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COMPETITION TRIBUNAL

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

AND IN THE MATTER OF an application by 8X Labs Inc. for one or more orders pursuant to section 75 of the *Competition Act*;

AND IN THE MATTER OF an application by 8X Labs Inc. for one or more orders pursuant to section 76 of the *Competition Act*;

AND IN THE MATTER OF an application by 8X Labs Inc. for one or more orders pursuant to section 77 of the *Competition Act*.

AND IN THE MATTER OF an application by 8X Labs Inc. for one or more orders pursuant to section 79 of the *Competition Act*.

B E T W E E N:

8X LABS INC.

Applicant

- and -

VISTAR MEDIA INC.

Respondent

**SUPPLEMENTARY MEMORANDUM OF FACT AND LAW OF THE
RESPONDENT, VISTAR MEDIA INC.**

April 2, 2026

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PART I: OVERVIEW

1. The Respondent, Vistar Media Inc. (**Vistar**), makes these submissions in supplement to its Memorandum of Fact and Law dated March 10, 2026 (**Vistar's Memorandum**), filed in the application of 8X Labs Inc. (**8X**) for leave pursuant to section 103.1 of the *Competition Act* (the **Application**). Capitalized terms not otherwise defined herein have the meanings ascribed to them in Vistar's Memorandum.

2. This Supplementary Memorandum of Fact and Law addresses two items raised in 8X's March 23, 2026 informal motions: (i) the admissibility and content of 8X's proposed affidavit of Frédéric Dionne (the **Proposed Second Dionne Affidavit**); and (ii) 8X's arguments regarding the admissibility of affidavits from its counsel, Mr. Dionne.

3. First, contrary to 8X's arguments in its informal motions, the Proposed Second Dionne Affidavit substantiates Vistar's evidence in the Application. In particular, the video of the June 25, 2024 virtual call between Mr. Dionne and Vistar representatives (the **Video**) is wholly consistent with Vistar's evidence. Far from assisting 8X's position, the Proposed Second Dionne Affidavit reinforces 8X's fundamental failure to establish that the alleged conduct could be the subject of an order by the Tribunal.

4. That said, 8X cannot meet the test for filing reply evidence. 8X has no credible explanation for its failure to file the reply evidence in the first instance. Delivering reply evidence after Vistar delivered its responding argument amounts to "litigation by ambush". 8X's recording of Vistar representatives was also likely a breach of Quebec privacy legislation, which should be discouraged.

5. Second, Mr. Dionne's proposed evidence, and his first affidavit, are inadmissible for the reasons identified in paragraphs 61-63 of Vistar's Memorandum. Mr. Dionne is counsel in this

matter. If Mr. Dionne “was the only person with personal knowledge of the material facts”, as 8X argues, he should not be counsel of record. His evidence cannot sustain the Application, which should be dismissed.

PART II: LAW AND ARGUMENT

A. 8X’s Proposed Reply Evidence Supports Vistar’s Position

6. The Proposed Second Dionne Affidavit states that the Video contradicts certain evidence from the affidavit of Scott Mitchell, filed on behalf of Vistar in response to the Application. That is not correct. Despite not having the benefit of a recording of the June 25, 2024 meeting, Mr. Mitchell’s memory of the meeting was accurate, and the Video substantiates his sworn evidence. For example, as Mr. Mitchell testified in his affidavit, the Video confirms that:

- (a) Vistar advised Mr. Dionne that it declined to partner with 8X expressly for legitimate business reasons, including because 8X was a “small player” (which Mr. Dionne admits repeatedly during the call), undermining 8X’s business case because of Vistar’s limited resources to allocate to its SSP platform;
- (b) Vistar did not indicate that its decision pertained to 8X’s purported “low-pricing” policy, or any other alleged anticompetitive reasons;
- (c) Vistar offered to partner with 8X if 8X was willing to invest more in the relationship with Vistar as a SaaS partner, which would increase 8X’s business case from Vistar’s perspective; and
- (d) Mr. Dionne immediately and repeatedly accused Vistar of acting in an anticompetitive manner (which assertions Mr. Mitchell rejected), made comments about reserving his

rights, and that he had been a lawyer for 25 years, implying that Vistar should expect 8X to take action to protect its rights. Such behaviour is entirely consistent with Mr. Mitchell's recollection that "8X's representatives were hostile, including by threatening legal action against Vistar."¹

