

FILED / PRODUIT

Date: December 18, 2025

CT- 2025-007

Grainne Gannon Dubroy for / pour
REGISTRAR / REGISTRAIRE

File No.

OTTAWA, ONT.

04

COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (“**CIPPIC**”) for an order pursuant to section 103.1 of the *Competition Act*, R.S.C. 1984, c. C-34 (the “*Competition Act*”) granting leave to bring an application under sections 77 and 79 of the *Competition Act*;

AND IN THE MATTER OF an application by CIPPIC for an order pursuant to sections 77 and 79 of the *Competition Act*;

B E T W E E N:

THE SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC
INTEREST CLINIC

Applicant

and

APPLE CANADA INC. and APPLE INC.

Respondents

AFFIDAVIT OF DAVID FEWER
(Affirmed on December 12, 2025)

I, David Fewer, of the City of Ottawa, DO SOLEMNLY AFFIRM THAT:

1. I am Director and General Counsel of the Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (“**CIPPIC**”) based at the Centre for Law, Technology and Society (CLTS) at the University of Ottawa’s Faculty of Law.
2. I affirm this Affidavit in support of CIPPIC’s application for an order pursuant to section 103.1 of the *Competition Act*, R.S.C. 1984, c. C-34, granting CIPPIC leave to bring an application under sections 77 and 79 of the *Competition Act*, and in support of such application if leave is granted.
3. Except as otherwise indicated, I have personal knowledge of the matters to which I depose in this Affidavit. Where I lack such personal knowledge, I have indicated the source of my information, and I verily believe such information to be true. Where specific CIPPIC activities are referred to below in which I have had no personal participation, I have familiarized myself with the relevant files and base my account thereof on this knowledge.

I. ABOUT CIPPIC

4. CIPPIC is a legal clinic founded at the University of Ottawa's Faculty of Law.
5. CIPPIC was established in September 2003 with funding from the Ontario Research Network on Electronic Commerce and an Amazon.com Cy-Pres fund.
6. The purpose of CIPPIC's creation was threefold:
 - (a) to fill voids in public policy debates on technology law issues;
 - (b) to ensure balance in policy and law-making processes; and
 - (c) to provide legal assistance to under-represented organizations and individuals on matters involving the intersection of law and technology.
7. In 2007, CIPPIC received additional funding from the Samuelson-Glushko Foundation, enabling CIPPIC to continue fulfilling its mandate and to join the international network of Samuelson-Glushko technology law clinics.
8. CIPPIC operates under a Staff Lawyer and a Director and General Counsel, presently Melissa Crane-Dupuis and me, respectively. Both of us are called to the bar of Ontario. CIPPIC benefits from the expertise of an internal Governance Committee composed of faculty members of the Faculty of Law.
9. CIPPIC's core mandate is to advocate in the public interest in debates arising at the intersection of law and technology, such as the issues in this application. CIPPIC has the additional mandate of providing legal assistance to under-represented organizations and individuals on law and technology issues, and a tertiary education-based mandate that includes a teaching and public outreach component.
10. In pursuit of these mandates, CIPPIC's activities regularly extend to provision of expert testimony to parliamentary committees, participation in regulatory and quasi-judicial proceedings, and strategic interventions before the courts. CIPPIC is keenly aware of its finite resources and so carefully selects its activities, ensuring that its participation is focused, fully resourced, timely, and in the public interest.
11. CIPPIC is deeply involved in research and advocacy on the nature and social impact of technological change, and the way the evolving legal landscape interacts with the distinct challenges of a technology-driven world, such as the issues that arise from this application.

