File No: CT-2004-007

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF an application by Goshen Professional Care Inc. for an Order pursuant to section 103.1 of the *Competition Act*;

AND IN THE MATTER OF an application by Goshen Professional Care Inc. for an order pursuant to sections 75 and 79 of the Act;

BETWEEN:

GOSHEN PROFESSIONAL CARE INC.

Applicant

-AND-

THE SASKATCHEWAN HEALTH AUTHORITY and THE MINISTRY OF HEALTH

Respondents

MEMORANDUM OF FACT AND LAW
(Motion to Strike the Notice of Application)

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OVERVIEW

1. The Saskatchewan Health Authority (the "**SHA**") (the "**Respondent**" or "**SHA**") seeks an order striking/dismissing in its entirety the Application of Goshen Professional Care Inc. ("**Goshen**") under Rule 167 and Rule 221(1)(a)(e)(d) and (f) of the *Federal Courts Rules* (the "**Rules**").

2. The SHA submits this memorandum of fact and law in support of their motion to strike.

3. On October 2nd, 2024 Goshen Professional Care Inc. commenced an application, seeking leave pursuant to s. 103.1 of the *Competition Act* (the "**Application**"). The Application seeks an order preventing the sale of a property that Goshen operated as a private personal care home to the SHA. The SHA is the provincial health authority, established pursuant to the *Provincial Health Authority Act*, SS 2017, c P-30.3,. Goshen is also seeking an order directing the SHA to reinstate a pilot project or, in the alternative, enter into a new agreement to provide Goshen with public sector long-term care residents in Saskatchewan.

4. As set out in greater detail below, Goshen operated as a provider of personal care services. Goshen owned and operated a facility known as the Emmanuel Villa Personal Care Home ("**Emmanuel Villa**"), a private personal care home located in Emerald Park, Saskatchewan. Emmanuel Villa is licensed as a personal care home and regulated by the Ministry in accordance with *The Personal Care Homes Act*, SS 1989-90, c. P-6.01, *The Personal Care Homes Regulations*, 1996, c. P-6.01, Reg 2, and the "Licensees' Handbook Personal Care Homes".

5. At the time the Application was filed, there were no public sector long-term care residents in Emmanuel Villa. However, Goshen was previously permitted to admit public sector long-term care residents to Emmanuel Villa pursuant to a pilot project agreement reached with the SHA. Then and now, the SHA is the sole provider of public sector long-term care in Saskatchewan as provided in *The Provincial Health Authority Act*. The pilot project was an agreement whereby the SHA permitted certain private sector personal care providers to offer public sector long-term care services under the SHA's oversight. The agreement between the SHA and Goshen was terminated by the SHA in accordance with a termination provision contained in the agreement. Since then

and until its recent sale, Emmanuel Villa has only operated as a private sector personal care home. To the SHA's knowledge, Goshen has not owned any other personal care home.

6. Goshen was recently in the midst of an insolvency proceeding in Saskatchewan. The appointed Receiver, MNP LLP ("**MNP**") has approved a transaction in which the SHA would purchase the Emmanuel Villa property. The proposed sale transaction was presented before the Court of King's Bench for judicial approval in a hearing on August 26, 2024. Goshen opposed the proposed sale. On January 17, 2025, the Court issued an Order approving the proposed sale. On May 21, 2025, the Court issued a Distribution and Discharge Order which disallowed any person from taking action to "attack or otherwise impair" the approved sale of the property. Goshen and its principals consented to the Distribution and Discharge Order.

7. There are three grounds on which the Application should be summarily dismissed pursuant to Rule 221 of the *Federal Courts Rules*, each of which alone is sufficient to dispose of Goshen's Application.

8. The first ground for dismissal is that the Application shows no reasonable cause of action. It is established that where a claim has no reasonable chance of success, it has no reasonable cause of action. The reason the Applicant's motion has no reasonable chance of success is due to mootness.

9. The Second ground for dismissal is that the relief sought by the Applicant's is an abuse of process because it attempts to relitigate settled issues and/or collaterally attack the Sale Order contrary to the terms of the Distribution and Discharge Order. Rule 221(1)(f) empowers courts and tribunals to strike an application on the grounds that it amounts to an abuse of process. Re-opening a settled issue has also been found to be "vexatious" behavior, another ground for dismissal, this time under Rule 221(1)(c).

