

**IN THE SUPERIOR COURT OF ONTARIO
JUDICIAL DISTRICT OF TORONTO**

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

AND IN THE MATTER OF an inquiry under subparagraph 10(1)(b)(iii) of the *Competition Act*, into certain telemarketing practices of Lexcan International Corp., Calcom Business Centre and Edward Harry Leefe;

AND IN THE MATTER OF an application for a Prohibition Order pursuant to subsection 34(1) of the *Competition Act*.

B E T W E E N:

HER MAJESTY THE QUEEN

Applicant

-and-

**EDWARD HARRY LEEFE,
LEXCAN INTERNATIONAL CORP. (ONTARIO CORPORATION NUMBER 1038191),
H & P COMMUNICATIONS INC. (ONTARIO CORPORATION NUMBER 1038192),
ALSO DOING BUSINESS AS
THE CALCOM BUSINESS CENTRE, LEXAM INTERNATIONAL CORP., MPL**

Respondents

AGREED STATEMENT OF FACTS

Pursuant to the provisions of sections 655 and 724 of the *Criminal Code of Canada*, R.S.C. 1985, c. C-46 (as amended), Edward Harry Leefe ("Edward Leefe"), on behalf of himself and the following corporations; Lexcan International Corp. (Ontario Corporation Number 1038191) and H & P Communications Inc. (Ontario Corporation Number 1038192) also doing business as The Calcom Business Centre, Lexam International Corp., MPL (the "corporations"), by his counsel, hereby admits the following facts solely for the purpose of dispensing with their proof in this proceeding and for no other purpose.

Edward Leefe and the corporations are hereinafter referred to collectively as the "Respondents".

A. BACKGROUND

a) Edward Harry Leefe

1. Edward Leefe, born on July 28, 1961, resides at 45 Joseph Duggan Road, Toronto, Ontario. He is the sole Director of Lexcan International Corp. (Ontario Corporation Number 1038191) and H & P Communications Inc. (Ontario Corporation Number 1038192), he was the Sole Proprietor of The Calcom Business Centre and MPL, the latter of which are expired business names, and he is the directing mind of Lexam International Corp., an unregistered business name.
2. In addition to his role as sole proprietor, sole director and directing mind, Edward Leefe personally participated as a telemarketer in the telemarketing operation.

b) Corporate History

3. Lexcan International Corp., (Ontario Corporation Number 1038191), The Calcom Business Centre, Lexam International Corp., MPL and H & P Communications Inc. (Ontario Corporation Number 1038192) were business names used by Edward Leefe to telemarket toner products for use in office equipment to potential customers both in Canada and the United States between the years 1990 and 2005.
4. The Calcom Business Centre ("Calcom") was registered as a sole proprietorship on June 12, 1990, with Edward Leefe as the sole owner. This registration expired on June 11, 1995.
5. MPL was registered as a sole proprietorship on May 26, 1992, with Edward Leefe as the sole owner. This registration expired on May 25, 1997.
6. Lexcan International Corp. ("Lexcan") was incorporated on July 20, 1993, with Edward Leefe as the sole Director.
7. H & P Communications Inc. (1038192 Ontario Limited) ("H & P") was incorporated on July 20, 1993, with Edward Leefe as the sole Director.
8. Lexam International Corp. ("Lexam") was an unregistered business name used by Edward Leefe, since approximately October 2000, to telemarket toner products to potential customers in the United States.

