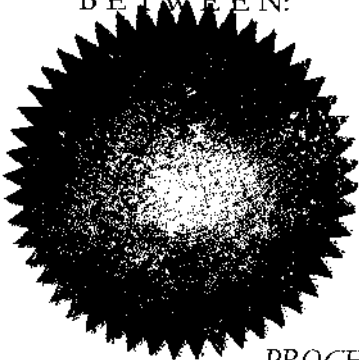


Court File No.

06-CV-320840
CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:



LEE VALLEY TOOLS LTD.

Plaintiff

- and -

CANADA POST CORPORATION

Defendant

PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1992

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve in on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

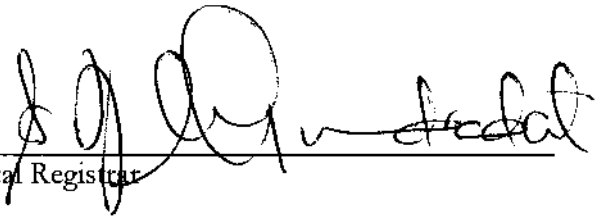
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside of Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: October 23, 2006

Issued by:


Local Registrar

Address of Court Office:

393 University Avenue, 10th Floor
Toronto, ON M5G 1E6

TO: Canada Post Corporation
2701 Riverside Drive
Ottawa, ON K1A 0B1

CLAIM

1. The plaintiff claims on its own behalf and on behalf of the members of the proposed Class which is described below in paragraph 4. Such claims include:

- (a) An order certifying this proceeding as a Class Proceeding and appointing Lee Valley Tools Ltd. representative Plaintiff for the Class;
- (b) a declaration that the shipping charges paid to the defendant (hereinafter referred to as "Canada Post") by the Class during the Class Period ("Shipping Charges") 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.
- (c) full restitution of Shipping Charges which are contrary to the *Weights and Measures Act*;
- (d) in the alternative, restitution of the excess shipping charges;
- (e) aggravated, exemplary and punitive damages in the amount of \$20,000,000.00;
- (f) 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;
- (g) post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (h) 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
- (i) such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.

2. The plaintiff is a corporation established and maintained in accordance with the laws of the Province of Ontario and carries on business as a designer, manufacturer and seller of wood working

and gardening tools, hardware and accessories which it sells through the plaintiff's mail order catalogue and through stores located in various cities across Canada.

3. For several years, the plaintiff has used Canada Post to ship parcels containing its products to the plaintiff's customers across Canada. From time to time, the plaintiff entered into agreements with Canada Post covering periods of one or more years and setting out the terms of the parcel shipping services provided by Canada Post to the plaintiff.

4. The members of the proposed class, who are hereinafter referred to as the Class, include all of the customers of Canada Post who had similar agreements with Canada Post which are referred to by Canada Post as any of a "Canada Post Account", "commercial account" or "small business account" and who were charged shipping charges after January 1, 2000, for parcels shipped within Canada on a basis other than actual weight.

5. Canada Post is a Crown corporation incorporated under the *Canada Post Corporation Act* R.S.C. 1985, c. C-10, as amended and is an agent of Her Majesty the Queen in right of Canada. Canada Post carries on business shipping parcels within Canada for its customers. As such, Canada Post sells a service on the basis of measure and is therefore subject to the *Weights and Measures Act*.

6. For many years Canada Post generally charged its customers based on the weight of the parcel. Consequently Canada Post was required by the *Weights and Measures Act* to base such charges on the weight measured in units authorized by the *Weights and Measures Act* such as kilograms. Canada Post based such charges to a given destination exclusively on weight until approximately the year 2000.

7. At some time before the year 2000 Canada Post decided to charge a "Density Surcharge" on low density parcels. The "Density Surcharge" required that the volume of the parcels be measured. Canada Post was required by the *Weights and Measures Act* to measure actual volume in authorized units such as cubic centimetres.

8. Canada Post stated in 1998 that:

- (a) The "Minimum Density Weight" of a parcel was derived by determining:
 - (i) the volume of a parcel by multiplying length by the width by the height;

(ii) dividing the volume by the “constant minimum density factor” of 6,000 for centimetres.

(b) The shipping charges were to be based on the greater of “Minimum Density Weight” and the actual weight, both expressed in kilograms.