10. The third ground for dismissal is the Applicant's delay and lack of participation in these proceedings. Rule 221(1)(d) empowers the Tribunal to strike out a pleading on the grounds that it delays the fair trial of the action. Similarly, Rule 167 empowers the Court to dismiss a proceeding on the ground that there has been undue delay. Since the

commencement of these proceedings, Goshen has exhibited – both through its behavior and communications – a lack of participation, resulting in a delay in the proceedings.

11. Therefore, the Application should be struck in its entirety and the Applicants should not be granted leave to amend the Application.

I. FACTS

12. Goshen commenced this application, seeking an order to block the proposed sale of Emmanuel Villa to the SHA, despite the matter of the sale being before the Saskatchewan Court of the King's Bench. Goshen's creditor, Canadian Western Bank, had commenced the insolvency proceeding against Goshen on May 24, 2023.

13. MNP was appointed as the interim receiver for Goshen by court order dated August 2, 2023. The Court subsequently appointed MNP as the Receiver for Goshen by order dated November 24, 2023. The formal decision was entered on January 10, 2024 (the "**Receivership Order**").

14. The Court's Receivership Order expressly granted MNP as Receiver with authority over all of Goshen's "Property." The term, Property, was defined as all "assets, undertakings and properties of [Goshen] acquired for, or used in relation to the business carried on by [Goshen], including all proceeds thereof."

15. The powers that the Court of King's Bench granted to MNP under the Receivership Order with respect to the Property included the authorization to do the following:

- "to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
    - without the approval of the Court in respect of any transaction not exceeding $50,000, provided that the aggregate consideration for all such transactions does not exceed $150,000; and

- with the approval of the Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause, and in each such case notice under section 59(10) of the PPSA shall not be required."

16. MNP prepared and submitted its "First Report of the Receiver," dated July 10, 2024. With respect to the sale of Emmanuel Villa, MNP reported that it had initiated a sales process on April 1, 2024 (the "Sales Process").

17. As part of the Sales Process, MNP had provided an Information Memorandum to 19 other entities that operate within the personal care and senior care home industry in Saskatchewan, Alberta, British Columbia, and Ontario. In response to the Information Memorandum, three of those entities signed Confidentiality Agreements in order to carry out further due diligence on Emmanuel Villa.

18. The SHA submitted an offer to purchase Emmanuel Villa on June 6, 2024. MNP reported that after it had reviewed the offer, which was at approximately 98% of the appraised fair market value of the property, and consulted with CWB – as Goshen's primary creditor – MNP accepted the offer, subject to judicial approval of the sale.

19. MNP and the SHA subsequently agreed upon a final form of Purchase Agreement on or about June 27, 2024.

20. MNP's application for judicial approval on the proposed sale transaction was addressed before the Court of King's Bench on August 26, 2024. Goshen opposed the proposed sale in that proceeding. On January 17, 2025, the Court issued an Order approving the proposed sale, as can be seen in the decision of Bergbusch J. in *Canadian Western Bank v Goshen Professional Care Inc*, 2025 SKKB 5 (the "Sale Order"). Goshen's application for leave to appeal from the Sale Order was dismissed by the Saskatchewan Court of Appeal on February 12, 2025.

21. Goshen commenced this proceeding before the Competition Tribunal, on October 8, 2024, a few months before Justice Bergbusch approved the sale.

22. MNP's counsel sent a letter dated October 25, 2024 to the Competition Tribunal in which it confirmed the Receiver's view that Goshen's application is in breach of the Receivership Order. MNP's counsel also advised that the Receiver had reported to the Court of King's Bench in Saskatchewan on this matter, and a hearing was scheduled for November 22, 2024 to address MNP's concern that Goshen's directors do not have the authority to commence this proceeding in Goshen's name.

23. On May 21, 2025, Justice Bergbusch issued a Distribution and Discharge Order in the Receivership proceeding. The Distribution and Discharge Order finalized the receivership and, among other things, disallowed any future efforts to attack or interfere with the sale of the Applicant's property in other forums. The Distribution and Discharge Order was consented to by Goshen.

