

APPLICATION FOR LEAVE TO MAKE AN APPLICATION

Competition Tribunal

BETWEEN:

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

- AND -

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

Applicant	
COMPETITION TRIBUNAL	
TRIBUNAL DE LA CONCURRENCE	
FILED	CT-2002-005
	JUL 29 2002
	REGISTRAR - REGISTRAIRE
	OTTAWA, ONT. # 001

Respondent

1. This is an application to the Competition Tribunal pursuant to Section 103.1 seeking leave to make an application under section 75 of the *Competition Act*.
2. An Order will be sought against the Honourable Peter Milliken, Member of Parliament for Kingston and the Islands, Speaker of the House of Commons, Room 309-S, Centre Block, Parliament Buildings, Ottawa, Ontario.

GROUND AND MATERIAL FACTS

3. The applicant has been substantially affected in his business and is significantly precluded from carrying on business due to his inability to obtain full access to substantial supplies of information and to essential services, (including a listing on the Press Gallery journalist list), that are provided to his competitors by the Speaker of the House of Commons, the Honourable Peter Milliken who controls such access on behalf of the Parliament of Canada.

4. The applicant is unable to obtain access to complete news and information as a result of the absence of a listing in the Press Gallery and is denied the networking opportunities essential in making necessary contacts by the failure to be recognized as an accredited journalist by the Speaker of the House of Commons, the Honourable Peter Milliken.
5. The applicant launched his newspaper, *The National Capital News*, in 1982, built it up at great expense and work, to a weekly publication in 1988, willing and able, and meeting and surpassing the usual trade terms and all other requirements for accreditation by the Speaker of the House of Commons.
6. The facilities and services provided by the House of Commons at public expense are in ample supply as other journalists are provided access while the applicant, with equal or greater qualifications is denied access and supply of information and essential networking opportunities. The applicant, among other important services particularly important for newspapers, is denied access to the research services and material of the Library of Parliament while his competitors benefit from these essential, substantial reporting and financial competitive advantages in an industry in the billions of dollars annually.
7. Access to the publicly-funded Press Gallery is provided to numerous foreign and state-subsidized publishing corporations while the applicant, a Canadian entrepreneur with no government subsidies, is denied the protection of the provisions of fair competition of the *Competition Act*.

8. These restrictive trade practices by the respondent against the applicant, continue to prevent the applicant from building his publications in the market. It is essential that a newspaper that carries a section on politics be provided equal and full access to the same sources of news, information and contacts enjoyed by the competition.

ORDER SOUGHT

9. Parliamentary privilege does not excuse the respondent from compliance with the Law and with rulings and orders of the Courts and other recognized Canadian and international Tribunals. Law makers should not be law breakers.
10. The order sought, pursuant to Section 75(1), (2) and (3) of the *Competition Act*, Restrictive Trade Practices, Refusal to Deal, is that full access to the Press Gallery facilities and services, including mailbox, listing and other benefits, be provided immediately to the applicant and his employees and associates without further delay without the requirement of becoming a member of a private corporation called Canadian Parliamentary Press Gallery Inc., or being required to meet unfair or arbitrarily restrictive conditions of any other person, group or government official.
11. The Fundamental Right of Freedom of Expression, defined as the right to seek, receive and impart information without interference, is guaranteed in the Canadian Constitution and this without any conditions or other anti-competitive interference from individuals, private corporations or from the Parliament and Government of Canada and their employees or elected representatives.

LANGUAGE AND FORMAT OF PROCEEDINGS

12. It is submitted that these proceedings proceed on paper in English.

Robert Gilles Gauthier
Proprietor/Publisher
The National Capital News Canada
RPO 71035 - 181 Bank Street
Ottawa, Ontario K2P 2L9

natcapnewscanada@aol.ca

(613) 232-6397

Acting on his own behalf

TO: Hon. Peter Milliken, M.P. for Kingston and the Islands,
Speaker of the House of Commons and
Chairman of the Board of Internal Economy,
Room 309-S, Centre Block,
Parliament Buildings, Ottawa K1A 0A6

Tel: (613) 992-5042

Fax: (613) 947-2816

TO: Mr. Konrad Von Finckenstein,
Commissioner of Competition,
Industry Canada,
50 Victoria Street,
Gatineau, Québec K1A 0C9

Tel: (819) 997-3301

TO: The Registrar
The Competition Tribunal,
Royal Bank Centre,
600 - 90 Sparks Street,
Ottawa, Ontario K1P 5B4

AFFIDAVIT OF ROBERT GILLES GAUTHIER

Competition Tribunal

BETWEEN:

ROBERT GILLES GAUTHIER
cob as THE NATIONAL CAPITAL NEWS CANADA

Applicant

- AND -

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

Respondent

I, Robert Gilles Gauthier, RPO 71035 - 181 Bank Street, Ottawa, Ontario

K2P 2L9, affirm that:

