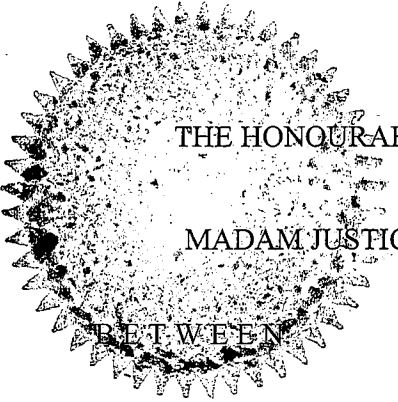


**ONTARIO
SUPERIOR COURT OF JUSTICE**



THE HONOURABLE

) TUESDAY, THE 18TH DAY

)

MADAM JUSTICE LAX

) OF DECEMBER, 2007

BETWEEN

LEE VALLEY TOOLS LTD.

Plaintiff

- and -

CANADA POST CORPORATION

Defendant

PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1992

ORDER

THIS MOTION, made by the Plaintiff, for an order, among other things, certifying this proceeding as a class proceeding was heard on October 30, 2007, at 393 University Avenue, Toronto, Ontario, with Written Submissions on November 27, 28 and 30, 2007.

ON READING the parties' Motion Records, Supplementary Motion Records, Factums, Briefs of Authorities, and Written Submissions, filed, and hearing the submissions of counsel for the parties, judgment having been reserved until this day.

1. **THIS COURT ORDERS** that the plaintiff be granted leave pursuant to section 2 (3) of the *Class Proceedings Act* to bring this motion.
2. **THIS COURT ORDERS** that this proceeding is hereby certified as a class proceeding.
3. **THIS COURT ORDERS** that:

- (a) the members of the class (the "Class") are defined as the customers of Canada Post who:
 - (i) entered into agreements with Canada Post covering periods of one or more years and that set out the terms of the parcel shipping services provided by Canada Post for such customers; and
 - (ii) were charged shipping charges after January 1, 2000 for parcels shipped within Canada on a basis other than actual weight.
- (b) Lee Valley Tools Ltd. is appointed as representative plaintiff; and
- (c) the nature of the claim, the relief sought by the class and the common issues are as is set out in Schedule "A" of this Order.

4. **THIS COURT ORDERS** that notice to the Class will be provided as follows:

- (a) The defendant will provide a list of all members of the Class known to the defendant together with complete contact information for such members based on the information and records available to the defendant, with such list and information to be provided to Blaney McMurtry LLP in an affidavit to be sworn by a representative of the defendant to be served on the plaintiff and filed with this Court on or before June 2, 2008.
- (b) The defendant will send on or before June 30, 2008 to each member of the class by ordinary mail a form of notice in the form attached as Schedule "B" to this Order, to the last known address of each class member as provided in the affidavit referred to in paragraph 4(a) of this Order, with the cost of such mailing to be borne by the defendant in the first instance, subject to the ultimate disposition of the trial of the common issues.
- (c) Blaney McMurtry LLP will reproduce on its website on or before June 2, 2008 a copy of the Statement of Claim in this action together with notice in the form attached as Schedule "B" to this Order.
- (d) Canada Post will post on the English version of its website, www.canadapost.ca, on or before June 2, 2008, and until the expiry of the period for opting out of this proceeding as set out below at paragraph 5 of this Order, notice of this class proceeding, as follows:
 - (i) The first item under the heading "Important Updates" on the English-language homepage will read: "Notice to customers with shipping agreements with Canada Post: A lawsuit has been commenced which may make it possible for you to obtain repayment of shipping charges paid under agreements with Canada Post. For further information, click here".
 - (ii) Clicking where noted will take the reader to a page that reproduces the notice in the form attached to this Order as Schedule "B".

- (e) Canada Post will make an equivalent posting in French on the French version of its website, www.postescanada.ca, on or before June 2, 2008, and until the expiry of the period for opting out of this proceeding as set out at paragraph 5 of this Order. This posting will consist of French translations of the material posted in English agreed by the parties or approved by the Court.
- (f) Blaney McMurtry LLP will provide a press release to Canadian News Wire Service containing the form of notice attached as Schedule "B" to this Order.

5. **THIS COURT ORDERS** that any member of the Class is permitted to opt out of this proceeding by mailing or faxing to Blaney McMurtry LLP a signed and dated Notice of Opting Out, in the form attached as Schedule "C" to this Order, which must be postmarked if sent by mail or received if sent by fax by no later than August 29, 2008, and that Blaney McMurtry LLP shall serve an affidavit on the defendant and file a copy with this Court no later than October 13, 2008, identifying all persons who have opted out of this proceeding.