24. Clause 8(d) of the Distribution and Discharge Order, states that:

> no Person shall seek or obtain any relief as against the Receiver, within the proceedings brought before the Competition Tribunal in matter CT-2024-007, or otherwise, nor shall any Person take any action to attack or otherwise impair the sale and vesting of the Debtor's Property as provided for in the earlier Order of this court issued January 17, 2025, and the Receiver shall notify the Competition Tribunal that this Order has been granted and provide a copy thereof to the Competition Tribunal Registry.

25. Clause 9(e) of the Distribution and Discharge Order, goes on to state that:

> It is hereby adjudged and declared that, based upon the evidence that is currently before this Honourable Court in regard to the Actions of the Receiver:
>
> . . . .
>
> (e) no Person shall commence an action or proceeding asserting a claim against the Receiver arising from, relating to or in connection with its discharge of the Receiver's Mandate without first obtaining an Order of this Honourable Court (on notice to the Receiver) granting such Person leave to commence such action or proceeding, and any such action or proceeding commenced without such leave being obtained is a nullity.

26. On April 8, 2025, the Tribunal asked the parties to advise whether they could attend a

case conference on either April 14 or April 15. The Applicant declined, saying that they had a conflict. The Respondent, however, confirmed their availability for the proposed dates on April 10. Counsel for the SHA also reached out to the Applicants to see if they had retained new counsel., and received no response.

27. In April and May 2025 the Tribunal scheduled two separate case management conferences, neither of which were attended by the Applicant or their retained counsel. Despite a direction from this Tribunal, the Applicant's principals have not advised that they have appointed legal counsel nor have they advised if they intend to proceed with an application to be represented by a non-lawyer. Counsel for the Respondent has reached out to the Applicant's principals (Adebunmi Onasanya) on numerous occasions, without reply.

28. The Affidavit of Mackenzie Laforet which forms part of the motion record of the Respondent, the Ministry of Health, outlines the delaying actions of the Applicant, and provides a summary of the communications between the parties.

29. On May 7th, the principals for the Applicant informed the Tribunal that this proceeding was "not a priority for us."

30. The Tribunal then sent a further direction on May 15, 2025, specifically directing the applicant to appoint new legal counsel to represent it prior to the next case management conference. Alternatively, if the principals of the Applicant intended to represent the Applicant in the proceeding, the Tribunal directed them to file a formal or informal motion prior to the next case management conference.

31. On June 11, 2025 the Tribunal Registrar advised that the Applicant had not taken the steps by the deadline outlined in the May 15, 2025 Direction. The Applicant did not provide any explanation for missing the deadline and disregarding the direction.

II. ISSUES

32. Should the Applicant's Motion be struck out pursuant to Rule 221(1) of the *Federal Court Rules*?

- Does the motion disclose no reasonable cause of action for reason of mootness under Rule 221(1)(a)?

- Does the Motion represent vexatious behavior and an abuse of process/ collateral attack pursuant to Rules 221(1)(c) and (f)?

- Is the Applicant's delay and lack of participation grounds for an order to strike under Rule 221(1)(d)? and/or Rule 167 of the *Federal Courts Rules* (i.e. should the Application be struck for delay)?

33. If the Application is struck in its entirety, should the Applicant be given leave to amend its Application?

III. SUBMISSIONS

1. THE APPLICANT'S MOTION SHOULD BE STRUCK:

A. The Applicant's Motion discloses no reasonable cause of action for reason of mootness

34. According to Rule 221(1)(a), a court may strike a claim if it discloses no reasonable cause of action.[1] In *10066055 Manitoba Ltd. v. Parks Canada Agency*, 2024 FC 266, [*Parks Canada Agency*], the Federal Court outlined the test for striking out a claim on this ground as being (from para 17):

> [17] whether, assuming that the facts pleaded to be true, it is "plain and obvious" that the pleaded claims disclose no reasonable cause of action.[2]

Parks Canada Agency also stated that another way of phrasing that test was that "the claim has no reasonable prospect of success."[3] Goshen's Application has no reasonable chance of success for reason of mootness.

