

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

(“Class Action”)  
SUPERIOR COURT

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No: 500-06-001247-234

Natasha Perry-Fagant

299 rue Villeneuve O

Montreal, PQ

H2V 2R2

Applicant

-vs-

[...]

Federal Express Canada Corporation

dba FedEx

[...]

[...]

110-6300 Ch. De la Côte-de-Liesse Rd,

Saint-Laurent, Quebec H4T 1E3

Defendants

**AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE  
A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE**  
(Articles 575 F.F. C.C.P.)

**Part 1: STATEMENT OF FACTS**

**Overview**

1. This action concerns false, misleading, and deceptive representations made by Federal Express [...] Canada Corporation, [...] ([...] “[...]FedEx”).
2. Fees are not properly identified at the time of initial contract and payment and fee structures are hidden online, see **Exhibit R-1 FedEx web site fees**, and **Exhibit R-2 FedEx site taxes and fees**. The value and delivery address are known at the time of shipment and fees should be disclosed at that time.
3. FedEx required the Plaintiff and other Class Members (defined below) to make payments to FedEx for “import duties and taxes” and “processing fees” and “frais de declaration en douane” after releasing to Class Members their purchased goods that were shipped, via FedEx, to their residences in Canada (Quebec) from the United States or internationally.
4. At time of original billing for the purpose of shipping service of Tribbles, see **Exhibit R-3A, R-3B, R-3C**, there was no indication of fees, see **Exhibit R-4A**.
5. FedEx billed Plaintiff and other Class Members previously undisclosed fees by mail, see **Exhibits R-4B**.
6. This “import duty/tax payment” included a “processing fee” as well as a “frais de declaration en douane” which was retained by FedEx after payment was made by a Class Member.
7. The original purchase price of the shipping service was US\$35.65 as seen in Exhibit R-4A, the added fees upon reception were “frais de debours” of \$10 and “Frais de declaration en douane” of \$25.50 for a total fee upon reception of \$35.50 Canadian dollars. This almost doubles the cost of shipping.
8. Had the Plaintiff known of the added fees she would have likely looked at other possible shipping methods which could have been more economical.

9. FedEx knew these fees would be levied by them at the time they agreed on the shipping charges and should have made them known at that time.

A. As indicated in the Competition Bureau of Canada's "The deceptive marketing practices digest, volume 1", at page 4, Exhibit R-8, hiding the true cost of a product or service is a growing problem in the digital economy where concealing the true cost occurs and it is only revealed to the consumer after purchase.

B. That bulletin further notes at page 4 that a body of research shows that hiding or obscuring costs significantly affects consumers ability to make well-informed decisions, and has a negative impact on the proper function of the marketplace.

10. At no time before payment was made did FedEx disclose to Class Members that this "import duty/tax payment" included a FedEx "processing fee" or a "frais de declaration en douane". At all material times, FedEx represented to Class Members that the payments being made by them to FedEx were for import duties and taxes charged by the Canada Border Services Agency ("Canada Customs") for goods crossing the border and entering Canada. Class Members believed these representations to be true.

11. FedEx's representations were false, misleading, and deceptive. FedEx knew that its representations were false, misleading, and deceptive. Alternatively, FedEx was reckless and ought to have known that its representations were false, misleading, and deceptive.

12. FedEx's representations and conduct were in breach of the provincial *Consumer Protection Acts* ("CPAs") and of the *Competition Act*, RSC 1985, c C-34 and constituted an unfair business practice contrary to provincial consumer protection legislation. FedEx was unjustly enriched by its conduct, and its conduct constituted the tort of deceit.

13. Class Members are entitled to restitution and to statutory and common law damages for their losses.

### **History of prior actions**

14. FedEx was named Defendant in another Quebec application for authorization filed in 2018 for a group from September 21, 2017 until December 20, 2018 and authorized December 20, 2018. The "Service Guides" referenced in that action are clearly an attempt to abrogate responsibility to adequately inform the customer at the time of sale/service and will be of importance in this action.

### **The Parties and the Class**

15. The Plaintiff, Natasha Perry-Fagant, is an actress and performer currently residing in Montreal, Quebec domiciled at 299 rue Villeneuve O, Montreal, PQ, H2V 2R2.

