are therefore whether (a) there is a reasonable cause of

action; (b) there is an identifiable class; (c) there are common questions of law and fact; (d) a class proceeding is the preferred procedure; and (e) Ms. Deane is an appropriate representative plaintiff for the Class.

[32] Class action provisions should be construed generously to achieve their objectives: (1) judicial economy (by combining similar actions and avoiding unnecessary duplication in fact-finding and legal analysis); (2) access to justice (by spreading litigation costs over a large number of plaintiffs, making economical the prosecution of unaffordable claims); and (3) behaviour modification (by deterring actual and potential wrongdoers through disabusing them of the assumption that minor but widespread harm will not result in litigation).

[33] Certification does not involve an assessment of the merits of the claim; rather, it focuses on the form of the action to determine if it can appropriately go forward as a class action.

Whether there is a reasonable cause of action is determined on the face of the pleading, and the balance of the certification criteria need only be demonstrated by “some basis in fact” (*Pro-Sys Consultants Ltd v Microsoft Corporation*, 2013 SCC 57 at paras 99-100 [*Pro-Sys Consultants*]).

A. *Rule 334.16(1)(a) – Pleadings Must Disclose a Cause of Action*

[34] Section 36 of the Act grants a statutory right of private action to recover damages for harm suffered as a result of certain criminal conduct prohibited by the Act, including conduct covered by sections 52 and 54, as well as the cost of investigation and prosecution.

[35] To establish a claim under paragraph 36(1)(a) of the Act, a plaintiff must plead that the defendant breached a provision of Part VI of the Act, and that the plaintiff suffered an actual loss or damage because of the impugned criminal conduct. The right to pursue an action in damages and to seek recovery of certain investigation costs is limited to compensatory damages and excludes punitive damages or injunctive relief (*Jensen v Samsung Electronics Co Ltd*, 2021 FC 1185 at para 93 [*Jensen FC*], aff'd 2023 FCA 89 [*Jensen FCA*]; *Zanin v Ooma*, 2025 FC 51 at para 408). To succeed, Ms. Deane must therefore prove that: (i) Canada Post's alleged misconduct satisfies all constituent elements of the underlying criminal offence (in this case, subsections 52(1.3) and 54(1) of the Act); (ii) she suffered loss or damage; and (iii) the loss or damage resulted from the violation of the criminal prohibitions (*Jensen FC* at para 94; *Lin v Airbnb, Inc*, 2019 FC 1563 at para 69; *Zanin* at para 409).

[36] Since the facts are to be taken as true at this stage, the question is whether the Plaintiff has pleaded the material facts in sufficient detail to support the claims and the relief sought.

[37] Both parties based a large portion of their arguments on the three following precedents (two from this Court and one from the Competition Tribunal): *Lin* (settled during the appeal and settlement approved by this Court in *Lin v Airbnb, Inc*, 2021 FC 1260); *Canada (Commissioner of Competition) v Cineplex Inc*, 2024 Comp Trib 5 (under appeal in file A-346-24); and *Zanin* (under appeal in file A-24-25).

[38] In *Lin*, the Court certified the Plaintiff's claim against Airbnb as a class action, finding that it was arguable that the addition of Airbnb Services Fees (on a second webpage) to the price

per night set by the host (on a first webpage), could constitute “double ticketing” and therefore breach section 54 of the Act.

[39] In *Cineplex*, the Competition Tribunal granted the Commissioner of Competition’s application under section 74.01, the civil deceptive marketing provisions of the Act, alleging false and misleading representations made by Cineplex on the price of movie tickets. The Competition Tribunal found that the total online ticket price that included the Online Booking Fee (second price) rendered the ticket price (first price) unattainable, and therefore constituted “drip pricing” under subsection 74.01(1.1) of the Act. Subsection 74.01(1.1) was adopted at the same time as subsection 52(1.3) of the Act to address “drip pricing” in both the civil and the criminal deceptive marketing provisions of the Act.

[40] Finally, in *Zanin*, this Court refused to certify the Plaintiff’s claim against Ooma, finding that the free telephone services offered by Ooma were always offered and displayed with the added monthly “Regulatory Compliance Fee,” “911 Service fee,” and applicable taxes, and therefore constituted segmented pricing not contrary to subsections 52(1) (false and misleading representation) and 54(1) (double ticketing) of the Act. I note that *Zanin* was argued before subsection 52(1.3) came into force, and although the decision was issued after, the parties did not amend their pleadings or make additional submissions. But for a short comment in paragraph 433 of *Zanin*, “drip pricing” was not the subject of the Court’s analysis.

(1) Section 52(1.3) of the Act – “Drip Pricing” Claim

[41] In her Amended Statement of Claim, Ms. Deane alleges that in 2022, the Act was amended such that any representation of a price that is unattainable due to additional fees would constitute a false or misleading representation that would be actionable. She asserts that when users of the three impugned online services select a shipping option at a first price, Canada Post displays a new higher price that includes an additional fuel surcharge. The latter higher price can only be visible to users if they scroll up to the top of the page. Ms. Deane adds that the additional fuel charge is an obligatory charge that is not imposed by an Act of Parliament or by the legislature of a province.

[42] Ms. Deane then provides the details of two different purchases made using her Snap Ship account on October 6, 2023, and on November 30, 2023, where Canada Post charged her the higher second price after having added the fuel surcharge near the final step of the purchase process. As such, Canada Post represented the first price to her, which was unattainable due to the additional fuel surcharge, in breach of subsection 52(1.3) of the Act. Ms. Deane adds that the price representations are similar or identical for all three impugned online services, no matter which device type is used to access the shipping tools, such as a desktop computer or a mobile device.

