

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bahraini v. Cineplex Inc.*,  
2026 BCSC 664

Date: 20260415  
Docket: S240406  
Registry: Vancouver

Between:

**Amir Hossein Bahraini**

Plaintiff

And

**Cineplex Inc. and Cineplex Entertainment Limited Partnership**

Defendants

Before: The Honourable Mr. Justice Branch

## **Reasons for Judgment on Motion to Strike**

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**I. INTRODUCTION**

[1] The defendants advance a motion to strike in this proposed consumer class action. For the reasons below, I grant their motion in part.

**II. FACTUAL BACKGROUND**

[2] The history of this matter is set out in my earlier sequencing decision in *Bahraini v. Cineplex Inc.*, 2025 BCSC 1384. I will not repeat the facts set out therein, except to the extent necessary to resolve the present application.

[3] In June 2022, Cineplex introduced an online booking fee for ticket purchases made on its website or on the Cineplex mobile application (the “Online Booking Fee”). The Online Booking Fee was generally \$1.50 per ticket, up to a maximum of \$6 per order. Reduced fees were available to the members of Cineplex’s loyalty programs.

[4] On September 23, 2024, the Competition Tribunal issued its decision considering these fees in *Cineplex - Reasons for Order and Order*, 2024 Comp Trib 5, 2024 CanLII 93716. In its decision, the Competition Tribunal considered the Commissioner of Competition’s (the “Commissioner”) May 18, 2023 application alleging that Cineplex was engaging in reviewable conduct under ss. 74.01(1) and 74.01(1.1) of the *Competition Act*, R.S.C. 1985, c. C-34. Section 74.01(1) prohibits “false or misleading” representations. Section 74.01(1.1) provides that certain “drip pricing” representations are false or misleading.

[5] The Tribunal concluded that Cineplex breached the *Competition Act*. The Tribunal ordered Cineplex to make changes to its website and mobile app. It also imposed a nearly \$40-million administrative monetary penalty (representing the aggregate amount of the Online Booking Fees collected from its introduction in mid-2022 through to the end of 2023). Cineplex has appealed the Tribunal’s order to the Federal Court of Appeal.

[6] This action was commenced on January 22, 2024. On January 16, 2025, the plaintiff filed a further amended notice of civil claim (the “FANOCC”). In the

FANOCC, the plaintiff added claims under the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, and consumer protection legislation in Alberta, Saskatchewan, Manitoba, Ontario, Prince Edward Island, and Newfoundland and Labrador. The plaintiff also added a claim for unjust enrichment.

[7] The defendants apply to strike aspects of FANOCC under Rule 9-5(1)(a) or (b) of the *Supreme Court Civil Rules* [Rules]. Specifically, they seek to strike the “drip pricing” and “double ticketing” *Competition Act* claims. They do not seek to strike the claim as a whole.

### III. ANALYSIS

#### A. Motion to Strike

[8] Rule 9-5(1) states as follows in relevant part:

##### **Rule 9-5 — Striking Pleadings**

##### **Scandalous, frivolous or vexatious matters**

(1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

- (a) it discloses no reasonable claim or defence, as the case may be,
- (b) it is unnecessary, scandalous, frivolous or vexatious ...

[9] The question for the Court on such an application is whether, assuming the facts pleaded are true, the claim has a “reasonable prospect of success” or whether it is “doomed to fail”: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 17; *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19 at paras. 18–19.

[10] In the context of a motion to strike based on principles of statutory interpretation, once a judge finds that legislation is capable of being interpreted in at least two different ways, it is not open to the judge to conclude that it is plain and obvious that the action has no reasonable chance of success: *Mohr v. National Hockey League*, 2022 FCA 145 at para. 46. Novel, but arguable claims, must be allowed to proceed to trial as new developments in the law often find their provenance in surviving motions to strike: *Mohr* at para. 48.

**B. Drip Pricing**

[11] The defendants argue that it is plain and obvious that the statutory bar in s. 52(7) of the *Competition Act* precludes the plaintiff from bringing a private cause of action for “drip pricing” if the Commissioner has previously commenced civil enforcement proceedings relating to the same legal and factual issues, as is the case here.

[12] Section 52 establishes a criminal offence, and states in relevant part:

**PART VI ...**

**False or misleading representations**

52 (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

...

**Drip pricing**

(1.3) For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed on a purchaser of the product referred to in subsection (1) by or under an Act of Parliament or the legislature of a province.

...