B. TELEMARKETING SCHEME

9. Edward Leefe and telemarketers representing the Respondents, promoted the sale of toner products to businesses across Canada and the United States, as well as to not-for-profit organizations, churches, schools, universities and government agencies. The telemarketing operations were conducted from an office in Toronto, Ontario with some of the lead calls and collection calls made from private residences.
10. Telemarketers representing the Respondents generated sales leads by obtaining background information on prospective customers' office equipment and the names of employees of the prospective customers. They obtained this information by telling prospective customers that they were conducting a survey on behalf of a major toner manufacturer or by telling prospective customers they needed information on the make and model of their office equipment in order to send out a sales catalogue. These lead calls were made using the business names "MPL" and "H & P Communications".
11. Target customers were not told that the information obtained in the lead call regarding the make and model of their equipment and the names of employees would later be used by the Respondents for subsequent sales calls.
12. Documents numbered NBHH 58, NBHG 2 and NBHA 801 are included in Exhibit "A" and are samples of typical scripts used by telemarketers to obtain this background information.
13. Edward Leefe was aware that sales catalogues were not sent out (and were never intended to be sent out) to prospective customers, and that no surveys were being conducted on behalf of major manufacturers. Edward Leefe was aware that instead, the information regarding the office equipment and the names of employees of target customers were recorded on lead cards and given to other telemarketers to use in subsequent sales pitches in order to create a false impression of familiarity with the target customer and their office equipment.
14. Telemarketers worked from sales scripts which were created by and/or provided by Edward Leefe. Using these scripts and the background information on the lead cards, telemarketers, including Edward Leefe, gave targets of telemarketing the impression that they were dealing with their regular toner supplier or that they had an existing contractual relationship with the Respondents. Document numbers NBHH 57 and NBHA 1084 are included in Exhibit "B" and are examples of typical sales pitches used by the telemarketers.
15. Document NBHA 5482s, is included as Exhibit "C" and is a complaint letter dated February 4, 2000 from the University of British Columbia to Lexcan, seized by the Competition Bureau from the Respondent's premises, wherein the complainant states that

the Respondents led them to believe they were their supplier.

16. Document NBHA 5349sf, is included as Exhibit "D" and is a complaint letter from General Mills Canada Inc., seized by the Competition Bureau from the Respondents' premises, wherein the complainant states that the Respondents led them to believe they were their supplier.
17. These sales calls were made using the business names Lexcan, Calcom and Lexam.

C. CHARGES

(a) Failure to Disclose Nature of Product

18. The toner cartridges shipped by the Respondents were almost exclusively remanufactured toner cartridges. No telemarketers, including Edward Leefe, advised targets of telemarketing they would be receiving remanufactured cartridges. Failing to disclose that the cartridges were remanufactured was intentional. Nowhere in the scripts was there reference to the fact that remanufactured cartridges would be sent. This lack of information was material in that target customers agreed to accept delivery of toner product with the expectation that they would be receiving new, original manufactured toner product.
19. Edward Leefe was aware that his cost for remanufactured toner cartridges was much lower than the cost of new, original equipment manufacturer's cartridges (OEM) and he instructed his employees to purchase remanufactured toner cartridges whenever possible.
20. Document numbers NBHH 57 and NBHA 1084 are included in Exhibit "B" and are examples of sales pitches used by the telemarketers which do not include any language whereby the telemarketer would reveal that the toner cartridges would be remanufactured.