[43] The elements of subsection 52(1.3) of the Act having been pleaded, Ms. Deane alleges that, since she and the class members were entitled to the first price, they suffered a loss and/or

damages equivalent to the amount of the fuel surcharge, plus the costs of investigating and prosecuting this action.

[44] Canada Post asserts that (i) the price representations do not constitute “drip pricing”; (ii) the fuel surcharge is not “fixed”; (iii) the Claim fails to plead facts to establish materiality; and (iv) the Claim fails to plead any viable theory of causation.

[45] I agree with the Plaintiff that *Cineplex* is highly informative of the legal interpretation of section 52(1.3) of the Act. Although it dealt with the civil deceptive marketing provisions of the Act, it provides a thorough analysis of what constitutes “drip pricing”. In that case, Justice Andrew Little, acting in his capacity of Judicial Member of the Competition Tribunal, found the following [equivalent criminal provisions of the Act enclosed in brackets]:

a. Section 74.01(1.1) [52(1.3)] does not create a separate reviewable practice for purposes of s. 74.01 [52]. There are two elements under s. 74.01(1)(a) [52(1)]: that there was a representation, and that the representation was false/misleading in a material way (*Cineplex* at para 331);

b. Section 74.01(1.1) [52(1.3)] identifies one particular form of representation (i.e., a representation of a price) that directs that if a particular condition is met, then the “representation is false or misleading” element in s. 74.01(1)(a) [52(1)] would be met, and it is not necessary to establish that any person was deceived/misled (*Cineplex* at para 332);

c. Section 74.01(1.1) [52(1.3)] is designed to simplify the proceedings in that the Tribunal need not separately analyze whether there is a “false and misleading representation.” A representation that meets the stated condition in s. 74.01(1.1) [52(1.3)] would be considered false and misleading, and if the other elements of 74.01(1)(a) [52(1)] are met, the conduct is reviewable [the element of the offence are made out]. (*Cineplex* at para 333, see also Competition Bureau’s *The Deceptive Marketing Practices Digest* — Volume 6, in particular the subsection entitled

“Recent amendments to the Competition Act”; Competition Bureau’s article entitled “The ambush of hidden fees”).

[46] During the purchase process described above, Canada Post made representations of a first price (stage 4 or box number 4), which are unattainable due to the fuel surcharge that is added in the Summary box subsequently to the customer’s selection of a service represented at the first price.

[47] There are a few significant differences between the factual circumstances of *Cineplex* and those of this case.

[48] First, in *Cineplex*, once the Online Booking Fee was added to the first price at a later stage of the purchase process, its amount was not indicated and users had to do the math to figure out the amount of the added fee. The only way users could see the amount of the Online Booking Fee before the payment was completed was to scroll down to the bottom of the page, or to click the “i” button for additional information; neither was necessary before users clicked the *Proceed* button. The unattainable first price continued to be displayed even after users clicked the *Add to cart* button.

[49] In the present case, the exact amount of the fuel surcharge is indicated in the Summary box, once the user has clicked on the chosen delivery option, and the user can see it before clicking the *Add to cart* button.

[50] In *Cineplex*, the Online Booking Fee was 1.50\$ per ticket (up to a total of 4 tickets), except for certain categories of membership where consumers were not subject to the Online Booking Fee or were subject to a lesser fee. The Tribunal found that the fact that no fee was charged for any ticket over 4, or that no fee or a lesser fee was charged to membership consumers, did not render the Online Booking Fee not fixed for the purpose of subsection 74.01(1.1) of the Act. The question is whether it is obligatory for users who want to complete their purchase online (as opposed to on site) (*Cineplex* at para 367).

[51] In the present case, the fuel surcharge is certainly obligatory. Users have no choice but to pay it if they want to complete the transaction. Canada Post argues that it is not fixed, as the surcharge varies from transaction to transaction. The Plaintiff rather suggests that fixed, for the purpose of subsection 52(1.3) of the Act, means non-negotiable.

[52] In *Cineplex*, the Tribunal found that “the fact that some consumers pay a different, pre-determined and set amount of the Online Booking Fee does not alter the fact that the fee is ‘fixed’ for each consumer and for each category of consumer created by Cineplex” (*Cineplex* at para 352). The Tribunal specifically declined to decide or comment on whether fees such as shipping charges — which would likely vary with the shipping destination — were, by definition, not fixed, as it was not an issue in that case.

[53] There is therefore no precedent on this specific issue which, in my view, is better left to the judge hearing the merit of the case with the benefit of a full evidentiary record. It is a novel issue, yet an arguable one (*Zanin* at para 312).

[54] Canada Post also argues that the shipping tools do not display any prices upfront, and that pricing is only displayed after customers have logged into their account and inputted sender, recipient, and package information. Canada Post relies on this Court’s comments in *Zanin* that there is nothing wrongful about displaying a price that is broken out into components (consisting of the base price and added fees) on the same page. However, and as stated above, *Zanin* did not deal with the “drip pricing” provisions of the Act (the Plaintiff was denied leave to make submissions regarding post-hearing amendments to section 52 of the Act – see para 25 of *Zanin*).

[55] *Zanin* had other particularities. Throughout the decision, Justice Denis Gascon clearly notes that the Plaintiff had made several misrepresentations in the way the factual background is presented. Justice Gascon goes so far as to state that when Ooma’s entire documentation (which is incorporated by reference for that purpose) is reviewed, it is clear that the Plaintiff’s pleading is “patently false” (*Zanin* at para 425). He also notes that all elements of the total prices are always displayed at the same time, never at different stages of the purchase process.

