

LITIGATION STATUS REPORT

**Department of Justice
COMPETITION LAW DIVISION**

Last update: December 21, 2009

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INTERNATIONAL LITIGATION

CIVIL MATTERS

Telecom Public Notice CRTC 2006-14 (Wholesale/essential services)

Canadian Radio-Television and Telecommunications Commission

Assigned Counsel: J. Palumbo

Opposing Counsel: 48 Intervenors

Nature of Matter: Intervention under s. 125 of the *Competition Act* in respect of a review of the regulatory framework for wholesale services and definition of essential service.

Status:

Hearing held from October 9 to 17 and 26 to 30 and the closing oral arguments held on November 9, 2007 ; decision released on March 3, 2008; Bell *et al.* filed leave to appeal. Appeal proceeding before the Federal Court is ongoing.

Hyperlink: <http://www.crtc.gc.ca/archive/ENG/Notices/2006/pt2006-14.htm>

<http://www.crtc.gc.ca/archive/ENG/Decisions/2008/dt2008-17.htm>

The Commissioner of Competition v. Premier Career Management Group Corp. and Minto Roy

Competition Tribunal (Vancouver)

Assigned Counsel: J. Syme

Opposing Counsel: S.L. Swan (Harper Gray – Vancouver)

Nature of Matter: The Commissioner filed an application under s.74.1 of the *Competition Act* against the Respondents. The Commissioner alleges that the

Respondents made false and misleading representations to prospective clients. The Respondents promised to give the prospective clients exclusive contacts with potential employers if they entered into contract with them. The Respondents also promised to help them find work quickly, with better salary and benefits.

Status: On May 8, 2007, the Commissioner filed a Notice of Application. The hearing was on April 14 to 25, 2008, in Vancouver; Decision was released on July 15, 2008. The tribunal dismissed the Application. Notice of Appeal was filed by the Commissioner on September 30, 2008. On October 16, 2009, the Federal Court granted the Competition Bureau's appeal.

Hyperlink:

<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2326&lq=e>

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03144.html>

PROSECUTIONS

Please note that the following proceedings have not all been adjudicated upon by a court of law. Until the allegations in each of the following proceedings have been proven beyond a reasonable doubt, all the accused are to be presumed innocent until proven guilty according to law.

R. v. J. D. Marvel Products, CND Mail Exchange et John Dragan

Cour du Québec (Montreal)

Assigned Counsel: S. Hould, N. Somji

Opposing Counsel: E. Vanchestein (Shadley Battista)

Nature of Matter: false representations under s. 52 of the *Competition Act*

Status: Judicial Pre-Trial scheduled for January 13, 2010.

R. v. John Armstrong and Michael Reynolds

Ontario Court of Justice (Toronto)

Assigned Counsel: G. Reitz (ORO), G. Caracciolo

Opposing Counsel: D. Bains, C. Granek (Bains, Granek)

Nature of Matter: charges under s. 52 of the *Competition Act* and s. 380 of the *Criminal Code* relating to alleged false or misleading representations and fraud over \$5000 with respect to an alleged therapy for cancer which involves exposing cancer patients to low level electromagnetic wave therapy.

Status: charges laid: August 2005;
On December 5, 2008, Mr. Reynolds was committed for trial on all charges.
Charges against Mr. Armstrong stayed at request of the Crown. Four week trial scheduled to commence on April 6, 2010.

R. v. Datacom Marketing Inc. (Ontario 1431798); Datacom Direct Inc. (Ontario 1417524) Paul Barnard, Bernard Fromstein and Judy Neinstein

Ontario Superior Court (Toronto)

Assigned Counsel: J. Marshall, L. Strezos, C. Black

Opposing Counsel: B. Greenspan, S. Lavine, D. Lighter, J. Gordon, D. Moore, D. Soos, C. Paliare

Nature of Matter: charges under s. 52, s. 52.1 of the *Competition Act* and s.

465(1)(c) and s. 380 of the *Criminal Code* relating to the telemarketing of a business to business directory and listing in such directory.

