IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN: Court File No.: 37809

PIONEER CORPORATION, PIONEER NORTH AMERICA, INC., PIONEER ELECTRONICS (USA) INC., PIONEER HIGH FIDELITY TAIWAN CO., LTD., and PIONEER ELECTRONICS OF CANADA INC.

APPELLANTS
(Appellants)

- and -

NEIL GODFREY

RESPONDENT
(Respondent)

Court File No.: 37810

AND BETWEEN:

TOSHIBA CORPORATION, TOSHIBA SAMSUNG STORAGE TECHNOLOGY CORP., TOSHIBA SAMSUNG STORAGE TECHNOLOGY CORP. KOREA, TOSHIBA OF CANADA LTD., TOSHIBA AMERICA INFORMATION SYSTEMS, INC., SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS CANADA INC., SAMSUNG ELECTRONICS AMERICA, INC., KONINKLIJKE PHILIPS ELECTRONICS N.V., LITE-ON IT CORPORATION OF TAIWAN, PHILIPS & LITE-ON DIGITAL SOLUTIONS CORPORATION, PHILIPS & LITE-ON DIGITAL SOLUTIONS USA, INC., PHILIPS ELECTRONICS LTD., PANASONIC CORPORATION, PANASONIC CORPORATION OF NORTH AMERICA, PANASONIC CANADA INC., BENQ CORPROATION, BENQ AMERICA CORPORATION and BENQ CANADA CORP.

APPELLANTS
(Appellants)

- and -

NEIL GODFREY

RESPONDENT
(Respondent)

- and -

CONSUMERS COUNCIL OF CANADA, OPTION CONSOMMATEURS, CANADIAN CHAMBER OF COMMERCE and CONSUMERS' ASSOCIATION OF CANADA

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PART I. OVERVIEW AND STATEMENT OF FACTS

(A) Overview

1. Price-fixing cartels are intelligent, purposeful and complex. But in spite of their ingenuity, they are completely unlawful. By their basic nature, they are conducted in secret, resulting in notorious difficulty in detecting and proving their existence. Price-fixing is serious criminal conduct that harms consumers, businesses and markets by driving up prices, reducing choice and stifling innovation.

2. In class action litigation, the clandestine nature of cartel activity remains an important factor as the alleged cartelists have the full advantage of an asymmetry in the evidentiary record through the preliminary procedural phase of the case. The plaintiffs are entitled to no discovery unless and until they have certified common issues for trial.

3. On this appeal, the appellants seek to strategically place the proverbial "cart before the horse", by demanding an increasing level of merits-based evidence from the plaintiff at the certification stage in order to certify a common issue.

4. Access to justice and redress for consumers and others can only realistically be achieved against a pricing conspiracy if the sophisticated details of the alleged cartel are unraveled by the exposure of the facts and circumstances, using the best procedural apparatus that the Canadian legal system has to offer.

5. As a matter of legal principle, a certification motion is an access to justice tool. That tool is designed to give a class of injured persons a mandate to overcome well documented barriers in the legal system in order to seek a substantive legal determination of issues that afford them the potential to claim redress. Put most simply, the purpose behind a certification motion is issue-setting for a later determination of those issues on a full record.

6. The certification motion cannot be a forum where claimants must prove without the benefit of discovery that their claims are likely to succeed in order to win the right to contest a common issue on its merits. Neither is it a juncture to resolve battles between experts or conflicts in other evidence.

7. Finally and most importantly, the certification motion cannot be a process that treats all competition law cases as monolithic. The evidentiary rules on a certification motion must facilitate fact or expert evidence which reflects the unique circumstances of each particular competition law case.

8. The existing jurisprudential framework for the assessment of commonality and expert evidence reflects an appropriate balance. To add further recalibration, complexity and expense to the certification motion frustrates access to justice, consumes judicial resources in an uneconomic fashion and fails to emphasize the behavior modification objective underlying class proceedings in Canada.

9. Similarly, the appellants urge this court to accept certain interpretations of the *Competition Act*,[1] all of which would serve to defeat the claims of consumers and others without allowing them to be evaluated on their merits.

10. The history, purpose, plain wording and normative interpretation of the *Competition Act* dictate that the Court of Appeal for British Columbia, hereinafter "BCCA", correctly interpreted that *Act* in *Godfrey*.[2]

11. The Consumers Council of Canada, hereinafter "CCC", intervenes on this appeal which concerns issues that substantially impact Canadian consumers and their rights to seek access to justice and redress. It does so both in the context of a global price-fixing conspiracy and as a matter of systemic class actions practice.