35. The leading authority on the doctrine of mootness is *Borowski v. Canada (Attorney*

[1] *Federal Courts Rules*, SOR/98-106, r.221(1)(a).
[2] *10066055 Manitoba Ltd. v Parks Canada Agency*, 2024 FC 266, at para 17 [*Parks Canada*].
[3] *Ibid.*

General) (1989), [1989] 1 SCR 342 (SCC) [*Borowski*]. The Supreme Court explained the doctrine of mootness as follows (at 353):

> "The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. …"[4]

The Court went on to explain a two-step approach to determine whether a proceeding should be dismissed as moot. At the first step, the court must determine if the proceeding is moot. If the proceeding is moot, the court must then decide whether it should nonetheless hear and decide the matter: *Borowski* at 353.[5]

36. Recently in *Prince Albert Right to Life Association v. Prince Albert (City)*, 2020 SKCA 96 [*Right to Life*] Justice Ottenbreit summarized some of the circumstances where a live controversy will cease to exist (at para. 54):

> [54] "Without attempting to define the term exhaustively, based on the foregoing, I conclude that a live controversy may cease to exist in the following circumstances: when the tangible and concrete dispute has disappeared; when the decision will or may no longer actually affect the rights of the parties; where the practical relief sought is no longer available because of alterations in the factual or legal matrix of the case; where the question before the court has ceased to exist or the substratum of the litigation has disappeared; where a decision on the merits would have no practical effect on the parties' rights; and where the question the court is now being asked to resolve has been overtaken by post-decision events or a subsequent decision of a decision-maker."[6]

As noted in *Right to Life*, a live controversy may cease to exist where the practical relief sought is no longer available because of alterations in the factual or legal matrix.

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[4] *Borowski v Canada (Attorney General)*, 1989 1989 CanLII 123 (SCC), [1989] 1 SCR 342, at 353 [*Borowski*].

[5] *Ibid.*

[6] *Prince Albert Right to Life Association v Prince Albert (City)*, 2020 SKCA 96, at para 54 [*Right to Life*].

37. Importantly, in *Lim v Canada (Justice)*, 2020 FC 628 [*Lim*], the Federal Court re-articulated what was first noted in *Borowski*, that where events which affect the relationship of the parties happen subsequently to the initiation of the proceeding so that there is no longer a live controversy, the case is moot (at para 38):

> [38] "If events which effect the relationship of the parties occurred subsequent to the initiation of the proceeding, so that no present live controversy existed which affects the rights of the parties, the case is said to be moot."[7]

38. The idea that mootness can be the basis of a motion to strike is well supported by case law. As much was noted by Justice Stratas in *Wenham v Canada (Attorney General)*, 2018 FCA 199 [*Wenham*], which described mootness as being potentially fatal to any possibility of success in an application.[8] This was reiterated in *1397280 Ontario Ltd. v Canada (Employment and Social Development)*, 2020 FC 20 [*1397280 Ontario*] (at para 11).

> [11] "The Respondent bases its motion to strike on the premise that the Application is moot, arguing that mootness is a reason for "finding no possibility of success." The Respondent's argument is supported by the jurisprudence."[9]

39. The relief Goshen seeks in its Application was rendered moot when on January 10, 2025 when Bergbusch J. approved the sale of the Emmanuel Villa in the Bankruptcy Proceeding in his decision: *Canadian Western Bank v Goshen Professional Care Inc*, 2025 SKKB 5.[10] The sale of the Emmanuel Villa closed on February 19, 2025.

40. The final sale of the Emmanuel Villa and the actions of the Receiver in the Bankruptcy Proceeding was then consented to by Goshen, in the Distribution and Discharge Order ("**Discharge Order**") rendered on May 21, 2025.

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[7] *Lim v Canada (Justice)*, 2020 FC 628, at para 38 [*Lim*].

[8] *Wenham v Canada (Attorney General)*, 2018 FCA 199, at para 36.

[9] *1397280 Ontario Ltd. v Canada (Employment and Social Development)*, 2020 FC 20, at para 11 [*1397280 Ontario*].

[10] *Canadian Western Bank v Goshen Professional Care Inc*, 2025 SKKB 5, at para 85.

