

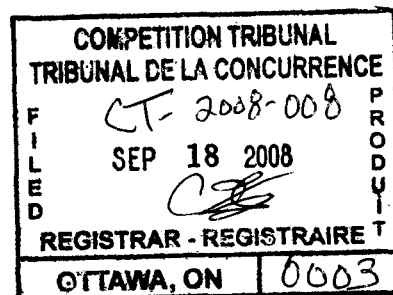
Competition Tribunal File No.

COMPETITION TRIBUNAL

BETWEEN:

STEVEN OLAH
Applicant

-and-



HER MAJESTY THE QUEEN as represented by the Correctional Service of
Canada and GRAVENHURST HOME HARDWARE
Respondents

AFFIDAVIT OF STEVEN OLAH

1. I, Steven Olah, of the Town of Gravenhurst in the District of Muskoka in the Province of Ontario am the applicant in this proceeding and as such I have personal knowledge of the matters hereinafter deposed to.
2. I am an inmate of ~~Fenbrook~~ ^{Beaver Creek} Institution, a ~~medium~~ ^{minimum} security federal penitentiary located near Gravenhurst, Ontario.
3. Fenbrook is amongst the newest of Canadian penitentiaries. It is located beside the much older Beaver Creek Institution, a minimum security penitentiary.
4. In much of the rest of Canada, when penitentiaries are located in close proximity, the institutions share certain services.
5. One of the services provided by the Correctional Service of Canada (with the exception of Fenbrook Institution) is to have a Social development Officer assemble

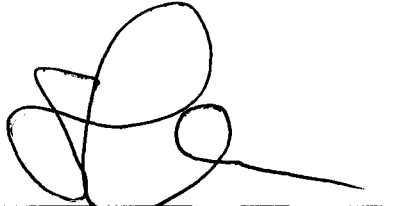
requests from inmates who wish to make purchases and have that staff person make the purchases on behalf of inmates who are not permitted to leave the institution to do their shopping.

6. When Fenbrook was built, a conscious decision was taken to save the cost of this staff person and effectively privatize the function of the Social Development Officer.
7. To accomplish this, the Government of Canada for the Correctional Service of Canada entered into a Memorandum of Understanding with Gravenhurst Home Hardware whereby the Gravenhurst Home Hardware would do the procurement usually done by a Social Development Officer. The benefit was that the Gravenhurst Home Hardware would be the sole source for inmate acquisitions. If the merchandise was in the inventory of the Gravenhurst Home Hardware, inmates would be charged the retail cost of the item purchased without any additional markup. If the good had to be ordered from outside the Gravenhurst Home Hardware inventory, inmates would be charged the retail price plus an additional 10% if the item was hobby craft material or an additional 20% if the merchandise was other than hobby craft items.
8. I brought suit in the Federal Court to challenge this procedure but my suit was dismissed since the Court found, *inter alia*, that it had no jurisdiction to deal with complaints under the *Competition Act*. A true copy of the reasons for judgment in my unsuccessful suit is attached hereto and marked as Exhibit "A" to this my affidavit.
9. I have used the *Privacy Act* to obtain a copy of the Memorandum of Understanding between the Correctional Service of Canada and the Gravenhurst Home Hardware. A true copy of that document is attached hereto and marked as Exhibit "B" to this my

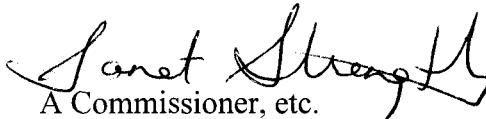
affidavit. I have made recent inquiries and I verily believe that the privatization continues with the markups as reported above continuing.

10. By virtue of section 4(e) of the *Corrections and Conditional Release Act*, inmates are accorded the same rights as persons not kept in penitentiary save and except as those rights may be “necessarily removed or restricted as a consequence of the sentence.” The right to have compliance with the *Competition Act* is of general application to Canadian citizens. The Correctional Service of Canada’s practice of “exclusive dealing” and “tied selling” as defined in section 77(1) of the *Competition Act* is not a right that is necessarily removed as a consequence of incarceration as inmates in all other institutions have the right to shop in a competitive market.
11. I make this affidavit in support of my application to have these market restrictions declared illegal and to have such restrictions cease.

SWORN BEFORE ME at the)
Town of Gravenhurst in the)
Province of Ontario, this)
27 Day of August, 2008)



Steven Olah



A Commissioner, etc.

Janet Mary Strength, a Commissioner, etc.,
District Municipality of Muskoka, for the
Government of Canada, Correctional Service of
Canada. Expires January 6, 2011.

Federal Court



Cour fédérale

Date: 20061018

Docket: T-1455-05

Citation: 2006 FC 1245

Ottawa, Ontario, October 18, 2006

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

STEVEN OLAH

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is an inmate at the Fenbrook Medium Security Institution (Fenbrook) located in Gravenhurst, Ontario. Fenbrook has implemented a privatized Inmate Purchasing Service wherein inmates may purchase merchandise from Gravenhurst Home Hardware (Home Hardware) at retail prices. When an inmate purchases an item not regularly stocked by Home Hardware, Home Hardware purchases the item from another retailer and sells it to the inmate with a 20% mark-up for general merchandise and with a 10% mark-up for hobbycraft goods. Fenbrook is the only federal penitentiary at which inmates must pay a mark-up on retail goods purchased for their own use.

THIS IS EXHIBIT A
TO THE AFFIDAVIT OF STEVEN OLAH
SWORN BEFORE ME
THIS 27 DAY OF AUGUST, 2008.
A COMMISSIONER, ETC.

Janet Strength

Janet Mary Strength, a Commissioner, etc.,
District Municipality of Muskoka, for the
Government of Canada, Correctional Service of
Canada. Expires January 6, 2011.

Other institutions employ an officer who purchases retail goods ordered by the inmate, without charging the inmate any mark-up for the service.

[2] The applicant seeks a declaration that the contract between the Correctional Service of Canada (the CSC) and Home Hardware constitutes a violation of section 74 of the *Corrections and Conditional Release Act* and a conspiracy under subsection 45(1) of the *Competition Act* to the extent that it grants Home Hardware the exclusive right to market its products to Fenbrook's inmates and charge them a mark-up for doing so.

[3] On May 28, 2004, the Fenbrook Inmate Welfare Committee (the Inmate Committee), of which the applicant is a member, submitted a first level group grievance challenging the decision to charge mark-ups on items purchased by inmates. In its 44-page presentation, the Inmate Committee described its concern that Home Hardware had charged a 10% mark-up on all non-stocked hobbycraft items and a 20% mark-up on all other non-stocked items. This practice, the Inmate Committee argued, contravened Fenbrook's contract with Home Hardware, which required that Home Hardware attempt to negotiate with suppliers for wholesale prices so that it could sell the items to the inmates at a normal retail price. If wholesale prices were not possible, Home Hardware would charge a mark-up to cover its costs, and the mark-up was to be negotiated semi-annually between Home Hardware and Fenbrook. The Inmate Committee described a feeling among the inmate population of frustration and powerlessness resulting from what it perceived as a forced monopoly by Home Hardware.

[4] The Inmate Committee's first level grievance was denied. On June 21, 2005, the applicant submitted a second level grievance. On August 23, 2005, the applicant filed with the Court a Notice of Application for judicial review. Subsection 81(1) of the *Corrections and Conditional Release*

Regulations provides that a grievance review must be deferred where an offender decides to pursue a legal remedy for the offender's grievance in addition to the internal grievance procedure until a decision is rendered on the alternate remedy or the offender abandons it. On July 5, 2005, the applicant was advised that his second level grievance had been deferred accordingly.

LEGISLATION

[5] The legislation relevant to this application is as follows:

1. the *Canadian Charter of Rights and Freedoms*,
2. the *Competition Act*, R.S.C. 1985, c. C-34;
3. the *Corrections and Conditional Release Act*, S.C. 1992, c. 20;
4. the *Corrections and Conditional Release Regulations*, S.O.R./92-620;
5. the *Criminal Code*, R.S.C. 1985, c. C-46; and
6. the *Federal Courts Act*, R.S.C. 1985, c. F-7.

The relevant excerpts of these statutes and regulations are set out in Appendix "A" to these Reasons.

ISSUES

[6] This application raises the following issues:

1. Did the applicant bring the application out of time?
2. If the applicant did not bring the application out of time, did the applicant fail to exhaust adequate alternate remedies?
3. Did the CSC fail to consult with inmates when deciding to allow Home Hardware to charge mark-ups to inmates?
4. Does the Court have jurisdiction to determine whether the CSC violated subsection 45(1) of the *Competition Act*?
5. Is the CSC's decision to allow Home Hardware to charge mark-ups to inmates contrary to section 15 of the *Canadian Charter of Rights and Freedoms*?

ANALYSIS

[7] The respondent, in its oral argument, first addressed the two substantive issues, which the Court has considered below. Then, a second counsel for the respondent raised significant procedural objections to the Court assuming jurisdiction because this application is brought out of time and because the applicant failed to exhaust adequate alternative remedies. I will first address the two procedural objections.

