



Court File No. **VLC-S-S-205652**

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

Antonio Pantusa

PLAINTIFF

and

**Parkland Fuel Corporation / Corporation Pétroles Parkland,
Suncor Energy Inc.,
Imperial Oil Limited / Compagnie Pétrolière Impériale Ltée,
Shell Canada Limited / Shell Canada Limitée, and
Husky Energy Inc.**

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

THE PLAINTIFF'S CLAIM

Part 1: STATEMENT OF FACTS

Overview

1. The Defendants are oil companies that control the supply of wholesale gasoline to retail gas stations and cardlock facilities in British Columbia. The Plaintiff and the proposed class members are purchasers of retail gasoline. In breach of the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 and with the object of profiting from the exploitation of retail gas buyers, the Defendants have abused their position and secretly arranged with one another to overcharge retail purchasers of gasoline. The Defendants' unconscionable pricing schemes have unfairly taken advantage of the ignorance and inability of consumers to protect themselves. Through this action, the Plaintiff and Class Members seek to hold the Defendants to account and recover damages.

The Parties

2. The Plaintiff is a resident of British Columbia. He purchased gasoline in British Columbia between January 1, 2015 and the present for personal transportation.
3. The Plaintiff brings this action on his own behalf and on behalf of:

All persons (other than Excluded Persons) who purchased gasoline in British Columbia from any gasoline station or cardlock facility, except “Co-op” branded gasoline stations and cardlock facilities, between January 1, 2015 and the date this action is certified as a class proceeding

Excluded Persons means:

- i. directors and officers of the Defendants and their families; and
- ii. counsel for the parties and the case management and trial judge in this proceeding and their immediate families

(the “**Class**”, “**Class Members**” and “**Class Period**”).

And an included consumer subclass of all Class Members who purchased retail gasoline for personal, family or household purposes (the “**Consumer Subclass**” and “**Consumer Subclass Members**”).

4. The Defendant Parkland Fuel Corporation / Corporation Pétroles Parkland (“**Parkland**”) is a corporation incorporated under the laws of Alberta and is extraprovincially registered and carries on business in British Columbia. Parkland’s head office is located at Suite 6302, 333 - 96th N.E. Calgary AB, T3K 0S3. In 2017, Parkland acquired all of the shares of the Chevron Canada subsidiary that owned the 55,000 barrel per day refinery located in Burnaby, as well as Chevron’s primary and bulk terminal and retail gasoline outlets in B.C. Parkland is the leading player in the wholesale gasoline market in British Columbia.
5. The Defendant Suncor Energy Inc. (“**Suncor**”) is a corporation incorporated under the laws of Canada and is extraprovincially registered and carries on business in British Columbia. Suncor’s head office is located at 150 - 6 Avenue SW Calgary AB, T2P 3E3. In 2009, Suncor acquired all the assets of Petro-Canada in British Columbia.
6. The Defendant Imperial Oil Limited - Compagnie Pétrolière Impériale Ltée (“**Imperial Oil**”) is a corporation incorporated under the laws of Canada and is extra provincially

registered and carries on business in British Columbia. Imperial Oil's head office is located at 505 Quarry Park Boulevard, SE Calgary AB, T2C 5N1.

7. The Defendant Shell Canada Limited / Shell Canada Limitée (“**Shell**”) is a corporation incorporated under the laws of Canada and is extraprovincially registered and carries on business in British Columbia. Shell's head office is located at 400 – 4th Avenue SW, Calgary AB, T2P 0J4.
8. The Defendant Husky Energy Inc. (“**Husky**”) is a corporation incorporated under the laws of Alberta and is extraprovincially registered and carries on business in British Columbia. Husky's head office is located at 39th Floor, 707 – 8th Avenue S.W. Calgary AB, T2P 1H5. On November 1, 2019, Husky sold its Prince George refinery to Tidewater Midstream and Infrastructure Ltd. (“**Tidewater**”). Concurrently with the sale, Husky and Tidewater entered into an off-take agreement pursuant to which Husky will purchase all of the gasoline from the Prince George refinery from Tidewater for five years.