41. Further, in clause 8(d) of the Discharge Order, the Court ordered that "no person shall seek or obtain relief as against the Receiver… nor shall any person take any action to attack or otherwise impair the sale and vesting of the Debtor's Property" as it was directed in the January, 2025 order.

42. By virtue of the Sale Order and Discharge Order, Goshen cannot seek relief to overturn the sale of the Emmanuel Villa, and has consented to a prohibition on any proceedings (including in front of this Tribunal) that challenge the sale of that property. A decision on the issue raised in the Application has already been made by the appropriate Court of jurisdiction, and that Court's orders have already been put into motion. The relief sought in paragraph 1a. of the Application is moot in the circumstances.

43. The Sale Order and the Discharge Order are what *Lim* would consider as an event that occurred subsequent to the initiation of the proceedings, which altered the relationship of the parties. Since the Sale Order and Discharge Order, there is no longer a live controversy between the parties as to whether the sale of the Emmanuel Villa property to the SHA can be barred as sought by Goshen in paragraph 1a. of the Application. That controversy was settled by Bergbusch J. when he approved the sale and granted the Discharge Order, the former of which approved the sale of the Emmanuel Villa property to the SHA and the latter of which prohibited any proceedings that attack or otherwise impair that sale.

44. With respect to the relief requested under paragraph 1b. of the Application, the Pilot Project agreement permitted Goshen to admit public sector long-term care residents to Emmanuel Villa for a temporary and finite period.[11] However, Goshen no longer owns that property as a consequence of the Sale Order and there is no evidence that Goshen owns any other property in which they are permitted to provide long-term care services under Saskatchewan law. In the circumstances, it is not feasible for the Competition

[11] See: Accountability Agreement between Saskatchewan Health Authority and Goshen Professional Care Inc. attached as Exhibit 3 to the Affidavit of Affidavit of Adebunmi Onasanya date October 1, 2024.

Tribunal to order the SHA to reinstate the Pilot Project agreement or require the SHA to supply Goshen with public sector long-term care residents. That issue is moot.

45. Furthermore, the SHA does not supply residents to personal care homes in Saskatchewan. The SHA does not own or operate any personal care homes in the Province of Saskatchewan. The Application highlights Goshen's misunderstanding regarding the distinction between personal care homes and long-term care homes under the relevant legislation in Saskatchewan. The SHA is, by legislation, responsible for the oversight and provision of publicly funded long-term care in Saskatchewan. Goshen operated a private personal care home, a distinct business under the governing legislation for care homes in Saskatchewan. Their ability to admit long-term care residents was temporary and permitted only while the Pilot Project Agreement was in effect.[12]

46. Having established mootness because there is no live issue between the parties, and because deliberating on the issue would be purely hypothetical and not directly impact the rights of the parties, it is necessary to turn to step two of the Borowski analysis. In step two, the court must then decide whether it should nonetheless hear and decide the matter: *Borowski* at 353.[13]

47. In *Borowski*, the SCC outlined three factors that courts should take into account when deciding whether to hear a case, despite mootness.[14] These three factors are the adversarial system, concern for judicial economy, and the court's proper lawmaking role.[15]

48. In *1397280 Ontario*, the Federal Court opted not to exercise its discretion to hear a case despite a finding of mootness (at para 17):

> [17] "I find the circumstances of this case do not warrant the exercise of the Court's

[12] Article 6 of the Pilot Project Agreement (aka Accountability Agreement) states that the agreement was in force for a period of two years from the effective date, subject to early termination in accordance with its terms or a mutually agreed upon extension in writing. The agreements effective date was January 29, 2020.

[13] *Borowski*, *supra* note 5 at 353.

[14] Ibid at 358.

[15] Ibid at 358-363.

> discretion. There clearly remains no adversarial context. The essential issues between the parties… has been resolved. No practical purpose would be served by reviewing the Original Decision for reasonableness. An order of the Court granting the remedy sought by the Applicant, that of returning the matter for redetermination, would result in redundancy."[16]

49. Like in *1397280 Ontario,* there remains no adversarial context in the current case because all issues respecting the Emmanuel Villa property have been resolved by the Bankruptcy Proceeding. Likewise, returning the matter for redetermination would similarly result in redundancy. Doing so would also infringe on the jurisdiction of the Court of the Saskatchewan's King's Bench and throw into question the Bankruptcy Proceeding.