Status: first appearance on July 12, 2006 in the Old City Hall Courthouse in Toronto; On April 24, 2008, Mr. Barnard pleaded guilty to six criminal charges and received a two-year conditional jail sentence.

Preliminary hearing was held April 29 to May 6, 2008. Committal for trial obtained on all *Competition Act* charges for all remaining accused. On July 27, 2009, Mr. Fromstein pleaded guilty to five criminal charges and received a two-year sentence in a federal penitentiary as well as a probation of three years. On December 18, 2009, the Court imposed a \$15 million fine against Datacom Marketing Inc.

Hyperlink:

<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02666e.html>

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03112.html>

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03175.html>

R. v. Garther Cheung, Sukhraj Chana, Pritpal Chana, Ranjit Sangha , Andrea Kyweriga

Alberta Court of Queen's Bench

Assigned Counsel: P. Papadatou; Alta. Jus. Special Prosecutions; J. Marshall

Opposing Counsel: D. Mohr (Savage Silver Kiss & Virk); D. Chow; R. Snukal (Roulston Snukal); A. Fay (Fay & Archer); J. Lutz (Dartnell & Lutz)

Nature of Matter: charges under s.52.1 of the *Competition Act* and s.380 of the *Criminal Code* relating to the telemarketing of a business directory and listing in such directory.

Status: Charges laid June 14, 2006.

On January 30, 2007, Sarah Schaefer pleaded guilty to two counts of s.52.1 of the *Competition Act* and received a fine of \$15,000;

Preliminary hearing was in June 2008; Janene Cheung was discharged at the end of the preliminary hearing;

First appearance before the Alberta Court of Queen's Bench scheduled for August 22, 2008; trial is scheduled from November 2 to December 16, 2009.

R. v. Électroméga, Tassimco, Lamoureux, Di Pietro

Cour supérieure du Québec

Assigned counsel: G. Pinsonnault

Opposing counsel: M. Massicotte, M. Daoust

Nature of Matter: charges under s. 47 of the *Competition Act* for bid-rigging concerning a call for bids relating to street lights.

Status: Preliminary hearing held on October 25 2007; Pro forma was on June 9, 2008; trial was on December 1-2, 2009. Decision scheduled to be released on January 19, 2010.

R. v. IT Data Direct et al.

Cour supérieure du Québec, Montreal

Assigned counsel: J. Marshall

Opposing counsel: J. Bertrand, C. Monterosso, I. Schurman, J. Peris, N. Tucci, J. Brossard

Nature of Matter: Application for *certiorari* filed by companies and individuals affected by the search. The application is to obtain an order to quash the decision of justice of the peace to authorize the search.

Status: *Certiorari* hearing was from April 21 to 25, 2008. On June 6, 2008, the Court decided to uphold the warrants and indicated that there was no charter violation in the garbage seizure. Questions now under appeal to the Quebec Court of Appeal.

R. v. Cory Kornelson, Hiep Manh Nguyen, Byron Steczko and Anh-Phong Vo

Cour du Québec, Montreal

Assigned counsel: S. Hould

Opposing counsel: L. Huot (represents Mr. Kornelson), Z. Al-Baghdadi (represents Mr. Steczko), J. Chalifoux (represents Mr. Vo)

Nature of matter: Charges under s.52.1 of the *Competition Act* relating to the telemarketing of a business directory by the following companies: Commutel, Marketing USA et Global Management Systems.

Status: Charges laid on February 27 2008. Byron Steczko, Anh-Phong Vo and Cory Kornelson pleaded guilty and obtained a six-month conditional sentence with curfew conditions, as well as a 10-year prohibition order from engaging in telemarketing. An arrest warrant was issued against Hiep Manh Nguyen.