Retail Gasoline Sales in British Columbia

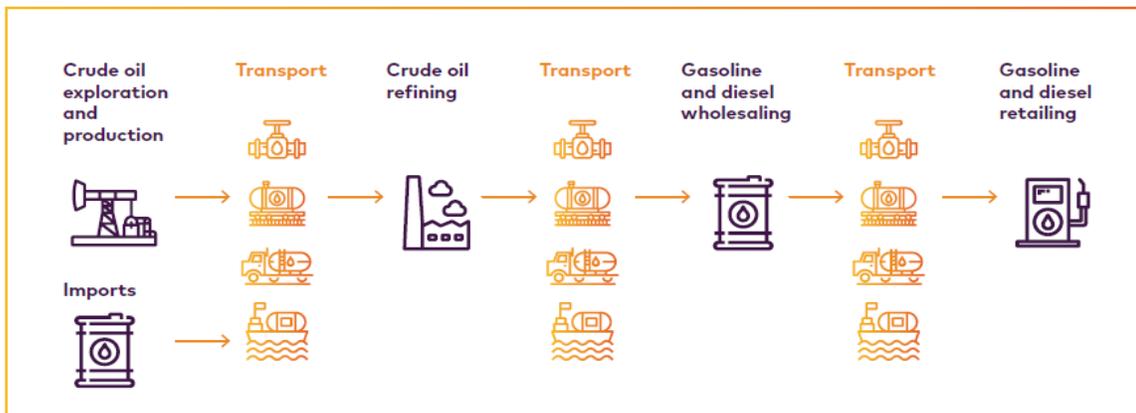
9. Consumers buy gasoline at retail gasoline stations in British Columbia to power vehicles and equipment. Businesses buy gasoline at retail gasoline stations and commercial cardlock facilities for the same purpose. More than 5 billion litres of gasoline is sold annually in British Columbia through approximately 1,300 retail gasoline outlets and approximately 100 commercial cardlock locations (the “**Retail Gasoline Market**”).
10. The Defendants supply 97% of the wholesale gasoline sold through the Retail Gasoline Market with the remaining 3% supplied under the “Co-op” brand.
11. Despite retail gasoline stations and cardlock locations operating under a diversity of different brands, the Defendants directly own or control approximately 33.6% of the

Retail Gasoline Market, and through long-term wholesale supply agreements this control extends to 52% of the Retail Gasoline Market. This is in addition to the Defendants’ near total control of the wholesale gasoline market in British Columbia.

12. The Retail Gasoline Market has important economic characteristics. In particular, demand for gasoline is inelastic. Demand is “inelastic” when an increase in the price of a product results in little to no decline in the quantity sold of that product. Retail gasoline purchasers have nowhere to turn for alternative products of similar quality. Demand for retail gasoline within the Retail Gasoline Market is highly inelastic because there are no close substitutes for these products, which are necessary to power vehicles and equipment designed to use that fuel type. The Defendants were at all material times aware of these market characteristics and manipulated them to their benefit and to the detriment of the Plaintiff and Class Members.

The Wholesale Gasoline Market in British Columbia

13. The wholesale gasoline market is the third step in the supply chain from crude oil exploration and production to gasoline and diesel retailing. Crude oil is transported to refineries where it is refined into gasoline and diesel and then transported to wholesale facilities, where it is blended. From wholesale facilities, gasoline is transported and sold through retail gasoline stations and cardlocks to customers:



14. The Defendants control all the key gasoline wholesaling facilities in British Columbia supplying the Retail Gasoline Market. They own 14 of the 15 primary terminals in the province that receive gasoline (the “**Primary Terminals**”).¹ Nine of the Primary Terminals have the capacity to blend refined gasoline with other biofuel products and with renewable and low-carbon sources like ethanol to comply with Canada and British Columbia-specific low-carbon fuel blending requirements. The Defendants own or control all nine of these primary biofuel blending terminals in British Columbia (the “**Primary Biofuel Blending Terminals**”). The Defendants also own or control 43 of the 54 bulk terminals, which store blended gasoline received from a Primary Biofuel Blending Terminal (the “**Bulk Terminals**”). Gasoline is then transported from the Bulk Terminals for sale through the Retail Gasoline Market from which it is purchased by the Plaintiff and the Class Members.
15. Federated Co-operatives Limited (“**FCL**”) owns the other 11 Bulk Terminals in British Columbia not owned or controlled by the Defendants. FCL, which is excluded from this lawsuit, is a Saskatchewan-based wholesaling Co-operative that supplies its affiliated 64 retail branded gasoline stations and 30 cardlock locations (“**Co-Op**”) with wholesale gasoline. FCL supplies less than 3% of the wholesale gasoline market in British Columbia and sells exclusively to its branded Co-Op retail gas stations.
16. The Defendants’ respective total ownership by number of Primary Terminals, Primary Biofuel Blending Terminals, and Bulk Terminals in British Columbia is as follows:

¹ The 15th terminal is owned by Kinder Morgan and only supplies jet fuel to Vancouver International Airport.