B. The Motion represents an abuse of the process of the Court pursuant to Rule 221(1)(c) and (f).

50. Rule 221(1)(c) empowers the Court to strike a motion on the ground that it is scandalous, frivolous or vexatious.[17]

51. Rule 221(1)(f) empowers the Court to strike a motion on the ground that it is otherwise an abuse of the process of the Court.[18]

52. A leading case on the doctrine of abuse of process is *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 [*Toronto]*. In *Toronto,* the SCC wrote "the doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would… bring the administration of justice into disrepute."[19] At paragraph 35, the Court in *Toronto* referenced the case of *R. v. Conway* to assert that:

> [35] "…abuse of process may be established where: (1) the proceedings are oppressive or vexatious; and, (2) violate the fundamental principles of justice underlying the

[16] *1397280 Ontario, supra* note 10, at para 17.
[17] *Federal Courts Rules*, SOR/98-106, r.221(1)(c).
[18] *Federal Courts Rules*, SOR/98-106, r.221(1)(f).
[19] *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63, at para 37 [*Toronto*].

> community's sense of fair play and decency."[20]

53. In *Toronto*, the Court specifically mentioned applying the doctrine of abuse of process to preclude relitigation.[21]

54. Similarly, in *Mancuso v. Canada (Minister of National Health and Welfare),* 2015 FCA 227 [*Mancuso*], the Federal Court described the doctrine of abuse of process as a way to bar the relitigating of issues (at para 40);

> [40] "Abuse of process, in contrast, is a residual and discretionary doctrine of broad application and scope, which bars the relitigation of issues. It is directed to preventing relitigation of the same issues and the attendant mischief of inconsistent decisions by different courts which, in turn, would undermine the doctrines of finality and respect for the administration of justice. It is thus a more flexible doctrine than collateral attack. It permits a judge to bar relitigation of a criminal conviction in a different forum, as was the case in *CUPE*."[22]

55. In *Zhao-Jie v. TD Waterhouse Canada Inc.,* 2024 FC 261 [*Zhao-Jie*], the Federal Court ruled relitigating issues is both vexatious and an abuse of process. The Court wrote that challenging the decision of a prior court amounts to a collateral attack that is an abuse of process.[23] Such an abuse of process, the Court stated, could be struck pursuant to Rule 221(1)(f).

56. Goshen began this proceeding as a way to circumvent another Court of inherent jurisdiction and tried to prevent the selling of its assets and stop the sale of the Emmanuel Villa. It was not successful. Not only was Goshen not successful, but the Court – through the Discharge Order – specifically disallowed any continued action by Goshen in other forums. Goshen has disregarded the Court's Order and continued on with this application anyway.

57. Likewise, the Court in *Zhao-Jie* found that the applicant's relitigating of that issue was both vexatious and an abuse of process, either of which was independently sufficient for

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[20] *Ibid* at para 35.

[21] *Ibid* at para 37.

[22] *Mancuso v Canada (Minister of National Health and Welfare),* 2015 FCA 227, at para 40.

[23] *Zhao-Jie v TD Waterhouse Canada Inc.,* 2024 FC 261, at para 8 [*Zhao-Jie*].

the claim to be struck under Rule 221.[24] Goshen's relitigating of this issue should face a similar finding, and should be struck because it is both an abuse of process pursuant to Rule 221(1)(f) and because it is vexatious pursuant to Rule 221(1)(c).

C. The Applicant's delay and lack of participation may prejudice or delay the fair trial of the action pursuant to Rule 221(1)(d) and Rule 167.

58. Pursuant to the "gap rule" set out in Rule 34(1) of the *Competition Tribunal Rules,*[25] the Tribunal has jurisdiction to consider a motion to strike under Rules 221(1)(d) and 167 of the *Federal Court Rules.*

59. Rule 221(1)(d) empowers the Court to strike a motion that may prejudice or delay the fair trial of the action.[26]

60. Rule 167 similarly empowers the Court to dismiss a motion on the ground that there has been undue delay by an applicant.[27]

61. Through its actions, Goshen and its principals has repeatedly shown a blatant disregard for the time and resources of this Tribunal, as well as for the public duty and resources of the SHA.