PART II. STATEMENT OF QUESTIONS IN ISSUE

12. The questions in issue on the appeal are as follows:

    a. Should the principles underlying the commonality requirement, including the rules for expert evidence be changed? and

    b. What is the correct interpretation of the *Competition Act* in respect of the following issues:

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[1] *Competition Act*, RSC, 1985, c C-34 [*Competition Act*].
[2] *Godfrey v Sony Corporation*, 2017 BCCA 302, [2017] 12 WWR 448 [*Godfrey*].

i. Do umbrella purchasers have a cause of action under s. 36 of that *Act*?

ii. May breaches of the *Act* be relied upon to facilitate the advancement of concurrent claims in tort and in equity?

iii. Should the limitations period under the *Act* be subject to discoverability and the doctrine of fraudulent concealment?

PART III. STATEMENT OF ARGUMENT

(A) Should the Commonality Requirement Established by this Court in *Pro-Sys Consultants Ltd. v. Microsoft* Be Changed?

13. The class action vehicle represents a crucial outlet for consumers to overcome well recognized economic, social and practical barriers in the pursuit of access to justice and effective redress. This Court has recognized the role of class actions in alleviating those barriers in *AIC Limited v. Fischer*.[3]

14. In *Hollick v. Toronto (City)* this Court noted that class proceedings legislation was adopted "to ensure the courts had a procedural tool sufficiently refined to allow them to deal efficiently, and on a principled rather than *ad hoc* basis, with the increasingly complicated cases of the modern era."[4]

15. In the case of consumer disputes involving technical and sophisticated areas such as competition law, a class action is virtually the only viable mechanism by which effective legal redress can be sought and obtained. This Court noted in *AIC Limited*, the following statement made in the Ontario *Report of the Attorney General*:

> …sophisticated and highly evolved rights and obligations are of little value if they cannot be asserted or enforced effectively and economically. Of what value is a right or obligation, or the judicial system itself, if its users must be told that the right is 'too small' or 'too complex' or 'too risky' to justify its enforcement?[5]

16. Class actions bring economies of scale to legal disputes that enable consumers and other class members to retain competent legal advisors, qualified economists and other experts.

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[3] See *AIC Limited v Fischer*, 2013 SCC 69 at para 27, [2013] 3 SCR 949 [*AIC Limited*].
[4] *Hollick v Toronto (City)*, 2001 SCC 68 at para 14, [2001] 3 SCR 158 [*Hollick*].
[5] *Supra* note 3 at para 33.

Otherwise, the economies of scale rarely, if ever exist at a level sufficient to enable the consumer to robustly contest such sophisticated legal matters in a real way. This is a crucial factor to be considered when assessing access to justice and rights of redress.

17. This Court has opined on the commonality requirement[6] in *Hollick, Western Canadian Shopping Centres Inc. v. Dutton, Rumley v. British Columbia, Pro-Sys Consultants Ltd. v. Microsoft Corp.* and in the Québec civil law context in *Dell'Aniello c. Vivendi Canada* Inc.[7] The following principles have been consistently established:

    a. The court is ill-equipped at the certification stage to resolve conflicts in the evidence because there has been no documentary or oral discovery between the parties;[8]

    b. Resolving conflicts between expert witnesses is a matter for the trial judge and not one that should be engaged in on the certification motion;[9]

    c. Proof of actual harm to class members is not required at the certification stage, certification is not a test of the merits of the case or whether the case is likely to succeed;[10]

    d. Commonality requirements recognize and include tolerance for nuance and individual issues as between class members;[11]

    e. The commonality requirement is not an onerous one;[12] and

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[6] The legislation at issue on this appeal specifically is the *Class Proceedings Act*, RSBC 1996, c 50, s 4(1).
[7] See *Vivendi Canada Inc v Dell'Aniello,* 2014 SCC 1 at para 37, [2014] 1 SCR 3 [*Vivendi*]; *Pro-Sys Consultants Ltd v Microsoft Corporation*, 2013 SCC 57 at paras 103-105, [2013] 3 SCR 477 [*Pro-Sys Consultants Ltd*]; *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46 at para 39, [2001] 2 SCR 534 [*Dutton*]; *Hollick, supra* note 4 at para 16; *Rumley v British Columbia*, 2001 SCC 69 at para 32 [2001] 3 SCR 184.
[8] See *Pro-Sys Consultants Ltd, supra* note 7 at paras 102, 126; *AIC Limited, supra* note 3 at para 40.
[9] See *Pro-Sys Consultants Ltd, ibid* at para 126.
[10] See *Hollick, supra* note 4 at paras 16, 25; *Pro-Sys Consultants Ltd, ibid* at paras 100, 102, 119.
[11] See *Vivendi, supra* note 7 at para 45; *Dutton, supra* note 7 at para 39.
[12] See *Hollick, supra* note 4 at para 21.

