

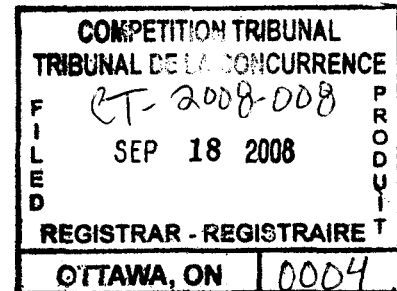
Competition Tribunal File No.

COMPETITION TRIBUNAL

BETWEEN:

STEVEN OLAH  
Applicant

-and-



HER MAJESTY THE QUEEN as represented by the Correctional Service of  
Canada and GRAVENHURST HOME HARDWARE  
Respondents

WRITTEN REPRESENTATIONS OF THE APPLICANT  
(Application for an Order pursuant to Section 103.1 of the Competition Act)

**Facts**

1. The Applicant at all material times was an inmate of Fenbrook Institution, a medium security federal penitentiary located at Gravenhurst, Ontario. He is now transferred to minimum security Beaver Creek Institution but he has paid the mark-ups discussed below while an inmate at Fenbrook.
2. Fenbrook Institution is a medium security federal penitentiary operated by the Correctional Service of Canada.
3. Gravenhurst Home Hardware is a private corporation located in Gravenhurst Ontario.
4. The Correctional Service of Canada entered into a contract with Gravenhurst Home Hardware to provide the services that are normally associated with a Social

Development Officer at every other federal prison in Canada. By doing so the CSC saves the cost of one employee.

5. Gravenhurst Home Hardware accepted this responsibility by being the sole provider of inmate purchases. Inmates at Fenbrook can order items such as radios, televisions, and items not considered contraband exclusively through the Gravenhurst Home Hardware. If the goods ordered are in the Home Hardware inventory the goods are sold at normal retail price. If the goods are not in inventory or have to be ordered from another supplier, the inmate must pay the normal retail price plus a markup of 20% of the good's retail price or a markup of 10% of the item ordered constitutes hobby craft items.
6. The Correctional Service of Canada operates pursuant to section 4(e) of the *Corrections and Conditional Release Act* such that all inmates enjoy the same rights of all Canadians save and except as those rights are precluded as a direct result of their incarceration. Here, Fenbrook inmates do not have the same access to a free marketplace as do other citizens of Canada including other federally incarcerated inmates.

### **The Leave Test**

7. To grant leave to commence a private application, the Tribunal must be satisfied that it has reason to believe that:
  - (a) The application for leave is supported by sufficient credible evidence to give rise to a *bona fide* belief that the applicant may have been directly or

substantially affected in the applicant's situation by a practice referred to in section 75 or 77 of the Act; and

(b) The practice at issue could be subject to an order under either 75 or 77 of the Act.

*National Capital News Canada v. Milliken*, 2002 Comp. Trib. 41 at para 14

*Barcode Systems Inc. v. Symbol Technologies Canada ULC*, 2004 FCA 339 at para 16.

8. In the present case the denial of access to a free and open market has a direct and substantial impact on the procurement practices of Fenbrook inmates. It is submitted that the contract entered into between CSC and Gravenhurst Home Hardware constitutes "exclusive dealing" as defined in section 77(1) (a) (i)

#### **The Conduct in Issue Contravenes s. 77**

9. The trade practice complained of in this application is unique to this one Canadian federal penitentiary. (See finding of fact set out in paragraph 1 of *Olah v. Canada (Attorney General)*; 2006 FC 1245.
10. Exclusive dealing as defined by the *Competition Act* as a practice whereby a supplier of a product (Gravenhurst Home Hardware) as a condition of supplying the product to a customer (inmates of Fenbrook Institution) requires the customer to deal only or primarily in products supplied by or designated by the supplier or the supplier's nominee.

11. The CSC in designating Gravenhurst Home Hardware as the sole supplier of goods to Fenbrook inmates has reduced access to the marketplace to one supplier and inmates are forced to deal with that one supplier or the supplier's nominee.
12. This application seeks an order declaring such a contract illegal under the *Competition Act* and ordering the parties to cease and desist in such illegal activity. Such an Order is contemplated by section 77 (3) of the *Competition Act*.

### **Costs**

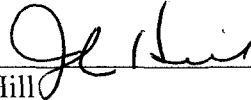
13. Pursuant to section 8.1 of the *Competition Tribunal Act*, R.S.C. 1985, c. 19, as amended, the Tribunal is empowered to order costs of proceedings before it in respect of reviewable matters in accordance with the provisions governing costs in the *Federal Courts Rules* (SOR/98 – 106) (“Federal Courts Rules”)

### **Order Sought**

14. The Applicant requests that the Tribunal allow the Applicant's leave application with costs.

Dated at Cobourg, Ontario this 15th day of September, 2008

Steven Olah, by his solicitor

A handwritten signature in cursive script, appearing to read "John L. Hill", written over a horizontal line.

John L. Hill  
Barrister & Solicitor  
993 Ontario Street  
Cobourg, Ontario  
K9A 3C8

File No. T-

**COMPETITION TRIBUNAL**

**Steven Olah**

**- and -**

**Her Majesty the Queen &  
Gravenhurst Home Hardware**

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OF THE APPLICANT**

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**Solicitor for the  
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