[56] The only precedent that dealt with drip pricing is therefore *Cineplex*, where the Tribunal describes it as follows:

[310] The parties were in general agreement that subsection 74.01(1.1) concerns “drip” pricing, described at a high level as a retailer advertising a product or a service at a stated price, but then adding one or more additional amounts to that price so the consumer actually has to pay more than the originally advertised amount to purchase the product or service. Beside subsection 74.01(1.1), the phrases “Drip pricing” and “Indication de prix partiel” appear as marginal notes, but are for convenience of reference only and form no part of the enactment: *Interpretation Act*, RSC, 1985, c I-21, section 14.

...

[379] ... When considering whether Cineplex's representations of a price are "not attainable due to" the Online Booking Fee under subsection 74.01(1.1), the analysis focuses on the impugned price representations, the channel in which the representations are made and where consumers see them, and whether consumers pay a fixed obligatory charge or fee to complete a purchase in that same channel.

[57] In the case before me, users are first presented with a first price which corresponds to the shipping services offered by Canada post. At that stage, Canada Post knows the exact amount of the fuel surcharge applicable to each shipping service but does not disclose it in box number 4. It only discloses the price of the service before discounts, if applicable. In a normal purchasing process, users have to complete the four stages and be presented with a first price before scrolling up to see the Summary box, which now discloses a second price with the fuel surcharge.

[58] To be clear, the fact that users must scroll up to see the Summary box to view the second price is not determinative of whether it is arguable that Canada Post's conduct constitutes "drip pricing." As mentioned previously, prior to July 2023, the Summary box was dynamic. Regardless of whether it is dynamic or static, the Summary box discloses a second price with the fuel surcharge only after users have selected a service displayed at a first price in box number 4. It is therefore arguable that the fuel surcharge is "added" to the first price disclosed in box number 4, contrary to subsection 52(1.3) of the Act (see, specifically, the French version of subsection 52(1.3), which states that mandatory fixed fees "*qui [s']ajoutent*" to the representation of a price constitutes a false or misleading representation).

[59] Canada Post also argues that the Claim fails to plead facts to support the materiality of the price representations. Canada Post mostly relies on *Jensen FC* (at paras 75-80) for the proposition that while a price representation may be deemed “false or misleading” where it meets the requirements in subsection 52(1.3), the materiality element must still be pleaded and proven to establish liability. By doing so, Canada Post confuses the materiality of the facts that are pleaded to support a cause of action and the materiality of the alleged false and misleading representations. *Jenson FC* was concerned with the former; we are concerned with the latter. *Jensen FC* was a case dealing with conspiracy (a claim under section 36 for a breach of sections 45 and 46 of the Act), not false and misleading representation, even less drip pricing.

[60] Again, when the conditions of subsection 52(1.3) are met, the representation is deemed false and misleading without the need to establish that any person was deceived or misled (*Cineplex* at paras 331-332).

[61] In *Cineplex*, the Tribunal refused to accept the Commissioner of Competition’s proposition in favour of a presumption that price representations are material because they always affect the decision to purchase, but it found, as was the case before the Tribunal, that it was very often the case (*Cineplex* at para 419). The Tribunal found the representation material because the Online Booking Fee constituted a significant proportion of displayed ticket prices.

[62] In the example provided at paragraph 29 above, the fuel surcharge added to the shipping service price during the week of April 15, 2024, represents a 25% increase; as such, it can also

be considered material. In any event, this issue is, in my view, an arguable one that is better left to the trial judge.

[63] Finally, Canada Post asserts that the claim fails to plead facts to establish causation of loss or damage, as required to establish a claim under section 36 of the Act.

[64] The Claim pleads two theories of causation: (1) that customers were entitled to pay the base price for the shipping services, and would have paid that lower price “but for” the alleged misconduct; and (2) that the representations caused customers to acquire less value than they expected to acquire because they would have expected to pay the price of the selected shipping service only.

[65] In Canada Post’s view, the first theory would apply to “double ticketing” (see *Lin* at para 81), but never to a “drip pricing” situation. As for the second theory, Canada Post notes that the Plaintiff was informed about the fuel surcharge before she completed her purchase. As such, there is no basis to conclude that the display of the shipping service price, even if false or misleading, caused her to “acquire less value than [she] expected.” The Plaintiff knew exactly how much value she was acquiring – and for what price – when she made her purchase. Canada Post states that Ms. Deane has been using Canada Post’s shipping services for over 15 years and, as a result, has been well aware of the fuel surcharge for a while.

[66] Taken at face value, Canada Post’s arguments are appealing. However, they could lead to absurd results; plaintiffs would never be able to make a case of loss or damages for “drip

pricing.” To sustain damages, customers necessarily have to complete a purchase at the second higher price. In other words, but for the criminal conduct — i.e., the display of the unattainable price — that first price would be attainable and paid by customers.

[67] The “drip pricing” provisions of the Act are not limited to the first time customers use a service or purchase goods either. There is no such restriction to subsection 52(1.3) of the Act. In *Cineplex*, the Tribunal did not find the price was only unattainable the first time the movie viewers used the online booking service. The test is an objective one: what is the general impression of the fictional ordinary person? (*Cineplex* at para 251) This argument was also raised without success by Airbnb in the *Lin* decision; Mr. Lin had been using the service for a while and he had even been a host.