f. The evidentiary standard applicable to the certification requirements is "some basis in fact."[13]

18. Each of the legal principles itemized above are anchored by the fact that the purpose of a certification motion is not to engage in a merits-based analysis of the claims advanced. Rather, the purpose is to determine the mandate that may be given to the plaintiff to litigate the certified legal and factual issues at a later time on a fully developed record. Those same principles also show a full appreciation for the pre-discovery context in which a certification motion is contested.

19. With that purpose and context, this Court gave the following guidance for any expert methodology furnished by the plaintiff in support of a certification motion in the price-fixing context:

> In my view, the expert methodology must be sufficiently credible or plausible to establish some basis in fact for the commonality requirement. This means that the methodology must offer a realistic prospect of establishing loss on a class wide basis so that, if the overcharge is eventually established at the trial of the common issues, there is a means by which to demonstrate that it is common to the class (i.e. that passing on has occurred). The methodology cannot be purely theoretical or hypothetical, but must be grounded in the facts of the particular case in question. There must be some evidence of the availability of the data to which the methodology is to be applied.[14]

20. The certification motion is the fulcrum for access to justice in class action litigation. It must be accessible and adaptable. As this Court has observed, access to justice is a precondition to the exercise of all other legal rights. [15] This is true not just for the challenges of today, but also for the new and sophisticated frontiers of global antitrust concern, such as autonomous high velocity pricing technologies using algorithms,

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[13] *Hollick, ibid* at para 25; *Pro-Sys Consultants Ltd*, supra note 7 at paras 99-100; *AIC Limited, supra* note 3 at para 39.

[14] *Pro-Sys Consultants Ltd, supra* note 7 at para 118; *AIC Limited, ibid* at para 43 "It was not necessary to establish that there was a compelling method to prove such loss, but it was necessary to provide some basis in fact to think that there was *some* method to do so."

[15] See *AIC Limited*, *supra* note 3 at para 31.

machine learning and artificial intelligence, all of which give rise to risks respecting price collusion and discrimination, among other things.[16]

21. While the jurisprudence reflects that price-fixing cases tend to exhibit consistent similarities, they are not and must not be seen as monolithic. The jurisprudence must therefore enable flexibility.

22. For example, is the market at issue dominated on a simple construct by as few as two or three defendants? Have any or all of the defendants admitted to participating in the pricing scheme by pleading guilty to criminal charges? Did the technique employed by the cartel involve pure price-fixing agreements or did it also engage market splitting, bid-rigging or perhaps some other unique technique in the relevant market in order to restrict supply or to control prices?

23. The appellants seek to "raise the bar" practically and strategically on the commonality requirement. They urge a merits-based analysis in the pre-discovery context that, if accepted, will force a substantial change in process. They seek a higher onus, and more evidence from the plaintiff knowing that they owe no discovery whatsoever. The purpose behind that position among others, is to put it out of reach for consumers and virtually all other claimants. That can only invite intensive procedural litigation on technical grounds. Such a change will add further complexity and delay to certification motions.

24. The increased merits-based evidentiary requirements sought by the appellants risk circumscribing the admission of expert evidence at the expense of access to justice. The Canadian legal system must maintain tools that are capable of protecting the rights of claimants to seek justice and redress in a range of given contexts and factual circumstances. As this Court recognized in *Pro-Sys Consultants Ltd* "Each case must be decided on its own facts."[17]

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[16] Terrell McSweeny & Brian O'Dea, "The Implications of Algorithmic Pricing for Coordinated Effects Analysis and Price Discrimination Markets in Antitrust Enforcement" (2017) 32:1 ABA Antitrust LJ 75.

[17] *Supra* note 7 at para 104.

25. CCC submits that the existing jurisprudence by this Court has captured an appropriate balance in law between establishing the basis in evidence for the certification of common issues while affording sufficient adaptability to the circumstances of a given case.