9. Around the year 2000 Canada Post asked some or all of the Class to use standard sized boxes of different volumes so that Canada Post could measure the volume more easily.

10. Although this was inconvenient for the plaintiff and other members of the Class, who had previously used various types of packaging best suited to protect the product at minimum weight and size, the Class converted most of their packaging to standard sized boxes around the year 2000 and identified the greater of “Volumetric Weight” or actual weight of each parcel on its shipping manifest. The use of standard sized boxes had the effect of overstating the volume of what the Class wished to ship.

11. Canada Post also required that the Class weigh each parcel and calculate the “Minimum Density Weight”, which was a number expressed by Canada Post in kilograms but in fact determined in accord with the above formula prescribed by Canada Post. “Minimum Density Weight” was independent of the weight of the parcel. Canada Post stated that it charged customers on the basis of a price per kilogram based on the greater of the “Minimum Density Weight” or the actual weight. However, in charging on the basis of “Minimum Density Weight” Canada Post did not charge on the basis of actual weight.

12. Canada Post’s Customer Guide issued effective 7 October, 2002, provided that:

(a) “the cost of shipping your item is based on the dimensions (length plus girth) and the weight of your item”;

(b) “Minimum Density Weight” is calculated by applying the “cubing rule” and for domestic shipping is calculated by:

(i) measuring the volume by multiplying “Length x Width x Height”; and

(ii) dividing the volume by the “constant minimum density factor” which for Canada was 6,000;

- (c) the shipping rate is based on the greater of the "Minimum Density Weight" or the actual weight; and
- (d) the item may be re-weighed and "cubed" by Canada Post and "shipping fees adjusted if required".

13. Canada Post also required the Class to determine the amount of the shipping charge to be paid in accord with the procedures set out above and to pay in accord with such determination. If a member of the Class erred in doing so and thereby understated the amount owing, Canada Post charged any additional amount owing. However if the member of the Class erred and thereby overstated the amount owing, Canada Post did not advise the member of the Class of the error and simply kept any overpayment made.

14. By letter dated 17 January, 2003, Canada Post advised the Class that it was installing new equipment that automated the "cubing process" to measure the size of parcels relative to their weight. This equipment was to measure the "Maximum Theoretical Volume" of parcels and apply the "Cubing Factor" or "Cubing Rule" to determine the "Minimum Density Weight". Canada Post represented this equipment was "certified by Weights and Measures Canada" (now called Measurement Canada), an agency of the Department of Industry Canada.

15. In or around February, 2003, Canada Post began using its own equipment to measure the "Maximum Theoretical Volume" of the Parcels submitted by the plaintiff and members of the Class to arrive at "Minimum Density Weight". Canada Post also continued to weigh such parcels. Canada Post charged the plaintiff and members of the Class on the basis of the greater of "Maximum Theoretical Volume" and actual volume and on the basis of the greater of "Minimum Density Weight" and actual weight.

16. The "Maximum Theoretical Volume" of a parcel is not the volume of the parcel but is determined by the above formula used by Canada Post which can greatly overstate the volume of a parcel which is not a rectangular box.

17. In or around January, 2004, Canada Post changed the name "Minimum Density Weight" to "Volumetric Weight" but the calculation remained the same.

18. Canada Post's Customer Guide issued effective 17 January, 2005, stated, in part:
- (a) the cost of shipping an item was based on its dimensions and weight;
 - (b) the two methods to calculate the maximum dimension was length + girth, or length + (height x 2) + (width x 2) using the widest part of the item;
 - (c) "Volumetric Weight" is calculated by:
 - (i) measuring the volume by multiplying the "length x width x height";
 - (ii) dividing the volume by the "cubing factor" (6,000 for domestic shipments);
 - (d) the shipping charge is based on the greater of the "Volumetric Weight" or the actual weight;
 - (e) the item may be re-weighed and "cubed" by Canada Post and additional charges may be applied if incorrect data provided; and
 - (f) re-weighing and "cubing" are done on government-approved equipment.

19. Any equipment used by Canada Post to establish the shipping charge based on "Minimum Density Weight" or "Volumetric Weight" was not properly approved for such purpose and any use of such equipment by Canada Post was in violation of section 8 of the *Weights and Measures Act*.