7. 8X appears to argue that, because Mr. Mitchell did not state on the virtual call that Vistar was making a "bespoke offer", the offer was not bespoke. That is not correct – Mr. Mitchell's statement in his affidavit that he "proposed to 8X a deal on certain bespoke terms" is entirely consistent with the Video.²

8. Similarly, Mr. Mitchell's evidence at paragraph 25 of his affidavit regarding conditioning access to Vistar's SSP to use of its ad server must be read in context of his entire affidavit, which 8X does not do. Alongside the evidence in paragraph 25, Mr. Mitchell acknowledged in his affidavit that Vistar had offered 8X a SaaS partnership that could come with SSP access.³ As he described, and the Video corroborates, that was specifically because of 8X's circumstances, and not because of its "low-pricing policy" or the competition that Vistar allegedly feared from 8X (which unsurprisingly is nowhere evidenced in the Video because no such fear existed).⁴

9. Not only does the Video corroborate Mr. Mitchell's evidence, but it reinforces 8X's failure to meet the underlying test for leave in three other fundamental respects.

10. First, because Mr. Dionne acknowledges in the Video that 8X is a small player, the Video separately corroborates the argument in Vistar's Memorandum that "8X has not provided any evidence that it had any significant or meaningful share of the ad server industry in Canada or that it

¹ See Mitchell Affidavit, para. 47.

² See Mitchell Affidavit, para. 46.

³ See Mitchell Affidavit, paras. 25, 46.

⁴ See Mitchell Affidavit, paras. 45-46, 49.

was poised to grow that market share”.⁵ Mr. Dionne seeks to address this in his affidavit by attaching Exhibits SA-2 and SA-3, neither of which help 8X. In particular:

- (a) Exhibit SA-2 is an email that Mr. Dionne received in September 2020 indicating that a media buying agency was interested in advertising on some of 8X’s screens (with no confirmation that such interest came to fruition); and
- (b) Exhibit SA-3 is an email that Mr. Dionne received in 2023, which begins by indicating that Bulletin (which was aggregating 8X’s screens) had “disappointing months mid-2023” and refers to “several years of our company’s mediocre sales in Quebec [where 8X operated]”.

11. The information contained in these two exhibits is stale, hearsay, and – at best – speculative. In any event, nothing within them (nor anything in the Proposed Second Dionne Affidavit) provides cogent evidence that 8X had, as of June 2024 or now, valuable media assets or any meaningful share of the ad server industry in Canada. Rather, they corroborate Mr. Mitchell’s evidence that 8X’s media assets were not valuable (hence the “mediocre sales in Quebec” as late as 2023) and reinforce that 8X neither had a large share nor was poised to grow that share such that its alleged exclusion could have any impact on competition.

12. Second, the Video contains evidence that 8X’s relationship with other business partners had frayed. Despite having access to the Video when he delivered his initial affidavit, Mr. Dionne did not provide that additional evidence, which is relevant to the Tribunal’s assessment of whether 8X has been directly and substantially affected by Vistar’s alleged conduct or whether other factors (such as a falling out with other business partners) caused 8X’s decline. This late-breaking evidence now

⁵ Vistar’s Memorandum, para. 85.

revealed in the Video reinforces Vistar’s argument made at paragraphs 105-108 of Vistar’s Memorandum that 8X has failed to demonstrate the necessary impact of Vistar’s alleged conduct on its business.

13. Finally, the Video supports Vistar’s argument that, even if discoverability principles apply to section 103.1(8) of the *Competition Act*, 8X’s Application is limitations-barred.⁶ In the Video, Mr. Dionne repeatedly refers to Vistar’s conduct as “anticompetitive” and asserts that 8X is maintaining all of its rights. 8X therefore plainly discovered any claims by June 2024.

B. Regardless, 8X Does Not Meet the Test for Introducing Reply Evidence

14. Contrary to the test identified in 8X’s informal motions,⁷ the test for leave to file reply affidavits is governed by Rule 312 of the *Federal Court Rules*, SOR/98-106 (the *FCR*), through which the Tribunal considers whether the affidavit is relevant, and admissible.⁸ Rule 312, however, is to be “exercised with great circumspection”.⁹ The potential for reply “is not there to allow a party to split its case” and a party “must put its best foot forward at the first opportunity”.¹⁰ Therefore, a reply affidavit for which leave is sought “must not deal with evidence that was available at the time the First Affidavit was filed, or could have been available with the exercise of due diligence.”¹¹

⁶ See Vistar’s Memorandum, paras. 54-59.