26. Even with that balance, from the consumer advocacy perspective, common law certification motions are daunting, expensive and long-lasting processes that engage genuinely challenging issues of accessibility and proportionality in the legal system.

27. CCC submits that in practice, the current common law model for the certification motion is straining against all three of the goals that underlie class proceedings legislation due to their complexity, duration and cost. Using *Godfrey* as an example, the Notice of Civil Claim was issued in 2010.[18] The certification motion was not argued until 4 years later, and it involved a 5-day hearing, lengthy cross-examinations and extensive use of costly expert economists. Other recent certification motions reflect similar circumstances.[19]

28. This appeal therefore presents the opportunity to emphasize the proper role of the certification motion in the common law context having full regard to its legislative objectives. Procedure must facilitate substantive outcomes, not deter them, particularly where the procedure at issue was crafted with the legislated objectives to create access to the legal system in judicially efficient fashion in order to correct and deter unlawful behaviour.

29. The changes to the commonality requirement requested by the appellants are fully at odds with the foundational jurisprudence setting out the purpose of a certification motion and

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[18] See *Godfrey v Sony Corporation*, 2016 BCSC 844 at para 10, 266 ACWS (3d) 552.

[19] See *ibid* at paras 151-165. See also, *Ewert v Nippon Yusen Kabushiki Kaisha*, 2017 BCSC 2357; *Ewert v Nippon Yusen Kabushiki Kaisha* (June 28, 2013), Vancouver S-134895 (BCSC) (Notice of Civil Claim), a 4 day hearing, occurring over 4 years after the claim was commenced; *Watson v Bank of America Corporation,* 2014 BCSC 532; *Watson v Bank of America Corporation,* (March 28, 2011), Vancouver VLC-S-S-112003 (BCSC) (Notice of Civil Claim), a 9-day hearing, occurring over 2 years after the claim was commenced; *Fanshawe College v Hitachi, Ltd. et al.*, 2016 ONSC 5118 at para 4, a 6-day hearing, occurring over 7 years after the claim was commenced.

the context in which it is undertaken. For example, if the appellants' position is accepted, the courts will be required to assess and resolve conflicts in the expert and other evidence and to make merits-based assessments of the claims of every class member on preliminary certification motions without the benefit of a full evidentiary record.

30. From the perspective of access to justice and redress for consumers and others, such a circumstance would be profoundly unfair and out of balance with the procedural nature of a certification motion. The recalibrations sought by the appellants here will impede access to the courts due to a heavy increase in the cost, complexity and duration of procedural certification motions.

31. It bears reminding that the appellants have lost nothing thus far in the *Godfrey* case. The merits of the proposed common issues have not been determined. If the certification order is upheld, the parties will simply pursue an adjudication of the certified commons issues on their merits, where every sophisticated defence remains fully available to the appellants.

(B) The Interpretation of the *Competition Act*

(i) Umbrella Purchaser Claims

32. The theory of the case in *Godfrey* is consistent with basic anti-trust economics. The cartel at issue is alleged to have altered the competitive fabric of the chain of distribution tied to an allegedly price-fixed product. Mr. Godfrey alleges that the appellants' pricing misconduct intentionally "moved the market" causing impact and harm throughout the distribution chain.[20] CCC submits that umbrella purchasers impacts are a natural and logical economic consequence of cartel misconduct.

33. From a policy perspective, the cause of action now reflected in s. 36 of the *Competition Act* encompasses both a mechanism for redress for injured parties and a systemic mechanism for deterrence against anticompetitive misconduct.[21] That deterrence objective is consistent with the behavior modification objective of class proceedings legislation. In the creation of the statutory cause of action, the legislature chose flexible

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[20] See *Godfrey*, *supra* note 2 at para 6.
[21] See *General Motors of Canada Ltd v City National Leasing*, [1989] 1 SCR 641 at 686-688, 58 DLR (4th) 255.

and adaptable language. That choice is exactly consistent with the well-established objectives of the *Competition Act*.

34. CCC submits that the BCCA correctly interpreted the *Competition Act* in respect of the cause of action by umbrella purchasers. The analysis of the BCCA is supported by the Ontario Court of Appeal in *Shah v. LG Chem Ltd*.[22]

35. This is an occasion where somewhat novel legal issues present an opportunity for growth in the law. CCC submits that the Canadian legal system must meet that challenge by recognizing a cause of action and by permitting common issues concerning umbrella purchasers to move forward to a common issues trial on a full record.