1. I am the proprietor of *The National Capital News* 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* 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 20 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 our laws to resolve this unfair and anti-competitive infringement on my right as a Canadian to earn my living in the field of my choice.
8. The problem was compounded by the fact that only cases chosen by the Competition Bureau could be brought before the Competition Tribunal, until recently. My complaint pursuant to the provisions of 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.
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 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 remedy.
14. The decision of the Human Rights Committee was published on April 7, 1999, more than 3 years ago, (20 years since I launched my newspaper), and the Speaker has yet to provide the remedy, namely, equal access to the 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. Under these new circumstances and that the Commissioner has discontinued the earlier complaint, the applicant submits that this application meets the requirements for a hearing before the Competition Tribunal pursuant to the new legislation.
17. The House of Commons provides substantial facilities and services made available to members of the media and which allow journalists and their employers 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 Corporation, has resulted in the applicant's having to interrupt production of his publication.
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 into the issue were advised by Fraser that the Speaker does not get involved in this matter.
24. When Steve Hall's (Publisher of *Publinet*) membership in the Press Gallery association was revoked, contrary to the false information provided to Members of Parliament by Speaker Fraser, Mr. Hall was provided a pass by Fraser to the press gallery facilities and services so that he could continue publishing. Mr. Hall advised the applicant that had he not been provided with such access, he would have had to cease publication of *Publinet*.
25. In the early 1950's. when the CBC first came on stream, Speaker Michener provided CBC reporters with access to the press gallery facilities and services when accreditation was denied by the journalists in their private Parliamentary Press Gallery association.

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 newspaper which 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 equally as that of my competitors.
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.
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.

31. Speaker Milliken has advised me that he will not communicate with me and has closed his file on this matter. I regret to inform Mr. 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 essential in the publishing business.
33. It is outrageous that a Canadian must seek recourse to international courts and tribunals to resolve a dispute that can be resolved with our own institutions within Canada.
34. I have been forced out of business as a result of this unfair refusal to deal with me, with my reporters and colleagues. The growth of my business and the hiring of staff continues to be delayed until fair competitive conditions are provided to me.
35. Not only is the refusal to provide access to the supply of information and sources alleged to be an infringement of Section 75 of the *Competition Act* but the decision of the Human Rights Committee of the United Nations,

posted on the Heritage Canada webpage at www.gc.ca Search "Robert G. Gauthier", 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.

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, resides with Parliament alone and has customarily been exercised by the Speaker. (Erskine May's Treatise on

the Law, Privileges, Proceedings and Usage of Parliament, 16th 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*.
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 three reasons:
 - 1) 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.

- 2) I had accepted the temporary pass on the assumption that, even though it did not provide for listing me as an accredited journalist, 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.

- 3) 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.

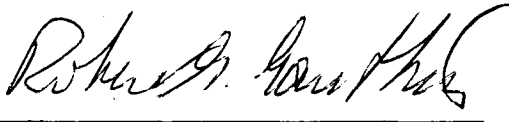
44. The applicant alleges that in denying my full and equal access to sources of supply, contacts and information, the Speaker is providing favoured treatment to his competitors in violation of Section 75, constituting Restrictive Trade Practices and Refusal to Deal.

45. I make this affidavit in support of the position of the applicant in this
Application for Leave to Make an Application to the Competition Tribunal.

Affirmed before me)
in the City of Ottawa
on July 29th, 2002



Commissioner for Taking Affidavits

) 
) _____
) Robert Gilles Gauthier

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GOWLING, STRATHY & HENDERSON

BARRISTERS & SOLICITORS • PATENT & TRADE MARK AGENTS

Suite 2600, 160 Elgin Street,
Ottawa, Ontario, Canada K1P 1C3
Tel. (613) 232-1781
Fax. (613) 563-9869

BRIAN A. CRANE, Q.C.
Direct Line: (613) 786-0107

Ex "A"

March 25, 1994

Robert Gauthier
The National Capital News
P.O.Box 71035, RPO L'Esplanade
181 Bank Street
Ottawa, Ontario
K2P 2L9

Dear Mr. Gauthier:

Re: Gauthier and The National Capital News v. Hon. John
A. Fraser, Speaker of the House of Commons
(Ontario Court General Division) File No. 66545/92

I now enclose the affidavit of The Hon. Gilbert Parent setting out the answers to your written questions pursuant to Rule 35 of the Rules of Civil Procedure. The affidavit also contains objections to answering certain of the questions as required by Rule 35.03. You have the right pursuant to Rule 35.04 to serve a further list of written questions should you wish to do so. I shall shortly provide you with an affidavit of documents as required by Rule 30.

In view of the fact that you are acting in your personal capacity and are no longer represented by legal counsel I am obliged to inform you that the answers to the written questions which we have supplied with this letter are given to you in the course of legal proceedings and may not be published or used in any manner other than in this litigation. The same restriction applies to correspondence between us with respect to the conduct of the litigation.