PROCEDURAL ISSUES

Issue No 1: Did the applicant bring the application out of time?

[8] With respect to the first procedural objection, the respondent argues that this application for judicial review has been brought out of time and that the Court accordingly has no jurisdiction to review the CSC's decision allowing Home Hardware to charge mark-ups to Fenbrook's inmates.

Subsection 18.1(2) of the *Federal Courts Act* provides as follows:

JURISDICTION OF FEDERAL COURT

[...]

Application for judicial review

18.1 [...]

Time limitation

(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or

COMPÉTENCE DE LA COUR FÉDÉRALE

[...]

Demande de contrôle judiciaire

18.1 [...]

Délai de présentation

(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente

within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

[9] Under cross-examination on January 23, 2006, the applicant stated that the CSC's decision to allow mark-ups was communicated to him in April 2003:

Q. And when did you personally find out that CSC would be charging a markup?

A. When I arrived here.

Q. And what year was that?

A. That would have been April, 2003.

Accordingly, subsection 18(2) of the *Federal Courts Act* requires that the applicant file an application for judicial review by May 2003. The Notice of Application was filed on August 23, 2005.

[10] The Federal Court of Appeal held in *Krause v. Canada*, [1999] 2 F.C. 476, that the 30 day time limit for bringing an application for judicial review under subsection 18.1(2) of the *Federal Courts Act* does not apply where there is no specific decision or order being challenged but rather an ongoing course of allegedly illegal conduct. In this case, the Applicant sought declarations that the CSC violated subsection 45(1) of the *Competition Act* and section 74 of the *Corrections and Conditional Release Act*. Such declarations would have the effect of preventing the CSC from continuing its alleged ongoing course of illegal conduct per *Krause*. Accordingly, I am satisfied that the time limit under subsection 18.1(2) would not apply.

Issue No. 2: Did the applicant fail to exhaust adequate alternate remedies?

[11] With respect to the second procedural objection, the respondent argues that the Court ought not to review the CSC's decision in 2000 to contract with Home Hardware for purchase procurement services on the basis that the applicant has not exhausted adequate alternative remedies before seeking a judicial review.

[12] The applicant argues that, where the legality of the CSC's decision is in question, it is naïve to expect the grievance commissioner to vindicate the inmates' position since doing so would be admitting illegal activity. Forcing the inmates to exhaust options in a flawed system, it is argued, is forcing inmates disaffected by the CSC's allegedly unlawful act to endure more illegality until the matter is eventually brought to Court.

[13] I agree with the respondent's submissions that the proper course is for the applicant to follow the statutorily-mandated grievance process. In this regard, I adopt the statements of Mr. Justice Rothstein (as he then was) in *Giesbrecht v. Canada* (1998), 148 F.T.R. 81 at 84, [1998] F.C.J. No. 621 (QL) at paragraph 10:

On its face, the legislative scheme providing for grievances is an adequate alternative remedy to judicial review. Grievances are to be handled expeditiously and time limits are provided in the Commissioner's Directives. There is no suggestion that the process is costly. If anything it is less costly than judicial review and more simple and straightforward. Through the grievance procedure an inmate may appeal a decision on the merits and an appeal tribunal may substitute its decision for that of the tribunal appealed from. Judicial review does not deal with the merits and a favourable result to an inmate would simply return the matter for redetermination to the tribunal appealed from.

[Emphasis added]

[14] Accordingly, I would dismiss the application for failure to exhaust alternate remedies. If the Applicant seeks to challenge the manner in which his grievance issues have been decided, he may bring an application for judicial review of the third level grievance decision.

SUBSTANTIVE ISSUES

[15] If I am incorrect in concluding that this application must fail for failure by the applicant to exhaust adequate alternate remedies, I would dismiss the application on its merits for the reasons below.

Issue No. 3: Did the CSC fail to consult with inmates when deciding to allow Home Hardware to charge mark-ups to inmates?

[16] The applicant submits that the CSC breached its duty under section 74 of the *Corrections and Conditional Release Act* to provide inmates with the opportunity to contribute to the decision of the CSC that Home Hardware would be permitted to charge a mark-up on retail goods purchased by the inmate population. Section 74 of the *Corrections and Conditional Release Act* provides:

GENERAL — LIVING CONDITIONS

[...]

Inmate input into decisions

74. The Service shall provide inmates with the opportunity to contribute to decisions of the Service affecting the inmate population as a whole, or affecting a group within the inmate population, except decisions relating to security matters.

CONDITIONS DE DETENTION

[...]

Participation aux décisions

74. Le Service doit permettre aux détenus de participer à ses décisions concernant tout ou partie de la population carcérale, sauf pour les questions de sécurité.

[17] Counsel for the respondent has referred the Court to extensive evidence from senior CSC officers at Fenbrook that the Fenbrook Inmate Committee was extensively consulted about this practice. There is a memo in the evidence from the Chair of the Inmate Committee, dated May 8,

2000, to the Assistant Warden expressing the inmates' concern that they have to pay a mark-up over the advertised price for retail items. In the Affidavit of William Gladue, the Assistant Warden at Fenbrook, Mr. Gladue details the many dates on which he met the Inmate Committee to consult about their concerns with the Home Hardware contract.

[18] The applicant submits that these consultations were not meaningful because Fenbrook had already entered into the contract with Home Hardware. With respect, the Home Hardware contract provides for a semi-annual negotiation of the rate of mark-up, so the input from inmates could be considered as the contract is continually renegotiated.

[19] The Court is satisfied that the evidence demonstrates that the CSC received regular input from the inmates about their concerns with the privatized inmate purchasing service. Accordingly, the CSC has not breached its duty to consult under s. 74 of the *Corrections and Conditional Release Act*.

Issue No. 4: Does the Court have jurisdiction to determine whether the CSC violated subsection 45(1) of the *Competition Act*?

[20] The second substantive issue is that the applicant seeks a declaration that the Correctional Service of Canada conspired with Home Hardware to restrain competition in violation of subsection 45(1) of the *Competition Act*. The respondent argues that the Federal Court has no jurisdiction to declare that a person has violated a criminal statute, particularly based on affidavit evidence in the context of a judicial review.

[21] The respondent relies on subsection 67(3) of the *Competition Act* as authority for its position:

PART VII
OTHER OFFENCES

[...]

Procédure

Procedure for enforcing punishment

67. [...]

Jurisdiction of courts

(3) No court other than a superior court of criminal jurisdiction, as defined in the *Criminal Code*, has power to try any offence under section 45, 46, 47, 48 or 49.

PARTIE VII
AUTRES INFRACTIONS

[...]

Procédure

Choix de l'inculpé

67. [...]

Compétence des tribunaux

(3) Nul tribunal autre qu'une cour supérieure de juridiction criminelle, au sens du *Code criminel*, n'a le pouvoir de juger une infraction visée à l'article 45, 46, 47, 48 ou 49.

[22] The *Criminal Code*, in turn, defines a "superior court of criminal jurisdiction" as follows:

INTERPRETATION

Definitions

2. In this Act, [...]

"superior court of criminal jurisdiction" means

(a) in the Province of Ontario, the Court of Appeal or the Superior Court of Justice,

(b) in the Province of Quebec, the Superior Court,

(c) in the Province of Prince Edward Island, the Supreme Court,

(d) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Appeal or the Court of Queen's Bench,

(e) in the Provinces of Nova Scotia, British Columbia and Newfoundland, the Supreme Court or the Court of Appeal,

(f) in Yukon, the Supreme Court,

(g) in the Northwest Territories, the Supreme Court, and

(h) in Nunavut, the Nunavut Court of Justice;

DÉFINITIONS ET INTERPRÉTATION

Définitions

2. Les définitions qui suivent s'appliquent à la présente loi. [...]

« cour supérieure de juridiction criminelle »

a) Dans la province d'Ontario, la Cour d'appel ou la Cour supérieure de justice;

b) dans la province de Québec, la Cour supérieure;

c) dans la province de l'Île-du-Prince-Édouard, la Cour suprême;

d) dans les provinces du Nouveau-Brunswick, du Manitoba, de la Saskatchewan et d'Alberta, la Cour d'appel ou la Cour du Banc de la Reine;

e) dans les provinces de la Nouvelle-Écosse, de la Colombie-Britannique et de Terre-Neuve, la Cour suprême ou la Cour d'appel;

f) au Yukon, la Cour suprême;

g) dans les Territoires du Nord-Ouest, la Cour suprême;

h) dans le territoire du Nunavut, la Cour de justice du Nunavut.

[23] The *Criminal Code*'s exhaustive definition, which is incorporated by reference in the *Competition Act*, does not include the Federal Court. Given the combined effect of section 67 of the *Competition Act* and section 2 of the *Criminal Code*, the Federal Court does not have jurisdiction to try offences under section 45 of the *Competition Act*. The proper venue for prosecuting such an offence is a provincial superior court included within the *Criminal Code* definition.

