



Reference: *The Commissioner of Competition v. The Toronto Real Estate Board*, 2014 Comp. Trib. 4

File No.: CT-2011-003

Registry Document No.: 255

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

AND IN THE MATTER OF certain rules, policies and agreements relating to the residential multiple listing service of the Toronto Real Estate Board.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

The Toronto Real Estate Board
(respondent)

and

The Canadian Real Estate Association
(intervenor)



Date of case management conference: 20140401

Presiding Judicial Member: Simpson J.

Date of Order: April 23, 2014

Order signed by: Madam Justice S. Simpson

**CONSENT ORDER REGARDING PROCEDURES ASSOCIATED WITH THE
RECONSIDERATION HEARING TO COMMENCE ON OCTOBER 14, 2014**

[1] **UPON** meeting with counsel for the Commissioner of Competition, the Toronto Real Estate Board (“TREB”) and the Canadian Real Estate Association (“CREA”), in Toronto on April 1, 2014 (the “Meeting”), to discuss the proposals contained in the transcript of a teleconference of February 26, 2014 (the “Proposals”);

[2] **AND UPON** receiving a letter filed by counsel for the Commissioner of Competition dated March 31, 2014;

[3] **AND UPON** hearing the submissions of all counsel about the Proposals in the Meeting;

[4] **AND UPON** noting that the Proposals deal with the pre-hearing and hearing procedures which are to apply to the Tribunal’s reconsideration of the Commissioner’s application filed on May 27, 2011;

[5] **AND UPON** the Tribunal circulating a draft order dated April 9, 2014, for comment (the “Draft”). The Draft was prepared in response to the discussion at the Meeting;

[6] **AND UPON** receiving a letter filed by counsel for the Commissioner of Competition, dated April 17, 2014, commenting on the Draft and advising the Tribunal that the Commissioner of Competition, TREB and CREA will consent to the Draft with certain changes;

[7] **AND UPON** the Tribunal accepting the suggested changes and incorporating them in this Order;

[8] **AND UPON** noting that the Tribunal’s hearing held from September 10, 2012, to October 18, 2012 will be described as the “Initial Hearing” and the hearing commencing on October 14, 2014, to conduct the reconsideration will be referred to as the “Further Hearing”;

THE TRIBUNAL ORDERS THAT:

[9] All witness statements, expert reports, exhibits, transcripts, and opening and closing submissions from the Initial Hearing will form part of the record of the Further Hearing.

[10] Unless counsel for the Commissioner, TREB, and CREA agree that an updated witness statement from a particular witness is unnecessary, counsel are to use their best efforts to provide updated witness statements from all witnesses who testified at the Initial Hearing (the “Updated Evidence”). It is to be confined to relevant facts and events which occurred after each witness testified at the Initial Hearing.

[11] If a witness refuses to provide Updated Evidence, despite counsel using their best efforts pursuant to paragraph 10, the opposite party or CREA may request that the Tribunal issue a subpoena to compel the witness to attend and be examined on matters which could be the subject of Updated Evidence pursuant to paragraph 10.

[12] All witnesses may be cross-examined without leave on their Updated Evidence and any other matters that have arisen since the Initial Hearing. However, leave of the panel members at

the Further Hearing will be required if counsel wish to cross-examine on evidence given at the Initial Hearing.

[13] Evidence from witnesses who did not testify at the Initial Hearing (“New Evidence”) may only be adduced with leave of Simpson J.

[14] Opening statements may refer to evidence given at the Initial Hearing and expected to be given at the Further Hearing. Closing statements may refer to evidence given at both the Initial and Further Hearings.

[15] The pleadings will not be amended.

[16] The economic theory of the case will not change.

[17] TREB’s Notice of a constitutional question will not be accepted.

[18] The prehearing schedule is as follows:

Friday July 11, 2014	The Commissioner is to move to file any New Evidence he seeks to adduce. The motion material will include a statement of the New Evidence.
Tuesday July 15, 2014	TREB and CREA may respond to the motion.
Thursday July 17, 2014	The motion will be heard (likely by teleconference).
Friday August 1, 2014	The Commissioner shall file his Updated Evidence and any New Evidence for which leave was given.
Friday August 15, 2014	TREB and CREA are to move to file any New Evidence they seek to adduce. The motion material will include a statement of the New Evidence.
Tuesday August 19, 2014	The Commissioner may respond to the motion.
Thursday August 21, 2014	The motion will be heard (likely by teleconference).
Friday September 5, 2014	TREB shall file its Updated Evidence and any New Evidence for which leave was given.
Friday September 19, 2014	CREA shall file its Updated Evidence and any New Evidence for which leave was given.
Friday October 3, 2014	Commissioner is to serve and file any evidence in reply to any Updated Evidence or New Evidence filed by TREB and CREA.

Tuesday October 14, 2014 Hearing begins.

[19] Once all the evidence has been filed, the Tribunal may revisit the need for a chess clock proceeding.

DATED at Ottawa, this 23rd day of April, 2014.

SIGNED on behalf of the Tribunal by the judicial member who is case managing this proceeding.

(s) Sandra J. Simpson

APPEARANCES:

For the applicant:

The Commissioner of Competition

John Rook
Emrys Davis

For the respondent:

The Toronto Real Estate Board

Donald Affleck, Q.C.
David Vaillancourt
Fiona Campbell

For the intervenor:

The Canadian Real Estate Association

Sandra A. Forbes
Jim Dinning