Owner	Primary Terminals	Primary Biofuel Blending Terminals	Bulk Terminals
Parkland	3	2	12
Husky	1	1	3
Imperial Oil	3	3	8
Shell	3	1	0
Suncor	4	2	20
Total	14	9	43

17. The Defendants have reciprocal agreements to access and use each other's Primary Biofuel Blending Terminals. The Defendants also have arrangements to not permit companies other than the Defendants to store or blend gasoline products at any of the Primary Terminals and Primary Biofuel Blending Terminals. In this way, the Defendants control the infrastructure required for the wholesale supply of gasoline to the Retail Gasoline Market in British Columbia.

The Relationship Between Gasoline Wholesaling and Gasoline Retailing

18. Each of the Defendants sets their own daily wholesale rack ("**wholesale rack**") price for gasoline. During the Class Period, the wholesale rack prices for gasoline in British Columbia sold by the Defendants were substantially the same in all material respects. The wholesale rack prices, which the Defendants control, affect the retail price for gasoline purchased by Class Members. The Defendants were at all material times aware of the role and effect of the wholesale rack prices and manipulated the wholesale rack prices to their benefit and to the detriment of the Plaintiff and Class Members.

19. At a time during or before the Class Period unknown to the Plaintiff and Class Members but well known to the Defendants, the Defendants agreed between themselves to set their wholesale rack prices for all wholesale gasoline sold by them in the Retail Gasoline Market at an inflated and exploitative price that was at times almost 20 cents per liter (cpl) higher than in neighbouring jurisdictions. It was because of these events that the Government of British Columbia established the Inquiry into Gasoline and Diesel Prices.

The British Columbia Utilities Commission Inquiry

20. On May 21, 2019, the Government of British Columbia, by Order No. 254 of the Lieutenant Governor in Council, directed the British Columbia Utilities Commission (“**BCUC**”) to conduct an inquiry into the factors influencing gasoline and diesel prices since 2015 and the mechanisms that the provincial government could use to moderate price fluctuations and increases.

21. From June 13 to August 8, 2019, the BCUC received consultant reports from independent experts, received written and expert reports from various interveners, conducted oral workshops with interested stakeholders, and received letters of comment from non-intervenor stakeholders (the “**BCUC Inquiry**”).

22. The Defendants participated in, and made submissions to, the BCUC during the BCUC Inquiry.

23. The BCUC released its report on August 30, 2019. After a 30-day period where all stakeholders, including the Defendants, were invited to provide further submissions after review of the BCUC Report, the BCUC released a supplementary report on November 12, 2019 (together, the reports are the “**BCUC Reports**”).

24. The BCUC Reports concluded that, since 2015, the price of gasoline in British Columbia had diverged substantially from what would be expected in a competitive

market. The BCUC estimated that a one cpl increase in the wholesale price of gasoline in British Columbia costs customers an additional \$49 million per year. The BCUC Reports and the Inquiry did not provide any relief or compensation to Retail Gasoline Market customers.

25. During the BCUC Inquiry, the Defendants were asked to provide an explanation for the reason for the rising price of gasoline in the Retail Gasoline Market. The Defendants each disclosed that they were each using the cost of the “marginal barrel” of gasoline to set their wholesale rack prices for gasoline. The marginal barrel refers to the most expensive source of refined gasoline supplied to a Primary Biofuel Blending Terminal in British Columbia.
26. Approximately 95% of the gasoline that is supplied to the Retail Gasoline Market is blended and distributed through the Defendants’ Primary Terminals is sourced from refineries in British Columbia, Alberta or Saskatchewan. The remaining 5% of gasoline is imported from the United States Pacific Northwest region.
27. During the BCUC Inquiry, the Defendants each disclosed that they each used the price for gasoline imported from the United States Pacific Northwest region (the “**PNW Spot Price**”) as the proxy cost of the marginal barrel for gasoline.
28. At all material times during the Class Period, the PNW Spot Price substantially exceeded the price for the other 95% of refined gasoline that was sourced from refineries in British Columbia, Alberta and Saskatchewan and distributed through the 14 Primary Terminals owned by the Defendants.
29. By virtue of their combined control of all Primary Terminals, including the Primary Biofuel Blending Terminals in British Columbia, the Defendants control all of the wholesale gasoline distribution in British Columbia, except at Co-op locations, and they