[24] Accordingly, the Court concludes that it does not have jurisdiction to determine whether the CSC breached section 45 of the *Competition Act* with respect to conspiring or agreeing with another person to lessen competition.

Issue No. 5: Is the CSC's decision to allow retailers to charge mark-ups to inmates contrary to section 15 of the *Canadian Charter of Rights and Freedoms*?

[25] The applicant also made a *Charter* argument, which the Court has determined it cannot consider on this application record. The applicant argued that the CSC's decision to allow retailers to charge mark-ups to inmates is discriminatory in its effect on Inuit inmates at Fenbrook and therefore contrary to section 15 of the *Canadian Charter of Rights and Freedoms*. The thrust of his argument is that, since Fenbrook uniquely offers special programming for Inuit offenders, the imposition of a mark-up on purchases including hobbycraft items has a disproportionately adverse effect on Inuit inmates at Fenbrook in violation of the equality guarantee under section 15 of the *Charter*. The applicant did not raise this issue in his Notice of Application and provided no evidence or analysis supporting his claim under subsection 15(1). Nor has the applicant suggested that he personally suffers from discrimination, as he is not Inuit. The Court cannot render a decision on a *Charter* issue without a proper record on which to adjudicate the claim. Accordingly, the Court cannot consider the applicant's challenge of the CSC's decision based on equality grounds.

CONCLUSION

[26] For the foregoing reasons, this application must be dismissed. However, as indicated at the hearing, the Court understands why the applicant and the other inmates at Fenbrook are concerned that they must pay a mark-up on some of their personal retail purchases, unlike inmates at every other federal institution. The inmates' concern is compounded by the fact that they earn very little for working in the penitentiary and thus have little disposable income.

[27] There will be no order as to costs.

JUDGMENT

THIS COURT ADJUDGES AND DECLARES that:

This application for a declaration is dismissed.

"Michael A. Kelen"

Judge

APPENDIX "A"1. Canadian Charter of Rights and Freedoms

EQUALITY RIGHTS

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

DROITS À L'ÉGALITÉ

Égalité devant la loi, égalité de bénéfice et protection égale de la loi

15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

2. Competition Act, R.S.C. 1985, c. C-34

PART VI

OFFENCES IN RELATION TO
COMPETITION

Conspiracy

45. (1) Every one who conspires, combines, agrees or arranges with another person

(a) to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,

(b) to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,

(c) to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property, or

(d) to otherwise restrain or injure competition unduly,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million dollars or to both.

PARTIE VI

INFRACTIONS RELATIVES À LA
CONCURRENCE

Complot

45. (1) Commet un acte criminel et encourt un emprisonnement maximal de cinq ans et une amende maximale de dix millions de dollars, ou l'une de ces peines, quiconque complot, se coalise ou conclut un accord ou arrangement avec une autre personne :

a) soit pour limiter, indûment, les facilités de transport, de production, de fabrication, de fourniture, d'emménagement ou de négoce d'un produit quelconque;

b) soit pour empêcher, limiter ou réduire, indûment, la fabrication ou production d'un produit ou pour en élever déraisonnablement le prix;

c) soit pour empêcher ou réduire, indûment, la concurrence dans la production, la fabrication, l'achat, le troc, la vente, l'entreposage, la location, le transport ou la fourniture d'un produit, ou dans le prix d'assurances sur les personnes ou les biens;

d) soit, de toute autre façon, pour restreindre,

Idem

(2) For greater certainty, in establishing that a conspiracy, combination, agreement or arrangement is in contravention of subsection (1), it shall not be necessary to prove that the conspiracy, combination, agreement or arrangement, if carried into effect, would or would be likely to eliminate, completely or virtually, competition in the market to which it relates or that it was the object of any or all of the parties thereto to eliminate, completely or virtually, competition in that market.

Evidence of conspiracy

(2.1) In a prosecution under subsection (1), the court may infer the existence of a conspiracy, combination, agreement or arrangement from circumstantial evidence, with or without direct evidence of communication between or among the alleged parties thereto, but, for greater certainty, the conspiracy, combination, agreement or arrangement must be proved beyond a reasonable doubt.

Proof of intent

(2.2) For greater certainty, in establishing that a conspiracy, combination, agreement or arrangement is in contravention of subsection (1), it is necessary to prove that the parties thereto intended to and did enter into the conspiracy, combination, agreement or arrangement, but it is not necessary to prove that the parties intended that the conspiracy, combination, agreement or arrangement have an effect set out in subsection (1).

Defence

(3) Subject to subsection (4), in a prosecution under subsection (1), the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to one or more of the following:

(a) the exchange of statistics;

indûment, la concurrence ou lui causer un préjudice indu.

Idem

(2) Il demeure entendu qu'il n'est pas nécessaire, pour établir qu'un complot, une association d'intérêts, un accord ou un arrangement constitue l'une des infractions visées au paragraphe (1), de prouver que le complot, l'association d'intérêts, l'accord ou l'arrangement, s'il était exécuté, éliminerait ou éliminerait vraisemblablement la concurrence, entièrement ou à toutes fins utiles, sur le marché auquel il se rapporte, ni que les participants, ou l'un ou plusieurs d'entre eux, visaient à éliminer la concurrence, entièrement ou à toutes fins utiles, sur ce marché.

Preuve de complot

(2.1) Lors d'une poursuite intentée en vertu du paragraphe (1), le tribunal peut déduire l'existence du complot, de l'association d'intérêts, de l'accord ou de l'arrangement en se basant sur une preuve circonstancielle, avec ou sans preuve directe de communication entre les présumées parties au complot, à l'association d'intérêts, à l'accord ou à l'arrangement, mais il demeure entendu que le complot, l'association d'intérêts, l'accord ou l'arrangement doit être prouvé hors de tout doute raisonnable.

Preuve d'intention

(2.2) Il demeure entendu qu'il est nécessaire, afin d'établir qu'un complot, une association d'intérêts, un accord ou un arrangement constitue l'une des infractions visées au paragraphe (1), de prouver que les parties avaient l'intention de participer à ce complot, cette association d'intérêts, cet accord ou cet arrangement et y ont participé mais qu'il n'est pas nécessaire de prouver que les parties avaient l'intention que le complot, l'association d'intérêts, l'accord ou l'arrangement ait l'un des effets visés au paragraphe (1).

Défense

(3) Sous réserve du paragraphe (4), dans des

- (b) the defining of product standards;
- (c) the exchange of credit information;
- (d) the definition of terminology used in a trade, industry or profession;
- (e) cooperation in research and development;
- (f) the restriction of advertising or promotion, other than a discriminatory restriction directed against a member of the mass media;
- (g) the sizes or shapes of the containers in which an article is packaged;
- (h) the adoption of the metric system of weights and measures; or
- (i) measures to protect the environment.

Exception

(4) Subsection (3) does not apply if the conspiracy, combination, agreement or arrangement has lessened or is likely to lessen competition unduly in respect of one of the following:

- (a) prices,
 - (b) quantity or quality of production,
 - (c) markets or customers, or
 - (d) channels or methods of distribution,
- or if the conspiracy, combination, agreement or arrangement has restricted or is likely to restrict any person from entering into or expanding a business in a trade, industry or profession.

Defence

(5) Subject to subsection (6), in a prosecution under subsection (1) the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to the export of products from Canada.

Exception

(6) Subsection (5) does not apply if the conspiracy, combination, agreement or arrangement

poursuites intentées en vertu du paragraphe (1), le tribunal ne peut déclarer l'accusé coupable si le complot, l'association d'intérêts, l'accord ou l'arrangement se rattache exclusivement à l'un ou plusieurs des actes suivants :

- a) l'échange de données statistiques;
- b) la définition de normes de produits;
- c) l'échange de renseignements sur le crédit;
- d) la définition de termes utilisés dans un commerce, une industrie ou une profession;
- e) la collaboration en matière de recherches et de mise en valeur;
- f) la restriction de la réclame ou de la promotion, à l'exclusion d'une restriction discriminatoire visant un représentant des médias;
- g) la taille ou la forme des emballages d'un article;
- h) l'adoption du système métrique pour les poids et mesures;
- i) les mesures visant à protéger l'environnement.

Exception

(4) Le paragraphe (3) ne s'applique pas si le complot, l'association d'intérêts, l'accord ou l'arrangement a réduit ou réduira vraisemblablement et indûment la concurrence à l'égard de l'un des sujets suivants :

- a) les prix;
 - b) la quantité ou la qualité de la production;
 - c) les marchés ou les clients;
 - d) les voies ou les méthodes de distribution,
- ou si le complot, l'association d'intérêts, l'accord ou l'arrangement a restreint ou restreindra vraisemblablement les possibilités pour une personne d'entrer dans un commerce, une industrie ou une profession ou d'accroître une entreprise commerciale, industrielle ou professionnelle.

Défense

- (b) the defining of product standards;
- (c) the exchange of credit information;
- (d) the definition of terminology used in a trade, industry or profession;
- (e) cooperation in research and development;
- (f) the restriction of advertising or promotion, other than a discriminatory restriction directed against a member of the mass media;
- (g) the sizes or shapes of the containers in which an article is packaged;
- (h) the adoption of the metric system of weights and measures; or
- (i) measures to protect the environment.