[68] Keeping in mind the generous interpretation that pleadings ought to receive, I am satisfied that Ms. Deane has pleaded the necessary elements to claim loss or damage as required by section 36, for the alleged breach of subsection 52(1.3) of the Act. In other words, it is arguable that, because of the “drip pricing” conduct, the customer suffers loss or damage equal to the difference between the unattainable price and the price paid.

[69] In my view, it is not plain and obvious that the Plaintiff’s claim for breach of subsection 52(1.3) is doomed to fail.

(2) Section 54 of the Act – “Double Ticketing” Claim

[70] In *Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19, the Supreme Court of Canada held that, in making a determination to certify a class action proceeding, “it is not uncommon for courts to resolve complex questions of law and policy” (*Atlantic Lottery* at para 19). In *Zanin*, Justice Denis Gascon held that where a statute is central to the claim, courts “should [not] shy away from engaging in statutory interpretation or give a statute only cursory treatment.” Rather, “pure questions of legal interpretation — even novel or disputed ones — can be decided and resolved at the certification stage” (*Zanin* at paras 304, 311-318; see also *Mohr v National Hockey League*, 2022 FCA 145 at para 49).

[71] In both *Lin* and *Zanin*, this Court was asked to certify, as a class proceeding, a claim under section 36 for a breach of section 54 of the Act; the first was issued before *Atlantic Lottery* and *Mohr*, the second was issued after.

[72] When *Lin* was decided, this Court’s jurisprudence held that issues of statutory interpretation could only be resolved at certification if there was “a decided case directly on point, from the same jurisdiction, demonstrating that the very issue has been squarely dealt with and rejected” (*Jacques v Canada*, 2024 FC 851 at para 35, citing *Arsenault v Canada*, 2008 FC 299 at para 27; *Doan v Canada*, 2023 FC 968 at para 132; *Sweet v Canada*, 2022 FC 1228 at para 123; *Lin* at paras 56, 59).

[73] In *Lin*, Justice Gascon found that although Mr. Lin appeared to be stretching the interpretation of section 54 of the Act, a novel or difficult question of statutory interpretation should not be decided at the certification stage but should rather be left to the trial judge (*Lin* at para 56).

[74] In *Zanin*, Justice Gascon confirmed, citing *Mohr* at para 48, that “[n]ovel but arguable claims must be allowed to proceed to trial since new developments of the law often find their provenance in surviving motions to strike” (*Zanin* at para 312, emphasis in original). But it needs to be arguable and “have the required elements of a cause of action recognized in law, and be a reasonably logical and tenable extension of established law” (*Zanin* at para 313).

[75] In his assessment of whether there were competing, credible interpretations refraining him from making a definitive legal pronouncement on the meaning of section 54 at the certification stage, Justice Gascon found that Mr. Zanin had proposed an incorrect and absurd interpretation of section 54 that would result in a prohibition of segmented pricing (*Zanin* at para 404; let’s keep in mind that subsection 52(1.3) was not part of the analysis in *Zanin*).

[76] In order for the offence of “double ticketing” under section 54 to be made out, there must be i) the supply of a product or service by a person; ii) at a price that exceeds the lowest of two or more prices; iii) expressed on the product, on anything attached to or accompanying the product, or on any point of purchase display or advertisement; iv) at the time the product or service is supplied (*Lin* at para 36; *Zanin* at para 410).

[77] In *Zanin*, Justice Gascon found that there were never two different prices clearly expressed at the time of supply, as the first price was always presented with the additional fees in a segmented way. Consequently, he did not need to address damages and causation. In his view, although there was no precedent plainly on point, the clear interpretative exercise was so straight forward that it was plain and obvious that Mr. Zanin's claim based on section 54 was bound to fail.

[78] In the case before me, Canada Post similarly argues that the online shipping tools do not clearly express two prices but rather express all components of a single price, on the same webpage, during the same stage of the purchasing process. As discussed above, Canada Post is right that all components of the final price are on the same webpage, but it is wrong to say that they appear during the same stage of the purchasing process. For greater certainty, the final price, which includes the fuel surcharge, appears in the Summary box after the customer has selected a service at a first, lower price in stage 4 of the purchasing process.

[79] Canada Post adds that it is plain and obvious that section 54 has no application to claims based on drip pricing in the e-commerce context. The only case relied on by the Plaintiff in support of the provision's potential applicability to these facts – this Court's decision in *Lin* – was decided prior to the coming into force of subsection 52(1.3). Applying the correct legal test and analyzing section 54 in reference to the current legislative scheme, Canada Post asserts it is plain and obvious that the Plaintiff's interpretation is not credible and has no reasonable prospect of success.

[80] I agree with Canada Post. Although one can imagine a situation where a merchant would be in breach of both subsection 52(1.3) and 54 from a single offering, I see a contradiction in the Plaintiff's position with respect to the situation before me.

[81] Canada Post suggests that section 54 was never meant to apply to e-commerce or encompass representations that are conveyed electronically; it asserts that it is simply inapplicable in such a context. I am not willing to go that far, nor do I need to. However, I agree that the enactment of a provision specific to drip pricing necessarily impacts the analysis as to whether section 54 can be interpreted to include such conduct. In my view, it is plain and obvious that it cannot.

[82] In the situation described in these reasons, one cannot say that Canada Post is, on one hand, adding price elements as the sale process unfolds, and, on the other hand, charging the higher of two or more prices clearly expressed via one of the specific modes of expression listed in paragraphs 54(1)(a) to (c). In the latter situation, the price is not provided to customers drop by drop; rather, more than one prices are presented simultaneously.

[83] As acknowledged by this Court in *Lin*, the drafters of section 54 were motivated by a particular set of circumstances at issue in the 1970s – namely, high grocery prices and the practice by certain grocers of displaying two price tags on a single physical product (*Lin* at para 38).