⁷ 8X refers to Rules 119 and 120 of the *Competition Tribunal Rules*, SOR/2008-141 (*CT Rules*), which address the filing of responding evidence, not *reply* evidence.

⁸ Rule 312 of the *FCR* provides that, “[w]ith leave of the Court, a party may...(a) file affidavits additional to those provided for in rules 306 and 307...” This test was expressly adopted by the Competition Tribunal (by way of Rule 2 or Rule 81 of the *CT Rules*) in *Audatex Canada, ULC v. CarProof Corporation*, [2015 Comp. Trib. 28](#) [*Audatex*] at para. [35](#). See also, *JAMP Pharma Corporation v. Janssen Inc.*, [2024 Comp. Trib. 4](#) at para. [7](#): “The Tribunal addressed the requirements for an applicant to obtain leave under Rule 2 to file reply affidavit evidence in *Audatex Canada, ULC v. CarProof Corporation*, 2015 Comp Trib 28 (“*Audatex IP*”), at paras. 34-39.”

⁹ *Audatex* at para. [35](#).

¹⁰ See, e.g., *Arora v. Canadian National Railway*, [2026 FC 82](#) [*Arora*] at para. [36](#)

¹¹ *Arora* at para. [56](#).

15. The entirety of the Proposed Second Dionne Affidavit was available to 8X when it commenced the Application. And because 8X waited until delivery of Vistar’s Memorandum before seeking to adduce the reply evidence, it is apparent that 8X seeks to split its case to “repair perceived deficiencies”.¹² As set out above, none of the evidence in the Proposed Second Dionne Affidavit assists 8X. But 8X’s tactical approach to delivering its evidence amounts to “litigation by ambush”, which should not be condoned.¹³

C. The Video Was Likely Recorded in Breach of Quebec Privacy Legislation

16. At the time of recording the Video, 8X was a Quebec company subject to the *Act respecting the protection of personal information in the private sector*, CQLR c P-39.1 (**Law 25**). Law 25 governs the protection, collection and holding of personal information, including strict rules surrounding biometric data (*i.e.*, voice, facial images, and video recordings).¹⁴ Mr. Dionne admits in the Proposed Second Dionne Affidavit to making the Video recording for business purposes (*i.e.*, to “maintain accurate records of important business discussions”).¹⁵

17. Law 25 mandates that organizations collecting or using an individual’s biometric data must first obtain the individual’s explicit consent.¹⁶ Law 25 also requires that any collection or use of personal information be reasonable and proportional for its purpose.¹⁷

18. The Video contains personal biometric data of Mr. Mitchell and a former Vistar employee (video of their faces and audio of their voices). In an age of artificial intelligence, deepfakes and

¹² *Arora* at paras. 56, 61.

¹³ See *Nguyen v. Canada (Citizenship and Immigration)*, [2025 CanLII 77103 \(FC\)](#) at para. 21; *Aird v. Country Park Village Properties (Mainland) Ltd.*, [2002 FCT 862](#) at para. 10.

¹⁴ See, *e.g.*, *Act respecting the protection of personal information in the private sector*, CQLR c P-39.1 (**Law 25**), ss. 1, 2, 6, 7, 8, 8.1, 12, 12.1, 14, among other provisions.

¹⁵ Proposed Second Dionne Affidavit, para. 6.

¹⁶ See, *e.g.*, **Law 25**, ss. 12, 13, 14, in particular.

¹⁷ See, *e.g.*, **Law 25**, ss. 4, 5, 8, 8.1, 12.

personal identity theft, there is a vast difference between recording what has been said in a meeting, such as through notes or an exchange of emails following the meeting, and collecting the biometric data of the individuals involved in the meeting by recording it.

19. There is no evidence that the Video was taken with Vistar's employees' knowledge or consent. At no point during the Video does Mr. Dionne request or obtain explicit consent from the individuals he recorded, nor did he even suggest that he was recording the meeting.

20. The Tribunal should not condone 8X's collection of Vistar's employees' biometric data in these circumstances by bestowing upon 8X any benefit from the Video.