Exception

(4) Subsection (3) does not apply if the conspiracy, combination, agreement or arrangement has lessened or is likely to lessen competition unduly in respect of one of the following:

- (a) prices,
 - (b) quantity or quality of production,
 - (c) markets or customers, or
 - (d) channels or methods of distribution,
- or if the conspiracy, combination, agreement or arrangement has restricted or is likely to restrict any person from entering into or expanding a business in a trade, industry or profession.

Defence

(5) Subject to subsection (6), in a prosecution under subsection (1) the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to the export of products from Canada.

Exception

(6) Subsection (5) does not apply if the conspiracy, combination, agreement or arrangement

poursuites intentées en vertu du paragraphe (1), le tribunal ne peut déclarer l'accusé coupable si le complot, l'association d'intérêts, l'accord ou l'arrangement se rattache exclusivement à l'un ou plusieurs des actes suivants :

- a) l'échange de données statistiques;
- b) la définition de normes de produits;
- c) l'échange de renseignements sur le crédit;
- d) la définition de termes utilisés dans un commerce, une industrie ou une profession;
- e) la collaboration en matière de recherches et de mise en valeur;
- f) la restriction de la réclame ou de la promotion, à l'exclusion d'une restriction discriminatoire visant un représentant des médias;
- g) la taille ou la forme des emballages d'un article;
- h) l'adoption du système métrique pour les poids et mesures;
- i) les mesures visant à protéger l'environnement.

Exception

(4) Le paragraphe (3) ne s'applique pas si le complot, l'association d'intérêts, l'accord ou l'arrangement a réduit ou réduira vraisemblablement et indûment la concurrence à l'égard de l'un des sujets suivants :

- a) les prix;
 - b) la quantité ou la qualité de la production;
 - c) les marchés ou les clients;
 - d) les voies ou les méthodes de distribution,
- ou si le complot, l'association d'intérêts, l'accord ou l'arrangement a restreint ou restreindra vraisemblablement les possibilités pour une personne d'entrer dans un commerce, une industrie ou une profession ou d'accroître une entreprise commerciale, industrielle ou professionnelle.

Défense

- (a) has resulted in or is likely to result in a reduction or limitation of the real value of exports of a product;
 - (b) has restricted or is likely to restrict any person from entering into or expanding the business of exporting products from Canada; or
 - (c) has prevented or lessened or is likely to prevent or lessen competition unduly in the supply of services facilitating the export of products from Canada.
- (d) [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 30]

Defences

(7) In a prosecution under subsection (1), the court shall not convict the accused if it finds that the conspiracy, combination, agreement or arrangement relates only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public

(a) in the practice of a trade or profession relating to the service; or

(b) in the collection and dissemination of information relating to the service.

Exception

(7.1) Subsection (1) does not apply in respect of an agreement or arrangement between federal financial institutions that is described in subsection 49(1).

Exception

(8) Subsection (1) does not apply in respect of a conspiracy, combination, agreement or arrangement that is entered into only by companies each of which is, in respect of every one of the others, an affiliate.

[...]

PART VII
OTHER OFFENCES
[...]

(5) Sous réserve du paragraphe (6), dans des poursuites intentées en vertu du paragraphe (1), le tribunal ne peut déclarer l'accusé coupable si le complot, l'association d'intérêts, l'accord ou l'arrangement se rattache exclusivement à l'exportation de produits du Canada.

Exception

(6) Le paragraphe (5) ne s'applique pas si le complot, l'association d'intérêts, l'accord ou l'arrangement, selon le cas :

- a) a eu pour résultat ou aura vraisemblablement pour résultat une réduction ou une limitation de la valeur réelle des exportations d'un produit;
 - b) a restreint ou restreindra vraisemblablement les possibilités pour une personne d'entrer dans le commerce d'exportation de produits du Canada ou de développer un tel commerce;
 - c) a empêché ou diminué la concurrence indûment dans la fourniture de services visant à promouvoir l'exportation de produits du Canada, ou aura vraisemblablement un tel effet.
- d) [Abrogé, L.R. (1985), ch. 19 (2^e suppl.), art. 30]

Moyens de défense

(7) Dans les poursuites intentées en vertu du paragraphe (1), le tribunal ne peut déclarer l'accusé coupable s'il conclut que le complot, l'association d'intérêts, l'accord ou l'arrangement se rattache exclusivement à un service et à des normes de compétence et des critères d'intégrité raisonnablement nécessaires à la protection du public :

- a) soit dans l'exercice d'un métier ou d'une profession rattachés à ce service;
- b) soit dans la collecte et la diffusion de l'information se rapportant à ce service.

Exception

(7.1) Le paragraphe (1) ne s'applique pas à un accord ou à un arrangement visé au paragraphe 49(1) lorsque cet accord ou arrangement a lieu

(a) has resulted in or is likely to result in a reduction or limitation of the real value of exports of a product;

(b) has restricted or is likely to restrict any person from entering into or expanding the business of exporting products from Canada; or

(c) has prevented or lessened or is likely to prevent or lessen competition unduly in the supply of services facilitating the export of products from Canada.

(d) [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 30]

Defences

(7) In a prosecution under subsection (1), the court shall not convict the accused if it finds that the conspiracy, combination, agreement or arrangement relates only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public

(a) in the practice of a trade or profession relating to the service; or

(b) in the collection and dissemination of information relating to the service.

Exception

(7.1) Subsection (1) does not apply in respect of an agreement or arrangement between federal financial institutions that is described in subsection 49(1).

Exception

(8) Subsection (1) does not apply in respect of a conspiracy, combination, agreement or arrangement that is entered into only by companies each of which is, in respect of every one of the others, an affiliate.

[...]

PART VII OTHER OFFENCES

[...]

(5) Sous réserve du paragraphe (6), dans des poursuites intentées en vertu du paragraphe (1), le tribunal ne peut déclarer l'accusé coupable si le complot, l'association d'intérêts, l'accord ou l'arrangement se rattache exclusivement à l'exportation de produits du Canada.

Exception

(6) Le paragraphe (5) ne s'applique pas si le complot, l'association d'intérêts, l'accord ou l'arrangement, selon le cas :

a) a eu pour résultat ou aura vraisemblablement pour résultat une réduction ou une limitation de la valeur réelle des exportations d'un produit;

b) a restreint ou restreindra vraisemblablement les possibilités pour une personne d'entrer dans le commerce d'exportation de produits du Canada ou de développer un tel commerce;

c) a empêché ou diminué la concurrence indûment dans la fourniture de services visant à promouvoir l'exportation de produits du Canada, ou aura vraisemblablement un tel effet.

d) [Abrogé, L.R. (1985), ch. 19 (2^e suppl.), art. 30]

Moyens de défense

(7) Dans les poursuites intentées en vertu du paragraphe (1), le tribunal ne peut déclarer l'accusé coupable s'il conclut que le complot, l'association d'intérêts, l'accord ou l'arrangement se rattache exclusivement à un service et à des normes de compétence et des critères d'intégrité raisonnablement nécessaires à la protection du public :

a) soit dans l'exercice d'un métier ou d'une profession rattachés à ce service;

b) soit dans la collecte et la diffusion de l'information se rapportant à ce service.

Exception

(7.1) Le paragraphe (1) ne s'applique pas à un accord ou à un arrangement visé au paragraphe 49(1) lorsque cet accord ou arrangement a lieu

Procedure for enforcing punishment

67. [...]

Jurisdiction of courts

(3) No court other than a superior court of criminal jurisdiction, as defined in the *Criminal Code*, has power to try any offence under section 45, 46, 47, 48 or 49.

entre des institutions financières fédérales.

Exception

(8) Le paragraphe (1) ne s'applique pas à un complot, une association d'intérêts, un accord ou un arrangement intervenu exclusivement entre des personnes morales qui, considérées individuellement, sont des affiliées de chacune des autres personnes morales en question.

PARTIE VII**AUTRES INFRACTIONS**

[...]

Choix de l'inculpé

67. [...]

Compétence des tribunaux

(3) Nul tribunal autre qu'une cour supérieure de juridiction criminelle, au sens du *Code criminel*, n'a le pouvoir de juger une infraction visée à l'article 45, 46, 47, 48 ou 49.

3. Corrections and Conditional Release Act, S.C. 1992, c. 20**GENERAL — LIVING CONDITIONS**

[...]

Inmate input into decisions

74. The Service shall provide inmates with the opportunity to contribute to decisions of the Service affecting the inmate population as a whole, or affecting a group within the inmate population, except decisions relating to security matters.

[...]

GRIEVANCE PROCEDURE**Grievance procedure**

90. There shall be a procedure for fairly and expeditiously resolving offenders' grievances on matters within the jurisdiction of the Commissioner, and the procedure shall operate in accordance with the regulations made under

CONDITIONS DE DETENTION

[...]

Participation aux décisions

74. Le Service doit permettre aux détenus de participer à ses décisions concernant tout ou partie de la population carcérale, sauf pour les questions de sécurité.