[84] If there were previously any ambiguity as to whether section 54 applied in situations such as this one, that ambiguity has been dispelled by the enactment of subsection 52(1.3). In criminalizing drip pricing under subsection 52(1.3), Parliament carved out three exceptions: (1) where the fee is not “fixed”; (2) where the fee is not “obligatory”; and (3) where the fee represents an amount imposed by acts of Parliament or provincial legislatures. In contrast, section 54 is a blanket prohibition on all situations where two or more prices are expressed and the higher price is charged. Further, there is no basis on which to read the carve-outs in subsection 52(1.3) into section 54. To the contrary, Parliament’s decision to include those exceptions in subsection 52(1.3) but not in section 54 is presumptively intentional (*Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at paras 26-27; *Canada v Loblaw Financial Holdings Inc*, 2021 SCC 51 at para 59; *Mohr* at para 22).

[85] Thus, if one were to accept the Plaintiff’s interpretation of section 54, one would also have to accept that section 54 criminalizes any instance in which fees are added to an initially displayed price, even where those fees are variable, optional, and/or imposed by legislatures. This would criminalize the conduct of every retailer who displays a price to which taxes (or other variable or optional charges) are later applied. Interpreted in this manner, the elements of a drip pricing offence under section 54 would be virtually identical to those of an offence under subsections 52(1) and (1.3).

[86] In my view, it is plain and obvious that Parliament did not intend this result, and that the Plaintiff’s claim of double ticketing has no reasonable prospect of success.

B. *Rule 334.16(1)(b) – Identifiable Class of Two or More Persons*

[87] The Plaintiff seeks certification of the following revised class definition:

All legal persons and natural persons residing in Canada who, on or after June 23, 2022, used Canada Post’s Snap Ship, Ship Online, and Shipping Manager and were charged a fuel surcharge, except an Excluded Individual.

An Excluded Individual means the Defendant’s officers, directors, and employees, and the lawyers for the Plaintiff and the Defendant, and the judicial officer(s) that have presided over this action.

[88] The principles governing this identifiable class requirement are as follows: (a) the purposes of the identifiable class requirement are to determine who is entitled to notice, who is entitled to relief, and who is bound by the judgment (*Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46 at para 38; *Paradis Honey Ltd v Canada*, 2017 FC 199 at para 22); (b) the class must be defined with reference to objective criteria that do not depend on the merits of the claim; (c) the class definition must bear a rational relationship to the common issues — it should not be unnecessarily broad, nor should it arbitrarily exclude potential class members (*Hollick v Toronto (City)*, 2001 SCC 68 at para 17; *Dutton* at para 38; *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 69); and (d) the evidence adduced by the plaintiff must be such that it establishes some basis in fact that at least two persons could self-identify as class members and could later prove they are members of the class (*Lin* at para 110; *Sun-Rype Products Ltd v Archer Daniels Midland Company*, 2013 SCC 58 at para 98).

[89] At paragraph 6 of the Plaintiff's Amended Statement of Claim, Ms. Deane acknowledges that usage of the Find-A-Rate tool is not part of this proposed class proceeding, as no transactions are made directly by using this tool.

[90] Consequently, Canada Post asserts that the Plaintiff's class definition does not satisfy the identifiable class requirement because there is no basis in fact that information exists which would allow potential class members to objectively confirm whether they accessed the shipping tools directly from the Canada Post website (in which case they would qualify for class membership), or indirectly through the Find-A-Rate tool (in which case they would not qualify). Nor is there any basis in fact that Canada Post could provide this information.

[91] As indicated, above, Find-A-Rate is not an online shipping tool. However, if a customer uses this informative tool before making a transaction on one of the shipping tools identified in the class definition of this proceeding, they will obtain only one price: the full and final price, including the fuel surcharge. If the user clicks on the "View Rate Summary" button, the segmented price will be displayed, including the specific cost of the fuel surcharge. If they log in to their account, they will be able to see the relevant discounts available to them, if any, but must still click on the "View Rate Summary" to see the segmented price. The user will then be directed to Snap Ship, Ship Online, or Shipping Manager to complete their transaction, where, as explained above, the price will be separated into a first price for the selected shipping option and later the full price including the fuel surcharge.

[92] Canada Post has filed detailed statistics of the users and transactions for all its platforms for most of the class period, including whether the user was using a desktop or mobile platform. The judge hearing the merits will be able to assess, benefitting from a full evidentiary record, whether the class should include those users that logged in to their account through the Find-A-Rate tool, and whether Canada Post's tracking of online transactions allows segregation of those transactions.

[93] At certification, the Court must exercise caution before limiting the dimension of the class proposed by the Plaintiff as the consequences for excluded members can be serious. The proposed class is defined by plainly objective criteria that will allow class members to self-identify whether the member used the Snap Ship, Ship Online or Shipping Manager on or after June 23, 2022, and whether that member was charged a "fuel surcharge." The "fuel surcharge" is documented on all receipts.

[94] In my view, the Plaintiff has met the section 334.16(1)(b) criterion for class action certification.

C. *Common Questions of Fact and Law*

[95] To satisfy the common issues criterion, the Plaintiff must establish (1) some basis in fact that the proposed common issues exist; and (2) some basis in fact that they can be answered in common across the entire class (*Jensen FCA* at paras 72-91).

