

Competition Tribunal File No.

COMPETITION TRIBUNAL

BETWEEN:

STEVEN OLAH
Applicant

-and-

COMPETITION TRIBUNAL	
TRIBUNAL DE LA CONCURRENCE	
F	CT- 2008-008
I	SEP 18 2008
L	<i>[Signature]</i>
E	REGISTRAR - REGISTRAIRE
D	T
OTTAWA, ON	0001

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

NOTICE OF APPLICATION FOR LEAVE

(Application for an Order pursuant to Section 103.1 of the Competition Act)

1. **TAKE NOTICE THAT** the Applicant, Steven Olah, on his own behalf and on behalf of all inmates of Fenbrook Institution located at Gravenhurst, Ontario will make an application to the Competition Tribunal pursuant to section 103.1 of the Competition Act, R.S.C. 1985, c. C-34 seeking leave to bring an application under subsection 77(2) of the Competition Act.
2. **AND TAKE NOTICE THAT** if leave is granted, the applicant will seek an Interim Order requiring the respondents to desist immediately from the practice of authorizing subcontractors to charge a mark-up on goods purchased out of inventory that in all other penitentiaries in Canada are purchases made by a Correctional Service of Canada (CSC) staff employee without cost. The practice

employed constitutes exclusive dealing as defined in subsection 77(1) of the Competition Act.

3. **AND TAKE NOTICE THAT** the Applicant proposes that the within application be heard in the English language at Bracebridge, Ontario.
4. **AND TAKE NOTICE THAT** the applicant proposes that the documents be filed in electronic form.
5. **AND TAKE NOTICE THAT** the persons whom the order for granting of leave is sought are the respondents. The Respondents' registered address for service is:

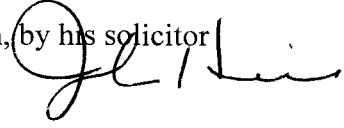
**The Warden
Fenbrook Institution,
2000 Beaver Creek Drive
P.O. Box 5000,
Gravenhurst, Ontario
P1P 1Y2**

**Gravenhurst Home Hardware
Muskoka Street South Gate Plaza
Gravenhurst, Ontario,
P1P 1T5**

6. **THE STATEMENT FOR GROUNDS AND MATERIAL FACTS** are set out in the Statement of Grounds and Material Facts attached as Schedule "A" to this Notice of application for Leave.

Dated at Cobourg, Ontario this 27th day of July, 2008

Steven Olah, (by his solicitor)


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

Schedule “A”

1. The Federal Court of Canada found the following fact situation applicable to inmate purchases at Fenbrook Institution:
 - (a) Fenbrook has implemented a privatized Inmate Purchasing Service wherein inmates may purchase merchandise from Gravenhurst Home Hardware (Home Hardware) at retail prices.
 - (b) When an inmate purchases an item not regularly stocked by Home Hardware, Home Hardware purchases the item from another retailer and sells it to the inmate with a 20% mark-up for general merchandise and with a 10% mark-up for hobbycraft goods.
 - (c) Fenbrook is the only federal penitentiary at which inmates must pay a mark-up on retail goods purchased for their own use. Other institutions employ an officer who purchases retail goods ordered by the inmate, without charging the inmate any mark-up for the service. [*Olah v. Canada*, 2006 F.C. 1245]

2. Since Home Hardware is the designated supplier, inmates are not free to shop by catalogue from other suppliers or to have goods purchased from any source other than Home Hardware. Inmates are thereby prevented from taking advantage of sales or from price reductions resulting from competition with other suppliers in the community. Section 4(e) of the *Corrections and Conditional Release Act*, the statute governing the running of Canada’s penitentiaries provides that “offenders retain the rights and privileges of all members of society, except those rights and

privileges that are necessarily removed or restricted as a consequence of the sentence.” Buying goods at retail price without a mark-up is a right and privilege available to all prisoners of federal penitentiaries across Canada save and except Fenbrook Institution. The practice of exclusive dealing is not a necessary restriction of imprisonment.

3. Ordinarily the CSC becomes the seller since requests are placed with a Social Development Officer at the Institution and that person is responsible for doing the acquisition of purchases for inmates from a variety of sources. In this instance, Fenbrook has eliminated the position of Social Development Officer to cut staffing costs and privatized the service through a contract it implemented requiring exclusive dealing.
4. CSC is responsible for the signing of the contract and for its implementation.
5. Inmates are not free to move about and transfer to another institution on the grounds that they prefer a purchase program not marked by exclusive dealing.

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COMPETITION TRIBUNAL

Steven Olah

- and -

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

**NOTICE OF APPLICATION FOR
LEAVE**

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**Solicitor for the
Applicant**