[...]

GRIEFS**Procédure de règlement**

90. Est établie, conformément aux règlements d'application de l'alinéa 96u), une procédure de règlement juste et expéditif des griefs des délinquants sur des questions relevant du commissaire.

Accès à la procédure de règlement des griefs

paragraph 96(u).

Access to grievance procedure

91. Every offender shall have complete access to the offender grievance procedure without negative consequences.

91. Tout délinquant doit, sans crainte de représailles, avoir libre accès à la procédure de règlement des griefs.

4. Corrections and Conditional Release Regulations, S.O.R./92-620

OFFENDER GRIEVANCE PROCEDURE

74. (1) Where an offender is dissatisfied with an action or a decision by a staff member, the offender may submit a written complaint, preferably in the form provided by the Service, to the supervisor of that staff member.

(2) Where a complaint is submitted pursuant to subsection (1), every effort shall be made by staff members and the offender to resolve the matter informally through discussion.

(3) Subject to subsections (4) and (5), a supervisor shall review a complaint and give the offender a copy of the supervisor's decision as soon as practicable after the offender submits the complaint.

(4) A supervisor may refuse to review a complaint submitted pursuant to subsection (1) where, in the opinion of the supervisor, the complaint is frivolous or vexatious or is not made in good faith.

(5) Where a supervisor refuses to review a complaint pursuant to subsection (4), the supervisor shall give the offender a copy of the supervisor's decision, including the reasons for the decision, as soon as practicable after the offender submits the complaint.

75. Where a supervisor refuses to review a complaint pursuant to subsection 74(4) or where an offender is not satisfied with the decision of a supervisor referred to in subsection 74(3), the offender may submit a written grievance, preferably in the form provided by the Service,

(a) to the institutional head or to the director of

PROCÉDURE DE RÈGLEMENT DE GRIEFS DES DÉLINQUANTS

74. (1) Lorsqu'il est insatisfait d'une action ou d'une décision de l'agent, le délinquant peut présenter une plainte au supérieur de cet agent, par écrit et de préférence sur une formule fournie par le Service.

(2) Les agents et le délinquant qui a présenté une plainte conformément au paragraphe (1) doivent prendre toutes les mesures utiles pour régler la question de façon informelle.

(3) Sous réserve des paragraphes (4) et (5), le supérieur doit examiner la plainte et fournir copie de sa décision au délinquant aussitôt que possible après que celui-ci a présenté sa plainte.

(4) Le supérieur peut refuser d'examiner une plainte présentée conformément au paragraphe (1) si, à son avis, la plainte est futile ou vexatoire ou n'est pas faite de bonne foi.

(5) Lorsque, conformément au paragraphe (4), le supérieur refuse d'examiner une plainte, il doit fournir au délinquant une copie de sa décision motivée aussitôt que possible après que celui-ci a présenté sa plainte.

75. Lorsque, conformément au paragraphe 74(4), le supérieur refuse d'examiner la plainte ou que la décision visée au paragraphe 74(3) ne satisfait pas le délinquant, celui-ci peut présenter un grief, par écrit et de préférence sur une formule fournie par le Service :

a) soit au directeur du pénitencier ou au directeur de district des libérations conditionnelles, selon le cas;

the parole district, as the case may be; or

(b) where the institutional head or director is the subject of the grievance, to the head of the region.

76. (1) The institutional head, director of the parole district or head of the region, as the case may be, shall review a grievance to determine whether the subject-matter of the grievance falls within the jurisdiction of the Service.

(2) Where the subject-matter of a grievance does not fall within the jurisdiction of the Service, the person who is reviewing the grievance pursuant to subsection (1) shall advise the offender in writing and inform the offender of any other means of redress available.

77. (1) In the case of an inmate's grievance, where there is an inmate grievance committee in the penitentiary, the institutional head may refer the grievance to that committee.

(2) An inmate grievance committee shall submit its recommendations respecting an inmate's grievance to the institutional head as soon as practicable after the grievance is referred to the committee.

(3) The institutional head shall give the inmate a copy of the institutional head's decision as soon as practicable after receiving the recommendations of the inmate grievance committee.

78. The person who is reviewing a grievance pursuant to section 75 shall give the offender a copy of the person's decision as soon as practicable after the offender submits the grievance.

79. (1) Where the institutional head makes a decision respecting an inmate's grievance, the inmate may request that the institutional head refer the inmate's grievance to an outside review board, and the institutional head shall refer the grievance to an outside review board.

(2) The outside review board shall submit its recommendations to the institutional head as soon as practicable after the grievance is referred

b) soit, si c'est le directeur du pénitencier ou le directeur de district des libérations conditionnelles qui est mis en cause, au responsable de la région.

76. (1) Le directeur du pénitencier, le directeur de district des libérations conditionnelles ou le responsable de la région, selon le cas, doit examiner le grief afin de déterminer s'il relève de la compétence du Service.

(2) Lorsque le grief porte sur un sujet qui ne relève pas de la compétence du Service, la personne qui a examiné le grief conformément au paragraphe (1) doit en informer le délinquant par écrit et lui indiquer les autres recours possibles.

77. (1) Dans le cas d'un grief présenté par le détenu, lorsqu'il existe un comité d'examen des griefs des détenus dans le pénitencier, le directeur du pénitencier peut transmettre le grief à ce comité.

(2) Le comité d'examen des griefs des détenus doit présenter au directeur ses recommandations au sujet du grief du détenu aussitôt que possible après en avoir été saisi.

(3) Le directeur du pénitencier doit remettre au détenu une copie de sa décision aussitôt que possible après avoir reçu les recommandations du comité d'examen des griefs des détenus.

78. La personne qui examine un grief selon l'article 75 doit remettre copie de sa décision au délinquant aussitôt que possible après que le détenu a présenté le grief.

79. (1) Lorsque le directeur du pénitencier rend une décision concernant le grief du détenu, celui-ci peut demander que le directeur transmette son grief à un comité externe d'examen des griefs, et le directeur doit accéder à cette demande.

(2) Le comité externe d'examen des griefs doit présenter au directeur du pénitencier ses recommandations au sujet du grief du détenu aussitôt que possible après en avoir été saisi.

(3) Le directeur du pénitencier doit remettre au

to the board.

(3) The institutional head shall give the inmate a copy of the institutional head's decision as soon as practicable after receiving the recommendations of the outside review board.

80. (1) Where an offender is not satisfied with a decision of the institutional head or director of the parole district respecting the offender's grievance, the offender may appeal the decision to the head of the region.

(2) Where an offender is not satisfied with the decision of the head of the region respecting the offender's grievance, the offender may appeal the decision to the Commissioner.

(3) The head of the region or the Commissioner, as the case may be, shall give the offender a copy of the head of the region's or Commissioner's decision, including the reasons for the decision, as soon as practicable after the offender submits an appeal.

81. (1) Where an offender decides to pursue a legal remedy for the offender's complaint or grievance in addition to the complaint and grievance procedure referred to in these Regulations, the review of the complaint or grievance pursuant to these Regulations shall be deferred until a decision on the alternate remedy is rendered or the offender decides to abandon the alternate remedy.

(2) Where the review of a complaint or grievance is deferred pursuant to subsection (1), the person who is reviewing the complaint or grievance shall give the offender written notice of the decision to defer the review.

82. In reviewing an offender's complaint or grievance, the person reviewing the complaint or grievance shall take into consideration

(a) any efforts made by staff members and the offender to resolve the complaint or grievance, and any recommendations resulting therefrom;

(b) any recommendations made by an inmate grievance committee or outside review board;

détenu une copie de sa décision aussitôt que possible après avoir reçu les recommandations du comité externe d'examen des griefs.

80. (1) Lorsque le délinquant est insatisfait de la décision rendue au sujet de son grief par le directeur du pénitencier ou par le directeur de district des libérations conditionnelles, il peut en appeler au responsable de la région.

(2) Lorsque le délinquant est insatisfait de la décision rendue au sujet de son grief par le responsable de la région, il peut en appeler au commissaire.

(3) Le responsable de la région ou le commissaire, selon le cas, doit transmettre au délinquant copie de sa décision motivée aussitôt que possible après que le délinquant a interjeté appel.

81. (1) Lorsque le délinquant décide de prendre un recours judiciaire concernant sa plainte ou son grief, en plus de présenter une plainte ou un grief selon la procédure prévue dans le présent règlement, l'examen de la plainte ou du grief conformément au présent règlement est suspendu jusqu'à ce qu'une décision ait été rendue dans le recours judiciaire ou que le détenu s'en désiste.

(2) Lorsque l'examen de la plainte ou au grief est suspendu conformément au paragraphe (1), la personne chargée de cet examen doit en informer le délinquant par écrit.

82. Lors de l'examen de la plainte ou du grief, la personne chargée de cet examen doit tenir compte :

a) des mesures prises par les agents et le délinquant pour régler la question sur laquelle porte la plainte ou le grief et des recommandations en découlant;

b) des recommandations faites par le comité d'examen des griefs des détenus et par le comité externe d'examen des griefs;

c) de toute décision rendue dans le recours judiciaire visé au paragraphe 81(1).

and

(c) any decision made respecting an alternate remedy referred to in subsection 81(1).