II. INSTITUTIONAL EXPERTISE

A. Competition Law Specific Activities

12. CIPPIC has also been active in competition law in matters where consumer rights are impacted by the practices of technology companies. For example:

(a) CIPPIC made submissions on the very same App issues that we raise in this application in the Government of Canada's recent consultation on the future of competition policy in Canada as a consumer and public interest group. Our full submissions can be found at [this Government of Canada link](#). CIPPIC submitted:

Canada should follow the EU's lead in developing legislation to regulate gatekeeping by dominant digital platforms. Gatekeeping in the digital economy is where a dominant platform controls the access and behaviors of the internal ecosystem in which it operates. Mobile app stores are an example of digital gatekeepers. The app store operators have significant power in regulating the type of apps published on their platform. The policies and terms and conditions of dominant app store operators, such as Google and Apple, play an important role in the marketplace by banning dangerous apps, maintaining quality standards, and regulating content to protect the privacy and safety of its users. However, the dominant control over the app market also allows the dominant app store operators to reduce competition by limiting the payment options available to consumers, charging exorbitant fees to developers, and in extreme circumstances, removing apps from third parties that are offering a similar service to the app that the operator launched.

Many critics have expressed concerns over the monopolistic nature of Apple's App Store and Google's Play Store, where app developers have no other marketplace in which they can publish their apps and they are forced to accept the terms of these two dominant platforms. The EU has taken the lead by enacting the Digital Markets Act, which explicitly sets out a list of criteria to qualify an online digital platform as a "gatekeeper." Canada should follow suit and enact its own platform-specific legislation to better protect Canadian businesses from anti-competitive behaviours.

(b) Together with another public interest organization, CIPPIC filed spyware complaints with the Competition Bureau and the US Federal Trade Commission (FTC) to investigate the business practices of a Montreal-based software distributor and several of its business partners. The filing marked the first time that the Bureau had been asked to investigate a spyware company, and the first time that the FTC had been asked to investigate the practices of a Canadian spyware vendor;

(c) CIPPIC filed an application to the Competition Bureau, requesting a review of the proposed merger between Google and DoubleClick. CIPPIC was concerned that the merger prevented or lessened competition substantially in the online targeted advertising market, as Google-DoubleClick would be able to manipulate the market to raise advertising prices and advertisers

and web publishers would have to choose Google-DoubleClick in order to be visible in the e-commerce market;

(d) CIPPIC worked with the Canadian Urban Libraries Council on a submission on library digital marketplace concerns to the Competition Bureau's 2019 consultation on "competition issues in the digital economy"; and

(e) CIPPIC is a frequent attendee and participant at Competition Bureau "consumer group" consultations and events. For example, I was invited to participate in, and attended, the 15 November, 2016 Competition Bureau/CRTC Consumer Groups Meeting, a full-day event addressing numerous consumer regulatory matters.

B. Judicial

13. CIPPIC has been active in the courts as counsel to primary parties in proceedings implicating law and technology broadly, such as:

(a) *Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic v Sanhi*, Fed Ct. No. T-1717-24, involving the copyright implications of the use of generative artificial intelligence to produce an image;

(b) *Bell Canada v Amtelecom*, 2015 FCA 126, on the retrospective application of elements of the CRTC's Wireless Consumer Protection Code to pre-existing contractual relationships, in the context of a consumer protection regime imposed onto wireless service provider contracts;

(c) *Voltage v Doe #1*, SCC File No. 41026, where, in a motion for leave to appeal to the Supreme Court of Canada, CIPPIC brought a successful motion to be added as responding party to the matter and subsequently succeeded in opposing the applicant's leave application;

(d) *Authors Guild v Google, Inc.*, No 05-Civ-8136 (DC) (SDNY March 22, 2011), wherein CIPPIC acted on behalf of a group of independent Canadian authors and for the Canadian Association of University Teachers (CAUT) in opposing a proposed class action settlement agreement, based in the United States, that would have established the major Internet intermediary Google, Inc. as a centralized hub for digital books, affecting the rights of international copyright holders, including Canadian authors; and

(e) *Lawson v Accusearch*, 2007 FC 125, wherein CIPPIC sought judicial review of the Privacy Commissioner of Canada's decision to refuse, on jurisdictional grounds, to exercise its investigatory mandate against a company based in the United States collecting, using, and disclosing the personal information of Canadians; CIPPIC argued that in an online world, territorial location cannot immunize an organization from the privacy protections guaranteed to Canadian residents.