(ii) Competition Act Breaches and Concurrent Claims in Tort and Equity

36. CCC submits that nothing in the *Competition Act* suggests that it is to be interpreted as a complete code or that it in any way ousts the application of the common law. Instead, the cause of action contained in the *Act* was introduced as a public welfare objective aimed at *expanding* rather than limiting the rights of claimants. On the introduction of Bill C-7[23] which included the statutory civil remedy for breaches of federal competition law, the Honourable Herb Gray (later the Right Honourable) stated as follows:

> [The] proposals in Bill C-7…will help provide expanded consumer protection in a marketplace characterized by high technology and massive organization of production and distribution.[24]

37. The appellants' interpretation of the *Competition Act* requires that it be applied in a way that restricts or reduces consumer protection rights at common law. That interpretation cannot be squared with the express objectives of the legislation, which were stated in prescient fashion in 1974.

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[22] *Shah v LG Chem Ltd*, 2018 ONCA 819 at paras 29-52, 297 ACWS (3d) 524.
[23] Bill C-7, *An Act to amend the Combines Investigation Act and the Bank Act and to repeal an Act to amend an Act to Amend the Combines Investigation Act and the Criminal Code*, 2nd Sess, 29th Parl, 1974, (The civil remedy provision was later re-introduced in Bill C-2 of the same name and passed on October 16, 1975).
[24] *House of Commons Debates*, 29th Parl., 2nd Sess., No 1 (13 March 1974) at 483 (Hon Herb Gray).

(iii) Limitations Period

38. CCC submits that discoverability and the doctrine of fraudulent concealment must naturally apply to the limitations period in the *Competition Act*. Due to the fact that the anticompetitive pricing misconduct that is prohibited by the *Act* is inherently clandestine and difficult to detect, the limitations period under that *Act* must be interpreted with regard to its proper context. Put simply, the limitations period must be interpreted precisely with reference to the conduct that the *Act* is designed to deter.

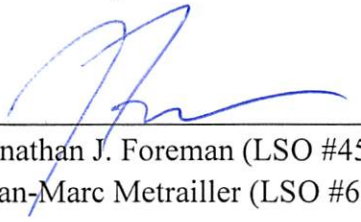
39. Indirect purchasers, including consumers, have a recognized cause of action under the *Competition Act*.[25] Consumers are in a prime position to be impacted adversely by pricing misconduct. However, consumers as a broad category of stakeholder are also in the poorest position to detect and seek redress for that misconduct. Consumers rarely have transactional privity with any members of the alleged cartel and instead they are caught in a downstream economic market impact that affects the pricing of the products they purchase.

40. CCC submits that realistic deterrence for competition law violations and effective pursuit of rights of redress for consumers require that the doctrines of discoverability and fraudulent concealment should apply to the applicable limitation period.

PART IV. AND V. COSTS AND ORDER SOUGHT

41. CCC seeks no costs of the appeal and asks that it not be liable to any party for costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED
THIS 27th DAY OF NOVEMBER, 2018



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[25] See *Pro-Sys Consultants Ltd*, *supra* note 7 at paras 67, 71.

PART VI. TABLE OF AUTHORITIES

Jurisprudence	**Reference(s)**
1. *AIC Limited v Fischer*, 2013 SCC 69, [2013] 3 SCR 949.	13, 15, 19, 20
2. *Ewert v Nippon Yusen Kabushiki Kaisha*, 2017 BCSC 2357, 287 ACWS (3d) 21.	27
3. *Fanshawe College v Hitachi, Ltd. et al.*, 2016 ONSC 5118, 270 ACWS (3d) 21.	27
4. *General Motors of Canada Ltd v City National Leasing*, [1989] 1 SCR 641, 58 DLR (4th) 255.	34
5. *Godfrey v Sony Corporation*, 2016 BCSC 844, 266 ACWS (3d) 552.	27
6. *Godfrey v Sony Corporation*, 2017 BCCA 302, [2017] 12 WWR 448.	10, 33
7. *Hollick v Toronto (City)*, 2001 SCC 68, [2001] 3 SCR 158.	14, 17
8. *Pro-Sys Consultants Ltd v Microsoft Corporation*, 2013 SCC 57, [2013] 3 SCR 477.	17, 19, 24, 40
9. *Rumley v British Columbia*, 2001 SCC 69, [2001] 3 SCR 184.	17
10. *Shah v LG Chem Ltd*, 2018 ONCA 819, 297 ACWS (3d) 524.	35
11. *Vivendi Canada Inc v Dell'Aniello,* 2014 SCC 1, [2014] 1 SCR 3.	17
12. *Watson v Bank of America Corporation*, 2014 BCSC 532, 242 ACWS (3d) 775	27
13. *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46, [2001 2 SCR 534.	17