**Offence and punishment**

(5) Any person who contravenes subsection (1) is guilty of an offence and liable

(a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both; or

(b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding one year, or to both.

**Reviewable conduct**

(6) Nothing in Part VII.1 shall be read as excluding the application of this section to a representation that constitutes reviewable conduct within the meaning of that Part.

**Duplication of proceedings**

(7) No proceedings may be commenced under this section against a person against whom an order is, on application by the Commissioner, sought under

Part VII.1 on the basis of the same or substantially the same facts as would be alleged in proceedings under this section ...

[Emphasis added.]

[13] Part VII.1 of the *Competition Act*, referenced in ss. 52(7), grants to the Commissioner the administrative power to advance “reviewable matters” before the Competition Tribunal raising concerns about deceptive marketing practices. (Since June 20, 2025, this ability has also been available to the public, with leave.) This is the power that the Commissioner relied on in pursuing Cineplex before the Tribunal.

[14] Both ss. 52(1) and Part VII.1’s s. 74.01(1)(a) address representations that are “false or misleading in a material respect”. Section 52 is the criminal analogue to the civil “reviewable conduct” proceeding available under s. 74.01(1)(a). Similarly, s. 52(1.3) is the criminal analogue to s. 74.01(1.1). Both these sections provide that certain “drip pricing” representations constitute “false or misleading” representations.

[15] To ground their ability to pursue a civil cause of action in this court, the plaintiff relies on s. 36 of the *Competition Act* found in Part IV of the legislation. It provides in relevant part:

#### **PART IV**

...

#### **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.

#### **Evidence of prior proceedings**

(2) In any action under subsection (1) against a person, the record of proceedings in any court in which that person was convicted of an offence under Part VI or convicted of or punished for failure to comply with an order of the Tribunal or another court under this Act is, in the absence of any evidence

to the contrary, proof that the person against whom the action is brought engaged in conduct that was contrary to a provision of Part VI or failed to comply with an order of the Tribunal or another court under this Act, as the case may be, and any evidence given in those proceedings as to the effect of those acts or omissions on the person bringing the action is evidence thereof in the action.

[16] The defendants concede that no Canadian court has opined directly on the argument they advance. While this is not a bar to pursuing a motion to strike, it does make it more difficult for the defendants to reach the requisite standard. They must argue that the result they seek is “plain and obvious” from first principles rather than from binding precedent.

[17] In terms of those first principles, the defendants argue that:

- a) The plaintiff’s claim is actually brought “under” s. 52, not s. 36. Section 52 creates the wrong that the plaintiff says the defendants committed.
- b) Section 52(7) was enacted simultaneously with another statutory bar in s. 74.16. Unlike s. 52(7), s. 74.16 included language specifically barring only parallel applications “made by the Commissioner”. The absence of this same language in s. 52(7) suggests that it was intended to bar all parallel proceedings, not just those advanced by the Commissioner, and including civil actions by the public pursuant to s. 36.
- c) The history behind Canada’s Anti-Spam Legislation implemented through S.C. 2010, c. 23<sup>1</sup> (“CASL”, or the “Amending Statute”) is said to support the defendant’s interpretation that s. 52(7) restricts civil actions. Specifically, their complex argument is that:
  - i. The Amending Statute added both s. 52.01 and s. 74.011 to the *Competition Act*, which respectively create criminal liability and a

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<sup>1</sup> *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, S.C. 2010, c. 23.

reviewable practice for false and misleading representations through electronic messages.

- ii. Section 47 of the Amending Statute also created a private right to apply to a court to enforce s. 74.011 of the *Competition Act* and seek payment for any contravention (although this provision was never put into force). This potential private enforcement right existed only in the Amending Statute and was not added to the *Competition Act* itself.
- iii. The Amending Statute also amended s. 74.16 of the *Competition Act*, which, as discussed, bars certain civil enforcement under Part VII.1 when there is an overlapping criminal proceeding under s. 52 or s. 52.01. This amendment to s. 74.16 came into force on July 1, 2014, and made the following alteration:

<b>Pre-Amending Statute</b>	<b>Post-Amending Statute</b>
74.16 No application may be made <b>by the Commissioner for an order under [Part VII.1]</b> against a person where proceedings have been commenced under section 52 against that person on the basis of the same or substantially the same facts as would be alleged in proceedings under this Part.	74.16 No application <b>may be made under [Part VII.1]</b> against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which proceedings have been commenced against that person under section 52 or 52.01.

[Emphasis added.]