[96] Canada Post argues that there is no basis in fact for the existence of common issues in relation to any class members and repeats its arguments related to the causes of action (all elements presented in a single stage on a single webpage, the fuel surcharge is not fixed, etc.). Canada Post adds that as it concerns business customers specifically (including the Plaintiff), there is no basis in fact for the existence of common issues as they are parties to contracts which disclosed all pricing information, including the base shipping rates and fuel surcharges applicable to each transaction. Questions of liability and damage could only be determined on an individual basis, considering each consumer's exposure to various disclosures by Canada Post regarding pricing, as well as their underlying contractual commitments.

[97] The following principles apply to the consideration of the common questions criteria:

- a. The commonality question should be approached purposively (*Dutton* at para 39);
- b. A question will be "common" only where its resolution is necessary to the resolution of each class member's claim, although success for one class member on a common issue need not necessarily mean success for all, but success for one member must not mean failure for another (*Vivendi Canada Inc v Dell'Aniello*, 2014 SCC 1 at para 45; *Lin* at para 118);
- c. It is not essential that the class members be identically situated vis-à-vis the opposing party – the common question may yield nuanced answers based on the individual situations (*Paradis Honey* at para 77, citing *Vivendi* at para 46);
- d. It is not necessary that common questions predominate over non-common issues. However, the class members' claims must share a substantial common ingredient to justify a class action. The court will examine the significance of the questions in relation to individual issues (*Dutton* at para 39);
- e. All members of the class must benefit from the successful prosecution of the common questions, although not necessarily to the same extent (*Dutton* at para 40); and

f. The commonality requirement can be met even if many issues, such as causation and damages, remain to be decided (*Lin* at para 119; *Canada v John Doe*, 2016 FCA 191 at paras 62-63).

[98] The proposed common questions are set out in Schedule A to the Notice of Motion and read as follows:

1. Did Canada Post make a representation of a price for their Shipping Services that was not attainable due to additional charges besides taxes or other government charges?
2. [Question pertaining to the double ticketing cause of action]
3. [Question pertaining to the double ticketing cause of action]
4. [Question pertaining to the double ticketing cause of action]
5. As a result of Canada Post's conduct, have the Class Members suffered damages equivalent to the additional charges, and therefore recoverable pursuant to section 36 of the Act?
6. Can an aggregate assessment of damages be made pursuant to Rule 334.28(1) of the *Federal Court Rules*?
7. Is Canada Post liable for their conduct?
8. In addition to damages under section 36 of the Act, are the class members entitled to recovery of investigation costs and costs of this proceeding, including counsel fees and disbursements on a solicitor-client basis?

[99] Questions 1 and 7 are common and focus on Canada Post's conduct and the application of the drip pricing provision to that conduct. Canada Post acknowledges that their purchase steps are uniform amongst the class on the Snap Ship, Ship Online and Shipping Manager platforms.

[100] Canada Post relies on the decision of the Supreme Court of British Columbia in *Vallance v DHL Express (Canada), Ltd*, 2024 BCSC 140, for the proposition that the relevant context for

assessing the materiality of the general impression made by the representations will depend on everyone's exposure to communications and disclosure regarding pricing generally, and the fuel surcharge specifically. Yet, the Court in *Vallence* was concerned with sections 52(1) and 52.01 of the Act, not subsection 52(1.3). In the present case, the representations are deemed false and misleading, irrespective of the impression made on the class members.

[101] That said, answering the liability questions would significantly advance the case in the sense that the trial decision can be applied to each class member's case.

[102] Question 6 considers whether the damages owing to the class members can be assessed in the aggregate and how they are to be paid to members. If common questions with respect to liability are answered in favour of the class, the next step will be to assess members' entitlement to damages and costs.

[103] The quantum of damages recoverable under section 36 for a breach of subsection 52(1.3) is a novel issue. Whether the class members are entitled to recover the unattainable price is a question better left to the trial judge, but there is some basis in fact that it could be the case.

[104] The Plaintiff does not dispute that the loss or damages vary between each class member (as the amount of fuel surcharges differs for each one of them), but this is not a bar to certification. The Defendant must have records of the fuel surcharges charged to each class member (account holder), so that an individual assessment of damages after the common issues trial might not be required. The class members all used one of the three online shipping tools,

which all take users through an almost identical purchasing process. It is that purchasing process that is at the heart of Ms. Deane's action.

[105] In my view, the common questions 1 and 5 to 8 meet the test and ought to be certified.

D. *Rule 334.16(1)(d) – A Class Proceeding is the Preferable Procedure*

[106] Rule 334.16(1)(d) requires consideration of whether a “class proceeding is the preferable procedure for the just and efficient resolution of the common questions.” Preferable procedure embodies two concepts: (a) a class action would be a fair, efficient and manageable method for advancing the claim, and (b) it would be preferable to other reasonably available means of resolving the members' claims (*AIC Limited v Fischer*, 2013 SCC 69 at paras 18 and 48).

[107] Canada Post's position is that since there is no basis in fact for the proposed common issues, it follows that there is no basis in fact for the preferable procedure criterion, and that the remaining individual issues related to liability, causation and damages would overwhelm the common issues and make the proceeding unmanageable.

[108] I disagree. At certification, the Court's task is to determine whether this action can be managed as a class proceeding, taking into account the broad and powerful procedural tools that are available throughout each stage of the class action. This is to be examined through the lenses of the three goals of class proceedings: access to justice, judicial economy, and behavioural modification, with reference to the five statutory factors under Rule 334.16(2).

[109] Access to justice is enhanced by resolving common questions, particularly where the amounts at issue are small, like in the present case, such that individuals might be deterred from bringing their claims alone. Behaviour modification should be considered from the perspective of the Canadian economy and e-commerce as a whole, and from the perspective of consumers. The alternatives to a class proceeding are few and would necessarily entail a plethora of individual small claims across the country.