Parliamentary Papers	
14. *House of Commons Debates*, 29th Parl., 2nd Sess., No 1 (13 March 1974) at 483 (Hon Herb Gray)	37

Secondary Sources

15. Terrell McSweeny & Brian O'Dea, "The Implications of Algorithmic Pricing for Coordinated Effects Analysis and Price Discrimination Markets in Antitrust Enforcement" (2017) 32:1 ABA Antitrust LJ 75.

PART VII. LEGISLATION RELIED UPON

1. *Class Proceedings Act* [RSBC] Chapter 50 s. 4(1)

Class Certification

4(1) The Court must certify a proceeding as a class proceeding on an application under section 2 or 3 if all of the following requirements are met:

(a) the pleadings disclose a cause of action;
(b) there is an identifiable class of 2 or more persons;
(c) the claims of the class members raise common issues, whether or not those common issues predominate over issues affecting only individual members;
(d) a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues;
(e) there is a representative plaintiff who
  (i) would fairly and adequately represent the interests of the class,
  (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
  (iii) does not have, on the common issues, an interest that is in conflict with the interest of other class members.

(2) In determining whether a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues, the court must consider all relevant matters including the following:

(a) whether questions of fact or law common to the members of the class predominate over any questions affecting only individual members;
(b) whether a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate actions;
(c) whether the class proceeding would involve claims that are or have been the subject of any other proceedings;

(d) whether other means of resolving the claims are less practical or less efficient;

(e) whether the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means.

2. *Competition Act* (R.S.C., 1985, c. C-34) s. 36(1) and (4)

Recovery of Damages

36 (1) Any person who has suffered loss or damage as a result of

(a) conduct that is contrary to any provision of Part VI, or

(b) the failure of any person to comply with an order of the Tribunal or another court under this Act,

may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

Limitation

(4) No action may brought under subsection (1),

(a) in the case of an action based on conduct that is contrary to any provision of Part VI, after two years from

(i) a day on which the conduct was engaged in, or

(ii) the day on which any criminal proceedings relating thereto were finally disposed of, whichever is the later; and

(b) in the case of an action based on failure of any person to comply with an order of the Tribunal or another court, after two years from

(i) a day on which the order of the Tribunal or court was contravened, or

(ii) the day on which any criminal proceedings relating thereto were finally disposed of, whichever is the later.

Recouvrement de dommages-intérêts

36 (1) Toute personne qui a subi une perte ou des dommages par suite:

(a) soit d'un comportement allant à l'encontre d'une disposition de la partie VI;
(b) soit du défaut d'une personne d'obtempérer à une ordonnance rendue par le Tribunal ou un autre tribunal en vertu de la présente loi,

peut devant tout tribunal compétent, réclamer et recouvrer de la personne qui a eu un tel comportement ou n'a pas obtempéré à l'ordonnance une somme égale au montant de la perte ou des dommages qu'elle est reconnue avoir subis, ainsi que toute somme supplémentaire que le tribunal peut fixer et qui n'excède pas le coût total, pour elle, de toute enquête relativement à l'affaire et des procédures engagées en vertu du présent article.

Restriction

(4) Les actions visées au paragraphe (1) se prescrivent:

(a) dans le cas de celles qui sont fondées sur in comportement qui va à l'encontre d'une disposition de la partie VI, dans les deux ans qui suivent la dernière des dates suivantes:

(i) soit la date du comportement en question,
(ii) soit la date où il est statué de façon définitive sur la poursuite;

(b) dans le cas de celles qui sont fondées sur le défaut d'une personne d'obtempérer à une ordonnance du Tribunal ou d'un autre tribunal, dans les deux ans qui suivent la dernière des dates suivantes:

(i) soit la date où a eu lieu la contravention à l'ordonnance du Tribunal ou de l'autre tribunal,

(ii) soit la date où il est statué de façon définitive sur la poursuite.