The defendants argue that the purpose of this amendment was intended to widen the scope of the bar. Specifically, it must have been intended to limit the availability of the new private enforcement right under CASL. The defendants say that the Amending Statute: (a) removed the words “by the Commissioner” from s. 74.16 because s. 47 of the Amending Statute was going to allow proceedings to be commenced by private persons under CASL; and (b) expanded s. 74.16 to include any application under Part VII.1—not just those “for an order under Part VII.1”—because an application under s. 47 of the

Amending Statute would be seeking orders under s. 51 of the Amending Statute rather than the *Competition Act*.

iv. Furthermore, at the time of the CASL amendments, there was no ability for private parties to commence an administrative remedy before the Tribunal under Part VII.1. That right came into force on June 20, 2025. As such, s. 74.16 could only be seeking to bar the s. 47 civil cause of action. When Parliament amended s. 74.16, it must have considered the words “under [Part VII.1]” broad enough to capture the private rights created under s. 47 of the Amending Statute. Therefore, the defendants say the statutory bar in s. 52(7) must also extend to bar to “duplicative” civil enforcement, including cases such those brought pursuant to s. 36.

d) Judicial interpretation of a similarly worded provision—s. 45.1 of the *Competition Act*—aligns with the defendant’s reading of s. 52(7): *Carrefour Langelier v. Cineplex Odeon Corp.*, 1999 J.E. 64, 1999 CanLII 11248 (Q.C.C.S.) [*Carrefour*].

e) Finally, the defendants argue that had Parliament wished to restrict s. 52(7)’s ban on parallel proceedings to criminal prosecutions commenced by the Commissioner, it could and would have used the words “prosecutions”, as it did elsewhere in the *Competition Act*, such as in s. 52(4).

[18] Notwithstanding the defendants’ carefully constructed first-principles argument, I find that it is not plain and obvious that s. 52(7) bars the present proceeding, and that the action is not doomed to fail. I come to this conclusion based on the existence of the following arguable responsive lines of reasoning available to the plaintiffs:

a) Section 52(7) only restricts cases brought “under this section”. But the plaintiff’s claim is arguably brought “under” s. 36, not s. 52. It is s. 36 that

creates the plaintiff's right to sue, while s. 52(5) creates a separate offence and punishment for contravening s. 52(1). The fact that s. 36 allows for a civil claim to be brought in relation to a breach of s. 52 does not mean that it is brought "under" s. 52.

- b) The absence of s. 74.16's language "made by the Commissioner" in s. 52(7) does not expand the plain language of s. 52(7). It still requires that the claim be brought "under" s. 52 in order for the bar to engage.
- c) The absence of the word "prosecutions" in s. 52(7) does not necessarily expand the plain language of s. 52(7). Again, it still requires that the competing claim be brought "under" s. 52 in order for the bar to apply.
- d) The decision in *Carrefour*:
  - i. relates to a different section of the *Competition Act*,
  - ii. is distinguishable on the grounds that it is an "illegality" case, not a competition law case;
  - iii. did not formally find that the *Competition Act* barred the action, but instead concluded that, in the context of the statute and the particular circumstances, it would be "inappropriate" for the Court to make a determination when the same questions were being put before the Tribunal (para. 28); and
  - iv. is not binding on this Court in any event.
- e) On a broader policy level, the defendants' interpretation would effectively create a "first to file" rule between (1) civil claims in the superior court, and (2) the pursuit of reviewable matters before the Tribunal. In other words, if a civil claim were filed first, the Commissioner would be barred from pursuing their own proceeding before the specialized Tribunal. If the Commissioner moves first, there could never be a civil action, whether framed as a class action or otherwise. In my view, it is at least arguable

that if the legislature intended to impose such a dramatic restriction on the civil or administrative rights available to the public or the Commissioner, it would have been more explicit.