5. Criminal Code, R.S.C. 1985, c. C-46

INTERPRETATION

Definitions

2. In this Act, [...]

"superior court of criminal jurisdiction" means

(a) in the Province of Ontario, the Court of Appeal or the Superior Court of Justice,

(b) in the Province of Quebec, the Superior Court,

(c) in the Province of Prince Edward Island, the Supreme Court,

(d) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Appeal or the Court of Queen's Bench,

(e) in the Provinces of Nova Scotia, British Columbia and Newfoundland, the Supreme Court or the Court of Appeal,

(f) in Yukon, the Supreme Court,

(g) in the Northwest Territories, the Supreme Court, and

(h) in Nunavut, the Nunavut Court of Justice;

DÉFINITIONS ET INTERPRÉTATION

Définitions

2. Les définitions qui suivent s'appliquent à la présente loi. [...]

« cour supérieure de juridiction criminelle »

a) Dans la province d'Ontario, la Cour d'appel ou la Cour supérieure de justice;

b) dans la province de Québec, la Cour supérieure;

c) dans la province de l'Île-du-Prince-Édouard, la Cour suprême;

d) dans les provinces du Nouveau-Brunswick, du Manitoba, de la Saskatchewan et d'Alberta, la Cour d'appel ou la Cour du Banc de la Reine;

e) dans les provinces de la Nouvelle-Écosse, de la Colombie-Britannique et de Terre-Neuve, la Cour suprême ou la Cour d'appel;

f) au Yukon, la Cour suprême;

g) dans les Territoires du Nord-Ouest, la Cour suprême;

h) dans le territoire du Nunavut, la Cour de justice du Nunavut.

6. Federal Courts Act, R.S.C. 1985, c. F-7**JURISDICTION OF FEDERAL COURT**

[...]

Application for judicial review**18.1 [...]****Time limitation**

(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

COMPÉTENCE DE LA COUR FÉDÉRALE

[...]

Demande de contrôle judiciaire**18.1 [...]****Délai de présentation**

(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-1455-05

STYLE OF CAUSE:

STEVEN OLAH v. THE ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING:

Toronto, Ontario

DATE OF HEARING:

October 12, 2006

**REASONS FOR JUDGMENT
AND JUDGMENT:**

KELEN I

DATED:

October 18, 2006

APPEARANCES:

Mr. John Hill

FOR THE APPLICANT

Mr. Matthew Sullivan

Ms. Susan Keenan

FOR THE RESPONDENT

SOLICITORS OF RECORD:

John Hill

Toronto, ON

FOR THE APPLICANT

John H. Sims, Q.C.

Deputy Attorney General of Canada

FOR THE RESPONDENT

(705) 627-3479

MAILED
04-02-20

(NEW) 03-05-ONT-332-1
(OLD) 03-04-ONT-332

Government of Canada
Gouvernement du Canada

MEMORANDUM OF AGREEMENT

Gravenhurst Home Hardware
1170 Southgate Plaza,
Box 490
Gravenhurst, Ontario
P1P 1T8
Attn: Robert & Kaija Clark

Dear Sir/Madam:

RE: INMATE PURCHASING AND CANTEEN SERVICE

Correctional Service Canada (C.S.C.) requires your services for the above noted project.

1 Period Of Work

This amendment dated the 17th day of February, 2004 and continue until the 31st day of July, 2004.

2 Statement Of Work

2.1 Scope of Work

- 2.1.1 To provide staff to manage the Fenbrook Medium Institution Inmate Purchasing and Inmate Canteen services.
- 2.1.2 To co-ordinate inmate orders for Section 532 purchases and inmate "group" purchases. In addition, the Contractor will co-ordinate Hobbycraft purchases through the Social Development Officer.
- 2.1.3 To be responsible for the recruitment and management of inmate purchasing clerks who will be trained in the skills of ordering, inventory control, record keeping, filing, computer inventory programs and ordering programs.
- 2.1.4 To post upcoming inmate purchasing clerk job opportunities through the Fenbrook Medium Institution Employment office. Applicants will be interviewed and recommendations made to the Program Board. The Program Board has the final decision responsibility.
- 2.1.5 To provide a training program in the skills of a purchasing department including record keeping, inventory control, purchasing procedures, ordering procedures, customer service and related skills. Extensive training in the use of computers in Word and Excel to be emphasized.
- 2.1.6 The Contractor, the Contractor's staff and the inmate purchasing clerks shall practice the highest standards of customer service while operating an efficient, understandable and comprehensive inmate purchasing service to the Fenbrook Medium Institution offender population.
- 2.1.7 Inmate canteen workers shall be hired through the Employment Coordinator Office and in full consultation with the Inmate Committee and the Inmate Canteen operators. Inmates will work a full 35 hour work-week where applicable.
- 2.1.8 The Contractor shall do regular "performance Evaluations" in the electronic system provided and shall post the inmate pay hours to the Inmate Pay clerk.

THIS IS EXHIBIT B
TO THE AFFIDAVIT OF Sworn Officer
SWORN BEFORE ME
THIS 27 DAY OF AUG, 2008.
A COMMISSIONER, ETC.
Janet Strength

REVIEWED BY ATIP DIVISION
Correctional Service of Canada
REVISE PAR LA DIRECTION AIP
Service correctionnel du Canada

Janet Mary Strength, a Commissioner, etc.,
District Municipality of Muskoka, for the
Government of Canada, Correctional Service of
Canada. Expires January 6, 2011.

Government
of CanadaGouvernement
du Canada

MEMORANDUM OF AGREEMENT

- 2.1.9 A minimum of 2 inmate clerks shall be used in the Inmate Purchasing Program and a minimum of 3 in the Canteen operation.
- 2.1.10 To provide on-site supervision at all times that there are inmate workers at the site. Job training instruction shall be continuous and progressive in nature leading to increased skills and tasks suitable to the positions.
- 2.1.11 To provide supervision of the Canteen operation consisting of overseeing the operation, receiving and forwarding inventory reports of the Canteen operation, monitoring the pricing of each canteen product for compliance with Correctional Service Canada policy. The Canteen supervisor shall ensure that only items on the "Approved List" are purchased by the Canteen operation.
- 2.1.12 Retail pricing shall be the objective of the Inmate Purchasing service.
- 2.1.13 Shipping charges and/or handling fees will be charged to the inmate with no additional mark-up. The Contractor shall supply an updated "Suppliers List" for all suppliers in the service with all charges highlighted where applicable, and noting where retail prices are in effect.
- 2.1.14 Hobbycraft shall be sourced from an "Approved List" of hobbycraft items. This list shall be developed by the Contractor and submitted to the institution for approval. Retail prices shall prevail.
- 2.1.15 The Inmate Purchasing service shall whenever possible, provide an up-to-date catalogue that shall be commonly available to the inmate population.
- 2.1.16 To provide continuous service in Inmate Purchasing and Canteen without interruptions for vacations or other reasons.
- 2.1.17 To develop a "Procedure Manual" including all procedures necessary to operate the Inmate Purchasing/Hobbycraft and Canteen service.
- 2.1.18 To meet with an Inmate Committee on a regular basis to facilitate communication throughout the inmate population.
- 2.1.19 To learn all computer programs in use in the service including the Canteen accounting system and the Inmate Purchasing accounting system, as revised from time to time; in order to be fully aware of all of the Purchasing systems in the office.
- 2.1.20 Supervision services to include health and safety instruction in the operation of the workplace and the safe and secure operation of the equipment provided.
- 2.1.21 To comply with all applicable policies, directives and instructions related to security and the health and safety of the workplace as directed by CORCAN and the Fenbrook Medium Institution.
- 2.1.22 The Fenbrook Medium Institution has many inmate groups such as the "Lifer's Group", the "Racial Harmony Group", etc. These groups will purchase through Inmate Purchasing and Inmate Purchasing shall provide for these requests. If a request is not feasible, Inmate Purchasing will advise the Institution of the reason.

REVIEWED BY ATP DIVISION
Correctional Service of Canada
REVISE PAR LA DIRECTION AIRP
Service correctionnel du Canada

(NEW) 03-05-ONT-332-1
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2.1.23 The Contractor shall not sublet the premises, or any part thereof, nor use the same for any purpose other than that stipulated, nor make any structural alterations, without the written consent of CORCAN. No third party hired by the Contractor to make alterations will be permitted without prior approval of the Departmental Representative/Project Authority. The Contractor shall not subcontract any or all of this agreement to any person or party without the express consent of the Departmental Representative/Project Authority.

2.2 Evaluation

The Departmental Representative/Project Authority, acting on behalf of the Minister, shall supply, complete and distribute the Standard Evaluation Form during the last few days of the contract period. The Contractor shall be allowed to review the completed evaluation and record any comments. Copies shall then be sent out to the Contractor, Departmental Representative/Project Authority and the Contracting Authority.