62. In *Comartin v. Marsh*, 2024 FC 160 [*Comartin*], the Federal Court reaffirmed that the test for considering a Rule 167 motion for dismissal for delay requires considering three things:[28]

    1. Whether there has been undue delay;
    2. Whether the delay is excusable; and
    3. Whether the defendants are likely to be seriously prejudiced by the delay.

Added on to the test is the requirement that "for a case to be allowed to move forward,

[24] *Ibid* at para 23.

[25] *Competition Tribunal Rules*, SOR/2008-141, r.34(1).

[26] *Federal Courts Rules*, SOR/98-106, r.221(1)(d).

[27] *Federal Courts Rules*, SOR/98-106, r.167.

[28] *Comartin v. Marsh*, 2024 FC 160, at para 12 [*Comartin*].

there must be a fair prospect that the plaintiff is intent on bringing the case to its end and has the means to do so."[29]

63. Rule 167 does not specify a length of time that would amount to "undue delay", and leaves wide discretion for judges to determine such on a case-by-case basis.[30]

64. In *Comartin,* the Court found that there was undue delay in that instance. The Court weighed non-participation in a process where the Court had "invested significant judicial resources trying to rescue this proceeding," to no avail.[31]

65. Like in *Comartin,* Goshen and its principals have exhibited a lack of participation in the proceedings, resulting in a delay that has been prejudicial to the Respondents. The ongoing uncertainty caused by this Application and increasing legal costs are not only placing strain on public resources, but are also delaying finality in a matter that has already been addressed substantively by the Saskatchewan Court of King's Bench.[32] Further delay risks potential prejudice to both the SHA and other stakeholders in carrying out their public duty.

66. In April and May 2025 the Tribunal scheduled two separate case management conferences, neither of which were attended by the Applicant or their retained counsel. Despite a direction from this Tribunal, the Applicant's principals have not advised that they have appointed legal counsel. Counsel for the Respondents have reached out to the Applicant's principals (Adebunmi Onasanya) on numerous occasions, without reply.

67. The Affidavit of Mackenzie Laforet, dated June 11th, 2025 (the "Laforet Affdiavit") that forms part of the Respondent, the Ministry of Health's, motion record, outlines the timeline of events and non-participation of the Applicant during this proceeding.

68. On May 7, 2025, the principals of the Applicant advised the Tribunal by email that the

[29] *Ibid* at para 13.

[30] *Comartin, supra* note 28, at para 21.

[31] *Ibid* at para 22.

[32] *Canadian Western Bank v Goshen Professional Care Inc*, 2025 SKKB 5.

Tribunal Proceeding was "not a priority for us."

69. The Competition Tribunal issued a further Direction to Parties and Counsel on May 15, 2025. The Tribunal directed the parties to attend the next CMC on June 20, 2025, and Justice Little also noted within the Direction that Goshen's principals were to do the following by Tuesday, June 10, 2025 (see Exhibit "DD" of the Laforet Affidavit"):

- "Inform the Registry by way of email of the contact information of the newly appointed legal counsel to represent it in this proceeding; or
- File a formal or informal motion and supporting evidence if the applicant's representatives wish to apply to represent the applicant, Goshen Professional Care Inc. (On such a motion, the Tribunal may refer to Rule 34(1) of the Competition Tribunal Rules, SOR/2008-141, and Rule 120 of the Federal Court Rules, SOR/98-106)."

70. On June 11, 2025, the Tribunal Registrar advised that the Goshen principals had not followed these obligations, again disregarding a Direction from this Tribunal (see Exhibit "GG" of the Laforet Affidavit).

