

CANADA / JUDGMENT

Bui v. Cargill, Incorporated

2025 BCSC 2102

COURT

Supreme Court of British Columbia

DECIDED

29 October 2025

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2025 BCSC 2102 Bui v. Cargill, Incorporated IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Bui v. Cargill, Incorporated, 2025 BCSC 2102 Date: 20251029 Docket: S221365 Registry:

Vancouver Between: Giang Bui Plaintiff And Cargill, Incorporated, Cargill Meat Solutions

Corporation, Cargill Limited, JBS USA Food Company, Swift Beef Company, JBS Packerland Inc.,

JBS Canada ULC, Tyson Foods, Inc., Tyson Fresh Meats, Inc., and National Beef Packing

Company, LLC Defendants Brought under the Class Proceedings Act, R.S.B.C. 1996, c. 50 Before:

The Honourable Justice Thomas Reasons for Judgment re: Notice Approval Counsel for the

Plaintiff: M.L. Segal K. Duke Counsel for Cargill, Incorporated, Cargill Meat Solutions

Corporation, Cargill Limited: J.S. Yates K. Hanowski Counsel for JBS USE Food Company, Swift

Beef Company, JBS Packerland Inc., JBS Canada ULC: M.A. Eizenga E. Davis Counsel for Tyson

Foods, Inc.; Tyson Fresh Meats, Inc.: R.L. Reinertson J.A. Hutchinson Counsel for National Beef

Packing Company, LLC: S.A. Forbes J.H. Machum Place and Date of Hearing: Vancouver, B.C.

September 10-12, 2025 Place and Date of Judgment: Vancouver, B.C. October 29, 2025 Table of

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Application

[1] This is an application for:

- a) certification for purposes of settlement only;
- b) approval of the notice of the proposed settlement; and
- c) approval of the plan of dissemination of the notice. Nature of Proceedings

[2] An overview of the action is provided in paras. 3-6 and 10-18 of the notice of application:

3. Mr. Bui commenced this action by notice of civil claim filed on February 18, 2022 (the "BC Action"). The claim alleges a conspiracy to fix, raise, maintain, control, or lessen the production or supply of Beef (defined below) and fix, raise, maintain, or stabilize the price of Beef sold to purchasers in Canada, starting at least as early as January 1, 2015 and continuing to the present (the "Class Period").
4. The BC Action is brought on behalf of persons or entities in Canada who directly or indirectly purchased Beef in Canada, either for resale or for their own consumption during the Class Period. As discussed below in paragraph 17, at the contested certification hearing which was held on January 13-17 and 31, 2025 the plaintiff sought to amend the class definition.
5. A parallel proposed class proceeding was commenced in the Superior Court of Quebec: Sylvie De Bellefeuille v. Cargill, Incorporated et al (Action No. 500-06-001180-229 the "Quebec Action") (the Quebec Action together with this action, the "Class Proceedings"), on March 24, 2022 with Belleau Lapointe s.e.n.c.r.l. acting for the plaintiff.
6. CFM Lawyers LLP and Strosberg Wingfield Sasso LLP ("BC Counsel") are working collaboratively with plaintiffs' counsel in the Quebec Action (collectively, "Class Counsel"). Class Counsel and the plaintiffs have agreed to pursue this BC Action on a national basis and to formally stay the Quebec Action. The Settlement Agreements
10. The plaintiffs in the Class Proceedings have entered into proposed settlements with the following defendants:
 - (a) JBS USA Company, Swift Beef Company, JBS Packerland Inc., and JBS Canada ULC ("JBS Defendants"), dated November 15, 2024 (the "JBS Settlement Agreement"); and
 - (b) National Beef Packing Company, LLC, ("National Beef Defendant") dated July 15, 2025 (the "National Beef Settlement Agreement").
11. The JBS Defendants and the National Beef Defendant are collectively referred to as the "Settling Defendants" and the JBS Settlement Agreement and National Beef Settlement Agreement are collectively referred to as the "Settlement Agreements".
12. The Settlement Agreements resolve the claims against the Settling Defendants and their related entities. The Settlement Agreements are national in scope and subject to court approval in British Columbia and Quebec.
13. Following certification for settlement purposes, class members will be provided their first and only opportunity to opt-out of these Class Proceedings.
14. The Settlement Agreements have the same proposed BC Settlement Class and common issue.