21. Given the sensitive biometric data contained in the Video, Vistar requests that the Video remain designated as confidential. 8X's apparent violation of Law 25 and the serious risks associated with the dissemination of personal biometric information collected without consent fully justify confidential treatment of the Video itself (as distinguished from what was said during the meeting, which Vistar does not assert is confidential and which could be transcribed for filing if necessary).

D. Mr. Dionne is 8X Counsel – He Cannot Testify to Matters in Dispute

22. Vistar repeats the arguments at paragraphs 61-63 of Vistar's Memorandum. In short, Mr. Dionne has improperly given evidence of matters in dispute in this proceeding, despite acting as 8X's counsel.

23. Nearly four months after filing this Application, for which 8X's sole evidence was Mr. Dionne's initial affidavit, 8X requests leave to file that initial affidavit pursuant to Rule 82 of the *FCR*. Even if that request was not unreasonably tardy (and further indicative of 8X's casual approach to this proceeding, and non-compliance with section 103.1(8) of the *Competition Act*), these are not

circumstances in which the general ban on counsel giving evidence on disputed matters should be disregarded (including in respect of the Proposed Second Dionne Affidavit).¹⁸ This is not a situation where, for example, the lawyer’s affidavit only attaches uncontroversial exhibits and “does not comment in any way” on them.¹⁹ Instead, Mr. Dionne’s evidence constitutes the *entirety* of 8X’s strongly disputed evidence.

24. Most problematic, no explanation has been provided for why Mr. Dionne must act as counsel of record in this proceeding. 8X’s informal motions repeatedly assert (without evidence) that Mr. Dionne was the only person who could give evidence for this proceeding,²⁰ but they do not explain why, given the existence of co-counsel, Mr. Dionne must also be on the record. 8X asserts that co-counsel is responsible for the “advocacy”, while Mr. Dionne “provides the factual evidence”.²¹ But one need not be counsel to provide “factual evidence” – in fact, that is precisely when a witness should not act as counsel.

25. Mr. Dionne has also been active in his role as counsel. Up until delivery of 8X’s March 23, 2026 informal motions, every piece of advocacy that 8X filed with the Tribunal was signed by Mr. Dionne, including 8X’s responding submissions to Vistar’s informal motion.²² Mr. Dionne signed every meaningful correspondence to both Vistar’s counsel and the Tribunal.²³ And Mr. Dionne appeared alone on behalf of 8X at the March 12, 2026 case conference before the Tribunal.

¹⁸ See *Cross-Canada Auto Body Supply (Windsor) Ltd. v. Hyundai Auto Canada*, [2006 FCA 133](#) at paras. [5-7](#).

¹⁹ *Pluri Vox Media Corp v. Canada*, [2012 FCA 18](#) at paras. [11-13](#).

²⁰ See, e.g., 8X Informal Motion, paras. 22-25.

²¹ See, e.g., 8X Informal Motion, paras. 26-28.

²² See, e.g., 8X Notice of Application for Leave; 8X Proposed Notice of Application dated November 27, 2025; 8X Memorandum of Fact and Law dated November 27, 2025; 8X Response to Vistar’s Informal Motion Responding Evidence dated January 30, 2026; 8X Notice of Motion re: Confidentiality Order dated February 20, 2026.

²³ See, e.g., Letter from F. Dionne to Registrar of Competition dated March 11, 2026; Letter from F. Dionne to Registrar of Competition dated January 26, 2026; Letter from F. Dionne to Bennett Jones dated January 23, 2026.

26. In short, 8X has provided no explanation as to why its sole witness is also its counsel in this proceeding. Mr. Dionne's affidavits are inadmissible and the Application should be dismissed.

27. Even if Mr. Dionne's evidence is admitted under Rule 82 of the *FCR*, as explained in this Supplement and Vistar's Memorandum, 8X's Application fails for the numerous other reasons Vistar has identified.

PART III: REQUESTED RELIEF

28. Vistar requests an Order: (i) dismissing the Application; and (ii) awarding Vistar its costs of the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of April 2026.