16. The Plaintiff brings this action on her own behalf and on behalf of a proposed national Class of persons resident in Canada (Quebec) who have paid FedEx fees charged by FedEx which include FedEx's processing or brokerage fees for goods shipped to Class Members, via FedEx, from a destination outside of Canada originating from Europe, the United States and Asia from July 6, 2020 until the date of authorization ("Class" or "Class Members", to be further defined in the Plaintiffs application for certification). In many circumstances, Class Members used FedEx's courier delivery services primarily for personal, family or household purposes or uses.

**(For Qc.)The Group:**

All natural persons, legal persons established for a private interest, partnerships and associations or other groups not endowed with judicial personality in Canada or, in the alternative, in Québec, who, from July 6, 2020 until the date of Authorization, were charged customs duties and or processing fees collected by Federal Express Canada Corporation (aka FedEx) in respect to the import of any goods.

17. The Defendant, Federal Express [...] Canada[...] Corporation, [...] (FedEx [...]), is a federal company duly incorporated pursuant to the laws of Canada with its corporate office at 5985 Explorer Dr Mississauga, ON, L4W 5K6 and it's office in Quebec at FedEx [...], 110-6300 Ch. De la Côte-de-Liesse Rd, Saint-Laurent, Quebec H4T 1E3. FedEx [...] identifies its business activity as "a reliable shipper, committed to getting your package - large or small - to its destination on time".

18. FedEx is a package delivery and express courier service. FedEx operates internationally and holds itself out as a specialist in international shipping and courier delivery services.

19. On its website, FedEx sets out "Clearance service and related fees" for receivers. See **Exhibit R-1** FedEx Fees. These fees are a hidden fee structure as they are not made evident at the time of contracting the shipment and are hidden.

20. On its FAQs webpage, FedEx states, **Exhibit R-2** FedEx web site taxes and fees. These fees are also not made evident at time of contracting the shipment and are hidden.

**FedEx's Unlawful Scheme**

21. FedEx holds itself out as a business that specializes in express courier delivery services for shipments of goods being transported across international borders.

22. In the course of its business, FedEx has engaged in an unlawful scheme whereby it has made false, misleading, and deceptive representations to the Plaintiff and Other Class Members — to their detriment — for its own financial gain and business interest. It is noteworthy that by Respondents own admission, as indicated at paragraph 33 of their defense in *Farias* (No. 500-06-000895-173, May 14, 2021), the fee is discretionary as, if complained of, either \$10 or \$10 plus applicable taxes is refunded to the complaining consumer.

23. During delivery of shipments to the Plaintiff and other Class Members, FedEx would advise Class Members by phone of their need to make payment to FedEx for “import duty/tax and clearance fees” owing on their goods shipped from a destination outside of Canada.

24. When deliveries were made, there later followed a letter with a bill demanding payment of the taxes, duties and hidden fees. See **Exhibit R-4B FedEx bill**.

25. At all material times, FedEx represented to the Plaintiff and other Class Members that in order to receive delivery of their goods in the shortest possible time after entering Canada - FedEx would pay any import duties or taxes (also referred to as government levies) deemed payable by Customs Canada.

26. At all material times, the Plaintiff and other Class Members understood that the fees being charged by FedEx — and paid to FedEx by them — were to repay FedEx for duties and taxes (government levies) charged by Canada Customs for goods being shipped when they crossed the border into Canada.

27. In reality, however, the fees charged by FedEx to the Plaintiff and other Class Members for “import duties and taxes” included a FedEx “processing” or brokerage fee as well as a “frais de declaration en douane”. This fee was retained by FedEx after payment was made by a Class Member.

28. At no time before payment was made, did FedEx disclose to Class Members that this “import duty/tax payment” included FedEx’s “processing fee” as well as the “frais de declaration en douane” fee . These are both hidden fees, contrary to the duty to fully inform required by the *CPA*.

29. For the purpose of promoting its business interest, FedEx knowingly and recklessly made representations to the Plaintiff and other Class Members that were false or misleading in a material respect contrary to the *Competition Act*.

30. For the purpose of promoting its business interest, FedEx knowingly and recklessly sent,

or caused to be sent, bills by mail to the Plaintiff and other Class Members that were false or misleading in a material respect contrary to the *Competition Act*, the *CPAs* and the *Quebec Civil Code*.