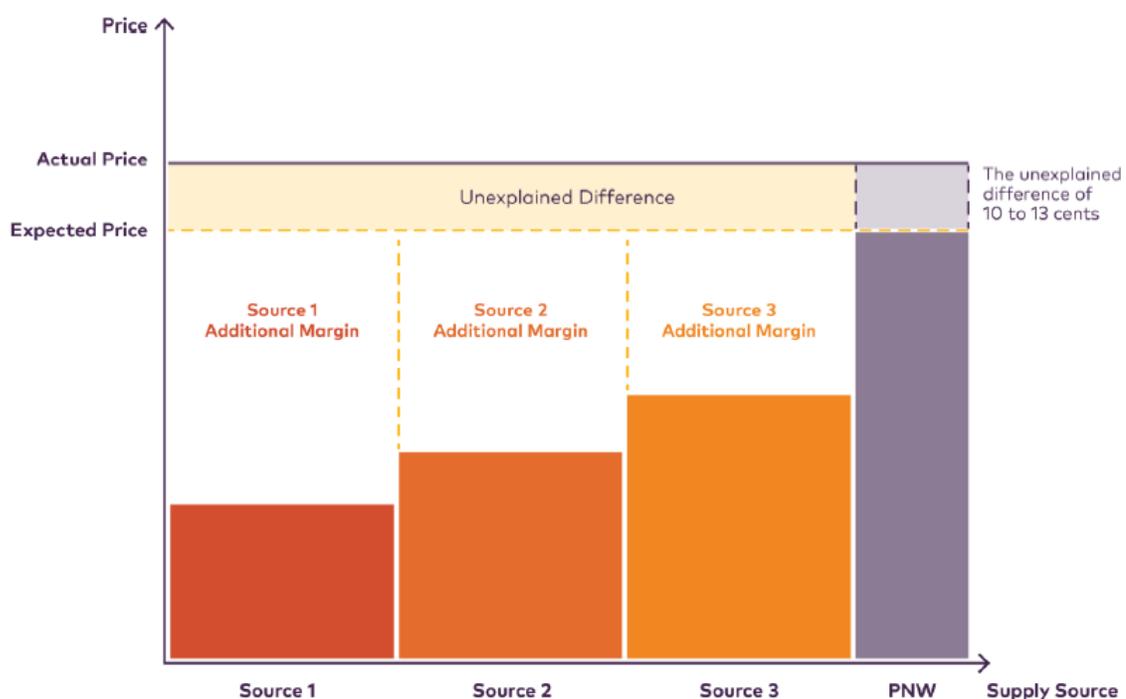
sell wholesale gasoline to the Retail Gasoline Market at an inflated and excessive price based on the cost of the marginal barrel (the “**Marginal Barrel Pricing Scheme**”) and the PNW Spot Price specifically.

30. The Defendants adopted the Marginal Barrel Pricing Scheme and the use of the PNW Spot Price by agreement between themselves and specifically for the purpose of inflating unreasonably the wholesale price of gasoline being sold in the Retail Gasoline Market, and with the express intention of harming retail purchasers in British Columbia to enrich themselves.
31. Consumers in Alberta do not suffer the same wrongdoing and they pay substantially lower prices for the same or substantially the same retail gasoline product than the Plaintiff and Class Members do in the Retail Gasoline Market.

The Defendants’ Manipulation of Wholesale Gasoline Prices in British Columbia

32. During the BCUC Inquiry, the Defendants made public disclosure of their use of the Marginal Barrel Pricing Scheme and their use of the PNW Spot Price specifically. The BCUC Reports concluded that the cost of the most expensive 5% of the supply, the PNW Spot Price, is driving the price of all gasoline sold in British Columbia. The BCUC Reports stated that reliance on the PNW Spot Price as a proxy for the marginal barrel is “the tail wagging the dog” that resulted in the payment of an unjustified premium by the Plaintiff and the Class Members for gasoline in British Columbia (the “**Marginal Barrel Pricing Scheme Margin**”).
33. The BCUC Reports found that it is unfair to consumers for the Defendants to set wholesale gasoline prices in British Columbia using the Marginal Barrel Pricing Scheme based on the PNW Spot Price when, in fact, that source of supply represents less than 5% of the total supply of gasoline by the Defendants to the Retail Gasoline Market.

