



Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued : 26-Jan-2022  
Délivré par voie électronique  
Toronto

**BURFORD LAW PROFESSIONAL CORPORATION and TAIS DAVIS**

Plaintiffs

and

**DYE & DURHAM LIMITED and DOPROCESS LP**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF ACTION**

**TO THE DEFENDANTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiffs. The claim made against you is set out in the statement of claim served with this notice of action.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

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Date: January 26, 2022

Issued By: \_\_\_\_\_

Address of Court Office:  
330 University Avenue  
Toronto, ON M5G 1R7

**TO: Dye & Durham Limited**  
199 Bay St., Suite #4610  
Toronto, ON M5L 1E9

**AND TO: DoProcess LP**  
123 Front St. West, Suite 700  
Toronto, ON M5J 2M2

## OVERVIEW

1. In 2020, Dye & Durham Limited (“**D&D**”) acquired DoProcess LP (“**DoProcess**”), a software company servicing law firms in the real estate conveyancing industry. DoProcess provided a software platform “Conveyancer” that facilitates the closing of real estate transactions. Conveyancer was developed by the defendant DoProcess. The software allows law firms to automate its documentation and manage the entire real estate transaction process.
2. DoProcess’ software handles more than 700,000 transactions annually in Ontario, and 1.4 million annually in Canada.
3. In 2020, DoProcess planned to phase out Conveyancer and replace it with a new software called ‘Unity’. At that time, DoProcess expected Unity would be fully implemented by December 31, 2021.
4. In December 2020 DoProcess was acquired by D&D.
5. Following the purchase, in January 2020 the fees for using the software increased dramatically in Ontario from \$25 per conveyancing transaction for Conveyancer, to \$129 plus HST per conveyancing transaction for Unity. Current customers, primarily real estate lawyers, were informed of the increase through email or ‘click-through pop up’ windows when they went to use the Unity product.
6. Law firms who practice conveyancing integrate the conveyancing software into their computer systems, where it functions as a key tool for collecting information and conducting high volume conveyancing transactions. Once integrated into the practice, law firms are essentially reliant on the platform. The time and costs of transitioning to an

alternative software product are immense. Once law firms elect to go with the Unity software the defendants have what is, essentially, a captive market.

7. In this context, the sudden and unexpected price increase shocked the conveyancing industry. The \$104 per transaction price increase was enormous, considering law firms can conduct in the range of fifty transactions monthly.
8. In their emails and pop-ups announcing the price increase the defendants made the following commitment which was intended to induce current customers to continue to use the Unity software product (hereafter, the “**Promise**”):

**In recognition of your loyalty, current customers will receive a minimum three-year price guarantee on purchase, sale, and mortgage files, ensuring no further price increases in the foreseeable future**

9. Based on the Promise of three years of no price increases, the plaintiffs and thousands of real estate practitioners throughout Ontario use the Unity platform.
10. One year later, on or about January 24, 2022, the defendants reneged on their Promise by increasing prices immediately from \$129 (plus HST) to \$249 (plus HST) per transaction. The defendants now offer two package options, which are \$229 for a minimum of 50 transactions or \$199 for a minimum of 100 transactions.
11. The defendants failed to provide advance notice of the price increase, making it impossible for lawyers to transition to other software options in time to close transactions.
12. The defendants have not refunded credits purchased in advance of the price increase. These credits are used to access the software to conduct a transaction. For lawyers who purchased credits at the former rate of \$129 per transaction, the credits can no longer be applied to \$129 transactions.