6. **THIS COURT ORDERS** that the parties shall make submissions on costs to the Court in writing by dates to be agreed between the parties or fixed by the Court.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAY 27 2008

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:



**SCHEDULE "A": NATURE OF THE CLAIM,
RELIEF SOUGHT BY THE CLASS AND COMMON ISSUES**

NATURE OF THE CLAIM

1. In this proceeding the nature of the claim is as follows:
 - (a) The Plaintiff alleges that Canada Post has violated the *Weights and Measures Act* to increase parcel shipping charges payable by the Class to Canada Post by:
 - (i) charging on the basis of overstated weights;
 - (ii) charging on the basis of overstated volumes;
 - (iii) using units of measure which are not approved;
 - (iv) using unapproved devices to measure parcels.

RELIEF SOUGHT BY THE CLASS

2. In this proceeding the relief sought by the Class includes:
 - (a) a declaration that the shipping charges paid to the defendant (hereinafter referred to as "Canada Post") by the Class during the Class Period are contrary to the *Weights and Measures Act*, R.S.C. 1985, c. W-6 as amended, and its regulations (hereinafter referred to as the "*Weights and Measures Act*") and are, therefore, illegal and void.
 - (b) full restitution of Shipping Charges which are contrary to the *Weights and Measures Act*;
 - (c) in the alternative, restitution of the excess shipping charges;
 - (d) aggravated, exemplary and punitive damages in the amount of \$20,000,000.00;
 - (e) pre-judgment interest compounded annually, or, in the alternative, pursuant to the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended;

- (f) post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) costs on a substantial indemnity basis and Goods and Services Tax pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended, applicable to any costs; and
- (h) such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.

COMMON ISSUES

3. The common issues in this proceeding are:

- (a) Were the practices of Canada Post with respect to the calculation and collection of shipping charges based on “volumetric weight” or the retention of inadvertent over-payment paid to the defendant by the class after January 1, 2000 contrary to the *Weights and Measures Act*, R.S.C. 1985, c. W-6?
- (b) If so, are members of the class entitled to restitution of some or all of the amounts charged by Canada Post in violation of the *Weights and Measures Act*. Can the amount of restitution, if any, be determined on an aggregate basis? If so, in what amount and how should this be distributed?
- (c) Is Canada Post liable to pay exemplary or punitive damages? If so, should these damages be assessed on an aggregate basis? If so, in what amount and how should this be distributed?
- (d) Is Canada Post liable to pay pre-judgment interest with respect to such shipping charges and damages? If so, in what amount?

SCHEDULE "B": NOTICE TO CLASS MEMBERS**ONTARIO
SUPERIOR COURT OF JUSTICE****Notice Published Under the *Ontario Class Proceedings Act*:**

TO ALL CUSTOMERS OF CANADA POST who were charged shipping charges on a basis other than actual weight after January 1, 2000, for parcels shipped within Canada.

IF YOU ARE: a customer of Canada Post who had or has an agreement with Canada Post covering periods of one or more years and setting out the terms of parcel shipping services provided by Canada Post to you (which agreements are referred to by Canada Post as any of a "Canada Post Account", "Commercial Account" or "Small Business Account" or similar term) and who was charged shipping charges on a basis other than actual weight after January 1, 2000, for parcels shipped within Canada;

then this notice will be important to you.

A lawsuit has been commenced which may make it possible for you to obtain repayment of shipping charges paid by you to Canada Post for parcels shipped by you within Canada for which you were charged on a basis other than actual weight after January 1, 2000.

THIS NOTICE is published by Order of the Honourable Madam Justice Lax of the Ontario Superior Court of Justice and explains:

- the lawsuit;
- who might benefit from the lawsuit;
- your right to choose not to be part of the lawsuit and how to be included in the Class;
- the manner by which and time within which Class members may opt out of this proceeding;
- the possible financial consequences of the proceeding to Class members;
- the names and addresses of the representative party and the class lawyers, and the relief sought; and
- other matters.

1. THE LAWSUIT

Lee Valley Tools Ltd. has sued Canada Post seeking the return of amounts paid as shipping charges to Canada Post for shipping parcels within Canada after January 1, 2000.

The claim is based on allegations that Canada Post's practices related to the charging of shipping charges violated the *Weights and Measures Act* of Canada resulting in substantially increased shipping charges.

The plaintiff claims payment of shipping charges in an amount to be determined to compensate those persons who paid such shipping charges to Canada Post. The plaintiff is also claiming payment of punitive and aggravated damages and costs.

The Court has not yet determined whether the lawsuit will be successful. Further court proceedings will be required to determine whether the defendant is liable and, if so, the amounts the defendant may be required to pay and how such amounts are to be distributed.