34. The BCUC Reports concluded that the Marginal Barrel Pricing Scheme Margin alone would not fully explain the increased prices for gasoline in the Retail Gasoline Market. In addition to the profit obtained by the Defendants through the Marginal Barrel Pricing Scheme Margin, the BCUC found a further unexplained profit to the Defendants of 10 to 13 cpl over and above the enrichment caused by the Marginal Barrel Pricing Scheme. The BCUC Reports called this difference between the actual price of gasoline in the Retail Gasoline Market and Marginal Barrel Pricing Scheme Margin the “The Unexplained Difference”:



35. The Unexplained Difference charged by each of the Defendants is a further unfair and unconscionable overcharge of the Plaintiff and Class Members by the Defendants (the “**Additional Overcharge**”). There is no rational or economic justification for the imposition of the Additional Overcharge, which is purely exploitative of the purchasers of gasoline through the Retail Gasoline Market and does not reflect the payment of any expenses by the Defendants.

36. All purchasers of gasoline in the Retail Gasoline Market, including the Plaintiff and Class Members, pay the Marginal Barrel Pricing Scheme Margin and the Additional Overcharge every time that they purchase gasoline in the Retail Gas Market in British Columbia, which is embedded and hidden in the posted retail price.
37. During the Class Period, the Additional Overcharge ranged yearly from 2 cpl to 13 cpl. The Defendants are the ultimate recipients or beneficiaries of part or all of Additional Overcharge received from the Plaintiff and the Class Members when they purchase gasoline in the Retail Gasoline Market.
38. At the time this action is filed, the Marginal Barrel Pricing Scheme, including the use of the PNW Spot Price specifically, and the imposition of the Additional Overcharge by the Defendants continues, resulting in ongoing losses to the Plaintiff and Class Members in the form of the Marginal Barrel Pricing Scheme Margin and the Additional Overcharge.

The Defendants' Actions are Unconscionable Acts and Practices

39. The Defendants have breached the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 ("**BPCPA**"). The Marginal Barrel Pricing Scheme, and the use of the PNW Spot Price specifically, and the imposition of the Additional Overcharge are each an unconscionable act or practice with respect to each consumer transaction for gasoline during the Class Period contrary to ss 7-10 of the *BPCPA*.
40. As a result of the Defendants' misconduct and breaches of the *BPCPA*, the Plaintiff and Consumer Subclass Members have suffered damage and loss, in the form of unfairly and unconscionably inflated gasoline prices caused by the Marginal Barrel Pricing Scheme, and the use of the PWN Spot Price specifically, and the imposition of the Additional Overcharge.
41. As set out above, at all material times during the Class Period, the Defendants controlled the supply of wholesale gasoline to the Retail Gasoline Market. They

dictated the terms by which wholesale gasoline was priced and sold to the Retail Gasoline Market at material times during the Class Period.

42. The Plaintiff and Consumer Subclass Members did not and do not have any visibility or transparency regarding the basis for wholesale rack pricing by the Defendants, including the Marginal Barrel Pricing Scheme and the use of the PNW Spot Price specifically, and the imposition of the Additional Overcharge, nor any control over the inelastic prices they pay for retail gasoline. A reasonable consumer would not and could not have looked behind the information presented to them to determine whether the prices were the product of a fair and competitive process or presentation. Consumers cannot realistically identify which wholesaler has supplied the retailer from whom they buy gasoline in the Retail Gasoline Market. In any event, consumers are unable to purchase gasoline at lower prices because the Defendants directly control over 97% of the wholesale gasoline supply to the Retail Gasoline Market, which in turn directly and unfairly inflates the price the Plaintiff and Class Members pay in the Retail Gasoline Market.