14. The Supreme Court of Canada has granted CIPPIC leave to intervene in various appeals, such as the following matters:

(a) *TELUS Communications Inc. v Wellman*, [2019] 2 SCR 144, advocating for consumer rights in the mobile phone service market;

- (b) *AB v Bragg Communications Inc*, 2012 SCC 46;
- (c) *Uber Technologies Inc v Heller*, 2020 SCC 16, advocating for consumer and employee rights in the digital app market;
- (d) *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and *Society of Composers, Authors and Music Publishers of Canada v Entertainment Software Association*, 2022 SCC 30;
- (e) *Haaretz.com, et al v Mitchell Goldhar*, 2018 SCC 28;
- (f) *Canadian Broadcasting Corporation v SODRAC 2003 Inc*, 2015 SCC 57;
- (g) *Crookes v Newton*, 2011 SCC 47;
- (h) *Dell Computer Corp v Union des consommateurs*, 2007 SCC 34;
- (i) *R v Downes*, 2023 SCC 6;
- (j) *R v Mills*, 2019 SCC 22;
- (k) *R v Jarvis*, 2019 SCC 10;
- (l) *R v Reeves*, 2018 SCC 56;
- (m) *Her Majesty the Queen in Right of British Columbia v Philip Morris International, Inc.*, 2018 SCC 36;
- (n) *R v Jones*, 2017 SCC 60;
- (o) *R v Marakah*, 2017 SCC 59;
- (p) *Douez v Facebook, Inc*, 2017 SCC 33;
- (q) *R v Fearon*, 2014 SCC 77;
- (r) *R v Chehil*, 2013 SCC 49, and *R v MacKenzie*, 2013 SCC 50; and
- (s) *R v TELUS Communications Co*, 2013 SCC 16.

15. CIPPIC has been granted leave to intervene in matters in the Federal Court and the Federal Court of Appeal under Rule 109 on various occasions, such as the following matters:

- (a) *Voltage Pictures LLC v John Doe*, 2014 FC 161; *Voltage Pictures v Doe*, 2016 FC 881; *Voltage Pictures, LLC v Salna*, 2019 FC 1047; and *Salna v Voltage Pictures, LLC*, 2025 FCA 131, 2023 FC 893, and 2021 FCA 176, addressing alleged online copyright infringement;

(b) *Voltage Holdings v Doe #1*, 2023 FCA 194 and 2022 FC 827, granted leave (2021 FC 1130) to intervene on the merits of what constitutes authorizing infringement in copyright law, and on the burden of proof required to establish infringement;

(c) *Google v Canada (Privacy Commissioner)*, 2023 FCA 200, on whether PIPEDA applies to Google's search engine service;

(d) *Teksavvy Solutions Inc v Bell Media Inc and Others*, 2021 FCA 100, on the role of Internet intermediaries in copyright enforcement activities of rights-holders in respect of websites alleged to have infringed copyright;

(e) *Cooperstock v United Airlines Inc*, 2018 FCA 40, regarding the application of the *Trademarks Act* to online parody in light of implicated consumer protection and freedom of expression values (discontinued);

(f) *National Post v Fournier*, File Nos A-394-12 and A-395-12 (FCA), on the obligations imposed by copyright law on online discussion platforms including with respect to liability for user activity (discontinued following written submissions); and

(g) *BMG v Doe*, 2004 FCA 193, on the balance between privacy and copyright enforcement in the third-party discovery process, considering applicable elements of PIPEDA.