21. Document numbers NDDL 324s and NDDL 325s are included in Exhibit "E". Document NDDL 324s is the will say statement of Rohanie Diaz, an employee of Massiv Die-Form, wherein she states that she expected to receive a genuine replacement cartridge based on her impression that Lexcan was connected to Lexmark and instead received what appeared to her to be a remanufactured cartridge. She also states that she was surprised at the price of \$299 charged by the Respondents (for a remanufactured cartridge) because she normally pays from \$80.00 to \$100.00 for genuine Hewlett Packard cartridges. Document NDDL 325s is a copy of an invoice from the Respondents to Massive Die-Form (Massive Automated Systems) which refers only to a printer cartridge, with no indication that the cartridge is remanufactured.
22. Document NBHA 1572s, which is included as Exhibit "F", is a complaint letter from Schure Sports Inc. to Lexcan, seized by the Competition Bureau from the Respondents' premises, wherein the complainant states the toner product was misrepresented because they were not new Lexmark cartridges, as expected.
23. Document NBHA 413sf, which is included as Exhibit "G", is a fax from the University of New Brunswick to Lexcan dated November 24, 2000, wherein the complainant states that the prices charged by Lexcan for remanufactured cartridges is more than they pay for new cartridges at a book store and four (4) times what they pay their remanufacturing supplier for remanufactured cartridges.
24. Document number NDGL 2857 is included as Exhibit "H" and is excerpts from a transcript of the testimony of Tracy Herrell at the preliminary hearing of this matter on June 2, 2005, wherein at page 42 she states that Edward Leefe told her to order remanufactured and generic cartridges because they were cheaper. Tracy Herrell is an ex-employee of the Respondents whose duties included ordering toner cartridges from suppliers.
25. Documents NDDL 308sf-y4, NDDL 308sf-y5, NDDL 308sf-y11, NDGL 2588, NDGL 2589, are included as Exhibit "T" and are the Evidence Memos prepared by Mr. Tom Byrne. Mr. Byrne is Vice President and Investigations Manager of MMCA, a firm contracted by the Hewlett Packard Company to represent their interests in matters relating to fraudulent representations of HP inkjet cartridges and HP LaserJet toner cartridges. Mr. Byrne, at the request of the Competition Bureau, examined five toner cartridges supplied to target customers by the Respondents. His Evidence Memos state that the toner cartridges are not genuine Hewlett-Packard toner cartridges, but rather are refilled toner cartridges with various after market non HP replacement parts.
26. Paragraphs 18 to 25 include facts which form the basis for Charge 1 (*re: failure to disclose nature of product*) of the Indictment (Amended), which is attached as Annex "1" to this Agreed Statement of Facts.

(b) **Failure to Disclose Price of Product**

27. Instead of advising target customers of the actual price of the toner product and the additional cost for shipping, telemarketers, including Edward Leefe, referenced price increases or discounts to give the illusion to prospective customers of a cost savings.
28. This failure to disclose the actual price was intentional. The scripts, which were created by and/or provided to telemarketers by Edward Leefe, did not include any language whereby the telemarketer would disclose the actual price and shipping costs. Instead the scripts referenced only price increases and discounts.
29. Documents numbers NBHH 57 and NBHA 1084 are included in Exhibit "B" and are examples of sales pitches used by the telemarketers and do not include any language whereby the telemarketer would disclose the actual price of the toner product.
30. Document NDGL 2546, which is included as Exhibit "J" is an excerpt from the testimony of Holly Botterill at the preliminary hearing of this matter on May 30, 2005, wherein, at page 84, Holly Botterill states that she would not divulge the price to customers unless they asked. Holly Botterill is an ex-employee of the Respondents, whose duties included telemarketing.
31. Where customers specifically asked the price, they were often sidetracked with vague responses, such as "same as last time" or that it was a discounted price.
32. The references to price increases and discounts were misleading. According to targets of telemarketing, the prices charged by the Respondents were significantly higher (three or four times higher) than prices charged by their regular toner suppliers. Customers often complained verbally or in writing to the Respondents about the exorbitant prices.
33. Document number NBHA 5349sf, which is included as Exhibit "D", is a complaint letter from General Mills Canada Inc., seized by the Competition Bureau from the Respondent's premises, wherein the complainant states that the Respondents led him to believe prices were going up.
34. Document number NBHA 5482s, which is included as Exhibit "C", is a complaint letter dated February 4, 2000 from the University of British Columbia to Lexcan, seized by the Competition Bureau from the Respondents' premises, wherein the complainant states that the Respondents stated there would be a price increase in the toner cartridge and they needed to purchase now if they wished to stock up on the present price.