[110] In my view, the commonality between class members' factual situation and the importance of the common issues in relation to the claims as a whole make the class proceeding preferable to individual recourses.

E. *Rule 334.16(1)(e) – The Representative Plaintiff*

[111] The Defendant does not submit arguments against the Plaintiffs' contention that the representative plaintiff is able to fairly and adequately represent the Class, has developed a plan for proceeding forward, and does not have a conflict with the Class on the common issues. Accordingly, I will not engage with the arguments brought forth by the Plaintiff here. The Plaintiff's Proposed Litigation Plan is attached to these reasons as Schedule "A".

IV. Conclusion

[112] For the above reasons, I find that Ms. Deane successfully meets the legal requirements for the certification of this class action, limited to the cause of action based on section 36 of the Act, for a breach of subsection 52(1.3) of same. Therefore, I will grant the motion to certify this

action as a class proceeding, conditional upon the amendment to be made to the Amended Statement of Claim to withdraw any reference to a breach of section 54 of the Act. Neither party has sought costs, and there is no basis to depart from the principle established by Rule 334.39 and to award costs in the present motion.

ORDER in T-494-24

THIS COURT ORDERS that:

1. This action is hereby certified as a class proceeding, conditional upon the Plaintiff amending her Amended Statement of Claim to withdraw any reference to a breach of section 54 of the *Competition Act*, RSC 1985, c C-34;

2. Marci Deane is appointed as the representative Plaintiff;

3. The Class is defined as:

All legal persons and natural persons residing in Canada who, on or after June 23, 2022, used Canada Post's Snap Ship, Ship Online, and Shipping Manager and were charged a fuel surcharge, except an Excluded Individual.

An Excluded Individual means the Defendant's officers, directors, and employees, and the lawyers for the Plaintiff and the Defendants, and the judicial officer(s) that have presided over this action.

4. The nature of the claim made on behalf of the Class is as follows:

The claim asserts a breach of section 52(1.3) of the *Competition Act*.

5. The relief claimed by the Class is as follows:

The claim seeks damages and costs pursuant to section 36 of the *Competition Act*.

6. The questions to be certified as common issues are as follows:

- a. Did Canada Post make a representation of a price for their shipping services that was not attainable due to additional charges besides taxes or other government charges?
- b. As a result of Canada Post's conduct, have the Class Members suffered damages equivalent to the additional charges, and are therefore recoverable pursuant to section 36 of the *Competition Act*?
- c. Can an aggregate assessment of damages be made pursuant to Rule 334.28(1) of the *Federal Court Rules*?
- d. Is Canada Post liable for their conduct?

- e. In addition to damages under section 36 of the *Competition Act*, are the class members entitled to recovery of investigation costs and costs of this proceeding, including counsel fees and disbursements on a solicitor-client basis?
- 7. The time and manner for Class members to opt out of the class proceeding are reserved to be addressed through the case management process.
- 8. No costs are awarded.

“Jocelyne Gagné”

Judge

SCHEDULE “A”

PROPOSED LITIGATION PLAN

CLASS COUNSEL AND THE RESOURCES AVAILABLE TO PROSECUTE THE ACTION

1. The Plaintiff's counsel group is comprised of the two law offices ("**Class Counsel**"), all of which possess the requisite knowledge, skill, experience, personnel, and financial resources to prosecute this class action:

Law Firm	City	Province
Hammerco Lawyers LLP	Vancouver	BC
Evolink Law Group	Burnaby	BC

Class Counsel anticipate that prosecuting this action will require:

- (a) reading, organizing, profiling, scanning, managing and analyzing thousands of documents; and
- (b) the analysis of novel legal issues of statutory interpretation relating to ss. 36 and 52 of the *Competition Act*.

THE COMPOSITION OF THE CLASSES

2. At present, the Class is defined as:

All legal persons and natural persons residing in Canada who, on or after June 23, 2022, used Canada Post's Website to purchase the Shipping Services, and were charged a fuel surcharge, except an Excluded Individual.

An **Excluded Individual** means the Defendants' officers, directors, and employees, and the lawyers for the Plaintiff and the Defendants, and the judicial officer(s) that have presided over this action

(collectively the "**Class**" or "**Class Member(s)**").

DISTRIBUTION OF NOTICES TO AND COMMUNICATING WITH CLASS MEMBERS

3. Based on publicly available information, Class Counsel estimates that at least tens of thousands, if not hundreds of thousands, of Canadians have used Canada Post's Shipping Services.
4. After the Class Action is certified, Class Counsel anticipates preparing a dedicated website for Class Members to review information and updates about the action, including copies of any pertinent court documents, and to submit inquiries.
5. The Plaintiff anticipates that, within sixty (60) days after this action is certified, that the notice distribution plan will be developed jointly with Canada Post, or decided by a further motion if required.

PLEADINGS

6. It is expected that the Defendant would have filed their Statement of Defense prior to certification.
7. Amendments to the pleadings can be made on consent, or by leave at a case management conference if the presiding judge sees fit, without the need of a formal motion.

DOCUMENT DISCOVERY

8. The parties are to serve their affidavit of documents within ninety (90) days of the close of pleadings.
9. The parties are to electronically exchange documents covered by Rule 228, within ten (10) days of service of the affidavit of documents.
10. Canada Post possesses most, if not all, of the documents relating to the quantum of damages such as records of past sales to each Class Member and each Class Members' contact information. These documents will be produced to Class Counsel through the document production process.
11. Class Counsel anticipate and are able to handle the intake and organization of the large number of documents that will likely be produced by Canada Post after certification.

