

INFORMATION NOTE*

Commissioner of Competition v. Gestion Lebski inc et al.

September 8, 2006. The Competition Tribunal issued its reasons and order today in *Gestion Lebski inc et al.* Mr. Justice Blanchard, sitting alone, heard and disposed of the application on behalf of the Tribunal.

The Commissioner of Competition alleged that the defendants had employed deceptive marketing practices contrary to subsections 74.01(a) and (b) of the *Competition Act* to promote certain products and an apparatus, purported to help people to lose weight.

The defendants raised three constitutional issues. They argued that paragraphs 74.01(a) and 74.01(b) of the Act infringed the rights conferred by sections 11, 7 and 2 of the *Canadian Charter of Rights and Freedoms*.

The Tribunal ruled that section 11 of the *Charter* was not applicable in this case because paragraphs 74.01(a) and 74.01(b) of the Act do not create an offence within the meaning of section 11, as they are not criminal proceedings and do not give rise to true penal consequences. The Tribunal also dismissed the arguments of the defendants with respect to section 7 of the *Charter*, since they had not established that the life, liberty or security interests of the defendants were threatened by the impugned provisions.

The Tribunal held that paragraphs 74.01(1)(a) and (b) of the Act did infringe freedom of expression under section 2 of the *Charter*, but ruled that paragraph 74.01(1)(a) of the Act was constitutional. However, paragraph 74.01(1)(b) of the Act was declared of no force or effect in this case because the Commissioner did not present any evidence to show that the impairment of freedom of expression was demonstrably justified in a free and democratic society.

On the merits, the Tribunal found that the representations made to the public were false or misleading in a material respect.

Consequently, the Tribunal issued a prohibition order, applicable to the products and the apparatus advertised by the defendants. The Tribunal saw no need for a corrective notice.

The Tribunal ordered an administrative monetary penalty of \$50,000 for the corporate defendant and of \$20,000 for the individual defendant.

* This is an unofficial summary prepared by the Registry of the Tribunal.