35. Document number NBHA 1688sf , which is included as Exhibit "K", is a complaint letter from Topax Export Packaging Systems to Lexcan, wherein the complainant states that the Respondent's prices are outrages (*sic*).
36. Document NBHA 946s, which is included as Exhibit "L", is a complaint letter from Canadian Sleep Institute to Lexcan, dated August 30, 1999, wherein the complainant describes the significant differences between the prices charged by Lexcan and the prices charged by other suppliers.
37. Document NBHA 413sf, which is included as Exhibit "G", is a fax from the University of New Brunswick to Lexcan dated November 24, 2000, wherein the complainant describes the significant price differences between the prices charged by Lexcan and the prices charged by their present suppliers.
38. Paragraphs 27 to 37 include facts which form the basis for Charges 2 and 9 (*re: failure to disclose price*) of the Indictment (Amended), which is attached as Annex "1" to this Agreed Statement of Facts.

(c) Misrepresentation re quantity ordered

39. The Respondents sent out toner product to target customers by courier, accompanied by a packing slip and followed by an invoice. Edward Leefe had the packing slip and the invoice designed to permanently show the quantity ordered as "12", regardless of how many, if any, the target customer had agreed to purchase. Edward Leefe and his employees were able to convince targets of telemarketing to accept delivery and pay for additional shipments by telling them that someone in their organization had placed an order for 12 toner products. Edward Leefe would continue to send product, in most cases, beyond the 12 cartons, until the target complained or refused to pay.
40. Edward Leefe directed his telemarketers that if a target customer said they had not ordered 12 cartons, they were to say it meant they could order "up to" 12 cartons.
41. Edward Leefe was fully aware that representatives of the businesses and organizations being invoiced had not, in fact, ordered 12 cartons.
42. Edward Leefe and his employees knowingly used this 'false quantity ordered' to convince targets of telemarketing to accept shipments of toner product they, in fact, did not order and did not want.

43. Document numbers NDDL 333s and NDDL 509s are included at Exhibit "M" and document numbers NDDL 401s and NDDL 402s are included at Exhibit "N". These are samples of typical invoices and packing slips generated by the Respondents, showing the quantity ordered as "12".
44. Document numbers NDGL 2075sc, included as Exhibit "O" is an excerpt from the transcript of a KGB interview of Holly Botterill, conducted by the Competition Bureau on April 11, 2004, wherein at pages 67 and 68 she states that nobody ever ordered 12 cartons and that they used this technique to make the customer believe that they had ordered 12 cartons. Holly Botterill is an ex-employee of the Respondents whose duties included telemarketing.
45. Document NBHA 1688sf, which is included as Exhibit "K", is a complaint letter from Topax Export Packaging Systems to Lexcan, wherein the complainant states that the Respondents insisted on sending the rest of an order when nothing was ordered in the first place.
46. Document NBHA 1334, which is included as Exhibit "P", is a complaint letter from Telus Mobility to Lexcan, dated April 7, 2001, wherein the complainant states that employees of Telus were misled by the Respondents with respect to the existence of a contract for a specific number of shipments of toner products.
47. Document number NBHA 5346sf, which is included as Exhibit "Q", is a complaint letter from Emerson Summers to Lexcan dated February 11, 2000, wherein the complainant states that they did not order 12 cartons of toner as stated in the packing slip.
48. Document number NBHA 497xsc, which is included as Exhibit "R", is a complaint letter from the Open Learning Agency to Lexcan dated March 22, 2001, wherein the complainant states they received one bottle of toner not the twelve bottles stated on the invoice.
49. Paragraphs 39 to 48 include facts which form the basis for Charges 3, 8 and 10 (*re: misrepresentation regarding quantity ordered*) of the Indictment (Amended), which is attached as Annex "1" to this Agreed Statement of Facts.

(d) Misrepresentation re existence of Chicago office

50. A Chicago address, telephone and fax number were used by the Respondents on invoices and packing slips sent to target customers in the United States under the unregistered business name of "Lexam International Corp."