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SCHEDULE “A” – LIST OF AUTHORITIES

A. Legislative History and Secondary Authorities

B. Judicial Authorities

1. *Aird v. Country Park Village Properties (Mainland) Ltd.*, [2002 FCT 862](#)
2. *Arora v. Canadian National Railway*, [2026 FC 82](#)
3. *Audatex Canada, ULC v. CarProof Corporation*, [2015 Comp. Trib. 28](#)
4. *Cross-Canada Auto Body Supply (Windsor) Ltd. v. Hyundai Auto Canada*, [2006 FCA 133](#)
5. *JAMP Pharma Corporation v. Janssen Inc.*, [2024 Comp. Trib. 4](#)
6. *Nguyen v. Canada (Citizenship and Immigration)*, [2025 CanLII 77103 \(FC\)](#)
7. *Pluri Vox Media Corp v. Canada*, [2012 FCA 18](#)

C. Enactments (Textual Extracts)

Federal Court Rules, [SOR/98-106](#)

Use of solicitor's affidavit

82 Except with leave of the Court, a solicitor shall not both depose to an affidavit and present argument to the Court based on that affidavit.

Additional steps

312 With leave of the Court, a party may

- (a) file affidavits additional to those provided for in [rules 306](#) and [307](#);
- (b) conduct cross-examinations on affidavits additional to those provided for in [rule 308](#);
or
- (c) file a supplementary record.

Competition Act, [RSC 1985, C-34](#)

Purpose of Act

1.1 The purpose of this Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

Refusal to Deal

Jurisdiction of Tribunal — cases of refusal to deal

75 (1) The Tribunal may, on application by the Commissioner or a person granted leave under section 103.1, order one or more suppliers of a product, including a means of diagnosis or repair, in a market to accept a person as a customer, or to make the means of diagnosis or repair available to a person, within a specified period and on the terms that the Tribunal considers appropriate if the Tribunal finds that

(a) the person is substantially affected in the whole or part of their business or is precluded from carrying on business due to their inability to obtain adequate supplies of the product anywhere in the market on usual trade terms;

(b) the person is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market;

(c) the person is willing and able to meet the usual trade terms of the supplier or suppliers of the product;

(d) the product is in ample supply or, in the case of a means of diagnosis or repair, can be readily supplied; and

(e) the refusal to deal is having or is likely to have an adverse effect on competition in a market.

Price maintenance

76 (1) On application by the Commissioner or a person granted leave under section 103.1, the Tribunal may make an order under subsection (2) if the Tribunal finds that

(a) a person referred to in subsection (3) directly or indirectly

(i) by agreement, threat, promise or any like means, has influenced upward, or has discouraged the reduction of, the price at which the person's customer or any other person to whom the product comes for resale supplies or offers to supply or advertises a product within Canada, or

(ii) has refused to supply a product to or has otherwise discriminated against any person or class of persons engaged in business in Canada because of the low pricing policy of that other person or class of persons; and

(b) the conduct has had, is having or is likely to have an adverse effect on competition in a market.

Exclusive Dealing, Tied Selling and Market Restriction

Definitions

77 (1) For the purposes of this section,

exclusive dealing means

(a) any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to

(i) deal only or primarily in products supplied by or designated by the supplier or the supplier's nominee, or

(ii) refrain from dealing in a specified class or kind of product except as supplied by the supplier or the nominee, and

(b) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs; (*exclusivité*)

market restriction means any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to supply any product only in a defined market, or exacts a penalty of any kind from the customer if he supplies any product outside a defined market; (*limitation du marché*)

tied selling means

(a) any practice whereby a supplier of a product, as a condition of supplying the product (the “tying” product) to a customer, requires that customer to

(i) acquire any other product from the supplier or the supplier’s nominee, or

(ii) refrain from using or distributing, in conjunction with the tying product, another product that is not of a brand or manufacture designated by the supplier or the nominee, and

(b) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the tying product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs. (*ventes liées*)

Exclusive dealing and tied selling

(2) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that exclusive dealing or tied selling, because it is engaged in by a major supplier of a product in a market or because it is widespread in a market, is likely to

(a) impede entry into or expansion of a firm in a market,

(b) impede introduction of a product into or expansion of sales of a product in a market, or

(c) have any other exclusionary effect in a market,

with the result that competition is or is likely to be lessened substantially, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in that exclusive dealing or tied selling and containing any other requirement that, in its opinion, is necessary to overcome the effects thereof in the market or to restore or stimulate competition in the market.