31. FedEx's conduct was unlawful and was purposed for FedEx's own financial gain. The representations made by FedEx to the Plaintiff and other Class Members were false, misleading, and deceptive.

32. FedEx's conduct was high-handed, planned, and deliberate and showed a marked departure from the ordinary standards of decent behaviour.

33. FedEx' penchant for [...] deceptive and misleading behaviour, which creates a presumption that the allegations of [...] wrongful conduct in the present matter are credible at the Authorization stage, is further indicated in their having apparently perpetrated the "largest odometer fraud scheme in history", as indicated by the article attached here with as **Exhibit R-5** and **Exhibit R-6** and video **Exhibit R-7**.

### **The Plaintiffs Experience**

34. The Plaintiff purchased books valued at \$40 and "Tribbles" valued at \$60, see **Exhibit R-3A** and **R-3B**, from Star Trek writer David Gerrold for the total price of \$100 plus \$35.65 for shipping for a total of \$135.65. The "Tribbles" were as a support entity and books were for personal use.

35. The Plaintiffs order was shipped by the vendor, David Gerrold, via FedEx, with waybill number 390532640392 . The Plaintiff was using FedEx's courier delivery services for personal, family, or household purposes.

36. On the date of November 18, 2022 she received the delivery at her door with no indication that there would be further fees.

37. The Plaintiff paid FedEx the CDN\$44.51 fee request in subsequent letter as indicated in Exhibit R-4B.

38. At all material times prior to payment, FedEx represented to the Plaintiff that the fee being charged on her shipment was for duties and taxes. FedEx never advised the Plaintiff, prior to payment, that the fee being charged included FedEx's "processing fee" of CDN\$10.00 plus tax and also a fee declared as "frais de declaration en douane" for \$25.50 plus tax. These fees were also not declared at the time of shipping.

39. The Plaintiff only learned that she had paid FedEx a "processing fee" as well as a

“frais de declaration en douane” after being able to examine the documentation in detail. It should be noted that the “processing fee” was in french as “Frais de debours”, which translates as “Disbursement costs” further complicating her ability to understand what she was paying for.

## **Damages**

40. As a consequence of FedEx's conduct and its false, misleading, and deceptive representations — which caused the Plaintiff and other Class Members to act and to pay FedEx a processing and/or brokerage fee — the Plaintiff and other Class Members have sustained loss and damage, including the monies they paid to FedEx for FedEx's processing and/or brokerage fees plus all taxes on those amounts.

41. The Plaintiff and other Class Members have also suffered stress, frustration and anxiety as a result of FedEx's conduct and as a result of time they have had to spend investigating the fees charged by FedEx.

## **Part 2: RELIEF SOUGHT**

42. The Plaintiff claims, on her own behalf and on behalf of the Class:

- a) an order authorizing this action as a collective action and appointing Natasha Perry-Fagant as a Representative Plaintiff;
- b) General damages;
- c) Special damages;
- d) Exemplary, aggravated, and, for Quebec members, punitive damages;
- e) Statutory damages pursuant to s. 36 of the *Competition Act*, RSC 1985, c C-34, including the cost of any investigation in connection with this matter and the cost of this proceeding;
- f) damages pursuant to section 171 of the *British Columbia Business Practices and Consumer Protection Act*, SBC 2004, e 2; section 13 of the *Alberta Consumer Protection Act*, RSA 2000 c C-26.3; section 93 of the Saskatchewan *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; section 23 of Manitoba's *The Business Practices Act*, CCSM c B120; sections 18 and 100 of the *Ontario Consumer Protection Act*, 2002, SO 2002, c 30, Sched A; section 272 of the *Quebec Consumer Protection Act*, CQLR c P-40.1; and section 10 of the *Newfoundland Consumer Protection and Business Practices Act*, SNL 2009,  
  
G C-31.1;
- g) restitution;
- h) damages equal to the costs of notices and the plan of distribution;
- i) Interest, costs; and
- j) The Special indemnity provided by law.