In your letter of January 19, 1994 you state that your claim deals exclusively with Speaker Fraser and that you see no reason for the new Speaker, The Hon. Gilbert Parent, to become involved. It is our position that the relief which you seek and which is set out in your

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- 2 -

Statement of Claim can only be given by the Speaker of the House of Commons and that your claim is against the Speaker as such and not against Mr. Fraser in his personal capacity.

In particular, you have asked in your Statement of Claim for an order that the Speaker produce all documents relating to the application for accreditation to the Press Gallery and for admission to the precincts of Parliament; any such documents are in the possession of the House of Commons. You have also asked for an order of mandamus directing the Speaker to grant you access; only the Speaker of the House can grant such access. You have asked for a declaration as against the Speaker of the House of Commons that you be given the same access as permanent members of the Press Gallery. You have asked for damages for actions allegedly taken by Mr. Fraser in his capacity as Speaker of the House of Commons. These claims are directed against the Speaker as such and are not personal claims against the individual who occupied that position.

To summarize, it is our position that your action is against the Speaker of the House of Commons and not against Mr. Fraser in his personal capacity and if your claim is well founded it is the Speaker of the House of Commons who must make restitution and not Mr. Fraser who is no longer Speaker of the House of Commons.

I do not mean to suggest that you have a valid claim. In fact, I have instructions from the Speaker of the House of Commons, The Hon. Gilbert Parent, to defend your claim on the grounds set out in our Statement of Defence and ask for its dismissal with costs.

Yours very truly,



Brian A. Crane

BAC:ds
Encl/

D
Tab 7

EX "B"



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
OTTAWA, CANADA
K1A 0A6

This is Exhibit "D"
to the Affidavit of

Sworn before me on the

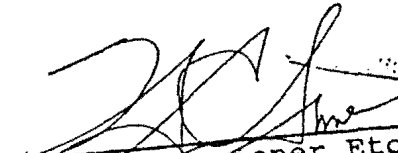
6th day of August 1992

REGISTRE ET CONSEILLER PARLEMENTAIRE
LAW CLERK AND PARLIAMENTARY COUNSEL

10 November 1989

A Commissioner etc

THIS IS EXHIBIT "D"
to the affidavit of
Robert G. Gauthier sworn
before me on October 6, 1992



(A Commissioner Etc.)

Mr. Harold C. Funk
Barrister Solicitor
Suite 506
180 Metcalfe Street
Ottawa, Ontario
K2P 1P5

Dear Mr. Funk:

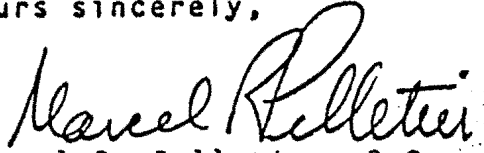
Re: The National Capital News, The Ottawa Downtowner and
The Ottawa Entertainers

I refer to your letter of October 20, 1989 in which you asked about any legislation which may have ceded a certain power to the Parliamentary Press Gallery. I am not aware of any such legislation.

As regards other statements made in your letter, I have nothing further to add to my earlier correspondence.

I trust that this is to your satisfaction.

Yours sincerely,



Marcel R. Pelletier, Q.C.

c.c. The Honorable John Fraser, P.C., M.P.
The Right Honorable Brian Mulroney, P.C., M.P.
The Honorable Guy Charbonneau

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Ex "C"

ONTARIO COURT (GENERAL DIVISION)

THE HONOURABLE) Monday, the 8th day
MR. JUSTICE SOUBLIERE) of January, 1996

BETWEEN:

CANADIAN PARLIAMENTARY PRESS GALLERY

Plaintiff

- and -

ROBERT GILLES GAUTHIER

Defendant

ORDER

THIS MOTION made by the plaintiff for an Order prohibiting the defendant from coming onto the premises of the plaintiff at 150 Wellington Street, Ottawa, was heard this day at Ottawa:

ON READING material filed by the plaintiff and the defendant and on hearing the submissions of counsel for the plaintiff, no one appearing for the defendant though properly served:

1. IT IS ORDERED that the defendant be and is hereby prohibited and enjoined from coming onto the premises of the Canadian Parliamentary Press Gallery at 150 Wellington Street, Ottawa.
2. AND IT IS ORDERED that the defendant shall forthwith pay the costs of the plaintiff fixed at \$350.

OTTAWA
JAN 15 1996
document no. 114

Blabla

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HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA
The Sergeant at Arms
Le Sergent d'armes

Ex "D"

October 16, 1995

Mr. Robert G. Gauthier
Publisher
The National Capital News
P.O. Box 71035, RPO L'Esplanade
181 Bank Street
Ottawa, Ontario
K2P 2L9

Dear Sir:

This is further to your letter of October 5, 1995, addressed to the Honourable Gilbert Parent, Speaker of the House of Commons, concerning your alleged restriction to enter the Parliament Buildings.

I can confirm that your name and photo are not on the protected list category A as you stated in your letter and that there is no restriction for you to access the buildings on Parliament Hill on the same basis as other visitors, with the exception of access to the Press Gallery premises.

I trust the above will clarify your situation.

Yours sincerely,

M.G. Cloutier