Abuse of Dominant Position

Definition of anti-competitive act

78 (1) For the purposes of section 79, *anti-competitive act* means any act intended to have a predatory, exclusionary or disciplinary negative effect on a competitor, or to have an adverse effect on competition, and includes any of the following acts:

- (a) squeezing, by a vertically integrated supplier, of the margin available to an unintegrated customer who competes with the supplier, for the purpose of impeding or preventing the customer's entry into, or expansion in, a market;
- (b) acquisition by a supplier of a customer who would otherwise be available to a competitor of the supplier, or acquisition by a customer of a supplier who would otherwise be available to a competitor of the customer, for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;
- (c) freight equalization on the plant of a competitor for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;
- (d) use of fighting brands introduced selectively on a temporary basis to discipline or eliminate a competitor;
- (e) pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market;
- (f) buying up of products to prevent the erosion of existing price levels;
- (g) adoption of product specifications that are incompatible with products produced by any other person and are designed to prevent his entry into, or to eliminate him from, a market;
- (h) requiring or inducing a supplier to sell only or primarily to certain customers, or to refrain from selling to a competitor, with the object of preventing a competitor's entry into, or expansion in, a market;
- (i) selling articles at a price lower than the acquisition cost for the purpose of disciplining or eliminating a competitor;
- (j) a selective or discriminatory response to an actual or potential competitor for the purpose of impeding or preventing the competitor's entry into, or expansion in, a market or eliminating the competitor from a market; and
- (k) directly or indirectly imposing excessive and unfair selling prices.

Prohibition if abuse of dominant position

79 (1) On application by the Commissioner or a person granted leave under section 103.1, if the Tribunal finds that one or more persons substantially or completely control a class or species of business throughout Canada or any area of Canada, it may make an order prohibiting the person or persons from engaging in a practice or conduct if it finds that the person or persons have engaged in or are engaging in

(a) a practice of anti-competitive acts; or

(b) conduct

(i) that had, is having or is likely to have the effect of preventing or lessening competition substantially in a market in which the person or persons have a plausible competitive interest, and

(ii) the effect is not a result of superior competitive performance.

Leave to make application under section 74.1, 75, 76, 77, 79 or 90.1

103.1 (1) Any person may apply to the Tribunal for leave to make an application under section 74.1, 75, 76, 77, 79 or 90.1. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under that section.

Granting leave – sections 75, 77, 79 or 90.1

(7) The Tribunal may grant leave to make an application under section 75, 77, 79 or 90.1 if it has reason to believe that the applicant is directly and substantially affected in the whole or part of the applicant's business by any conduct referred to in one of those sections that could be subject to an order under that section or if it is satisfied that it is in the public interest to do so.

Granting Leave to make application under section 76

(7.1) The Tribunal may grant leave to make an application under section 76 if it has reason to believe that the applicant is directly affected by any conduct referred to in that section that could be subject to an order under that section.

Time and conditions for making application

(8) The Tribunal may set the time within which and the conditions subject to which an application under section 74.1, 75, 76, 77, 79 or 90.1 must be made. The application must be made no more than one year after the practice or conduct that is the subject of the application has ceased.

Competition Tribunal Rules, [SOR/2008-141](#)

Variation

2 (1) The Tribunal may dispense with, vary or supplement the application of any of these Rules in a particular case in order to deal with all matters as informally and expeditiously as the circumstances and considerations of fairness permit.

Questions as to practice or procedure

34 (1) If, in the course of proceedings, a question arises as to the practice or procedure to be followed in cases not provided for by these Rules, the practice and procedure set out in the *Federal Courts Rules* may be followed.

Informal procedure

81 (1) Except in the case of a motion for summary disposition, if these Rules provide that relief shall be sought by way of motion, a party may begin by informally requesting relief by sending a letter to the registry and serving the letter on the other parties and on any intervenor, who shall respond promptly.

Tribunal direction

(2) The Tribunal may issue a direction resolving a matter for which relief is requested under subrule (1) or direct the party to proceed by way of motion.

Representations in writing

119 (1) A person served with an application for leave referred to in [rule 115](#) who wishes to oppose the application shall, within 15 days after receiving the Tribunal's notice under [rule 118](#),

(a) serve a copy of their representations in writing on the applicant, on any other person against whom the order is sought and on the Commissioner; and

(b) file the representations with proof of service.

Content

(2) Representations in writing shall contain a memorandum of fact and law and shall set out the official language the person opposing the application intends to use.