13. The plaintiffs state that the Promise was a three-year pricing commitment to the Class Members. The defendants had a duty to be forthright and honest in disclosing matters which impacted the defendants' contracts with and commitments to their customers.
14. The defendants knew that their Promise would have the effect of actively misleading the class about their intention to perform on the contract and honour the Promise. In the circumstances, customers reasonably expected that the pricing for Unity would remain at \$129 plus HST per transaction for at least three years. It was reckless and contrary to justice for the defendants to make the Promise or to fail to disclose their intention to break it. Had the defendants been honest about their intentions at the time they made the Promise, customers would have cancelled their accounts and found other solutions.
15. The plaintiffs state that the defendants' Promise and assurances of a three-year fixed price per transaction constituted a false representation, purposely made to promote the use of the defendants' Unity software, contrary to Section 52 of the *Competition Act*, R.S.C., 1985, c. C-34 (the "***Competition Act***"). As a result of this breach of section 52 of the *Competition Act*, the plaintiffs and the class are entitled to damages under section 36 of the Act.
16. The plaintiffs state that in making the Promise and/or material representation, the defendant DoProcess agreed to provide the Unity product at a fixed price per conveyance for three years. In exchange, the class members continued to use the product. The defendants knew that once the Class had resolved to continue to use the product, there would be essentially a captive market. The defendants' representation was intended to - and did in fact - lull members of the Real Estate Bar into a false sense of security when they elected to continue with Unity and install the Unity software.

17. The defendants' termination of the three-year fixed pricing was capricious and high-handed. The defendants also failed to give reasonable notice resulting in the Class sustaining damages because of insufficient time to transition to another product or retool systems to close transactions, causing the Class to have no choice but to continue to use Unity and pay the higher fees to access the software for each transaction.
18. The plaintiffs bring this action on behalf of all persons residing in Ontario who were current customers of the Unity product as of January 2021, received the Promise (access to the service features of Unity at a fixed fee of \$129 plus HST per transaction for at least three years), and who elected to continue using Unity in or about that time.

## **RELIEF SOUGHT**

19. The plaintiffs, on their own behalf and on behalf of the Class Members, claim:
  - (a) an order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, certifying this action as a class proceeding and appointing them as representative plaintiffs for the Class;
  - (b) a declaration that the defendants are liable in breach of contract;
  - (c) a declaration that the defendants are liable to the class for breach of the duty of honesty, good faith and fair dealing;
  - (d) a declaration that the defendants violated section 52 of the *Competition Act* and are therefore liable for damages under section 36 of the *Competition Act*;
  - (e) damages in the amount of \$200 million.
  - (f) an order, pursuant to s. 24 of the *Class Proceedings Act, 1992*, directing an aggregate assessment of damages;
  - (g) an order directing a reference or giving such other directions as may be necessary to determine any issues not determined at the trial of the common issues;

- (h) pre-judgment and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1980, c. 43;
- (i) costs of this action on a substantial indemnity basis, together with applicable HST or other applicable taxes thereon;
- (j) the costs of administering the plan of distribution of the recovery in this action; and
- (k) such further and other relief as this Honourable Court deems just.

## THE PARTIES

### Plaintiffs

20. The plaintiff, Burford Law Professional Corporation (“**Burford**”), is a law firm carrying on the practice of real estate from offices located in Napanee, Ontario. The firm received an email from the defendant in or about January of 2021 notifying it of the price increase and assuring it that if it agreed to purchase the Unity product, the fee was promised to remain the same for a period of at least three years. On that basis, Burford agreed to purchase the product and integrated the software into its conveyancing practice.
21. The plaintiff, Tais Davis, is a sole practitioner carrying on the practice of real estate from offices located in Toronto, Ontario. She received an email from the defendant in or about January of 2021 notifying her of the price increase and assuring her that if she agreed to purchase the Unity product, the fee was promised to remain the same for a period of at least three years. On that basis, she agreed to purchase the product and integrated the software into her conveyancing practice.

## **Defendants**

22. The defendant, Dye & Durham Limited, is a company which provides software and ‘cloud-based platforms’ to support business transactions and regulatory compliance. Dye & Durham wholly own, and are a partner in DoProcess LP, which it acquired in 2020.
23. The defendant, DoProcess LP, is a provider of practice specific software for law offices in Canada, which has existed since 1989. DoProcess LP provides the Unity software.

## **PLACE OF TRIAL**

24. The plaintiffs propose that this action be tried at the City of Toronto.

Date: January 26, 2022

### **CHARNEY LAWYERS PC**

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Toronto, ON M5S 1P7

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Lawyers for the plaintiffs



**BURFORD LAW PC, ET AL** v. **DYE & DURHAM, ET AL**

Plaintiff

Defendants

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF ACTION**

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