### **Part 3: LEGAL BASIS**

#### **Legislation**

43. The Plaintiff pleads and relies on the *Class Proceeding Act*, RSBC 1996, e 50; the *Competition Act*, RSC 1985, c C-34; the *Business Practices and Consumer Protection Act*, SBC 2004, c 2; the *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A; the *Consumer Protection Act*, CQLR c P-40.1; the *Consumer Protection Act*, RSA 2000, c C-26.3; the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1; *The Business Practices Act*, CCSM c B120; *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28; the *Court Order Interest Act*, RSBC 1996, c 79, and the *Limitation Act*, SBC 2012, c 13. Civil code of Quebec.

#### **Breach of the *Competition Act***

##### Generally

44. At all material times, FedEx represented to the Plaintiff and other Class Members that the fees being charged to them by FedEx were to pay any import duties or taxes (government levies) charged by Canada Customs for goods being shipped into Canada.

45. At all material times, the Plaintiff and other Class Members understood that the fees being charged by FedEx — and paid to FedEx by them — were for duties and taxes (government levies).

46. However, the fees charged by FedEx to the Plaintiff and other Class Members included a FedEx “processing” and/or brokerage fee, which was not disclosed by FedEx to the Plaintiff and other Class Members prior to shipping.

##### Section 52

47. For the purpose of promoting its business interest (which includes financial gain), FedEx knowingly and recklessly made representations to the Plaintiff and other Class Members that were false or misleading in a material respect, contrary to section 52(1) of the *Competition Act*.

48. Although section 52(1.1) of the *Competition Act* does not require that the Plaintiff and other Class Members be deceived or misled, they were - in fact - deceived or misled by FedEx’s representations.

##### Section 52.01

49. Mails sent, or caused to be sent, by FedEx to the Plaintiff and other Class Members advised Class Members of their need to make payment to FedEx for “import duty/tax and clearance fees” as well as “frais de declaration en douane” fees owing on their goods shipped from destinations outside of Canada.

50. The mail from FedEx to the Plaintiff and other Class Members did advise the Plaintiff and other Class Members that they were being charged a “processing” and/or brokerage fee by FedEx but they had not been advised of these fees at the time of shipment.

51. For the purpose of promoting its business interest (which includes financial gain), FedEx knowingly and recklessly sent, or caused to be sent, in mail to the Plaintiff and other Class Members representations that were false or misleading in a material respect contrary to section 52.01(2) of the *Competition Act* and subject matter information that was false or misleading contrary to section 52.01(1) of the *Competition Act*.

Section 36 — Statutory Damages

52. FedEx’s conduct, as set out in the whole of this claim, was contrary to Part VI of the *Competition Act*.

53. Pursuant to section 36 of the *Competition Act*, the Plaintiff and other Class Members can sue for and recover from FedEx an amount equal to the loss or damage they have suffered as a result of FedEx’s breaches of Part VI of the *Competition Act*, together with an additional amount the Court may allow for the cost of any investigation in connection with FedEx’s statutory breaches and the cost of this proceeding.

**Tort of Deceit**

54. FedEx made false representations to the Plaintiff and other Class Members.

55. FedEx knew of the falsehood of its representations or, alternatively, FedEx was reckless and ought to have known that its representations were false.

56. FedEx’s false representations caused the Plaintiff and other Class Members to act and to pay FedEx the hidden processing or brokerage fee.

57. The Plaintiff and other Class Members suffered a loss as a result of their actions, being the amount they paid to FedEx for the hidden processing or brokerage fee.

58. Defendant Federal Express Canada Corporation (FedEx)'s improper charging of these fees is all the more galling as on December 18, 2018, the Québec Superior Court authorized a

class action against defendants which included these same fees as concerns the European Union. On November 11, 2019, the Québec Court of Appeal dismissed defendant FedEx's appeal.

### **Unjust Enrichment**

59. FedEx received financial gain and was enriched from charging the Plaintiff and other Class Members a processing or brokerage fee.

60. The Plaintiff and other Class Members suffered a corresponding deprivation, being the monies they paid to FedEx for FedEx's hidden processing or brokerage fee.