51. Edward Leefe arranged to have Lexam's Chicago telephone and fax number forwarded to the telephone and fax number of the Respondents' in Toronto, Ontario and contracts were made to have all letters and packages forwarded from Chicago to Toronto.
52. Documents number NBHH 225 and NBHH 226r are included at Exhibit "S" and are notes seized by the Competition Bureau, from the Respondent's premises, which show that Lexam's Chicago mail was forwarded to the Respondent's Toronto address.
53. Document NBHH 376, included at Exhibit "T" is a contract with Sprint whereby the Respondent's Chicago telephone and fax numbers were forwarded to their Toronto telephone and fax numbers.
54. These United States targets of telemarketing were not provided with any information to indicate that they were being solicited by telemarketers in Canada and none of the scripts which were created by and/or provided to telemarketers by Edward Leefe, made reference to the fact that the telemarketers were calling from Canada.
55. Document numbers NDDL 401s and NDDL 402s are included at Exhibit "N" and are typical of invoices and packing slips sent to targets of telemarketing in the United States, using the fictitious Chicago address, telephone number and fax number.
56. Paragraphs 50 to 55 include facts which form the basis for Charge 4 (*re: misrepresentation regarding existence of Chicago office*) of the Indictment (Amended), which is attached as Annex "1" to this Agreed Statement of Facts.

(e) **Misrepresentation regarding Flood and Damaged Cheques**

57. During a search of the Respondents' premises in July and August 2001, the Competition Bureau seized cheques totalling approximately \$80,000, payable to the Respondents, which had been issued by businesses and organizations in payment for toner products. Edward Leefe directed his employees to recover those cheques that were seized by the Competition Bureau.
58. Edward Leefe was aware that approximately 70 targets of telemarketing, whose cheques had been seized, were contacted by his employees and asked to re-issue those cheques and that the targets were told the cheques had been destroyed due to a flood at the Respondents' offices. Edward Leefe and his employees knew that no cheques had in fact been destroyed and that there was in fact no flood. As a result of this false information the majority of those contacted by the Respondents proceeded to re-issue cheques to the Respondents.

59. Document NDDL 32s is included at Exhibit "U" and is a copy of a notice provided to the Competition Bureau by a target customer, namely BMO Nesbitt-Burns, wherein the Respondents state that their (BMO Nesbitt-Burn's) cheque was destroyed by water damage and requesting a replacement.
60. Document NDDL 814sf is included at Exhibit "V" and is a copy of a requisition prepared by a target customer, namely Rexdale Community Health Centre to have a cheque re-issued to the Respondents due to flood damage.
61. Paragraphs 57 to 60 include facts which form the basis for Charge 5 (*re: misrepresentation regarding flood and damaged cheques*) of the Indictment (Amended), which is attached as Annex "1" to this Agreed Statement of Facts.

(f) Fraudulent Representations

62. Edward Leefe and his employees knowingly deceived and misled target customers during the course of interactive telephone communications that were used for the purpose of promoting sales of toner products. Through a series of false and misleading representations, targeted customers were led to believe that:
- i) the Respondents were their regular supplier of toner products;
 - ii) an order already existed and there was an obligation on the target customer's part to accept more product to complete an order;
 - iii) a price increase was imminent;
 - iv) certain toner cartridges were about to be discontinued;
 - v) the Respondents had an office in Chicago, Illinois; and/or
 - vi) cheques issued by them had been damaged in a flood, prompting them to issue replacement cheques, when in fact those initial cheques had been seized by the Competition Bureau.
63. The Respondents also failed to disclose information as required by law and specifically, the telemarketing provisions of the *Competition Act*, including;
- i) the nature of the product being promoted;
 - ii) the purpose of the call;
 - iii) the identity on behalf of whom the communication was made;
 - iv) the price of the product;
 - v) the value of gifts given at no cost;
 - vi) the terms and conditions applicable to delivery (freight charges); and
 - vii) material restrictions regarding the return policy.