C. Parliamentary Committees and Governmental Consultations

16. CIPPIC has had many opportunities to provide expert testimony to parliamentary committees and in other governmental processes regarding the societal and legal challenges posed by online environments and digital technologies, a sampling of which includes:

(a) testimony before the House of Commons Standing Committee on Access to Information, Privacy and Ethics (ETHI), regarding the use of facial recognition technologies by state and commercial actors (June 16, 2022);

(b) testimony before the House of Commons Standing Committee on Access to Information, Privacy and Ethics (ETHI), regarding the *Security of Canada Information Sharing Act* (November 22, 2016);

(c) testimony before the House of Commons Standing Committee on Access to Information, Privacy and Ethics (ETHI), regarding modernization of the *Privacy Act* (September 20, 2016);

(d) testimony before the Legislative Assembly of British Columbia Special Committee to Review the *Freedom of Information and Protection of Privacy Act* on the implications of recent trade agreements for legislative provisions protecting the privacy of government-held Canadian data in cross-border contexts (November 18, 2015);

(e) testimony before the House of Commons Standing Committee on Industry, Science and Technology (INDU), on Bill S-4: the *Digital Privacy Act*, on cybersecurity information sharing (February 19, 2015);

(f) testimony before the House of Commons Standing Committee on Access to Information, Privacy and Ethics (ETHI) on social media (June 19, 2012); and

(g) testimony before the House of Commons Standing Committee on Industry, Science and Technology (INDU), on Bill C-27: *Electronic Commerce Protection Act*, addressing the regulation of unsolicited electronic messages and the unauthorized installation of computer programs (September 28, 2009).

D. Quasi-Judicial Tribunals

17. CIPPIC has filed numerous complaints with the Office of the Privacy Commissioner of Canada (“OPC”) on matters of significance stemming from the rise of digital technologies. These include complaints that have produced judicial decisions or findings of precedential value, such as:

(a) *Lawson v Accusearch*, 2007 FC 125, which originated with a complaint that CIPPIC filed with the OPC with respect to the extra-territorial activities of a data broker that met the test for real and substantial connections to Canada (Report of Findings, “Complaint under PIPEDA against Accusearch Inc., doing business as Abika.com”, 27 July 2009); and

(b) a complaint and intervention in *CIPPIC v Facebook*, PIPEDA Case Summary #2009-008 (PIPEDA Report of Findings #2009-008, “Report of Findings into the Complaint Filed by the Canadian Internet Policy and Public Interest Clinic (CIPPIC) against Facebook Inc. Under the *Personal Information Protection and Electronic Documents Act* by Elizabeth Denham Assistant Privacy Commissioner of Canada”, 16 July 2009), which applied Canadian laws, norms, and principles to the then-new and emerging medium of online social networking, and which the OPC extensively referenced in a 2019 investigation of similar issues arising from the Cambridge Analytica scandal (PIPEDA Findings #2019-002, “Joint investigation of Facebook, Inc. by the Privacy Commissioner of Canada and the Information and Privacy Commissioner for British Columbia”); the OPC tied the investigated issues in 2018-2019 to Facebook’s failure to “meaningfully implement its 2009 commitments to the OPC” resulting from CIPPIC’s complaint, and subsequently won a landmark ruling at the Federal Court of Appeal, in *Canada (Privacy Commissioner) v Facebook, Inc*, 2024 FCA 140.

18. CIPPIC has participated in various activities before other quasi-judicial administrative tribunals in pursuit of its objectives. A representative sample of CIPPIC’s advocacy in this field includes:

(a) representation of the OpenMedia Engagement Network in *re: An Applicant and the Vancouver Police Department*, BC OIPC File No: F15-63155, a written inquiry before the Office of the Information and Privacy Commissioner for British Columbia examining the refusal of the Vancouver Police Department to respond to an access to information request on records relating to a surreptitious surveillance tool; and

(b) participation in *Application Regarding Vidéotron’s Unlimited Music Zero Rating Service*, CRTC File Nos: 8661-P8-201510199 and 8622-V42-20150735 (September 1, 2015), regarding the potential impact on online innovation that would arise from a mobile service

provider operating and applying differential pricing to its own digital music streaming platform.