71. Both the Tribunal and the Respondent have made good faith attempts and dedicated resources to connect with the Applicant's principals to discuss their intentions regarding continuing this proceeding. The Applicant has ignored these outreaches and are unengaged and unwilling to continue their responsibilities in forwarding this proceeding. This should be found to cross the threshold of undue delay, as outlined in *Comartin.*

72. As to whether the delay is excusable, in *Comartin,* the Court found that personal hardships of the plaintiff, of which the Court was "sympathetic,"[33] did not amount to an excusable delay. It should not be found then, that a stressful vacation by the principals (as outlined in Exhibit "BB" of the Laforet Affidavit), should count as an excusable delay in the current situation. Indeed, the principals for the Applicant have even admitted that the delay is simply because this case is "not a priority" for them.

[33] *Comartin*, *supra* note 28, at para 29.

73. As for step three of the test, the Respondents have been prejudiced by the delay. In *Comartin,* the Court outlined that the defendants are not required to show evidence of actual delay suffered.[34] The test is whether the defendant is "likely" to be seriously prejudiced.[35] Courts have, time and time again, recognized the costs of access to justice.[36] The Respondents have dedicated time and financial resources to the resolution of this issue. It should be recognized that further delay, causing further expenses and hardship, would be prejudicial.

74. As such, the Applicant's motion should be dismissed on the grounds of undue delay, under Rule 167.

2. <u>THE MOTION SHOULD BE STRUCK WITHOUT LEAVE TO AMEND:</u>

75. Rule 221 motions to strike can be granted with or without leave to amend. For a motion to be struck without leave to amend, *Simon v Canada*, 2011 FCA 6 [*Simon*] outlines how any defect must be one that cannot be fixed through an amendment.[37]

76. The Applicant cannot amend its Application in any way that would not be in violation of the Discharge Order and considered an abuse of process.

77. The Court of King's Bench for Saskatchewan was unequivocal in its decision to allow the sale of the Applicant's assets to SHA. The Discharge Order was also unequivocal in disallowing any party from impairing the sale and vesting of the Applicant's property through proceedings before other courts and tribunals.

78. As such, it would be inappropriate for the Tribunal to allow the Applicant to amend its motion.

IV. ORDER SOUGHT

[34] *Ibid* at para 37.
[35] *Ibid.*
[36] Ibid at para 14.
[37] *Simon v Canada*, 2011 FCA 6, at para 8.

79. The Respondent requests that the Applicant's motion be dismissed with substantial costs, and without leave to amend.

V. LIST OF AUTHORITIES REFERRED TO

Documentary Evidence

A. *Affidavit Of Mackenzie Laforet, dated June 11th, 2025, as part of the Motion Record of The Ministry of Health of Saskatchewan.* See Exhibit C to the Notice of Action.

Jurisprudence:

B. *Canadian Western Bank v Goshen Professional Care Inc*, 2025 SKKB 5

C. *10066055 Manitoba Ltd. v Parks Canada Agency*, 2024 FC 266

D. *Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342

E. *Prince Albert Right to Life Association v Prince Albert (City)*, 2020 SKCA 96

F. *Lim v Canada (Justice)*, 2020 FC 628

G. *Wenham v Canada (Attorney General)*, 2018 FCA 199

H. *1397280 Ontario Ltd. v Canada (Employment and Social Development)*, 2020 FC 20

I. *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63

J. *Mancuso v Canada (Minister of National Health and Welfare)*, 2015 FCA 227

K. *Zhao-Jie v TD Waterhouse Canada Inc.*, 2024 FC 261

L. *Comartin v. Marsh*, 2024 FC 160

M. *Simon v Canada*, 2011 FCA 6

Legislation:

Competition Act, RSC 1985, c C-34, ss. 75, 79, 103.1

Federal Courts Rules, SOR/98-106, Rules 167, 221(1)(a)(e)(d) and (f)

The Provincial Health Authority Act, SS 2017, c. P-30.3

Personal Care Homes Act, SS 1989-90, c. P-6.01

Personal Care Homes Regulations, 1996, c. P-6.01, Reg 2

Competition Tribunal Rules, SOR/2008-141, Rule 34(1)

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: June 11, 2025

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File No. CT-2024-007

THE COMPETITION TRIBUNAL

BETWEEN:

GOSHEN PROFESSIONAL CARE INC.

Applicant

-and-

THE SASKATCHEWAN HEALTH AUTHORITY and THE MINISTRY OF HEALTH

Respondents

NOTICE OF MOTION
(for Motion to Strike the Application)

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