

FILED / PRODUIT

Date: September 13, 2011

CT- 2011-003

Chantal Fortin for / pour
REGISTRAR / REGISTRAIRE

CT-2011-003

OTTAWA, ONT.

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COMPETITION TRIBUNAL

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

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 :

COMMISSIONER OF COMPETITION

Applicant

AND

THE TORONTO REAL ESTATE BOARD

Respondent

NOTICE OF MOTION

TAKE NOTICE THAT The Toronto Real Estate Board will make a motion to the Competition Tribunal, at a date, time, location and in a manner directed by the Competition Tribunal.

THE MOTION IS FOR:

1. An order removing Mark Nicholson and the firm Gowling Lafleur Henderson LLP as solicitors of record for Realtysellers Real Estate Inc. with respect to the above-noted proceedings;
2. An order enjoining Mark Nicholson and the firm Gowling Lafleur Henderson LLP from advising Realtysellers Real Estate Inc. or any related party or entity (including Mr.

Lawrence Dale) with respect to any matters arising from or related to the above-noted proceedings;

3. The costs of the motion on a solicitor and client basis; and
4. Such further and other relief as counsel may request and the Tribunal may permit.

THE GROUNDS FOR THE MOTION ARE:

1. During the period from approximately 2001 to mid-2007, Gowling Lafleur Henderson LLP (“**Gowlings**”) was retained by The Toronto Real Estate Board (“**TREB**”) as TREB’s general counsel. During the period of the retainer, TREB disclosed confidential information to Gowlings relevant to subject matters in issue in the Application.
2. Should Realtysellers be granted leave to intervene, Realtysellers intends to support generally the position of the Commissioner of Competition, a position adverse to TREB.
3. Gowlings is in an actual or perceived conflict of interest.
4. Accepting Realtysellers’ retainer has placed Gowlings in breach of its duty of loyalty to TREB.
5. Rules 34(1) and 83 to 88 (inclusive) of the *Competition Tribunal Rules*.
6. Rules 123, 400 and 401 of the *Federal Court Rules*.
7. Rules 2.04 and 2.05 of the *Rules of Professional Conduct* of the Law Society of Upper Canada.
8. Such further and other grounds as counsel may advise and the Tribunal may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The affidavit of Donald John Richardson, sworn September 13, 2011 and exhibits thereto.
2. The pleadings herein;
3. Such further and other materials as counsel may advise and the Tribunal may permit.

DATED AT Toronto, this 13th day of September, 2011.



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And To: **Mark Nicholson**
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And To: **The Registrar**
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