Affidavit evidence

(3) Representations in writing shall not contain affidavit evidence, except with leave of the Tribunal.

Reply

120 The person making an application for leave under section 103.1 of the [Act](#) may serve a reply on each person against whom an order is sought and on the Commissioner within seven days after being served with the representations in writing under [rule 119](#) and shall file the reply with proof of service.

Act respecting the protection of personal information in the private sector, [CQLR c P-39.1](#)

APPLICATION AND INTERPRETATION

1. The object of this Act is to establish, for the exercise of the rights conferred by [articles 35 to 40](#) of the [Civil Code](#) concerning the protection of personal information, particular rules with respect to personal information relating to other persons which a person collects, holds, uses or communicates to third persons in the course of carrying on an enterprise within the meaning of [article 1525](#) of the Civil Code.

The Act applies to such information, whether the enterprise keeps the information itself or through the agency of a third person, whatever the nature of its medium and whatever the form in which it is accessible, whether written, graphic, taped, filmed, computerized, or other.

This Act also applies to personal information held by a professional order to the extent provided for by the [Professional Code](#) (chapter C-26) and to that held by a political party, an independent Member or an independent candidate to the extent provided for by the [Election Act](#) (chapter E-3.3).

This Act does not apply to journalistic, historical or genealogical material collected, held, used or communicated for the legitimate information of the public.

Divisions II and III of this Act do not apply to personal information which by law is public. Nor do they apply to personal information concerning the performance of duties within an enterprise by the person concerned, such as the person’s name, title and duties, as well as the address, email address and telephone number of the person’s place of work.

1993, c. 17, s. 1; [2002, c. 19, s. 19](#); [2006, c. 22, s. 111](#); 2021, c. 25, s. 100.

1.1. For the purposes of this Act, any person who collects personal information relating to another person for a serious and legitimate reason is deemed to be establishing a file within the meaning of the [Civil Code](#) and the rights concerning such a file conferred by [articles 35 to 40](#) of that Code apply to the personal information collected.

2021, c. 25, s. 101.

2. Personal information is any information which relates to a natural person and directly or indirectly allows that person to be identified.

1993, c. 17, s. 2; 2021, c. 25, s. 102.

COLLECTION OF PERSONAL INFORMATION

4. Any person carrying on an enterprise who, for a serious and legitimate reason, collects personal information on another person must determine the purposes for collecting the information before doing so.

1993, c. 17, s. 4; [1999, c. 40, s. 233](#); 2021, c. 25, s. 104.

4.1. The personal information concerning a minor under 14 years of age may not be collected from him without the consent of the person having parental authority or of the tutor, unless collecting the information is clearly for the minor's benefit.

2021, c. 25, s. 104.

5. Any person collecting personal information on another person may collect only the information necessary for the purposes determined before collecting it.

Such information must be collected by lawful means.

1993, c. 17, s. 5; 2021, c. 25, s. 105.

6. Any person collecting personal information relating to another person may collect such information only from the person concerned, unless the latter consents to collection from third persons.

However, he may, without the consent of the person concerned, collect such information from a third person if the law so authorizes.

He may also do so if he has a serious and legitimate reason and either of the following conditions is fulfilled:

1° the information is collected in the interest of the person concerned and cannot be collected from him in due time;

2° collection from a third person is necessary to ensure the accuracy of the information.

1993, c. 17, s. 6.

7. Any person collecting personal information from another person carrying on an enterprise must, at the request of the person concerned, inform the latter of the source of the information.

This section does not apply to a file established for the purposes of an inquiry to prevent, detect or repress a crime or statutory offence.

1993, c. 17, s. 7; [1999, c. 40, s. 233](#); 2021, c. 25, s. 106.

8. Any person who collects personal information from the person concerned must, when the information is collected and subsequently on request, inform that person

1° of the purposes for which the information is collected;

2° of the means by which the information is collected;

3° of the rights of access and rectification provided by law; and

4° of the person's right to withdraw consent to the communication or use of the information collected.

If applicable, the person concerned is informed of the name of the third person for whom the information is being collected, the name of the third persons or categories of third persons to whom it is necessary to communicate the information for the purposes referred to in subparagraph 1 of the first paragraph, and the possibility that the information could be communicated outside Québec.