15. The BC Settlement Class is defined in both Settlement Agreements as: All persons in Canada, other than members of the Quebec Settlement Class, who purchased for resale or personal use, between January 1, 2015 and the date the BC Action is certified for settlement approval, Beef excluding Beef Products and Beef purchased from the food service industry. "Beef" means the raw portion of cattle carcasses intended for human consumption. "Beef Products" means those products that contain Beef as one ingredient among others, except where all non-Beef ingredients have been introduced through the processes of mechanical blade/needle tenderizing, brine injection, massaging, aging, chemical/enzyme tenderizing, vacuum tumbling, marination and/or seasoning.
16. The BC Action is continuing against the remaining defendants. Amendments to Class Definition
17. An application to certify the BC Action against the non-settling defendants took place on January 13-17 and 31, 2025.
18. As part of the certification application, the plaintiff sought an order amending the Notice of Civil Claim to vary the class definition. If approved, the amended definition will mirror the definition of BC Settlement Class. Certification for Settlement Purposes
- [3] Under the terms of the Settlement Agreements, the parties consent to certification solely for the purpose of settlement.
- [4] Partial settlements involving certification of settlement classes are to be encouraged and have previously been approved by this court. This was discussed in *Haney Iron Works Ltd. v. Manufacturers Life Insurance Co.*, 169 D.L.R. (4th) 565, 1998 CanLII 3085 (B.C.S.C.) at paras 16-17:
16. Where an application for certification is made contingent upon a settlement agreement being approved, the court should first determine whether the applicants have made out a prima facie case for certification; that is to say whether they have made out a prima facie case that the claim meets the requirements of s. 4 of the Act. If such a prima facie case has been made out, the court can then move on to consider whether the settlement is fair and reasonable.
17. In such a case, one of the considerations that the court will have to weigh is the litigation risk; that is not only whether the plaintiffs will succeed in the action against the defendant, but also the risk that the defendant reserving its rights will be able to successfully oppose certification in the event the settlement is not approved and a full hearing on the certification issue subsequently proceeds.
- [5] Certification for settlement purposes is somewhat academic at this point, given the action has been certified against the remaining defendants: see *Bui v. Cargill, Incorporated*, 2025 BCSC 1870.

- [6] Nonetheless, I will review each of the requirements stipulated by s. 4(1) of the Class Proceedings Act, R.S.B.C. 1996, c. 50 [CPA] in order to certify the action against the settling defendants. Section 4(1)(a) Cause of Action
- [7] The plaintiff alleges the following causes of action:
- a) breach of ss. 45-46 of the Competition Act, R.S.C. 1985, c. C-34 giving rise to a cause of action under s. 36(1);
 - b) the tort of civil conspiracy;
 - c) unjust enrichment; and
 - d) (for the Québec subclass) civil extracontractual liability pursuant to art. 1457 of the Civil Code of Québec, C.Q.L.R. c. CCQ-1991. Section 4(1)(b) Identifiable class
- [8] In reviewing the proposed class in this application, I am satisfied that the settlement clearly identifies the persons who were entitled to notice, entitlement to relief, and whether relief is awarded or bound by the judgment. The class is defined using objective criteria and does not depend on resolving a contested issue. The class definition has a rational connection to the common issues. Section 4(1)(c) Common Issues
- [9] The common issue proposed for certification in both Settlement Agreements is as follows: Did the settling defendants conspired to fix, maintain, control, or lessen the production or supply of Beef and fix, raise, maintain, or stabilize the price of Beef sold to purchasers in Canada during the Settlement Class Period? If so, what damage, if any, did Settlement Class Members suffer?
- [10] This case, by its nature, deals with common legal and factual questions about the existence, scope, and effect of the alleged conspiracy. Punitive class members have a common interest in proving the facts and circumstances pertaining to the causes of action pleaded. In my view, the defined common issues are central to the litigation and satisfy the test of advancing the proceedings and avoiding duplication of the fact-finding and legal analysis. Section 4(1)(d) Preferable Procedure
- [11] The proposed class provides a fair, efficient, and manageable method of determining the common issues and will advance the pleadings in accord with the goals of judicial economy, access to justice, and behaviour modification. I accept in the absence of this case, it is unlikely that the majority of claims would be advanced at all. Section 4(1)(e) Suitable Representative Plaintiff
- [12] The proposed representative plaintiff is a member of the BC settlement class, has no conflict with other members of the proposed BC settlement class, and will fairly and adequately represent the interests of the proposed BC settlement class. Conclusion on Certification
- [13] In my view, the plaintiffs have made out a prima facie case for certification for settlement purposes. Notice of Settlement