- f) There is some legislative history evidence suggesting that the real concern that s. 52(7) was designed to address was simply the simultaneous pursuit of remedies for criminal and administrative reviewable conduct, and not civil actions. In the Legislative Summary written when Part VII.1 was implemented, the effect of the addition of ss. 74.16 and 52(7) was described as such:

No application could be made by the Commissioner for an order under proposed Part VII.1 of the Act against a person, where criminal proceedings had been commenced under proposed section 52(1) against that person on the basis of the same or substantially the same facts (proposed section 74.16). Similarly, no criminal proceedings could be commenced under section 52 against a person against whom an order was sought under Part VII.1 on the basis of the same or substantially the same facts (clause 12; proposed section 52(7)).<sup>2</sup>

- g) In *General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 S.C.R. 641 at 686, 1989 CanLII 133, the Supreme Court suggested that there was a public interest in permitting a level of duplication where necessary to ensure that the public could be fully compensated for criminal competition wrongs:

The use by a party of the civil remedy in s. 31.1 does not prevent the operation of the other remedial mechanisms of the *Combines Investigation Act*. The right of action in s. 31.1 may be used to supplement the other remedial provisions in the Act. The civil cause of action may also be used by an aggrieved party when the public enforcement mechanism of the Act fails to react with sufficient alacrity. As Anisman and Hogg state in "Constitutional Aspects of Federal Securities Legislation", in *Proposals for a Securities Market Law for Canada* (1979), vol. 3, at p. 190:

. . . the availability of civil actions for damages by persons who suffer harm as a result of a violation both enhances the deterrent effect of

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<sup>2</sup> Canada, Library of Parliament, *Bill C-20: An Act to Amend the Competition Act and to Make Consequential and Related Amendments to Other Acts*, Legislative Summary No. LS-309E by David Johansen, Law and Government Division, (November 27, 1997, rev'd March 9, 1999).

the legislation and enables compensation to the plaintiff for his injury. Indeed, the public benefits of private actions derive largely from the economic interest of the plaintiff in obtaining compensation for the effects of the violation ...

- h) As a matter of pure statutory interpretation, s. 52(7) should be read harmoniously with s. 52(6): *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 at para. 10. Section 52(6) clarifies that simply because a matter can be pursued as a reviewable conduct under Part VII.1 does not immunize a wrongdoer from potential criminal responsibility. Hence, it is at least arguable that s. 52(7) seeks only (and harmoniously) to confirm that where a choice is made to pursue an issue as reviewable conduct, it cannot simultaneously be pursued as criminal conduct. In other words, s. 52(7) simply elaborates further on the concern driving the preceding subsection.
- i) In relation to the defendant's CASL Amending Statute theory:
- i. It is largely based on a review of a different section with a different legislative history, rather than being a direct interpretation of the section at issue.
  - ii. In the Amending Statute, there is no express link between the *Competition Act* amendments and the provisions implementing a (potential future) civil cause of action for spam communication.<sup>3</sup>
  - iii. The commentary made regarding s. 75 of the Amending Statute (which added s. 52.01(8) of the *Competition Act*) suggests that the

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<sup>3</sup> Canada, Library of Parliament, *Legislative Summary of Bill C-28: An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities*, Legislative Summary No. 40-3-C28-E by Erin Virgint & Terrence J. Thomas, Research and Education Division, (28 May 2010, rev'd 15 Nov 2012). § 2.6 discusses the 'Private Right of Action' and § 2.10 addresses the 'Amendments to the Competition Act' ("Legislative Summary"). The Summary addresses CASL's private right of action (ss. 47–55) in one section, while the *Competition Act* amendments are addressed separately.

purpose of this provision was to prevent dual enforcement by the Commissioner.

- iv. No interpretive commentary is provided in relation to s. 81 of the Amending Statute (which amends s. 74.16). This arguably signals a purely technical, rather than a substantive, amendment.
- v. The amendment to s. 74.16 arguably reflects Parliament's more limited intent to prevent arguments that a Part VII.1 proceeding falls outside s. 74.16 because it does not take the precise form of an "application made by the Commissioner for an order". Under Part VII.1, the Commissioner may proceed by mechanisms that do not involve an application for an order, including consent agreements under s. 74.12 with a person against whom they have not yet applied for an order. Because s. 74.12(1) allows for agreements even without the condition precedent of the Commissioner applying for an order, the previous wording of s. 74.16 was potentially under-inclusive. The amendment arguably clarifies that once a criminal proceeding triggers the bar, the Commissioner is prohibited from pursuing its administrative track, including by pressing for a consent agreement.
- vi. The removal of "the Commissioner" from s. 74.16 is arguably the necessary corollary to this shift. While an application is a unilateral act by the Commissioner, a consent agreement is simply a bilateral instrument signed by both the Commissioner and the respondent. By deleting the reference to a specific entity (the Commissioner), Parliament ensured that the registration of a joint settlement could not be mischaracterized as a "mutual procedural step" that falls outside the prohibition previously directed only at the Commissioner's unilateral filings.

