

# ***Competition Tribunal***

BETWEEN:

**ROBERT GILLES GAUTHIER**  
cob as **THE NATIONAL CAPITAL NEWS CANADA**

Applicant

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
F I L E D	JUN 15 2007
REGISTRAR - REGISTRAIRE	
OTTAWA, ON	0010

- AND -

**THE HONOURABLE PETER MILLIKEN, M.P.**  
**SPEAKER OF THE HOUSE OF COMMONS**

Respondent

## **Amended**

### **AFFIDAVIT OF ROBERT GILLES GAUTHIER**

I, Robert Gilles Gauthier, 181 Bank Street, rpo 71035, Ottawa,  
Ontario K2P 2L9, affirm that:

1. I am the proprietor of The *National Capital News Canada* which I launched in Canada in 1982 following the closure of the broadsheet daily *The Ottawa Journal*, the broadsheet daily *The Winnipeg Tribune* and the tabloid daily *Ottawa Today*.

**2. The newspaper publishing industry generates upwards of 10 billion dollars annually and is highly labour-intensive allowing the creation of employment for many people of varying levels of skills.**

**3. *The National Capital News Canada* was, and still is, to be the first of a chain of newspapers to be published by the applicant and distributed across Canada and around the world.**

**4. Newspapers, depending on their publishing policies, require sources of information of varying types. For example, a newspaper publishing in, say Sudbury, would likely carry articles on mining and other outdoor activities.**

**5. My newspaper, publishing in Ottawa, the capital of Canada, requires access to sources of information related to the Parliament and Government of Canada, in addition to the regular material readily available.**

**6 I have invested 25 years of my life and more than my own financial resources into this business and have been seriously impeded by the Speaker of the House of Commons who finances and controls the facilities and services provided for the media by the House of Commons.**

**7. I have tried every means within Canadian and international laws to**

resolve this *prima facie* unfair, discriminatory, arbitrary, abusive of parliamentary privilege and anti-competitive infringement on my right as a Canadian to earn my living in the field of my choice with the protection of the *Competition Act, et al.*, being Exhibit “E” to this my Affidavit.

7A. By ratifying not just *The International Covenant on Civil and Political Rights*, but also others, including *Economic and Fair Competition treaties*, Canada assumed the obligations and commitments thereby incurred, including recognizing the authority conferred on the UN Human Rights Committee, and other Committees, to make rulings (Views) and expect compliance with such Views. In support of such ideals, Canada pretends an idealistic objective to respect fundamental rights, even to providing Government of Canada funding to a Human Rights Museum locate in Winnipeg, Manitoba, being Exhibit “F” to this my Affidavit.

7B. The Minister of Canadian Heritage and Status of Women, at which website the UN Views (633/1995, *Gauthier v. Canada* are posted, in addition to the postings on the United Nations website at “Human Rights” and “International Treaties, the Hon. Bev Oda, P.C., M.P., wrote in her letter to me March 29, 2007: “*While the obligations contained in the Covenant [International Covenant of Civil and Political Rights] are binding, the views of the United Nations Human Rights Committee are not,*” being Exhibit “G” to this my Affidavit.

7C. An "APPLICATION TO MEMBERS OF PARLIAMENT," being Exhibit "H" to this my Affidavit, individually addressed, was mailed to every Member of Parliament and to every Senator, being Exhibit "I" to this my Affidavit, asking for their intervention to have the Speaker, who is not outside the Law, comply without further delay with the HRC Views presented before the General Assembly of the United Nations in New York in 1999 by the then High Commissioner for Human Rights, Mrs Mary Robinson. Not one response was received with the exception of a phone call from the Office of The Honourable Senator Raymond Lavigne instructing me to send him my letter in French, which I did, being Exhibit "J" to this my Affidavit, but still did not receive any reply, in particular, not even from this Honourable Senator Raymond Lavigne.