- [14] Section 19 of the CPA sets out the requirements of what notice is to be provided to class members: 19(1) Notice that a proceeding has been certified as a class proceeding must be given by the representative plaintiff to the class members in accordance with this section.
- (6) Unless the court orders otherwise, notice under this section must
- (a) describe the proceeding, including the names and addresses of the representative plaintiffs and the relief sought,
 - (b) state the manner in which and the time within which a class member may opt out of the proceeding,
 - (c) [Repealed 2018-16-9.]
 - (d) describe the possible financial consequences of the proceeding to class members and subclass members,
 - (e) summarize any agreements respecting fees and disbursements
 - (i) between the representative plaintiff and the representative plaintiff's solicitors, and (ii) if the recipient of the notice is a member of a subclass, between the representative plaintiff for that subclass and that representative plaintiff's solicitors,
 - (f) describe any counterclaim being asserted by or against the class or any subclass, including the relief sought in the counterclaim,
 - (g) state that the judgment on the common issues for the class, whether favourable or not, will bind all class members who do not opt out of the proceeding,
 - (h) state that the judgment on the common issues for a subclass, whether favourable or not, will bind all subclass members who do not opt out of the proceeding,
 - (i) describe the rights, if any, of class members to participate in the proceeding,
 - (j) give an address to which class members may direct inquiries about the proceeding, and
 - (k) give any other information the court considers appropriate.
- [15] Section 20 of the CPA governs the requirements for notice of determination of common issues. Although s. 35 of the CPA states that notice pursuant to s. 20 is discretionary, the parties are to give notice necessary to protect the interests of potential class members, to the settling defendants, and to the defendants who remain in the action.
- [16] In my view, the notice should contain the following contents set out in s. 35(5) of the CPA:
- a) an account of the conduct of the proceeding;
 - b) a statement of the result of the proceeding; and
 - c) a description of any plan for distributing any settlement funds.

- [17] I have attached a copy of the proposed notice to these reasons. In my view, the proposed notices comply with the legislative requirements referred to above and satisfy the overriding purpose of giving notice to class members to provide them with sufficient information to decide what steps to take to protect their interests. Plan of Dissemination
- [18] Section 19(3)-(5) of the CPA deals with dissemination of notice certification as follows: 19(3) The court must make an order setting out when and by what means notice is to be given under this section and in doing so must have regard to the following:
- (a) the cost of giving notice;
 - (b) the nature of the relief sought;
 - (c) the size of the individual claims of the class members;
 - (d) the number of class members;
 - (e) the presence of subclasses;
 - (f) whether some or all of the class members may opt out of the class proceeding;
 - (g) the places of residence of class members;
 - (h) any other relevant matter.
- (4) The court may order that notice be given by
- (a) personal delivery,
 - (b) mail,
 - (c) posting, advertising, publishing or leafleting,
 - (d) individually notifying a sample group within the class, or
 - (e) any other means or combination of means that the court considers appropriate.
- (5) The court may order that notice be given to different class members by different means.
- [19] The Settlement Agreements set out a notice plan which specifies the form and content notice will take: a banner ad and short form and long-form notice of certification/ authorization and settlement approval hearings.
- [20] The Settlement Agreements require class counsel to post a copy of the short form and long form notices on its respective websites in English and French, together with the Settlement Agreements. Class counsel are also required to set up a settlement website where all the notices will be posted together with the Settlement Agreements.
- [21] Class counsel will distribute the Settlement Agreements along with the short form and long-form notices to major news and broadcast outlets across Canada through a press release on Canada Newswire.