61. There was no juristic reason for FedEx's enrichment and Class Members' corresponding deprivation.

62. The Plaintiff and other Class Members are entitled to restitution of FedEx's financial gain.

### **Breach of Consumer Protection Legislation**

#### *British Columbia*

63. With respect to the Plaintiff and other Class Members resident in British Columbia who used FedEx's courier delivery services primarily for personal, family or household purposes:

- (a) the Plaintiff and each Class Member was a "consumer";
- (b) FedEx was a "supplier";
- (c) FedEx's courier delivery services were a "service"; and
- (d) the supply of FedEx's services from FedEx to the Plaintiff and each Class Member was a "consumer transaction"

all within the meaning of section 1 of the *Business Practices and Consumer Protection Act*, SBC 2004, c 2.

64. At all material times, FedEx represented to the Plaintiff and other Class Members that the fees being charged to them by FedEx were to pay any import duties or taxes (government levies) charged by Canada Customs for goods being shipped into Canada.

65. At all material times, the Plaintiff and other Class Members understood that the fees being charged by FedEx — and paid to FedEx by them — were for duties and taxes (government levies).

66. However, the fees charged by FedEx to the Plaintiff and other Class Members included a FedEx “processing” or brokerage fee, which was not disclosed by FedEx to the Plaintiff and other Class Members.

67. FedEx’s representations were relied on by the Plaintiff and other Class Members in connection with the consumer transactions when FedEx’s courier delivery services were provided to the Plaintiff and other Class Members primarily for personal, family or household purposes.

68. Contrary to FedEx’s representations and as set out in the whole of this claim, FedEx’s representations were false, misleading, and untrue and constituted a “deceptive act or practice” within the meaning of section 4 and contrary to section 5 of the *Business Practices and Consumer Protection Act*.

69. The Plaintiff and other Class Members are entitled to statutory damages under section 171 of the *Business Practices and Consumer Protection Act*.

Alberta

70. With respect to Class Members resident in Quebec who used FedEx’s courier delivery services primarily for personal, family or household purposes:

- (a) each Class Member was a “consumer”;
- (b) FedEx was a “supplier”;
- (c) FedEx’s courier delivery services were a “service”, and
- (d) the supply of FedEx’s services from FedEx to each Class Member was a “consumer transaction”

all within the meaning of section I of the *Consumer Protection Act*, RSA 2000, c C-26.3.

71. As set out above and in the whole of this claim, FedEx made various representations which were relied on by Class Members in connection with the consumer transactions when they decided to use FedEx’s courier delivery services primarily for personal, family or household purposes.

72. As set out above and in the whole of this claim, FedEx acted contrary to its

representations. FedEx's representations were false, misleading, and deceptive and constituted an "unfair practice" within the meaning of and contrary to section 6 of the *Consumer Protection Act*.

73. Class Members are entitled to statutory damages under section 13 of the *Consumer Protection Act*.

#### Saskatchewan

74. With respect to Class Members resident in Saskatchewan who used FedEx's courier delivery services ordinarily for personal, family or household purposes:

- (a) each Class Member was a "consumer";
- (b) FedEx was a "supplier"; and
- (c) FedEx's courier delivery services were a "service"

all within the meaning of section 2 of *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2.

75. As set out above and in the whole of this claim, FedEx made various representations which were relied on by Class Members in connection with the consumer transactions when they decided to use FedEx's courier delivery services ordinarily for personal, family or household purposes.

76. As set out above and in the whole of this claim, FedEx acted contrary to its representations. FedEx's representations were false, misleading, and deceptive and constituted an "unfair practice" within the meaning of sections 4 and 6 and contrary to section 8 of *The Consumer Protection and Business Practices Act*.

77. Class Members are entitled to statutory damages under section 93 of *the Consumer Protection and Business Practices Act*.

#### Manitoba

78. With respect to Class Members resident in Manitoba who used FedEx's courier delivery services primarily for personal, family or household use:

- (a) each Class Member was a "consumer";
- (b) FedEx was a "supplier";
- (c) FedEx's courier delivery services were "goods"; and

- (d) the supply of FedEx's courier delivery services from FedEx to each Class Member was a "consumer transaction" all within the meaning of section 1 of *The Business Practices Act*, CCSM c B120.

79. As set out above and in the whole of this claim, FedEx made various representations which were relied on by Class Members in connection with the consumer transactions when they decided to use FedEx's courier delivery services primarily for personal, family or household use.