2. WHO MIGHT BENEFIT FROM THE LAWSUIT

On December 18, 2007, the Ontario Superior Court of Justice appointed Lee Valley Tools Ltd. to represent the following class of persons (the "Class") in what is commonly known as a Class Action lawsuit:

Customers of Canada Post who had an agreement with Canada Post covering periods of one or more years and setting out the terms of the parcel shipping services provided by Canada Post for such customers and who were charged shipping charges after January 1, 2000, on a basis other than actual weight for parcels shipped within Canada.

3. YOUR RIGHT TO CHOOSE NOT TO BE PART OF THE LAWSUIT

If you are a person falling within the Class described above and do not wish to be included in the Class and to be bound by any Order made in this proceeding, then you must send written notice in the form appearing below ("Opt Out Notice") to Blaney, McMurtry LLP, Barristers, counsel for the Class, indicating that you do not wish to participate in the Class.

If your written request to be excluded from the Class is not received by August 29, 2008, you will be a member of the Class.

4. HOW TO BE INCLUDED IN THE CLASS

If you are a member of the Class described above, you will automatically be included in the proceeding unless you provide the notice to Blaney, McMurtry LLP, in the manner and within the time frame set out above, indicating that you wish not to be a member of the Class.

5. FINANCIAL CONSEQUENCES FOR YOU

If the class action is successful in showing that Canada Post is liable to pay the Class members any of the amounts being claimed, the Court will proceed to determine the amounts to which the Class members may be entitled and how such amounts should be distributed to or for the benefit of the people affected.

If the lawsuit is successful, legal costs will be deducted from the amounts recovered for the members of the Class. Any legal costs charged to the Class must be approved by a court.

Whether or not the Class Proceeding lawsuit is successful, all members of the Class who have not opted out of the proceeding will be bound by the judgment. This means, for example, that after this lawsuit is over such persons could not start their own proceedings against Canada Post for the same types of claims.

6. OTHER MATTERS

Lee Valley Tools Ltd. has retained the law firm of Blaney, McMurtry LLP, Barristers, to represent it and the Class in the lawsuit. The law firm will be paid legal fees only if the lawsuit is successful. If the lawsuit is successful, counsel will be requesting legal fees to be determined as a percentage of the amounts recovered plus some or all of any legal costs awarded against the defendant subject to minimum and maximum limits tied to the value of the time spent in connection with this lawsuit. The legal fees are subject to court approval.

The proceeding will involve a two stage process. The first stage of the proceeding will be a trial of the common issues to determine whether the defendant breached its legal obligations. You will not be responsible for any costs associated with the trial of the common issues.

If the representative plaintiff is successful in proving that the shipping charges were established in breach of the *Weights and Measures Act* and that the Class members are entitled to the return of shipping charges and/ or damages, the next step may be for each Class member to prove it paid excess shipping charges. If you attempt to do so and fail, there is a possibility that a cost award may be made against you. You will have an opportunity to decide whether you wish to proceed to prove loss for this purpose. In this regard, you may wish to seek advice of Class counsel, which will be provided at no additional cost.

If you wish to participate personally in the lawsuit, you may apply to the Court for permission to do so.

For further information about the Class Action lawsuit you may contact Blaney, McMurtry LLP to the attention of Julia Anagnostakis at (416) 596-2894, janagnostakis@blaney.com. Fax no: (416) 593-5437.

The court papers in this lawsuit are available for inspection at www.blaney.com or at the office of the Superior Court of Justice, Court House, 393 University Avenue, 10th Floor, Toronto, Ontario, Court File No. 06-CV-320840 CP.

Please **DO NOT CALL** the Registrar of the Court or the judge. They will not be able to answer your questions about the lawsuit.

DATED at Toronto, this 1st day of May, 2008.

SCHEDULE "C": NOTICE OF OPTING OUT**NOTICE OF OPTING OUT**

I **do not** wish to participate in the *Lee Valley Tools Ltd. v. Canada Post Corporation* Class Action. I understand that by opting out I will not be eligible for the payment of any amounts awarded in the Class Action.

Dated: _____

Signature

Print Name

Address

City, Province, Postal Code

Telephone No.

This Notice of Opting Out is to be delivered by mail or fax to the following:

BLANEY McMURTRY LLP

Barristers and Solicitors
Attention: Julia Anagnostakis
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Fax: (416) 593-5437

This Notice of Opting Out must, if sent by mail, be postmarked by August 29, 2008, or, if sent by fax, be received by August 29, 2008, to be effective.

LEE VALLEY TOOLS LTD.
Plaintiff

CANADA POST CORPORATION
and
Defendant

Court File No: 06-CV-320840 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **Toronto**

PROCEEDING UNDER THE *CLASS
PROCEEDINGS ACT*, 1992

178539

ORDER

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Solicitors for the Plaintiff