



Reference: *Commissioner of Competition v. Sears Canada Inc.*, 2003 Comp. Trib. 26
File no.: CT2002004
Registry document no.: 0098

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

AND IN THE MATTER OF an inquiry pursuant to subparagraph 10(1)(b)(ii) of the *Competition Act* relating to certain marketing practices of Sears Canada Inc.;

AND IN THE MATTER OF an application by the Commissioner of Competition for an order pursuant to section 74.01 of the *Competition Act*.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

Sears Canada Inc.
(respondent)



Date of hearing: 20031021
Member: Dawson J. (presiding)
Date of reasons and order: 20031029
Reasons and order signed by: Madam Justice Eleanor R. Dawson

**SUPPLEMENTARY REASONS AND ORDER REGARDING THE COST OF SEARS'
MOTION FOR AN ADJOURNMENT AND/OR STAY OF PROCEEDINGS**

[1] For reasons delivered orally on October 21, 2003 the Competition Tribunal (“Tribunal”) dismissed the motion brought by Sears Canada Inc. (“Sears”) for an adjournment or stay of proceedings pending the disposition of an interlocutory appeal to the Federal Court of Appeal. The Commissioner of Competition (“Commissioner”) seeks the costs of the motion.

[2] In support of his submission, the Commissioner points to subsection 8.1(1) of the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.), which authorizes the Tribunal to award costs in proceedings, such as this proceeding, on a final or interim basis. Such costs are to be assessed in accordance with the provisions governing costs which are contained in the Federal Court Rules, 1998. The Commissioner says that having regard to the factors enumerated in paragraphs 400(3)(a), (c) and (g) of the Federal Court Rules, 1998, the Commissioner should be awarded costs in the range of between \$3,000.00 and \$4,000.00. Those paragraphs of the Federal Court Rules, 1998 provide that relevant factors in awarding costs are the result of the proceeding, the importance of the issues and the amount of work involved. Rule 400 at subsections (1) and (3) reads as follows:

(1) The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.

...

(3) In exercising its discretion under subsection (1), the Court may consider

- (a) the result of the proceeding;
- (b) the amounts claimed and the amounts recovered;
- (c) the importance and complexity of the issues
- (d) the apportionment of liability;
- (e) any written offer to settle;
- (f) any offer to contribute made under rule 421;
- (g) the amount of work;
- (h) whether the public interest in having the proceeding litigated justifies a particular award of costs;
- (i) any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding;
- (j) the failure by a party to admit anything that should have been admitted or to serve a request to admit;
- (k) whether any step in the proceedings was
 - (i) improper, vexatious or unnecessary, or
 - (ii) taken through negligence, mistake or excessive caution;
- (l) whether more than one set of costs should be allowed, where two or more parties were represented by different solicitors or were represented by the same solicitor but separated their defence unnecessarily;
- (n) whether a party who was successful in an action exaggerated a claim, including a counterclaim or third party claim, to avoid the operation of rules 292 to 299; and
- (o) any other matter that it considers relevant.

[3] In response, Sears submits that the costs of the motion should be left in the cause. If fixed, Sears asserts that they should be fixed within the range of \$350.00 to \$500.00.

[4] The significant factor, in my view, is the nature of the pending interlocutory appeal to the Federal Court of Appeal. In the order under appeal the Tribunal refused leave to Sears to amend its response to the Commissioner's notice of application on the grounds that the motion was not brought on a timely basis and that the Commissioner would be prejudiced if the amendment was allowed. In that circumstance, I am satisfied the Commissioner should receive his costs, in the cause, for subsequently responding to Sears' request that the hearing be adjourned in order to permit an appeal to be taken from the order refusing Sears leave to amend.

[5] I am further satisfied that the costs of the motion should be fixed, because fixed amounts save the parties time and trouble and are a more efficient method of awarding costs. In the present case an award of costs fixed in the amount of \$1,200.00 properly reflects, in my view, the time and amount of work involved on the Commissioner's part in responding to Sears' motion, as well as the importance to the parties of this issue.

THE TRIBUNAL THEREFORE ORDERS THAT:

[6] Sears shall pay to the Commissioner the Commissioner's costs of the motion for an adjournment, in the cause, such costs to be fixed in the amount of \$1,200.00.

DATED at Ottawa, this 29th day of October, 2003.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Eleanor R. Dawson

COUNSEL

For the applicant:

The Commissioner of Competition

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For the respondent:

Sears Canada Inc.

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