64. Edward Leefe was aware that the representations in the sales scripts were false. For instance, contrary to the information in the scripts, discounts were not offered as a result of special anniversaries or warehouse moves. Further, the scripts included ambiguous remarks about calling the service department if there was any problem with the office equipment. However, the Respondents were not in the business of repairing or servicing office equipment.
65. Documents NBHH 57 and NBHA 1084 are included at Exhibit "B" and are sales scripts which include these false misrepresentations. Document NDGL 2546, which is included as Exhibit "J" is the transcript of the testimony of Holly Botterill on May 30, 2005 at the preliminary hearing of this matter, wherein at pages 76 and 77, Holly Botterill describes the false statements in the scripts including that there was no warehouse move, there were no special anniversaries, and the scripts were pitched to new customers and yet called them long and loyal customers.
66. All of these misrepresentations and omissions played a vital part in compelling the target customers to agree to accept and issue payment for toner product.
67. Exhibit "W" is unaudited financial statements, included with the Respondents' income tax returns or seized from the premises of the Respondents. In the case of Calcom, these statements are for the years 1997 to 2003 (document numbers NBHA 2315s, NBHA 2327sf, NDGL 1235s, NBHH 874sf, NDGL 1154s, NDGL 1112s, and NDGL 1907s). In the case of Lexcan, these statements are for the fiscal years ending July 31, 1997 to July 31, 2003 (document numbers NDGL 1075s, NDGL 1011sf, NDGL 974sf, NDGL 946s, NDGL 912s, NDGL 1955s and NDGL 1994s).
68. According to the unaudited financial statements included as Exhibit "W":
 - (a) the Respondents reported income (also referred to as revenue or sales) totalling \$7,333,230;
 - (b) the Respondents reported a net income of \$478,796; and
 - (c) Edward Leefe received a management salary (also referred to as proprietor's drawings) of \$762,518.
69. Document numbers NBHA 771 to NBHA 776r, included as Exhibit "X", are a letter dated July 28, 1996 addressed to Edward Leefe, seized by the Competition Bureau from the office of Edward Leefe. The letter references a business proposal entitled "Awaken The Telemarketing Giant Within: My 6 Step Audiocassette Guide to Making a Killing in Office Supplies Without Hurting Anyone's Feelings".
70. Exhibit "X", at document number NBHA 775 ridicules the targets of toner telemarketing, calling them "suckers"; it references convincing buyers they have actually ordered product; it references confusing people with the order of 12 cartons; it references creating confusion by convincing Calcom customers that they are not the disreputable

creatures at Lexcan; and it mentions sending along cases of wine and perfume to sweeten deals.

71. Exhibit "X", at document number NBHA 771, references legal considerations including a sworn affidavit from Barry Elliott. Barry Elliot is an OPP Officer who has worked with PhoneBusters for many years and is well known in the telemarketing community. PhoneBusters is the national deceptive telemarketing call centre, operated by the Ontario Provincial Police in partnership with the Royal Canadian Mounted Police and the Competition Bureau.
72. Exhibit "X" is signed Frank Lee Preposterous and appears to be a tongue-in-cheek business proposal which mirrors the fraudulent sales techniques engaged in by the Respondents.
73. Paragraphs 62 to 72 include facts which form the basis for Charge 6 (*re: fraud*) of the Indictment (Amended), which is attached as Annex "1" to this Agreed Statement of Facts.

(g) Possession of Proceeds Obtained by Crime

74. The Respondents accepted payment for toner product that the target customers agreed to accept based on a number of misleading representations prohibited by the *Competition Act* and the non-disclosure of mandatory information as required by the telemarketing provisions of the *Competition Act*, thereby committing indictable offences under the *Competition Act* and the *Criminal Code*.
75. At the time of the Competition Bureau's search in 2001, the Respondents had in their possession uncashed cheques totalling approximately \$80,000 which were issued by targets of telemarketing in payment for toner products, as well as money in bank accounts, the source of which included payment for toner products from targets of telemarketing.
76. Paragraphs 74 and 75 include facts which form the basis for Charge 7 (*re: possession of proceeds obtained by crime*) of the Indictment (Amended), which is attached as Annex "1" to this Agreed Statement of Facts.