80. As set out above and in the whole of this claim, FedEx acted contrary to its representations. FedEx's representations were false, misleading, and deceptive and constituted an "unfair business practice" within the meaning of sections 1 and 2 and contrary to section 5 of *The Business Practices Act*.

**81.** Class Members are entitled to statutory damages under section 23 of *The Business Practices Act*.

Ontario

82. With respect to Class Members resident in Ontario who used FedEx's courier delivery services for personal, family or household purposes:

Sch A.

- (a) each **Class Member** was a "**consumer**";
- (b) FedEx was a "supplier";
- (c) FedEx's courier delivery services were a "service";
- (d) the supply of FedEx's courier delivery services from FedEx to each Class Member was a "consumer transaction"; and
- (e) FedEx and Class Members entered into a "consumer agreement" with respect to the supply of FedEx's courier delivery services

all within the meaning of section 1 of the *Consumer Protection Act, 2002*, SO 2002, c 30,

83. As set out above and in the whole of this claim, FedEx made various representations which were relied on by Class Members in connection with the consumer transactions when they decided to use FedEx's courier services for personal, family or household purposes.

84. As set out above and in the whole of this claim, FedEx acted contrary to its representations. FedEx's representations were false, misleading, and deceptive and constituted an "[...]unfair practice" within the meaning of section 14 and contrary to section 17 of the *Consumer Protection Act, 2002*.

85. Class Members are entitled to statutory damages under sections 18 and 100 of the *Consumer Protection Act, 2002*.

86. With respect to Class Members resident in Quebec:

(a) each Class Member was a “consumer”; and

(b) FedEx was a “merchant”;

within the meaning of section 1 of the *Consumer Protection Act*, CQLR c P-40.1.

87. As set out above and in the whole of this claim, a contract for services was entered into, in the course of FedEx’s business, between each Class Member in Quebec and FedEx, within the meaning of section 2 of the *Consumer Protection Act*.

88. As set out above and in the whole of this claim, FedEx made various representations which were relied on by Class Members when entering into contracts with FedEx for courier delivery services.

89. As set out above and in the whole of this claim, FedEx acted contrary to those representations. The representations made by FedEx to Class Members in Quebec were false and misleading and, accordingly, FedEx contravened section 219 of the *Consumer Protection Act*.

90. FedEx further contravened section 228 of the *CPA* in failing to mention an important fact in its representation to consumers.

91. Class Members are entitled to statutory damages under section 272 of the *Consumer Protection Act*, including punitive damages.

92. On December 20, 2018 Madam Justice Tremblay, of the the Quebec Superior Court authorized a class action against FedEx in file 500 – 06 – 00895 – 173 in the matter of *Farias v Federal Express Canada Corporation*. The class in that matter are Québec residents who from September 21, 2017 until December 20, 2018 were charged in and paid customs duties and or processing fees collected by FedEx in respect of the import of any goods originating from a European country or a beneficiary of the Canada European Union comprehensive economic and trade agreement ("The Group"). That collective action may be distinguished from the present matter as:

(a) there is no temporal overlap between the two groups/classes;

(b) the present matter is broader as it includes or all Québec residents who were charged or customs duties and or processing fees from all countries outside of Canada, including Asia and the United States;

(c) The Quebec consumer Representative Perry-Fagant's transaction concerns a Tribble shipped from the United States, such that her claim is manifestly *not* included in the *Farias* matter;

93. Proposed common questions of fact and law:

one. Was/is the Respondent entitled to charge and collect custom duties and or processing fees from members of the class?

Two. Is Respondent a quote merchant court governed by the Québec *Consumer Protection Act*?

Three. Are certain members of the class consumers governed by the Québec *Consumer Protection Act*?

Four. Did Respondent fail to comply with the requirements of the Québec *Consumer Protection Act* by charging and collecting, during the Class Period, customs duties and processing fees from members of the class?

Five. How much money did Respondent collect from members of the class collectively for customs duties and processing fees during the Class Period?

Six. Is Respondent liable to pay punitive damages to consumer members of the class for their repeated breaches of the Québec *Consumer Protection Act* and if so, what amount of punitive damages should respondent be condemned to pay collectively?