43. As a result of the Defendants' control over pricing for wholesale gasoline in British Columbia, and the Plaintiff and Class Members' ignorance of and inability to take positive action to protect their interests in purchasing retail gasoline in the Retail Gasoline Market, there is a fundamental inequality of bargaining power between the Defendants and the Plaintiff and Consumer Subclass Members. The Marginal Barrel Pricing Scheme, and the use of the PNW Spot Price specifically, and the imposition of the Additional Overcharge during the Class Period have been, and continue to be, so harsh and adverse to the Plaintiff and Consumer Subclass Members as to be inequitable and unconscionable.

44. The relationship between the Defendants, as effectively the only wholesale suppliers of gasoline to the Retail Gasoline Market, and the Plaintiffs and Consumer Subclass Members, as retail purchasers of gasoline for personal, family and household use, has

resulted in a substantially unfair bargain to the Defendants' benefit in the form of the total value of the Marginal Barrel Pricing Scheme Margin and the Additional Overcharge. The benefit the Defendants have derived from the Marginal Barrel Pricing Scheme Margin and the Additional Overcharge is a direct consequence of the Defendants' systemic conduct during the Class Period.

45. The Defendants knew or ought to have known that their conduct in connection with the Marginal Barrel Pricing Scheme, including the use of the PNW Spot Price specifically, and the imposition of the Additional Overcharge on the Retail Gasoline Market was unconscionable.
46. The Plaintiff and Consumer Subclass Members are entitled to damages under the *BPCPA* in the amount of total value of the Marginal Barrel Pricing Scheme Margin and the Additional Overcharge, a declaration and an injunction to restrain further abuses.

The Conspiracy

47. During the Class Period, senior executives and employees of the Defendants, acting in their capacities as agents for the Defendants, engaged in communications, conversations and attended meetings with each other at times and places, the particulars of which are unknown to the Plaintiff but well known to the Defendants, regarding the control, distribution, pricing and sale of wholesale gasoline in to the Retail Gasoline Market. As a result of the communications and meetings, the Defendants and their co-conspirators unlawfully conspired, arranged or agreed to:
 - a. manipulate the price of wholesale gasoline in British Columbia by using the Marginal Barrel Pricing Scheme, and the PNW Spot Price specifically, to set all wholesale gasoline prices in British Columbia with the object of inflating prices in the Retail Gasoline Market and increasing their own profits to the amount of the Marginal Barrel Pricing Scheme Margin and the Additional Overcharge;

- b. exchange information with each other to monitor and adhere to an unreasonably inflated price of wholesale gasoline employing the Marginal Barrel Pricing Scheme and the PNW Spot Price specifically and the imposition of the Additional Overcharge; and
 - c. exclude third party suppliers of wholesale gasoline from any access to the Defendants' Primary Terminals that would allow third party suppliers to gain access to the wholesale market for the supply and distribution of wholesale gasoline to the Retail Gasoline Market. Such exclusion was done to prevent price competition or the undermining of the Margin Barrel Pricing Scheme and the imposition of the Additional Overcharge.
48. The Defendants were motivated to conspire, and their predominant purposes and predominant concerns were:
- a. to harm the Plaintiff and Class Members by requiring them to pay artificially high prices for gasoline in the Retail Gasoline Market through the Marginal Barrel Pricing Scheme, and the use of the PNW Spot Price specifically; and
 - b. to unlawfully increase their profits on the sale of wholesale gasoline by virtue of both the Marginal Barrel Pricing Scheme, and the use of the PNW Spot Price specifically, and the imposition of the Additional Overcharge.
49. The acts alleged in this claim to have been done by each of the Defendants were authorized, ordered and done by each Defendants' officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.

Part 2: RELIEF SOUGHT

50. The Plaintiff claims, on his own behalf and on behalf of the Class Members:
- a. an order certifying this action as a class proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (the “*Class Proceedings Act*”);
 - b. damages for the tort of conspiracy on behalf of the Class or, in the alternative, waiver of tort including disgorgement of the benefits obtained by the Defendants;
 - c. damages under the *BPCPA*, s 171 on behalf of the Consumer Subclass;
 - d. a declaration under the *BPCPA*, s 172(1)(a) that the Defendants have breached the *BPCPA*;
 - e. an injunction under the *BPCPA*, s 172(2) to restrain further breaches of the *BPCPA*;
 - f. in the alternative to damages under the *BPCPA*, s 171, a restoration order under the *BPCPA*, s 172(3)(a) on behalf of the Consumer Subclass;
 - g. pre-judgment and post-judgment interest under the *Court Order Interest Act*, RSBC 1996, c 79; and
 - h. such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

51. The Plaintiff pleads and relies on the *BPCPA*, the *Class Proceedings Act*, the *Limitation Act*, SBC 2012, c 13, the *Court Order Interest Act*, RSBC 1996, c 79, the *Emergency Program Act*, Ministerial Order No. M098, the common law of conspiracy, the *Supreme Court Civil Rules*, and related enactments.