3 Basis Of Payment

3.1 The basis of payment will be in accordance with the following:

Payment of \$1,500.00 per month, up to a maximum of eight months; for a sum not to exceed ~~\$12,000.00~~ for fees, will be made upon successful completion of the deliverables outlined above in the scope of work and subject to receipt of monthly invoices; certified by the Departmental Representative/Project Authority (Assistant Warden Correctional Programs, Fenbrook Medium Institution) or designated officer with the appropriate delegated signing authority.

3.2 Institutional Shutdown

In the event of an institutional shutdown for more than one (1) day, services may be suspended as per the Departmental Representative/Project Authority. The Departmental Representative/Project Authority will advise the Contractor when services are to be suspended. No remuneration will be paid during suspension of services.

3.3 Notification

3.3.1 The Contractor shall be required to notify the Departmental Representative/Project Authority once the total billing-to-date has reached 75% of the total portion of this agreement.

3.3.2 Said notification can be either verbal or written, however, verbal notifications must be confirmed in writing.

3.4 Invoices

3.4.1 Each invoice must specify:

- dates of service;
- brief list of services provided;
- GST costs (if applicable) are to be identified separately;
- contract number;
- total cost of invoice.

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3.4.2 Each invoice will be mailed to:

TITLE: Assistant Warden Correctional Programs
ADDRESS: Correctional Service Canada
Fenbrook Medium Institution
P.O. Box 5000
Beaver Creek Drive,
Gravenhurst, Ontario
P1P 1Y2
TELEPHONE: (705) 687-1744

3.5 Payment by Her Majesty for the work shall be made within (30) days following:

3.5.1 the date an invoice and substantiating documentation has been received by the Departmental Representative/Project Authority;

or

3.5.2 the date that the deliverables provided for under the contract have been completed and accepted by the Departmental Representative/Project Authority,

whichever is later.

3.6 Interest

3.6.1 In this Article an amount "due and payable" when it is due and payable by Her Majesty to the Contractor according to the terms of the contract.

3.6.2 For the purposes of this Article, an amount is overdue when it is unpaid on the first day following the day upon which it is due and payable.

3.6.3 In this Article "date of payment" means the date of a negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable.

3.6.4 In this Article "Bank Rate" means the discount rate of interest set by the Bank of Canada.

3.6.5 Her Majesty shall be liable to pay without demand from the Contractor simple interest at the Bank Rate plus 3 per cent on any amount which is overdue from the day such amount became overdue until the day prior to the date of payment, inclusive. Her Majesty will not pay interest on an interim basis and also will not pay interest on interest or on overdue advance payments.

3.6.6 The Bank Rate shall be the average Bank of Canada discount rate for the month preceding the date of payment.

3.6.7 Interest shall only be paid when Her Majesty is responsible for the delay in paying the Contractor. In the event Her Majesty is not responsible for the delay in paying the Contractor, no interest shall be paid.

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3.7 Goods and Services Tax

The Goods and Services Tax (GST) is excluded from the contract price. The Goods and Services Tax, to the extent applicable, will be incorporated into all invoices and claims and will be paid by Canada. The Contractor agrees to remit to Revenue Canada - Customs and Excise any GST that the Contractor receives from Canada pursuant to this contract. The Goods and Services Tax, to the extent applicable, shall be shown as a separate item on invoices. The invoice shall also include the Contractor's GST Registration Number.

4 Indemnification

4.1 The Contractor shall indemnify and save harmless Her Majesty and the Minister from and against all claims, losses, damages, costs, expenses, actions and other proceedings, made, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner based upon, occasioned by or attributable to any injury to or death of a person or damage to or loss of property arising from any willful or negligent act, omission or delay on the part of the Contractor, the Contractor's servants or agents in performing the work or as a result of the work.

4.2 The Contractor shall indemnify Her Majesty and the Minister from all costs, charges and expenses whatsoever that Her Majesty sustains or incurs in or about all claims, actions, suits and proceedings for the use of the invention claimed in a patent, or infringement or alleged infringement of any patent or any registered industrial design or any copyright resulting from the performance of the Contractor's obligations under the contract and in respect of the use of or disposal by Her Majesty of anything furnished pursuant to the contract.

4.3 The Contractor's liability to indemnify or reimburse Her Majesty under the contract shall not affect or prejudice Her Majesty from exercising any other rights under law.

5 Termination or Suspension

5.1 The Minister may, by giving notice to the Contractor, terminate or suspend work with respect to all or any part or parts of the work not completed. A minimum of 30 days notice shall be provided if the contract has to be cancelled due to unexpected changes in program requirements or funding levels.

5.2 All work completed by the Contractor to the satisfaction of Her Majesty before the giving of such notice shall be paid for by Her Majesty in accordance with the provisions of the contract and, for all work not completed before the giving of such notice, Her Majesty shall pay the Contractor's costs as determined under the provisions of the contract and, in addition, an amount representing a fair and reasonable fee in respect of such work.

6 Conflict of Interest

It is a term of this contract that no individual, for whom the post-employment provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders or the Conflict of Interest and Post-Employment Code for the Public Service apply, shall derive a direct benefit from this contract unless that individual is in compliance with the applicable post-employment provisions.

7 Contractor Status

This is a contract for the performance of a service and the Contractor is engaged under the contract as an independent contractor for the sole purpose of providing a service. Neither the Contractor nor any of the Contractor's personnel is engaged by the contract as an employee, servant or agent of Her Majesty. The Contractor agrees to be solely responsible for any and all payments and/or deductions required to be made including those required for Canada or Quebec Pension Plans, Unemployment Insurance, Workmen's Compensation, or Income Tax.

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8 Member of House of Commons

No member of the House of Commons shall be admitted to any share or part of this contract or to any benefit to arise therefrom.

9 Privacy

9.1 It is understood and agreed that all information obtained and all records, research, working papers, submissions and reports, final or otherwise, prepared in connection with this contract shall be submitted to the Minister/Department and shall be the sole and exclusive property of the Minister/Department. Furthermore, this information shall be subject to the application of the *Access to Information Act* and *Privacy Act*. The Contractor shall not use or release this information without the written consent of the Department.

9.2 The *Privacy Act* applies to all personal information recorded in any form by the Contractor in connection with any services rendered pursuant to this agreement.

10 Security

10.1 Contractor personnel who require access to protected information, assets or sensitive work sites shall each hold a valid Enhanced Reliability screening, granted by Correctional Service Canada.

10.2 The Contractor shall not remove any designated information or assets from the identified work site(s), and the Contractor shall ensure that its personnel are made aware of and comply with this restriction. The Departmental Representative/Project Authority may, in writing, authorize temporary removal of such information or assets by the Contractor from the identified work site(s) subject to safeguarding specified in the written authorization.

10.3 Protected Information - Document Location and Safeguarding

In accordance with Section 10 - Security, the Contractor may be permitted to remove DESIGNATED information on a TEMPORARY basis and to store or create designated documents at his/her facility subject to the following safeguards:

- all documents or computer media e.g. diskette containing DESIGNATED information belonging to Correctional Service Canada must be stored in a locked fireproof cabinet at the Contractor's facility;
- no DESIGNATED information may be stored on the computer hard drive or be processed on a computer belonging to the Contractor, unless the computer is protected by a software program approved by the Department that automatically encrypts swap file and temporary file areas on that computer;
- the Contractor must remove any and all sensitive Correctional Service Canada electronic information that belongs to the Department or was processed in the completion of the contract, from any storage medium belonging to the Contractor or any of its agents. The sensitive Correctional Service Canada electronic information must be removed in a manner that complies with requirements of the Government Security Policy and associated Standards documents, for the removal of information of the sensitivity involved. Information on this can be obtained by contacting the Correctional Service Canada - Information Technology Security Coordinator at (613) 996-8300;
- no information provided by the Department is to be copied or retained by the Contractor, following the conclusion of this contract;

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- all documentation produced or completed by the Contractor, which contains DESIGNATED information shall be labeled PROTECTED "B" in the upper right hand corner on the face of each page of the document;
- the Contractor will personally pick up and deliver all DESIGNATED information from and to the Departmental Representative/Project Authority;
- all notes, working papers, etcetera, that are related to the completion of this contract and that contain DESIGNATED information shall be returned to the Departmental Representative/ Project Authority for disposal;
- the Contractor shall not share or release any DESIGNATED information related to the completion of this contract with anyone, without the prior written authorization of the Departmental Representative/Project Authority;
- the Contractor shall ensure that all of its employees who are involved in this contract are completely aware of their security obligations related to the handling of Correctional Service Canada's DESIGNATED assets, as outlined in this Appendix.

10.4 It is understood and agreed that all security rules, regulations and procedures applicable to public servants employed by the Correctional Service Canada will apply equally to the Contractor, its officers, servants and agents. The Contractor is responsible to ensure the completion of all documentation required in the Correctional Service Canada personnel security program for the purpose of security clearance or reliability screening of its officers, servants and agents. It is understood and agreed that access to Correctional Service Canada premises or to Correctional Service Canada documents will be withheld until clearance documentation is submitted and processed.