- [22] The short form notice will be sent directly to the following:
- a) specific organizations requesting voluntary distribution to their membership and/or that a copy of the information about the actions be posted on their website;
 - b) persons who been identified by the settling defendants and non-settling defendants as direct customers; and
 - c) persons who have provided contact information to class counsel.
- [23] The banner ad will be distributed nationally on news media websites within the post media networks in English and/or French. The banner ad will also be distributed on the Google display network, Facebook, and Instagram. The banner ad will redirect class members to the settlement websites where they will be able to consult the long-form notice.
- [24] The digital notice campaign will target 1,500,000 impressions over 60 days.
- [25] The proposed notice plan makes sense. It provides direct notice to class members who are both the largest purchasers of beef and identifiable. It provides notice through a digital marketing program and through news outlets to the individual consumers of smaller amounts of beef products whose identity is unknown and for whom it would clearly be impractical to commence actions on their own behalf.
- [26] As noted in *Fantl v. ivari*, 2018 ONSC 4443 at paras. 20-22 [Fantl]:
- [20] If a Class Member, for whatever reason, in the immediate case, does not want to sue ivari, then there is no reason for him or her to opt out, because he or she can simply not participate; i.e., not make a claim in the distribution of any settlement or in the distribution of a favourable judgment. Further, he or she will be indifferent if ivari is successful in having the action dismissed.
- [21] Conversely, if a Class Member wished in the immediate case to advance a claim against ivari, it would be silly to opt-out in the immediate case, because his or her autonomous litigation would not be economically viable. The case at bar exemplifies the circumstances where a class action is the preferable procedure to achieve access to justice and a sensible person would not opt out.
- [22] Generally speaking, in cases like the case at bar, a robust notice plan alerting Class Members of the right to opt-out is far, far less important than a robust notice plan where there is a settlement fund to be distributed.
- [27] Similarly to *Fantl*, the non-settling defendants here argue that there is inadequate dissemination of notice to class members, which may affect their ability to rely on the approval of the notice in other jurisdictions. Therefore, the issue of notice may be greater here than in cases where it is unlikely that consumers will opt out due to the economic infeasibility of bringing an individual claim.