94. The applicable sections of the, Québec *Consumer Protection Act* are:

As concerns punitive damages section 272 provides:

[216.](#) For the purposes of this title, representation includes an affirmation, a behaviour or an omission.

[217.](#) The fact that a prohibited practice has been used is not subordinate to whether or not a contract has been made.

[227.1.](#) No person may, by any means whatever, make false or misleading representations concerning the existence, charge, amount or rate of duties payable under a federal or provincial statute.

[228.](#) No merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer.

As concerns punitive damages section 272 provides:

[272.](#) If the merchant or the manufacturer fails to fulfil an obligation imposed on him by this Act, by the regulations or by a voluntary undertaking made under section 314 or whose application has been extended by an order under section 315.1, the consumer may demand, as the case may be, subject to the other recourses provided by this Act,

- (a) the specific performance of the obligation;
- (b) the authorization to execute it at the merchant's or manufacturer's expense;
- (c) that his obligations be reduced;

or ...

without prejudice to his claim in damages, in all cases. He may also claim punitive damages.



95. **Authorize** this application to institute a collective action;

**Conclusions sought:**

**Authorize** or the applicant to proceed with this collective action against the defendants;

**Designate** the applicant representative of the members of the group;

**Define** the group as:

All natural persons, legal persons established for a private interest, partnerships and associations or other groups not endowed with judicial personality in Canada or, in the alternative, in Québec, who, from July 6, 2020 until the date of Authorization, were charged customs duties and or processing fees collected by Federal Express Canada Corporation (aka FedEx) in respect to the import of any goods.

**Identify** the questions to be decided collectively as follows:

**One.** Was/is the Respondent entitled to charge and collect custom duties and or processing fees from members of the class?

**Two.** Is Respondent a quote merchant court governed by the Québec *Consumer Protection Act*?

**Three.** Are certain members of the class consumers governed by the Québec *Consumer Protection Act*?

**Four.** Did Respondent fail to comply with the requirements of the Québec *Consumer Protection Act* by charging and collecting, during the Class Period, customs duties and processing fees from members of the class?

**Five.** How much money did Respondent collect from members of the class collectively for customs duties and processing fees during the Class Period?

**Six.** Is Respondent liable to pay punitive damages to consumer members of the class for their repeated breaches of the Québec *Consumer Protection Act* and if so, what amount of punitive damages should respondent be condemned to pay collectively?

**Identify** the conclusions sought as being:

**GRANT** the Class Action against the Defendant;

**CONDEMN** the Defendant to pay to the Plaintiff, for the benefit of the Class, all amounts owing to the Class, the whole with interest and the additional indemnity provided by law;

**CONDEMN** the Defendant to pay punitive damages in the minimum amount of \$100 million, *sauf a parfaire*, the whole with interest and additional indemnity provided by law;

**ORDER** the collective recovery of the total amount of the claims herein;

**ORDER** that the claims of the members of the Class be the object of [...] individual liquidation in accordance with Articles 599 to 601 CCP or, if impractical or inefficient, order the Defendant to perform any remedial measures that this Honourable Court deems to be in the interests of the members of the Class;

**CONDEMN** the Defendant to any further relief as may be just and proper;

**THE WHOLE** with legal costs and the Special Indemnity, including the costs of all exhibits, reports, expertise and publication of notices.

**Refer** this matter to the Chief Justice of the Superior Court of Québec to determine the district in which this collective action should be heard and designate the judge who will hear it;

**Request** the clerk of this Court, should this matter be heard in another district, to transmit the file, following the decision of the Chief Justice, to the clerk of that of the district;

**Postpone** the matter of publication of notice to members, including its contents, to the next case management conference;

**The whole**, with costs to follow.

Newfoundland und Labrador

96. With respect to Class Members resident in Newfoundland and Labrador who used FedEx's courier delivery services for personal, family or household purposes:

- (a) each Class Member was a "consumer";
- (b) FedEx was a "supplier";
- (c) FedEx's courier delivery services were "services"; and
- (d) the supply of FedEx's courier delivery services from FedEx to each Class Member was a "consumer transaction"; and

all within the meaning of section 2 of the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1.

97. As set out above and in the whole of this claim, FedEx made various representations which were relied on by Class Members in connection with the consumer transactions when they decided to use FedEx's courier delivery services for personal, family or household purposes.