8. The problem was compounded by the fact that only cases chosen by the Competition Bureau could be brought before the Competition Tribunal, until around 2002 following hearings before the Standing Committee on Industry chaired by the Hon. Susan Whelan and subsequent changes to the *Competition Act* and the *Competition Tribunal Act* that allow private cases under certain conditions. My complaint pursuant to the *Competition Act* was not brought by the Commissioner before the Tribunal.

9. Unfortunately, the Commissioner did not simply advise me that he did not have the necessary resources to properly review all

complaints, but chose to make personal attacks against the applicant and to accumulate false information in support of his unfair handling of my complaint tainting the impartiality of the investigation.

10. It was not possible to have a fair and impartial review at the Bureau of Competition Policy as evidenced by the characterization of the applicant as *“another nut”* by the investigators with the approbation of the Director of Competition, Mr. Howard I. Westson at the time.

11. As a result, misrepresentations of the facts became the norm by many persons involved and there was no way to stop the flow of misinformation.

12. In the alternative to the failure of being able to obtain an objective hearing before a court of competent jurisdiction, the applicant, following the appropriate procedures and several unsuccessful attempts within the Canadian Justice system, brought a complaint against Canada pursuant to the Articles of the *International Covenant on Civil and Political Rights*, in particular Article 19 which guarantees the Fundamental Right of Freedom of Expression, defined as the right to seek, receive and impart information without interference.

13. The Human Rights Committee of the United Nations in Geneva ruled that Canada, ie the Speaker of the House of Commons, is in violation of Article 19 and to provide a remedy.

14. The decision of the Human Rights Committee was published on April 7, 1999, now more than 10 years ago, and 25 years since I launched my newspaper, and the Speaker has yet to provide the remedy, namely, equal access to the House of Commons media facilities as is enjoyed by my competitors.

15. In the meantime, the *Competition Act* and the *Competition Tribunal Act* are amended to allow an individual to apply for a hearing before the Competition Tribunal.

16. In 2002, under the new rules, the applicant made an application for leave to apply to the Competition Tribunal which was dismissed on the grounds that the Tribunal did not have jurisdiction over Parliament due to *parliamentary privilege*. Since that application, two pertinent cases that the applicant is aware of where some gains have been made to challenge mis-applications or inappropriate application of the principle of privilege. *The Speaker v. Vaid* and *Gauthier v. Minister of Justice* wherein privileges have been found to carry limits in their application.

17. The House of Commons provides substantial facilities and services made available to members of the media, as listed by the former Sergeant-at-Arms (numbers as at 1990) being Exhibit "K" to this my Affidavit and which allow journalists and their employers to establish

**essential business and political (editorial) networking contacts and compete on an equal footing to earn their living and realize serious commercial rewards.**

**18. There are approximately 400 journalists, camera- and soundpersons who have access to the premises, facilities and services provided by the House of Commons for the media. This would indicate the importance of these facilities to the media in gathering news and establishing contacts.**

**19. Being denied similar and full access to these facilities and services deemed essential by the privately-owned Canadian Parliamentary Press Gallery Inc. has resulted in my having to interrupt production of my newspapers, copies of some, not all, back issues of said publications being Exhibit "M" and "M1" to this my Affidavit.**

**20. The commercial, and political, benefits of access to these facilities enjoyed by Canadian and foreign journalists employed by his competitors are substantial as demonstrated by the membership of such organizations as *The Globe and Mail, The Citizen, La Presse, The Montreal Gazette, The Toronto Star, The Wall Street Journal, TASS, The People's Daily of China, Global TV, CBC Radio and TV, Canadian Press* wire service, and numerous individuals who are granted access by the Speaker of the House of Commons who controls, staffs and finances these media facilities.**

21. My case was then brought to the Speaker (Fraser) at that time who stated incorrectly that the Speaker does not get involved in matters related to membership in the Press Gallery.

22. I sought the help of the Members of Parliament, given that the protection of the *Competition Act* was not available to me and that I could not bring the case before the Competition Tribunal as an individual at that time.