(h) Breach of Undertaking

77. On the 23rd of September 2003, Edward Leefe was first arrested and charged with offences contrary to paragraphs 52(1)(a) (as in effect prior to March 18, 1999), 52.1(2)(a), 52.1(2)(b), 52.1(3)(a) and 52.1(3)(c) of the *Competition Act*. He was also charged with offences contrary to paragraphs 380(1)(a), 354(1)(a) and 465(1)(c) of the *Criminal Code*.

Edward Leefe was then released on a form 10/11.1, by the Officer-In-Charge, with conditions which included that he 1) remain within the Province of Ontario and refrain from deceptive telemarketing 2) notify Detective J White regarding any change of address, employment or occupation and 3) abstain from communicating with co-accused Shirley Herrell.

78. Document NDGL 769s, included as Exhibit "Y" is a copy of the Undertaking Given to a Peace Officer or an Officer in Charge and signed by Edward Leefe on September 23, 2003.
79. Subsequent to the release noted in paragraph 77, the Respondents continued to engage in deceptive telemarketing. Telemarketers continued to make misleading representations by conveying the general impression that businesses had placed an order for toner product and telemarketers continued to fail to disclose the price of the toner product they were promoting.
80. Paragraphs 27 to 37 (*price*) and 39 to 48 (*placed an order for a certain quantity*) include facts which, inasmuch as they occurred after September 23, 2003, form the basis for Charges 9 and 10 (*offences resulting in the breach of a condition of undertaking*) of the Indictment (Amended), which is attached as Annex "1" to this Agreed Statement of Facts.
81. Documents NDGL 1390sc to NDGL 1391s, included as Exhibit "Z", is a will say statement signed by Nick Bensch of the University of Lethbridge, wherein Nick Bensch describes how the Respondents attempted to give the impression that an order had been placed and wherein Nick Bensch states that the Respondents did not disclose the price of the toner product. This will say statement describes occurrences in late October 2003, subsequent to the undertaking by Edward Leefe on September 23, 2003 not to engage in deceptive telemarketing.
82. On the 3rd of March 2004, Edward Leefe was once again arrested and charged with offences contrary to paragraphs 52.1(2)(b) and 52.1(3)(a) of the *Competition Act*, which are provisions relating to deceptive telemarketing. He was also charged with failing to comply with the condition of undertaking dated the 23rd of September 2003, to refrain from deceptive telemarketing. He appeared before a judge on March 3, 2004 and was released with conditions that 1) he notify Detective Jim White of any change in address, 2) he not associate with co-accused Shirley Herrell except in the presence of counsel; 3) he surrender all travel documents; 4) he remain in the Province of Ontario; 5) he refrain from deceptive telemarketing; and 6) he post bail in the amount of \$25,000.
83. Document number NDGL 1532s, included as Exhibit "AA" is a copy of his release conditions dated March 3, 2004.

84. Paragraphs 77 to 83 include facts which form the basis for Charge 11 (*re: breach of a condition of undertaking*) of the Indictment (Amended), which is attached as Annex "1" to this Agreed Statement of Facts.
85. On December 9, 2004 Edward Leefe appeared before Mr. Justice Archibald and obtained a variation to his release conditions such that 1) he could travel outside of the country of Canada to the continental United States of America providing he notified the Crown; 2) he notify Toronto Police of any changes in address, employment or occupation; 3) his passport be returned to him prior to departure and be returned back to the Toronto police on his return; 4) he refrain from deceptive telemarketing; 5) he not associate with co-accused Shirley Herrell; 6) he deposit an additional \$5,000 security (bringing the total security to \$30,000).
86. Document number NDGL 2868sc to NDGL 2871s is included as Exhibit "BB" a copy of the conditions of release authorized by Justice Archibald on December 9, 2004.