20. Thus from the time Canada Post instituted the changes outlined above in paragraphs 7 to 19, Canada Post was charging for the shipment of some parcels on the basis of weight in accord with the *Weights and Measures Act*. However, Canada Post was charging for shipping other parcels on the basis of "Minimum Density Weight" or "Volumetric Weight" expressed as weight but determined independent of the weight. Canada Post was also charging for shipping other parcels based on "Maximum Theoretical Volume" which was stated to be volume but calculated so as to be greater than the actual volume for a substantial proportion of parcels.

21. The net effect of using the units of measure utilized by Canada Post, which was not authorized pursuant to the *Weights and Measures Act*, was that Canada Post was charging the Class for a substantial portion of parcels on the basis of "Volumetric Weight" as stated by Canada Post which exceeded the actual weight and/or on the basis of volume as stated by Canada Post which

exceeded the actual volume. The effect of this was to increase the charges to the plaintiff alone by approximately 40%.

22. Canada Post continues to measure parcels contrary to the *Weights and Measures Act* and to charge the Class excess shipping charges as a result.

23. Canada Post also continues to charge the Class an additional charge where the weight or dimensions stated by the Class member on the manifest is less than the weight or dimensions of the Parcel as measured by Canada Post. However, Canada Post does not advise the Class member of the error when the error favours Canada Post, and Canada Post simply keeps the overpayment.

24. The Canada Post shipping charges to the plaintiff and other members of the Class in the Class Period are contrary to the *Weights and Measures Act* and, therefore, illegal, in that:

- (a) Canada Post provides the service of shipping parcels in Canada and in establishing shipping charges provides for and uses units of measurement which are not authorized by the *Weights and Measures Act*;
- (b) Canada Post overcharges the plaintiff and other members of the Class by:
 - (i) the use of “Maximum Theoretical Volume” to determine volume which overstates the volume for many parcels;
 - (ii) the application of the “Cubing Rule” or “Cubing Factor” to determine the “Minimum Density Weight” or “Volumetric Weight” rather than charging based on actual volume or actual weight;
 - (iii) charging on the basis of the greater of “Volumetric Weight” and actual weight; and
 - (iv) the application of charges based on incorrect weights or dimensions stated by the plaintiff and Class Members where they are greater than the weight or dimensions as measured by Canada Post; and

- (c) the amount of service provided by Canada Post is less than:
 - (i) the amount of service Canada Post purports to provide; and
 - (ii) the amount of service Canada Post should provide based on the total price charged for the service and the stated price per unit of measure.

25. The purpose of the *Weights and Measures Act* is in part to protect the plaintiff and the members of the Class and other members of the public from short, misleading, confusing or dishonest measure and to prevent Canada Post from overcharging the plaintiff and members of the Class or charging the plaintiff and members of the Class shipping charges contrary to such *Act*.

26. The plaintiff claims aggravated, exemplary and punitive damages by reason of the following:

- (a) Canada Post knew that it was violating the *Weights and Measures Act*, or was deliberately reckless in proceeding as is described above;
- (b) Canada Post knew or believed that in establishing shipping charges as referred to above it was using units of measurement which were not permitted under the *Weights and Measures Act*;
- (c) Canada Post knew that the Government of Canada was not prepared to approve the measurement of parcels in the manner described above in paragraphs 8 to 23 and to take the steps necessary to make such measurement legal under the *Weights and Measures Act* and yet Canada Post went ahead with such measurement and determination of shipping charges;
- (d) Canada Post opposed or failed to support changes to the *Weights and Measures Act* so as not to bring attention to the illegality of their actions referred to above;
- (e) Canada Post's breaches of the *Weights and Measures Act* have continued over a period of years and Canada Post has refused to comply with the *Weights and Measures Act*, and refused to return excess shipping charges;
- (f) Canada Post's misconduct places in jeopardy the reputation, credibility and viability of an important institution and Crown corporation;

- (g) when notice of its conduct contrary to the *Weights and Measures Act* was brought to Canada Post's attention, Canada Post denied any wrongdoing; and
- (h) Canada Post continues to claim its conduct complies with the *Weights and Measures Act* when it knows it does not, or Canada Post continues to be reckless in making such assertions.

27. The plaintiff proposes that this action be tried at the City of Toronto.

October 23, 2006

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Solicitors for the Plaintiff

LEE VALLEY TOOLS LTD.
Plaintiff

and

CANADA POST CORPORATION
Defendant

Court File No.

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at **Toronto**

PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1992

STATEMENT OF CLAIM

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