23. Members of Parliament making enquiries of Speaker Fraser and of the Executive of the Canadian Parliamentary Press Gallery Inc. into the issue of *The National Capital News Canada* being unable to obtain accreditation in the CPPG Inc. were advised by Speaker John Fraser that the Speaker does not get involved in the matter: “[T]he concept of freedom of the press requires that I should not interfere with the operations of the Canadian Parliamentary Press Gallery, in particular its accreditation function being Exhibit “L” of this my Affidavit. Yet, when the private corporation, Canadian Parliamentary Press Gallery Inc. suspended the membership of the Editor of *Publinet* in March, 1990, the Speaker of the House of Commons, the very same the Hon. John A. Fraser, Speaker of the House of Commons and Chairman of the Board of Internal Economy (that oversees House of Commons expenses) granted him a pass for access to the Precincts of Parliament, notwithstanding that he was not accredited in



**the CPPGInc. “That had I not obtained this privilege from the Speaker’s Office my livelihood would have been jeopardized and my business would have been put at risk,” this being Exhibit “L1” to this my Affidavit.**

**[Paragraph 24 deleted]**

25. In the early 1950’s when the CBC first came on stream with television, Speaker Michener provided CBC reporters with access to the the Speaker’s House of Commons gallery facilities when accreditation was denied to them by the journalists in their private Parliamentary Press Gallery association because they were not members of the press, but television.

26. Later, in the 1990’s, when I again asked Members of Parliament for their help, Speaker Parent also misrepresented the facts that the Speaker does not interfere in the accreditation process; the Speaker not only finances but he controls all access to the precincts of Parliament including the press gallery premises, facilities and services including a public servant staff of 9 people on the press gallery staff.

27. I was left with the choice of putting out a materially deficient newspaper that would not sell in a tough marketplace or getting out of the publishing industry in the absence of fair competitive conditions against powerful corporations and the unfair refusal of the Speaker to protect my Fundamental Right of Freedom of Expression and his refusal

**to deal on the usual trade terms pursuant to sections 75 and 77 of the Competition Act.**

**28. As a Canadian, I have the same right to compete on fair terms as other businesses and am entitled to the protection of the law.**

**29. The Speaker has stated that the Speaker is above the law, that rulings of the Courts and Tribunals are not binding on the Speaker, and he has misrepresented the facts to Members of Parliament on numerous occasions when they made enquiries on behalf of the applicant. In the *Vaid* case, the Courts determined that while the principle of parliamentary privilege may provide some immunity in specific circumstances, it is for the Courts to determine when in certain situations are too important to allow parliamentary, or solicitor-client, which is a similar principle, to apply in all cases regardless of the existing laws and to override the rights protected by such laws, in this case, the *Competition Act* and the *Competition Tribunal Act*. It remains for the Competition Tribunal to determine if, in this case, the revoking of the right to fair competition for the applicant by the Speaker can be justified on the alleged arbitrary and inappropriate application of the principle of parliamentary privilege allowing him to refuse to deal which is alleged to be in violation of sections 75 and 77 of the Competition Act.**

30. Speaker Milliken wrongly advised Members of Parliament about the facts of this case and he has notified me that he will not allow an appeal pursuant to the procedure tabled in the House of Commons by Mr. Milliken himself, as Deputy Speaker at the time, October, 1999. Speaker Milliken cannot, therefore, claim that is unaware of this Appeal Procedure that he is denying to me in alleged violation of Due Process, in addition to all the other long series of infringements of Canadian and International Laws on the pretext of parliamentary privilege. This abuse must stop at some point in the public interest and in the proper functioning of the Canadian democratic process which relies on the Rule of Law for its effective operation.

31. Speaker Milliken has advised me that he will not communicate with me and has closed his file on this matter. I regret, and have so informed M. Milliken, that this file will not be closed. I also advise Mr. Milliken that *The National Capital News Canada* will not be shut out, shut up or shut down by any representative of the Government and Parliament of Canada, or anyone else.