Civil Conspiracy

52. As set out above, the Defendants have conspired and arranged with one another to:

- a. unreasonably increase the price of all wholesale gasoline sold in the Retail Gasoline Market using the Marginal Barrel Pricing Scheme and the PNW Spot Price specifically and the imposition of the Additional Overcharge;
- b. exclude potential competitors from the wholesale gasoline market in British Columbia, while allowing reciprocal access to their Primary Biofuel Blending Terminals to one another to maintain control over the supply and pricing of wholesale gasoline to the Retail Gasoline Market

(the “**Conspiracy**”).

53. As set out above, the Defendants intended to cause damage to the Plaintiff and Class Members through the Conspiracy for the predominant purpose of causing injury to benefit themselves, knowing that their acts would cause injury to the Plaintiff and Class Members.

54. The Plaintiff and Class Members have suffered loss through the payment of the Marginal Barrel Pricing Margin and the Additional Overcharge to the Defendants brought about by the Conspiracy.

55. The Plaintiff and Class Members are entitled to damages for the commission of the tort of predominant purpose conspiracy by the Defendants, in the form of the Marginal Barrel Pricing Margin and the Additional Overcharge.

56. In the alternative, the Plaintiff and Class Members waive the tort and seek disgorgement of the benefits obtained by the Defendants on account of the Conspiracy.

Breach of the Business Practices and Consumer Protection Act

57. The Defendants have breached the *BPCPA*.

58. The Plaintiff and Consumer Subclass Members purchased retail gasoline for purposes that are primarily personal, family or household and are “consumers” within the meaning of the *BPCPA*, s 1.

59. Retail gasoline is a “product” within the meaning of the *BPCPA*, s 1.

60. The Defendants are each a “supplier” within the meaning of the *BPCPA*, s 1. The *BPCPA* does not require privity of contract between suppliers and consumers.

61. The purchase, sale and supply of retail gasoline in the Retail Gasoline Market is a “consumer transaction” within the meaning of the *BPCPA*, s 1. An unconscionable act or practice can occur before, during or after a consumer transaction.

62. By the conduct set out above, the Defendants have breached ss 8-9 of the *BPCPA*. The Defendants’ actions constitute unconscionable business practices. The Defendants knew or ought to have known that their conduct was unconscionable.

63. In particular, during the Class Period the Defendants have breached *inter alia* the *BPCPA*, s 8, whether or not the factors in ss 8(3) are present in any individual case, and s-ss 8(3)(b), (c) and (e) specifically.

64. As set out above, the Defendants took advantage of the inability of consumers, per *BPCPA*, s-s 8(3)(b), including the Plaintiff and Consumer Subclass Members, to reasonably protect their own interests because of their ignorance or inability to understand the character or nature of the consumer transaction and the Defendants’ misconduct underlying it in the form of the imposition of the Marginal Barrel Pricing Scheme, including the use of the PNW Spot Price specifically, and the further

imposition of the Additional Overcharge, resulting from the Defendants' total control over wholesale gasoline supply and pricing to the Retail Gasoline Market.