10.5 The Contractor understands and agrees that its officers, servants and agents must consent to the necessary disclosure of personal information required to support the personnel security program and that failure to consent to these disclosures will render the person unsuitable for employment on Correctional Service Canada premises and/or to have access to any Correctional Service Canada documents.

The Contractor agrees that its officers, servants and agents will comply with all standing orders or other regulations in force at the site where the work covered by this contract is to be performed, relating to the safety of persons on the site or the protection of property against loss or damage from any, and all causes, including fire.

11 Compliance with Applicable Laws

11.1 The Contractor shall comply with all laws, regulations and rules applicable to the agents and servants of the Crown and shall require compliance therewith by all of its sub-contractors. Evidence of compliance with such laws, regulations and rules shall be furnished by the Contractor to the Contracting Authority at such times as the Contracting Authority may reasonable request.

Details on existing Correctional Service Canada policies may be found at: <http://www.csc-sec.gc.ca/text/legislative.shtml>.

12 Health and Labour Conditions

12.1 In this section, "Public Entity" means the municipal, provincial or federal government body authorized to enforce any laws concerning health and labour applicable to the performance of the Work or any part thereof.

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- 12.2 The Contractor shall comply with all laws concerning health and labour conditions applicable to the performance of the Work or part thereof and shall also require compliance of same by all its subcontractors when applicable.
- 12.3 The Contractor upon any request for information or inspection dealing with the Work by an authorized representative of a Public Entity shall forthwith notify the Departmental Representative/Project Authority or Her Majesty.
- 12.4 Evidence of compliance with laws applicable to the performance of the Work or part thereof by either the Contractor or its subcontractor shall be furnished by the Contractor to the Departmental Representative/Project Authority or Her Majesty at such time as the Departmental Representative/Project Authority or Her Majesty may reasonably request."

13 Replacement of Personnel

- 13.1 When specific persons have been named in the contract as the persons who must perform the work, the Contractor shall provide the services of the persons so named unless the Contractor is unable to do so for reasons beyond its control.
- 13.2 If at any time the Contractor is unable to provide the services of any specific person named in the contract, it shall provide a replacement person with similar qualifications and experience. The Contractor shall, as soon as possible, give five (5) working days notice to the Minister of:
- (a) the reason for the removal of the named person from the work;
 - (b) the name, qualifications and experience of the proposed replacement person. The replacement must be of similar ability and experience and must be acceptable to the Departmental Representative/Project Authority. Any replacement shall be at the Contractor's sole expense.
- 13.3 The Minister may order the removal from the work of any such replacement person and the Contractor shall immediately remove the person from the work and shall, in accordance with subsection 2, secure a further replacement.

14 Certification - Contingency Fees

- 14.1 The Contractor certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation, or obtaining of this contract to any person other than an employee acting in the normal course of the employee's duties.
- 14.2 All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the contract shall be subject to the Accounts and Audit provisions of the contract.
- 14.3 If the Contractor certifies falsely under this section or is in default of the obligations contained therein, the Minister may either terminate this contract for default provisions of the contract or recover from the Contractor by way of reduction to the contract price or otherwise the full amount of the contingency fee.
- 14.4 In this section:
- "contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a Government contract or negotiating the whole or any part of its terms.

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"employee" means a person with whom the Contractor has an employer/employee relationship.

"person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to Section 5 of the Lobbyist Registration Act R.S. 1985 c.44 (4th supplement) as the same may be amended from time to time.

15 Tuberculosis Testing

15.1 It is a condition of this contract that the Contractor or any employee of the Contractor who require entry into a Correctional Service Canada institution to fulfil the conditions of the contract, may at the sole discretion of the Warden, and upon reasonable grounds, be required to provide proof of and results of a recent tuberculin test for the purpose of determining their TB infection status.

15.2 Failure to provide proof of and results of a tuberculin test may result in the termination of the contract.

15.3 All costs relating to such testing will be at the sole expense of the Contractor.

16 Permits And Licences

The Contractor is responsible for obtaining and payment of fees for all necessary permits or licences required for the performance of the services pursuant to this contract.

17 Personal Articles

The Contractor, its officers, servants and agents are authorized to introduce or bring onto the premises of a Correctional Service Canada facility; only very personal articles approved by the Warden/Director or designate. In case of any doubt, the Contractor, its officers, servants and agents must obtain written authority from the Warden/Director or designate.

18 Contraband

18.1 The Contractor shall ensure that all persons employed by it, directly or indirectly in the provision of services under this contract, are familiar with Corrections and Conditional Release Act, section 2.

18.2 Giving a prohibited item to an offender is strictly forbidden.

18.3 The Contractor, its officers, servants and agents shall not enter into any relationship and give or receive items to an offender. Such items include but are not restricted to the following: cigarettes, toiletry items, hobby items etc., drugs, alcohol, letters to or from inmates, money, weapons or items which could be used as a weapon.

18.4 Any person found responsible for providing prohibited objects or contraband materials to offenders will be subject to immediate removal from the institution and/or possible criminal charges.

19 Damage To Or Loss Of Government Property

In the event of damage or loss of government property under care and control of the Contractor's personnel, the Contractor shall immediately advise the Correctional Service Canada Departmental Representative/Project Authority, by telephone or message, and within seven (7) days submit a written report on the incident.

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20 Amendments

No amendment to the contract nor waiver of any terms of the terms and provisions shall be deemed as valid unless effected by a written amendment.

21 Entire Agreement

The contract constitutes the entire agreement between the parties with respect to the subject matter of the contract and supersedes all previous negotiations, communication and other agreements relating to it unless they are incorporated by reference in the contract.

22 International Sanctions

22.1 Persons in Canada, and Canadians outside of Canada, are bound by economic sanctions imposed by Canada. As a result, the Government of Canada cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries or persons subject to economic sanctions.

Details on existing sanctions may be found at: <http://www.dfa-it-maeci.gc.ca/trade/sanctions-e.asp>.

22.2 It is a condition of this contract that the Contractor not supply to the Government of Canada any goods or services which are subject to economic sanctions.

22.3 By law, the Contractor must comply with changes to the regulations imposed during the life of the contract. During the performance of the contract, should the imposition of sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services cause an impossibility of performance for the Contractor, the situation will be treated by the Parties as a force majeure. The Contractor shall forthwith inform Canada of the situation and the procedures applicable to force majeure shall then apply.

23 Ownership of Intellectual Property

Should any work under this contract be recorded in a medium (except for computer programs & related software documentation) the following will apply:

Copyright

23.1 In this section,

"Material" means anything that is created or developed by the Contractor as part of the Work under the Contract, and in which copyright subsists, but does not include computer programs and related software documentation.

"Moral Rights" has the same meaning as in the *Copyright Act*, R.S.C. 1985, c. C-42

23.2 Copyright in the Material shall vest in Canada and the Contractor shall incorporate in all Material the copyright symbol and either of the following notices, as appropriate:

© HER MAJESTY THE QUEEN IN RIGHT OF Canada (year)

or

© SA MAJESTÉ LA REINE DU CHEF DU CANADA (year)

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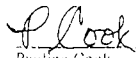
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- 23.3 At the completion of the Contract, or at such other time as the Contract or the Minister may require, the Contractor shall fully and promptly disclose to the Minister all Material created or developed under the Contract.
- 23.4 Where copyright in any Material vests in Canada under the Contract, the Contractor shall execute such conveyances and other documents relating to title or copyright as the Minister may require.
- 23.5 The Contractor shall not use, copy, divulge or publish any Material except as is necessary to perform the Contract.
- 23.6 At the request of the Minister, the Contractor shall provide to Canada, at the completion of the Work or at such other time as the Minister may require, a written permanent waiver of Moral Rights, in a form acceptable to the Minister, from every author that contributed to the Material.
- 23.7 If the Contractor is an author of the Material, the Contractor hereby permanently waives the Contractor's Moral Rights in respect of the Material.

If you concur with the preceding please acknowledge by signing all copies of this agreement below and returning them to the undersigned.

Yours truly,


Pauline Cook
Regional Contract Administrator
Correctional Service Canada
Regional Headquarters (O)
440 King Street West
P.O. Box 1174
Kingston, Ontario
K7L 4Y8
Tel: (613) 545-8216
FAX: (613) 536-4571

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FOR THE CONTRACTOR:

Gravenhurst Home Hardware

Witness

Date

FOR HER MAJESTY:

Contract Review Board

Witness

Date

Reviewed by Contract Review Board:

February 11, 2004

Reviewed for Regional Contract Administrator:

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File No. T-

COMPETITION TRIBUNAL

Steven Olah

- and -

**Her Majesty the Queen &
Gravenhurst Home Hardware**

AFFIDAVIT OF THE APPLICANT

**John L. Hill
993 Ontario Street
Cobourg, Ontario
K9A 3C8**

**Tel.: (905) 373-0200
Fax : (905) 373-1670**

**Solicitor for the
Applicant**