32. I believe that had access to the Competition Tribunal been available to me in the 1980's, it would not have been necessary to proceed, as was necessary, to the Federal Court, the Provincial Court and finally to the Human Rights Committee of the United Nations, where it was ruled that Canada is in violation of my

**Fundamental Right to Freedom of Expression, essentially, similarly in its effects, to restrictive trade practices by refusing to deal with me and provide access to the supply of information and contacts and other substantial resources essential in the publishing business and which are provided by the Speaker of the House of Commons to some 400 competitors.**

**33. It is outrageous that a Canadian must seek recourse and remedy to international courts and tribunals to resolve a dispute that can be resolved with our own institutions within Canada.**

**34. As a result of this unfair refusal to deal on usual trade terms, I have been forced out of business, and the 18 or 19 people who participated in the start-up lost their jobs and the opportunity to participate in the continuing development of our newspapers, even though said development is considered slow by some “experts.”**  
The growth of my business and the hiring of staff continues to be delayed until fair competitive conditions are provided for me. **At that time, production will resume, in spite of the massive opportunities and revenues that were not realized and that are lost never to be recovered.**

**35. Not only is the refusal to provide access to the supply of information and sources alleged to be an infringement of sections 75 and 77 of the *Competition Act* but the decision of the Human**

Rights Committee of the United Nations, available at: "United Nations" Robert G. Gauthier, on the Internet, has ruled that it is also a violation of the Fundamental Right of Freedom of Expression, defined as the right to seek, receive and impart information without interference.

36. The facilities and services provided by the House of Commons fall under the direct control of the Speaker of the House of Commons who has the sole authority to determine who may have access to the Press Gallery facilities and services in the House of Commons and the Senate and which access also provides access to the press offices and personnel at each of the 30 or so Government Department, essential for my type of newspapers.

37. Enclosed is a copy of the letter March 25, 1994, being Exhibit "A" to this my affidavit, to me from Brian A. Crane, Q.C., Gowling, Strathy & Henderson, Counsel for the Speaker of the House of Commons at the time, in which he wrote, at paragraph 3 on page 1 carried over at the top of page 2:

*"It is our position that the relief which you seek and which is set out in your Statement of Claim can only be given by the Speaker of the House of Commons ..."*

and on page 2, paragraph 3, Mr. Crane continues:

***“... it is the Speaker of the House of Commons who must make restitution ...”***

**38. The power to regulate the admission of strangers to the precincts of Parliament, including the Press Gallery, resided with the Parliament alone and has customarily been exercised by the Speaker. (Erskine May’s Treatise on the Law, Privileges and Usage of Parliament, 16<sup>th</sup> ed. London: Butterworths, 1976.)**

**39. There has been no delegation of that power by either Parliament itself nor the Speaker of the House of Commons to the privately-owned Canadian Parliamentary Press Gallery Corporation, as confirmed by the House of Commons Law Clerk and Parliamentary Counsel, in his letter 10 November 1989 to the applicant’s Legal Counsel at that time, being Exhibit “B” to this my affidavit.**

**40. The applicant alleges that the Speaker is the sole person in control of the media facilities and services and therefore to the resultant commercial benefits derived by journalists and publishers who have access.**

**41. The Speaker has the duty to administer these publicly-funded facilities and services in a fair manner pursuant to the provisions of the *Competition Act*. While The Speaker and all**