65. At the time that the Plaintiff and Consumer Subclass Members paid for retail gasoline based on the Marginal Barrel Pricing Scheme and the Additional Overcharge, the total price grossly exceeded the total price at which similar subjects of similar consumer transactions were readily obtainable by similar consumers in breach of *BPCPA*, s 8(3)(c). In particular, the price for retail gasoline exceeded that which would have been available in the absence of the Marginal Barrel Pricing Scheme or had the Defendants set their wholesale rack price based on some reasonable relationship to the average cost of all their inputs, instead of primarily based PNW Spot, which is the most expensive input yet only 5% of their total inputs. Consumers in Alberta pay substantially less for the same product.
66. As set out above, the terms or conditions on, or subject to, which the Plaintiff and Consumer Subclass Members purchased retail gasoline in the Retail Gasoline Market during the Class Period, including, but not limited to the Marginal Barrel Pricing Scheme and the imposition of the Additional Overcharge, were so harsh or adverse to these consumers as to be inequitable because of the inequality of bargaining power between the Consumer Subclass Members and the Defendants, in breach of the *BPCPA*, s 8(3)(e).
67. The *BPCPA* s 9 prohibits suppliers from engaging in unconscionable acts or practices in respect of consumer transactions. Once it is alleged that a supplier committed or engaged in an unconscionable act or practice, the burden of proof that the unconscionable act or practice was not committed or engaged in is on the supplier.
68. Pursuant to *BPCPA* s 10(1), as result of the Defendants' breaches of the *BPCPA*, s 8, consumer transactions for retail gasoline in British Columbia during the Class Period, are not binding on the Plaintiff and Consumer Subclass Members to the extent of the Marginal Barrel Pricing Scheme and the Additional Overcharge.

69. As a result of the Defendants' breaches of the *BPCPA*, the Plaintiff and Consumer Subclass Members are entitled to damages under the *BPCPA*, s 171 in the full amount of the Marginal Barrel Pricing Scheme Margin and the Additional Overcharge.
70. As a result of the Defendants' breaches of the *BPCPA*, the Plaintiff and Consumer Subclass Members are entitled to a declaration under *BPCPA*, s 172(1)(a) and an injunction to restrain those practices pursuant to s 172(1)(b). In particular, the Plaintiff and Consumer Subclass Members are entitled to an injunction to restrain the Defendants from communicating about their internal mechanisms for price setting and to prohibit the use of the Marginal Barrel Pricing Scheme or, at minimum, the use of the PNW Spot Price specifically.
71. In the alternative to an order for damages under the *BPCPA*, s 171, the Plaintiff and Consumer Subclass Members have an interest in the total value of the Marginal Barrel Pricing Scheme Margin and the Additional Overcharge funds acquired by the Defendants in contravention of s 8 of the *BPCPA*. The Plaintiff and Consumer Subclass Members would have a right to make a claim for damages under the *BPCPA* s 171 or at common law for the tort of conspiracy. The Plaintiff and Consumer Subclass Members are entitled to the restoration of those amounts under the *BPCPA*, s 172(3)(a).

Joint and Several Liability

72. The Defendants are jointly and severally liable for their wrongdoing.

Limitation Period

73. The Plaintiff or Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by acts of the Defendants, or that a court proceeding would be an appropriate means to seek to remedy the injury until after the release of the BCUC Supplemental Report on November 12, 2019.
74. The Plaintiff and Class Members rely on the doctrines of postponement, discoverability, and fraudulent concealment per *Pioneer Corp v Godfrey* to postpone the running of the limitation period until November 12, 2019.

75. The Plaintiff and Class Members plead and rely on and the *Limitation Act*, SBC 2012, c 13, and in particular ss 8 and 21(3). In the alternative, or in addition, the Plaintiff and Class Members rely on the *Limitation Act*, SBC 2012, c 13, s 30 and the *Limitation Act*, RSBC 1996, c 266.

76. In addition, the Plaintiff and Class Members plead and rely on the *Emergency Program Act*, Ministerial Order No. M098 to suspend the running of the limitation period from March 26, 2020.

Plaintiff's address for service:

Slater Vecchio LLP
1800 - 777 Dunsmuir Street
Vancouver, BC V7Y 1K4

Fax number for service: 604.682.5197

Email address for service: service@slatervecchio.com

Place of trial: Vancouver, BC

The address of the registry is: 800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: June 5, 2020



Signature of lawyer for plaintiff
Anthony A Vecchio QC
Slater Vecchio LLP

and

Mat Good
Mathew P Good Law Corp

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(c) serve the list on all parties of record.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The plaintiff claims the right to serve this pleading on the Defendants outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*) applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

- a tort committed in British Columbia (*CJPTA*, s 10(g));
- restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f)); and
- business carried on in British Columbia (*CJPTA*, s 10(h)).

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a proposed class proceeding regarding retail and wholesale gasoline prices in B.C.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

a motor vehicle accident

medical malpractice

another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4:

Business Practices and Consumer Protection Act, SBC 2004, Limitation Act, SBC 2012, c 13,
Court Order Interest Act, RSBC 1996, c 79