98. As set out above and in the whole of this claim, FedEx acted contrary to those representations. FedEx's representations were false, misleading, and deceptive and constituted an "[...]unfair business practice" within the meaning of section 7 and contrary to section 9 of the *Consumer Protection and Business Practices Act*.

99. Class Members are entitled to statutory damages under section 10 of the *Consumer Protection [...]and Business Practices Act*.

### **Damages**

100. As a result of FedEx's conduct and its false, misleading, and deceptive representations, the plaintiff and other Class Members have sustained loss and damage, including monies they paid to FedEx for FedEx's processing or brokerage fee.

101. They have also suffered stress and anxiety as a result of FedEx's conduct and as a result of time they had to spend investigating the fees charged by FedEx.

### **Punitive Damages**

102. FedEx's representations were false, misleading, and deceptive.

103. As set out in detail in this claim, FedEx's conduct was high-handed and showed a marked departure from the ordinary standards of decent behaviour.

104. FedEx's conduct was planned and deliberate and merits punishment.

105. An award of punitive damages in this case is necessary to achieve the goals of general and specific deterrence.

### **Punitive damages pursuant to the CPA**

106. As respondent had a Quebec class action authorized against it for the improper collection of such duties and processing fees, its continued improper collection of those fees since December 20, 2018 should be considered intentional as well as negligent and as such, punitive damages pursuant to section 272 of the *Québec Consumer Protection Act* are warranted.

**MONTREAL**, this day of July 13, 2023

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CHARLES O'BRIEN  
Lorax Litigation for Representative Perry-Fagant

SUMMONS  
(articles 145 and following C.C.P.)

**TAKE NOTICE** that the Petitioner has filed this application in the office of the Superior Court of the judicial district of Montreal.

#### Defendant's Answer

To file an answer to this application, you must first file an appearance, personally or by advocate, at the courthouse of Montreal, located at 1 Notre Dame Street East, Montreal, Quebec within 15 days of service of this motion. The answer must be notified to Lorax Litigation.

#### Failure to Answer

If you fail to file an appearance within the time limit of 15 days, a judgment by default may be rendered against you without further notice and you may, according to circumstances, be required to pay the legal costs.

#### Content of Answer

In your answer, you must state your intention to:

- Negotiate a settlement;
- Propose mediation to resolve the dispute;
- Defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons
- Propose a settlement conference.

If you file an appearance, the application will be presented before the Court **on a date and in a room to be determined** by the Court. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding, unless you make a written agreement with the Plaintiffs in Warranty's advocate on a timetable for the orderly progress of the proceeding.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

#### Change of judicial district

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff. If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

#### Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

#### Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

#### Exhibits supporting the application

In support of the Motion Seeking Authorization, Petitioner alleges the following Exhibits, referred to in the links or available on request: *(provided on the attached USB key)*

Exhibit R-1 FedEx web site fees

Exhibit P-2 FedEx site taxes and fees

Exhibit R-3 [...]Tribble

R-3A Picture of Tribble

R-3B Video of Natasha Perry-Fagant with Tribble

R-3C Picture of Natasha Perry-Fagant with Tribble

Exhibit R-4

R-4A FedEx bill first Perry-Fagant

R-4B FedEx bill secondary Perry-Fagant

Exhibit R-5 Odometer class action article

Exhibit R-6 Odometer class action article 2

Exhibit R-7 Odometer class action video

Exhibit R-8 CB Deceptive Marketing Practice Digest - Competition Bureau Canada

S.C.: 500-06-001247-234

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**Class Action  
SUPERIOR COURT  
DISTRICT OF MONTREAL**

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**Natasha Perry-Fagant**

299 rue Villeneuve O, Montreal, PQ, H2V 2R2

Applicant

vs.

**Federal Express Canada Corporation**

[...]  
[...]

110-6300 Ch. De la Côte-de-Liesse Rd,

Saint-Laurent, Quebec H4T 1E3

Respondent

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**AMENDED APPLICATION FOR AUTHORIZATION  
TO INSTITUTE A CLASS ACTION TO OBTAIN  
THE STATUS OF REPRESENTATIVE**

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Original

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