Parliamentarians enjoy certain privileges deemed essential for the proper functioning of Parliament, such tools, for want of another term, are labeled “privileges,” as opposed to “rights.” Privileges carry with them, because of their discretionary flexibility, a responsibility, namely, to administer such privileges equitably and judiciously so as to ensure no unnecessary encroachment on other “fundamental rights” of Canadians. Rights are clearly defined while privileges can be flexible, at the discretion of the Courts and the Rule of Law in this instance, namely, to determine if the exercise of parliamentary privilege trumps the fundamental rights guaranteed in the *Canadian Charter of Rights and Freedoms*, the right for the Applicant to compete and enjoy the protection of sections 75 and 77 of the *Competition Act*, and all other appropriate laws, and, does the exercise of parliamentary privilege allow the Speaker (and or with the approbation of the Parliamentarians) arbitrarily and without grounds, on a whim, in effect, so to speak, to exclude 1, 2 or more journalists from the press gallery resources while allowing others full access without having demonstrated that such arbitrary practice is not essential for the proper functioning of Parliament? “Privilege,” by its very definition, carries equal obligation for responsible and fair application. As with the privilege of being granted the “privilege” of owning a driver’s licence, carries also the responsibility not to deprive others of their fundamental

right to the safety provided by the traffic laws. So, as the Speaker enjoys a “privilege” to go somewhat beyond certain prescribed rules or laws, there must be an accountability where allegations of seeming misapplication or abuse of this privilege are raised. As with solicitor-client privilege, which also carries its appropriate obligation for responsible implementation, a limitation that can best be determined by the expert knowledge of the Courts. (See *Application for Leave to Make an Application: T-653-02 before Mosley J., “What is the appropriate standard with respect to a decision ... solicitor-client privilege?” Q. In the present case, at what point does the parliamentary privilege cease to function in infringing on sections 75 and 77 of the Competition Act?*

42. A 6-month temporary pass was offered and, although it did not provide a listing, I accepted it because I thought any access was better than none.

43. The temporary pass was returned part way through the 6-month period for four reasons:

- i. I had accepted the temporary pass on the assumptions that a Court Order, 8 January 1996, prohibiting my access to the press gallery, being Exhibit “C” to this my affidavit, and the letter, October 16, 1995, from the Sergeant-at-



Arms, being Exhibit "D" to this my affidavit, would be cancelled, which the Speaker did not do. This placed me in the contradictory position of being granted access to the press gallery, on the one hand, while being prohibited such access on the other; clearly an intolerable, unacceptable and impractical position to be in.

ii. I had accepted the temporary pass on the assumption that, even though it did not provide for listing me as an accredited journalist, although all the other members and their employers were, I thought the other benefits would be at least adequate for my needs until a permanent pass was provided. Not being on the listing which is made available to the hundreds of media sources routinely interested in communicating with journalists was too great a disadvantage and information being provided to my competitors was not available to me.

iii. The absence of recognition of accreditation was too serious an impediment to making contacts and networking! A journalist whose name does not appear on the accreditation list does not have professional credibility in those circles.

iv. And, finally, since I was to be "evaluated" for permanent

membership by the CPPGInc., on the basis of my “performance,” this was clearly an unfair contest and it would be impossible, if not stupid, to be part of such a blatantly unfair procedure that would provide the riffraff, for the most part, in the Executive of the CPPGInc. to claim that, notwithstanding the obviously flawed test, “Gauthier did not meet the requirements set out in the By-laws of the CPPGInc.,” a screwball test with a clear and predictable outcome and to which I was not prepared allow myself to be subjected.

44. In denying these supplies, with important if not enormous commercial value, ie access to these substantial, described as essential by the CPPGInc., resources provided by the House of Commons for the media on equal terms as members of the CPPGInc., the Speaker (Supplier) is providing favoured treatment to my competitors in violation of section 75 and 77 of the *Competition Act* restricting trade notwithstanding that, even in the absence of access, I published the attached (partial list): “CHRONOLOGY OF THE NATIONAL CAPITAL NEWS” newspapers being Exhibit “N” to this my Affidavit. This listing does not include editions published after August 20, 1991 and later, until production gradually became impractical, if not impossible, and production was halted until the

outcome of the judiciary's evaluation of the merits is determined.