12. Class Counsel will use data management systems to organize, code, and manage the documents.
13. If required, the documents may be maintained on a secure, password-protected Internet website for access by Class Counsel.
14. The same data management systems will be used to organize and manage all relevant documents in the possession of the Plaintiff although the Plaintiff has virtually no documentation relating to the common issues other than what is available in the public domain.

EXAMINATIONS FOR DISCOVERY

15. Within thirty (30) days after the parties exchange documents pursuant to item 9 above, the Defendants shall nominate one representative to be examined in accordance with Rule 237(1).
16. The Plaintiff may bring an informal motion under Rule 237(3) to examine a representative other than those nominated by Canada Post.
17. The examination for discovery of the Plaintiff and of Canada Post shall commence no later than ninety (90) days after Canada Post nominates their representative, or at any other time agreed to by the parties, subject to any objections motion and/or re-attendance to answer any questions that remain unanswered.

MOTIONS FOR SUMMARY TRIAL, SUMMARY JUDGMENT OR QUESTION OF LAW

18. The parties may not bring a motion for summary trial (Rule 216), motion for summary judgment (Rule 214-215), or motion on a question of law (Rule 220), until after the parties exchange documents pursuant to item 9 above.
19. After exchange of documents, any party may bring a motion for summary trial (Rule 216), motion for summary judgment (Rule 214-215), or motion on a question of law (Rule 220) in relation to some or all of the common issues, and the steps for such motion may be fixed at a case management conference.

EXPERT WITNESSES

20. Within sixty (60) days after the last examination for discovery, the parties shall advise each other and the Court whether they intend to adduce expert evidence for the trial.

FIXING TRIAL DATE

21. Within ninety (90) days after the last examination for discovery, the parties are to request a case management conference to fix a date for a conventional trial or summary trial.

CLARIFICATION OF THE COMMON ISSUES

22. At any time before the trial of the common issues or at the trial of the common issues, the parties may request the court to clarify and/or redefine the common issues or the state further common issues, as necessary.

SETTLEMENT DISCUSSIONS

23. For greater certainty, Rule 257 will continue to apply to this action.
24. At least sixty (60) days before the date of the conventional trial or summary trial, the parties shall attend a pre-trial conference presided by an associate judge, in accordance with Rule 258, to make a good faith attempt settle some or all of the outstanding issues.
25. If the parties agree to settle the entire action, the settlement is not effective until subject to court approval under Rule 334.29.

COMMON ISSUES TRIAL

26. At the common issues trial, whether by way of conventional trial or summary trial, the Plaintiff will request the Court to render a judgment on the common issues.
27. The Plaintiff will ask the court to award damages to the Class Members applying the aggregate damages under Rule 334.28, any applicable pre-judgment and/or post-judgment interest, and an award of solicitor-client costs for this proceeding, and any claims administration costs, in accordance with section 36 of the *Competition Act*.

28. Should there be remaining individual issues after the common issues trial, the Plaintiff will ask the Court to applying Rule 334.28(3) to appoint an associate judge and/or independent claims administrator to adjudicate the remaining individual issues, in accordance with the principles outlined in Jiang v. Peoples Trust Company, 2017 BCCA 119 at para. 117.
29. If there are no remaining individual issues, the Plaintiff will ask the Court to order that the monetary award be distributed:
- a. For Class Members with an active account with Canada Post, Canada Post will refund those monies automatically onto those Class Members' credit card or bank account.
 - b. For Class Members without an active account Canada Post, an independent claims administrator be appointed pursuant to Rule 334.28(2) to distribute the monetary award to those Class Members using the most expeditious and least expensive method.
30. After payment of all legal fees and expenses and administrative costs, and distribution of monetary award to Class Members, if any monies remain undistributed, the Plaintiff will bring a motion to ask the Court to authorize that this residue be distributed *cy-pres* for consumer protection education and advocacy. This distribution would indirectly benefit Class Members who cannot be located or did not submit a claim. The *cy-pres* distribution shall be paid in such manner to such recipients and in such proportions as the Court may deem appropriate.

CLASS COUNSEL FEES AND CLAIMS ADMINISTRATION EXPENSES

31. Before the commencement of distribution of monetary awards to the Class Members, the Court will be asked to:
- a. fix the amount of Class Counsel fees, disbursements and applicable taxes and that such amounts be paid out of the monies recovered as a first charge from the monetary amounts recovered; and
 - b. if applicable, fix the costs of the person(s) to be appointed as the independent claims administrator and to order payment of these costs as a second charge from the monetary amounts recovered.

REVIEW OF THE LITIGATION PLAN AND ONGOING CASE MANAGEMENT

32. This plan will be reconsidered and may be revised at any time under the continuing case management authority of the Court, if required.
33. No less than every ninety (90) days after the certification of this action as a class proceeding:
 - a. a case management conference will be held to provide updates to the Court regarding the status of the action; or
 - b. if directed by the Court, the parties shall submit a joint written correspondence to provide updates to the Court regarding the status of the action.
34. For greater certainty, nothing in this plan is intended to diminish or otherwise depart from the Court's broad case management powers under Rule 385.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-494-24

STYLE OF CAUSE: MARCI DEANE v CANADA POST CORPORATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATES OF HEARING: MAY 20 & 21, 2025

ORDER AND REASONS: GAGNÉ J.

DATED: JULY 8, 2025

APPEARANCES:

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Serena Cheong

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Cindy Phillips

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