Hyperlink:

<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02649e.html>

<http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03163.html>

R. v. Construction G.T.R.L. et al.

Cour du Québec, Chicoutimi

Assigned counsel: S. Hould, V. Chénard

Opposing counsel: J.-M. Fradette

Nature of matter: Bid-rigging charges under s. 47 of the *Competition Act*. Charges laid against three construction companies and their presidents based on allegations that the parties entered into agreements to predetermine which would win some contracts.

Status: Charges laid on November 10, 2008. First appearance was on January 5, 2009. Pro forma scheduled for April 12, 2010.

Hyperlink:

<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02748e.html>

R. v. TPG Technology Consulting Ltd. et al.

Ontario Court of Justice, Ottawa

Assigned counsel: V. Chénard, D. Pilon

Opposing counsel: P. Mantas, P. McCann, W. Vanveen & A. Patenaude, M. Neville, G. Chayko, E. Dufour & K. Glover, W. Carroll, N. Boxall, D. Daoust & J. Shields, R. Wagner, J. Langevin, S. May, M. McGarvey

Nature of matter: Bid-rigging charges under s. 47 of the *Competition Act*. Charges laid against 7 companies and 14 individuals based on allegations that the parties entered into agreements to coordinate their bids in an illegal scheme to defraud the government by winning and dividing contracts for information technology services.

Status: Charges laid on February 17, 2009. Ms. Lambert pleaded guilty to one count of bid-rigging on February 23, 2009 at the Superior Court of Ontario. First appearance was on March 17, 2009. On June 9, 2009, Theodore Martin (former owner of TRM Technologies Inc.) pleaded guilty. He was fined \$25,000 and a prohibition order was issued against TRM Technologies Inc. The preliminary inquiry is scheduled for December 1st 2010. Next Judicial Pre-Trial scheduled for April 13, 2010.

Hyperlink:

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02983.html>

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03075.html>

Quebec Gasoline Cartel Case

Cour supérieure du Québec

Assigned counsel: C. Alarie, G. Pinsonnault

Nature of matter: Charges under s. 45 of the *Competition Act* relating to the price fixing of gasoline at the pump in Victoriaville, Thetford Mines, Magog and Sherbrooke. Charges laid against eleven companies and thirteen individuals in June 2008.

Status: Six of the companies and ten of the individuals have pleaded guilty with fines totalling over \$2.7 million. Six of the individuals have been sentenced to a total of 54 months in prison.

Hyperlink:

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03055.html>

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03145.html>

<http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03168.html>

R. v. Société Air France (Air France), Koninklijke Luchtvaart Maatschappij N.V. (KLM), Martinair Holland N.V. (Martinair), Qantas Airways Limited (Qantas), British Airways Plc

Federal Court

Assigned counsel: B. Miller, V. Chénard

Opposing counsel: M. Low, R. Hughes

Nature of matter: Charges under s. 45 of the *Competition Act* for fixing surcharges on air cargo exported on certain routes from Canada.

Status: On June 26, 2009, the following three companies have pleaded guilty. The Court imposed the fines of \$4 million for Air France; \$5 million for KLM; and \$1 million for Martinair. On July 7, 2009, Qantas pleaded guilty and was imposed a fine of \$155,000. On October 30, 2009, British Airway Plc pleaded guilty and was imposed a fine of \$4.5 million.

Hyperlink:

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03089.html>

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03094.html>

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03147.html>

R. v. Infogroup Data Inc., Allegiance Publishing Inc., 2957647 Canada Inc. and 3433587 Canada Inc.

Assigned counsel: G. Pinsonnault

Opposing counsel: R. Schadley, É. Vanchestein

Nature of matter: Charges under s. 52.1(3) and 52(1) of the *Competition Act* for engaging in deceptive telemarketing activities involving the sale of business directories.

Status: On June 16, 2009, four companies pleaded guilty before the Court of Québec and were fined \$725,000. In addition, prohibition orders were issued by

the Superior Court of Quebec against Bianca Rosa Pazzano and Darren Johnston, who operated these companies.

Hyperlink:

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03083.html>

INTERNATIONAL LITIGATION

*For information mentioned in previous Litigation Reports, please visit the *Archives* page.