[19] To be clear, I am not concluding that any of these lines of reasoning will succeed, but only that it is not plain and obvious that they will not succeed. Furthermore, I have not reviewed all of the arguments advanced by the plaintiff, only those that I have found most clearly create an arguable case that the action may be allowed to proceed notwithstanding the language of s. 52(7).

### C. Double Ticketing

[20] The defendants also raise temporal and substantive problems with the plaintiff's alternative s. 54 "double ticketing" claim.

[21] Section 54 states:

#### Double ticketing

54 (1) No person shall supply a product at a price that exceeds the lowest of two or more prices clearly expressed by him or on his behalf, in respect of the product in the quantity in which it is so supplied and at the time at which it is so supplied,

- (a) on the product, its wrapper or container;
- (b) on anything attached to, inserted in or accompanying the product, its wrapper or container or anything on which the product is mounted for display or sale; or
- (c) on an in-store or other point-of-purchase display or advertisement.

[22] Section 54 was enacted in response to consumer complaints about grocery stores affixing two price stickers to the same product: *Lin v. Airbnb Inc.*, 2019 FC 1563 at para. 38.

[23] This Court has (not surprisingly) concluded that in order for s. 54 to be engaged, it requires that the two prices be expressed at the same time: *Bergen v. WestJet Airlines Ltd.*, 2021 BCSC 351, aff'd *Trotman v. WestJet Airlines Ltd.*, 2022 BCCA 22. The decision in *Bergen* specifically states that "in order for a violation of s. 54 of the *Competition Act* to occur, two prices have to be expressed for the same product at the same time, which must be the time of supply of the product": para. 2. *Bergen* referred to this as the "temporal requirement": para. 2. In *Bergen*, the s. 54

claim was struck because, on the plaintiff's own pleading, the two prices were expressed "at two different points in time": para. 2.

[24] In terms of the present plaintiff's s. 54 pleading, the defendant argues that the plaintiff here also claims that Cineplex made its two representations at different times over the course of the transaction. The pleading reads:

24. At material times, Cineplex represented and clearly expressed that the Movie Tickets and/or the Online Ticket Services were available at the First Price. Cineplex represented and clearly expressed the First Price on the Booking Platforms, each of which constitutes a point-of-purchase display.

25. At material times further along in the purchasing process, Cineplex represented and clearly expressed that the Movie Tickets and/or the Online Ticket Services were available at the Second Price. Cineplex represented and clearly expressed the Second Price on the Booking Platforms, each of which constitutes a point-of-purchase display.

...

29. At all material times, Cineplex represented the First Price and the Second Price at different stages of the same booking process. Cineplex did not add an additional service element or provide an additional service when it added the Online Booking Fee. The Online Ticket Services remained the same product at every stage of the booking process.

[Emphasis added.]

[25] This plaintiff's temporal position is also emphasized in the plaintiff's Application Response, which argues that "discrepant expressions of price were made at different stages of the transaction".

[26] I agree that the plaintiff has pleaded the facts such that the claim lands outside the scope of s. 54.

[27] More substantively, the defendants argue that the plaintiff's proposed interpretation of s. 54 would render s. 52(1.3) of the *Act* meaningless. I agree. If sequential price representations were already captured by s. 54, there would have been no need for the later implementation of s. 52(1.3).

[28] In *Deane v. Canada Post Corporation*, 2025 FC 1194, a proposed class proceeding was filed alleging that online services offered by Canada Post breached both the drip pricing prohibition in s. 52(1.3) and the double ticketing prohibition in s.

54. The Court held that the double ticketing allegations disclosed no reasonable cause of action because the plaintiff’s interpretation of s. 54 would “criminalize[] any instance in which fees are added to an initially displayed price, even where those fees are variable, optional, and/or imposed by legislatures”: para. 85.

[29] I find no reason to doubt the correctness of the Court’s analysis in *Deane*.

[30] It was notable that the plaintiffs were unable to put forward a scenario in which they would fail on the “drip-pricing” claim, but still be able to succeed on their “double-ticketing” claim. This supports the determination that the claims are intended to be mutually exclusive. I do not make a formal finding that there could never be a circumstance in which the two claims could overlap, but in this case, the facts as pleaded support only the “drip-pricing” claim.

**IV. CONCLUSION**

[31] The defendants have succeeded in having the Court strike the double-ticketing claim, but not the drip-pricing claim. Unless any party seeks to make further submissions on costs, my default order would be that, given that neither party reached the substantial success level, each should bear their own costs.

“The Honourable Mr. Justice Branch”