On request, the person concerned is also informed of the personal information collected from him, the categories of persons who have access to the information within the enterprise, the duration of the period of time the information will be kept, and the contact information of the person in charge of the protection of personal information.

The information must be provided to the person concerned in clear and simple language, regardless of the means used to collect the personal information.

1993, c. 17, s. 8; 2021, c. 25, s. 107.

8.1. In addition to the information that must be provided in accordance with [section 8](#), any person who collects personal information from the person concerned using technology that includes functions allowing the person concerned to be identified, located or profiled must first inform the person

1° of the use of such technology; and

2° of the means available to activate the functions that allow a person to be identified, located or profiled.

“Profiling” means the collection and use of personal information to assess certain characteristics of a natural person, in particular for the purpose of analyzing that person's work performance, economic situation, health, personal preferences, interests or behaviour.

2021, c. 25, s. 107.

12. Unless the person concerned gives his consent, personal information may not be used within the enterprise except for the purposes for which it was collected. Such consent must be given expressly when it concerns sensitive personal information.

Personal information may, however, be used for another purpose without the consent of the person concerned, but only

- 1° if it is used for purposes consistent with the purposes for which it was collected;
- 2° if it is clearly used for the benefit of the person concerned;
- 3° if its use is necessary for the purpose of preventing and detecting fraud or of assessing and improving protection and security measures;
- 4° if its use is necessary for the purpose of providing or delivering a product or providing a service requested by the person concerned; or
- 5° if its use is necessary for study or research purposes or for the production of statistics and if the information is de-identified.

In order for a purpose to be consistent within the meaning of subparagraph 1 of the second paragraph, it must have a direct and relevant connection with the purposes for which the information was collected. However, commercial or philanthropic prospecting may not be considered a consistent purpose.

For the purposes of this Act, personal information is

- 1° de-identified if it no longer allows the person concerned to be directly identified;
- 2° sensitive if, due to its nature, in particular its medical, biometric or otherwise intimate nature, or the context of its use or communication, it entails a high level of reasonable expectation of privacy.

Every person carrying on an enterprise who uses de-identified information must take reasonable measures to limit the risk of someone identifying a natural person using de-identified information.

1993, c. 17, s. 12; 2021, c. 25, s. 110.

12.1. Any person carrying on an enterprise who uses personal information to render a decision based exclusively on an automated processing of such information must inform the person concerned accordingly not later than at the time it informs the person of the decision.

He must also inform the person concerned, at the latter's request,

- 1° of the personal information used to render the decision;
- 2° of the reasons and the principal factors and parameters that led to the decision; and
- 3° of the right of the person concerned to have the personal information used to render the decision corrected.

The person concerned must be given the opportunity to submit observations to a member of the personnel of the enterprise who is in a position to review the decision.

2021, c. 25, s. 110.

13. No person may communicate to a third person the personal information he holds on another person, unless the person concerned consents to, or this Act provides for, such communication.

Such consent must be given expressly when it concerns sensitive personal information.

1993, c. 17, s. 13; 2021, c. 25, s. 110.

14. Consent under this Act must be clear, free and informed and be given for specific purposes. It must be requested for each such purpose, in clear and simple language. If the request for consent is made in writing, it must be presented separately from any other information provided to the person concerned. If the person concerned so requests, assistance is provided to help him understand the scope of the consent requested.

The consent of a minor under 14 years of age is given by the person having parental authority or by the tutor. The consent of a minor 14 years of age or over is given by the minor, by the person having parental authority or by the tutor.

Consent is valid only for the time necessary to achieve the purposes for which it was requested.

Consent not given in accordance with this Act is without effect.

1993, c. 17, s. 14; [2006, c. 22, s. 115](#); 2021, c. 25, s. 110.

COMPETITION TRIBUNAL

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

AND IN THE MATTER OF an application by 8X Labs Inc. for one or more orders pursuant to section 75 of the *Competition Act*;

AND IN THE MATTER OF an application by 8X Labs Inc. for one or more orders pursuant to section 76 of the *Competition Act*;

AND IN THE MATTER OF an application by 8X Labs Inc. for one or more orders pursuant to section 77 of the *Competition Act*.

AND IN THE MATTER OF an application by 8X Labs Inc. for one or more orders pursuant to section 79 of the *Competition Act*.

B E T W E E N:

8X LABS INC.

Applicant

- and -

VISTAR MEDIA INC.

Respondent

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