- [28] However, unlike in *Fantl*, the non-settling defendants have not consented to provide any means of providing direct notice to their customers. This somewhat undercuts their position that they have concerns about the extent of notice, since it is likely the largest, or at least a significant, proportion of liability that they would have in other jurisdictions which would arise from their direct customers.
- [29] I note that the settling defendants, who were involved in formulating the notice program and approved of it:
- a) do not share the non-settling defendants' concerns; and
 - b) are providing the contact information of customers who directly purchased beef from them for notice purposes.
- [30] The main focus of the non-settling defendants' concern is on the large number of consumer purchases of beef, which could exceed 20,000,000 people who may receive a relatively modest share of the settlement. The remaining defendants say that 1,500,000 impressions is not nearly adequate to satisfy the requirement that the notice is "likely to reach all class members".
- [31] The proposition that notice must be "likely to reach all class members" comes from *Charlton v. Musashi Bockenau GmbH & Co. KG*, 2024 BCSC 428 [Charlton], which notes:
- [18] With respect to digital and social media, the plaintiff proposes to use:
- a) A banner ad redirecting class members to the settlement website through the Google Display Network, Facebook, and news media websites within the Postmedia Network as part of a 30-day social media campaign;
 - b) There will be a link to the settlement website on the social media accounts of class counsel; and
 - c) Publication on discussion boards in Canadian car-based forums, including *wheels.ca*, *Automotive News Canada*, *CAA-Québec* and *Le Guide de l'auto*.
- [19] Factors to be considered in evaluating a notice plan are set out in s. 19(3) and (4) of the CPA. The purpose of notice is to inform class members about the impending class action and to ensure they are informed about their ability to object to the settlement or opt out if so desired.
- [20] While the notice plan need not be perfect, the court's role is to ensure that the reach is sufficient to ensure class members are notified, that the scope of the notice is likely to reach all members, and that the contents of the notice are sufficient to allow class members to make an informed decision about their options in respect of the settlement.
- [21] In this case, in the event that the settlement is approved, there will be further steps taken to notify class members of the settlement and their rights in respect thereof.

- [22] In this case, the class members will largely be indirect purchasers of the product in issue. That is not uncommon in actions alleging anti competitive conduct. I have been referred to other cases in which similar notice plans have been approved, in particular: *Allott v. Panasonic Corporation*, 2021 ONSC 1891, and *Cygnus Electronics Corporation v. Panasonic Corporation*, 2021 ONSC 2767.
- [23] On materials before me, I am satisfied that the notice plan is appropriate in the circumstances. It appears to be sufficient and workable, and I would thus grant the order sought in paragraphs 1(j)-(l) of the notice of application.
- [32] In my view, especially in cases involving indirect purchasers in which it is infeasible to bring an individual action and who will be provided subsequent notice of settlement procedures, an appropriate notice plan, such as the one approved of in *Charlton*, cannot be expected to directly reach all class members.
- [33] In this case, we do not know:
- how widespread the press coverage will be;
 - how many individuals will account for the 1,500,000 impressions; or
 - how many people will disseminate the information that they receive to other class members.
- [34] I do not accept that the non-settling defendants' concerns about the size of the online campaign are as significant as they claim for two reasons:
- they are not participating in the direct notice campaign which in my view would account for a significant portion of their stated concerns; and
 - the settling defendants face the same risk and are satisfied that their interests are sufficiently protected by the agreement.
- [35] I agree with the plaintiff that the appropriate test to be applied derives from ss. 19(2) and (3) of the CPA, which asks the court to consider "the costs of giving notice" and "whether some or all of the class members may opt out of the proceedings." In my view, appropriate dissemination depends on the purpose of the notice, the stage of the proceedings, and a cost-benefit analysis.
- [36] The cost-benefit analysis is difficult because of the inability to quantify the effectiveness of the non-direct aspects of the notice program. In my view, the largest purchasers of beef are identifiable and will receive direct notice. The smaller purchasers of beef are not identifiable and their claims are not feasible to bring on an individual basis. In addition, the amount of settlement money available to pay those claims is precious, given the large number of potential claimants and the limited amount of funds allocated to indirect purchasers.

- [37] Although it is possible to increase the number of online impressions, I am not satisfied that the increase in the number of individuals that will be ultimately notified by such an increase in impressions is merited by the associated impact on the award. In my view, it is always possible to argue that more is better, and notifying everyone would be ideal. However, the court must recognize that dissemination has cost implications that impact the size of the award available to everyone. The benefits of increasing dissemination have to be assessed in light of the entire dissemination plan and the size of the settlement.
- [38] It is true that the dissemination plan also has an impact on the defendants. However, in my view, the presented plan is reasonable and does not pose an undue threat of liability in other jurisdictions to the settling and non-settling defendants.
- [39] When I consider all of these issues, in my view, the proposed dissemination plan is appropriate as presented by the plaintiff. "Thomas J."

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