E. Research and Public Education

19. CIPPIC has participated in numerous research and advocacy initiatives relevant to the impact of modern technologies on rights, such as:

(a) CIPPIC sat on the Advisory Group of a multi-year law reform project undertaken by the Law Commission of Ontario, *Defamation Law in the Internet Age*;

(b) CIPPIC was an active participant in *The eQuality Project*, described above, a 7-year research initiative examining the online relationships and connections of children and youth;

(c) CIPPIC contributed to the submission of the Citizen Lab (Munk School of Global Affairs & Public Policy, University of Toronto) to the United Nations Special Rapporteur on violence against women, its causes and consequences, Ms. Dubravka Šimonović, on technology-facilitated violence against women (November 2, 2017);

(d) in 2024, CIPPIC contributed to the OPC's public consultation on privacy and "age assurance"—referring to the policies, practices, and potential legal obligations of digital platforms to determine users' ages;

(e) in 2014, CIPPIC participated in the OPC's Consultation on Mobile Tracking and Advertising; and

(f) CIPPIC published *Digital Rights Management Technologies and Consumer Privacy: A Canadian Market Survey and Privacy Impact Assessment*, a 2007 report submitted to the OPC that analyzed how Digital Rights Management (DRM) changed the ways individuals interacted with digital content. The study assessed the use of DRM in the Canadian marketplace.

20. In addition to its parliamentary, quasi-judicial and judicial activities, CIPPIC routinely advises and represents both consumers and organizations on a range of issues related to legal rights, access to justice issues, and standard-form contracts in digital society.

21. Through these activities, CIPPIC has had a substantial impact on the development of technology-related law and policy in Canada. This foundational work has informed CIPPIC's engagement with specific, technology-driven harms.

22. CIPPIC's expertise in the most severe forms of harm enabled by digital technologies is further supplemented by faculty advisors and access to the University of Ottawa's Faculty of Law and Centre for Law, Technology and Society.

IV. CIPPIC'S INTEREST IN THIS APPLICATION

23. In the above paragraphs, I described our mandate and work to date in advocating for the public interest at the intersection of law and technology. At the core of our work has been consumer advocacy aimed at providing reasonable checks and safeguards to counterbalance the immense power of giant technology corporations. As such, CIPPIC's historical public-interest concern places this application squarely within its core mandate of advocating for the public interest in respect of a private technology company such as Apple and the impact of Apple's conduct on Canadian consumers and app business.


24. CIPPIC's enduring interest in platform economy issues is reflected in CIPPIC's extensive contributions to policy and legal discussions around such matters.

25. This case follows from the work we have done to date and falls directly within CIPPIC's mandate. In particular, CIPPIC understands the App Store represents a venue of significant digital commerce in Canada, covering a myriad of different digital products.

26. To the extent that Apple's policies may have the effect of stifling innovation on the part of App developers and increasing costs to Canadian consumers, CIPPIC believes that this application is an important and necessary proceeding that is in the public interest and beneficial to Canadian consumers and businesses.

Affirmed by David Fewer of the City
of Ottawa in the Province of Ontario before me
at the Town of Ajax in the Province of Ontario
this 12th day of December, 2025, in accordance
with O. Reg. 431/20, Administering Oath or
Declaration Remotely.

David
Fewer

 Digitally signed by David Fewer
DN: cn=David Fewer, o=CIPPIC,
ou=General Counsel,
email=dfewer@uottawa.ca, c=CA
Date: 2025.12.12 16:23:09 -05'00'

David Fewer



A commissioner, etc.
Georgia Elizabeth Scott-McLaren, a Commissioner, etc.
Province of Ontario, for
Sotos LLP, Barristers and Solicitors
Expires February 20, 2027
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