45. I believe that in this case the application of parliamentary "privilege" which was legitimately granted to Parliament as an emergency procedure to protect and ensure its proper operation cannot be arbitrarily extended to infringe on sections 75 and 75 of the *Competition Act* when there is no threat to the proper operation of Parliament and that such alleged inappropriate exercise of parliamentary privilege is an abuse of this important privilege. I believe that the Competition Tribunal must ensure that the principle of privilege is not extended to become unnecessary "licence" as a pretext to infringe on the provisions in sections 75 and 77 to ensure fair competition in the marketplace without unfair advantages to a favoured segment of competing businesses.

(NOTE: It seems a lot of confusion arises around the meaning of "privilege." It would appear that this stems from the common cultural interexchange of the words "licence" and "privilege." For instance, the permit to drive an automobile is called a "Driver's Licence," when in fact it is a "Certificate granting the Privilege to Drive." Had that not occurred when Drivers' "Licences" were first issued a hundred years ago, the destructive interpretation that has resulted in the minds of many drivers believing they have been granted a "License" to override the law. Similarly, it can be observed that it seems relatively easy for people in positions of power to slip into the conviction that "Privilege" means "Licence." It is, in my opinion, for the Tribunal, and the Courts, to make the distinction and define the parameters in cases like this one.)

46.It is clear that the resources (supplies) are considerable when you consider the investment in salaries invested by the present accredited members of the CPPGInc., CBC alone with over 100 journalists at estimated salaries on average of at least \$50,000 each, totaling at least \$5,000,000 per

year, plus other operating costs, and this is an under-estimate, not to mention all the other journalists who are able to generate sufficient revenues to cover these payroll costs as a result of the benefits received as a result of having access to the facilities and services provided by the House of Commons for the *media*.

46. The applicant cannot compete on such unequal conditions in such an unbalanced competitive market where the Speaker for no reason other than arbitrary application of parliamentary privilege can deny my business the same commercial terms enjoyed by all the other journalists benefiting from access to these essential resources, supplies and commercial opportunities.

47. I believe there is sufficient evidence to demonstrate that the need for fair competition as provided by sections 75 and 77 of the *Competition Act* can be weighed and balanced equally with the need for parliamentary privilege to protect the proper operation of Parliament. The Competition Tribunal will, upon evaluation of all the evidence, argument and law, establish that the protection of the sections 75 and 77 of the *Competition Act* will extend equally for all Canadian journalists and publishers everywhere in Canada.

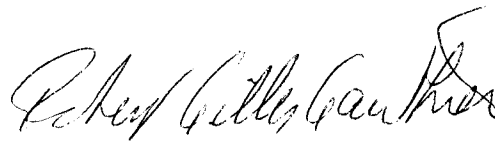
48. I believe that the Competition Tribunal will confirm the right of the applicant to compete with the same trade terms provided by the House

of Commons as are currently enjoyed exclusively by the members of the CPPGInc. and that these must be extended to the applicant without the requirement of my becoming a member of this private corporation.

49. The applicant submits to the Competition Tribunal that there is no conflict between the sections 75 and 77 for access to supplies from the House of Commons for his newspapers and the parliamentary privilege that protects the need for the House of Commons to operate; and that the access for *The National Capital News Canada* to the House of Commons press gallery resources will not interfere with the proper operation of the Canadian Parliament any more that such access as enjoyed by the 400 members of the privately-owned CPPGInc. does. There is no conflict between the parliamentary privilege to protect the proper operation of Parliament in a democracy and the protection of sections 75 and 77 of the *Competition Act* equally for all businesses and, in this case, journalists and publishers in Canada.

50. I make this affidavit in support of the Applicant in this Application or Leave to Make and Application to the Competition Tribunal.

AMENDED at Ottawa, Ontario,  
this 15<sup>th</sup> day June, 2007.



Robert Gilles Gauthier  
Proprietor/Publisher  
The National Capital News Canada

Sworn before me in the  
City of Ottawa on June 15, 2007

For Justice  
Commissioner for Taking Affidavits