D. TRAINING

87. Edward Leefe was involved in and responsible for the training and direction of his employees including the telemarketers. This training included having telemarketers tap into his telephone, which allowed the telemarketers to listen as he made telemarketing calls to target customers. He then instructed the telemarketers to use the sales tactics they had heard him use in their subsequent sales calls.
88. Document number NDGL 2546 is included as Exhibit "J" and is an excerpt from a transcript of the testimony of Holly Botterill, on May 30, 2005, during the preliminary hearing of this matter, wherein, at page 113, she describes tapping in to Edward Leefe's phone for training. Holly Botterill is an ex-employee of the Respondents whose duties included telemarketing.
89. Edward Leefe did not provide training for his employees in regards to the telemarketing provisions of the *Competition Act*. Instead he informed some of his employees that his sales practices had been reviewed by lawyers and were "OK".
90. Document number NDGL 2546 is included as Exhibit "J" and is excerpts from a transcript of the testimony of Holly Botterill, on May 30, 2005, during the preliminary hearing of this matter, wherein, at pages 162 and 163, she states that Edward Leefe did not provide any training with respect to the telemarketing provisions of the *Competition Act* and that Edward Leefe told her he has lawyers in his family and they have nothing to worry about. Holly Botterill is an ex-employee of the Respondents whose duties included telemarketing.

91. After the Competition Bureau's search of the Respondent's premises in July and August 2001, Edward Leefe did not instruct his employees to make any substantive changes to their sales tactics. To the contrary, it was "business as usual".
92. Document number NDGL 2546 is included as Exhibit "J" and is excerpts from a transcript of the testimony of Holly Botterill, on May 30, 2005, during the preliminary hearing of this matter, wherein, at page 163, she states that none of the sales practices changed after the Competition Bureau's search of the Respondent's premises. Holly Botterill is an ex-employee of the Respondents whose duties included telemarketing.

E. COMPLAINTS

93. Edward Leefe was aware that complaints were received, by the Respondents, on a regular basis, from target businesses and organizations which had been contacted by and/or had received shipments of toner product from the Respondents. Complaints were received by telephone and in writing. The nature of the complaints included that the complainants:
- i) had not placed an order for the toner product;
 - ii) were expecting original cartridges and received remanufactured cartridges;
 - iii) found the price was too high;
 - iv) had been misled to believe the toner product was being sent to them by their regular toner supplier;
 - vi) objected to the sales tactics of the telemarketers; and
 - vii) questioned why the packing slip and invoice stated 12 cartons when they had never ordered 12 cartons.
94. Exhibits C, D, F, G, K, L, P, Q, R, and EE are typical complaint letters received by the Respondents. Complaint letters directed to the Respondents were given directly to Edward Leefe by employees who opened the mail.
95. Edward Leefe was aware that, due to the large number of telephone complaints received, his employees developed and used the acronyms "DNO" for "did not order" and "DNW" for "did not want" to avoid having to write it out each time on message slips.
96. Telemarketers were trained to not describe the Respondents' return policy during the sales calls. Edward Leefe discouraged employees from accepting the return of product. If target customers complained and requested that they be allowed to return toner product they were often told that no returns were possible and they must pay for the toner product. Telemarketers were discouraged from accepting returns as they would have to return the commission paid to them by the Respondents from such transactions.

97. There is no language in the scripts whereby the telemarketer would disclose the Respondent's return policy to a prospective customer. Documents NBHH 57 and NBHA 1084 are included at Exhibit "B" and are sales scripts which contain no reference to a return policy.
98. Document NDGL 2856, which is included as Exhibit "CC" is excerpts from the testimony of Shirley Herrell at the preliminary hearing of this matter on May 31, 2005, wherein at page 92 and 93, she states that it was Edward Leefe's rule that no product was to come back through the door and that sales commissions were docked if product was returned. Shirley Herrell is an ex-employee of the Respondents, who worked for the Respondents as the Office Manager.
99. Document NDGL 2546, which is included as Exhibit "J" is an excerpt from the testimony of Holly Botterill, at the preliminary hearing of this matter on May 30, 2005, wherein at page 140, she states that the return policy was not conveyed to customers and the Edward Leefe's view was that there were to be no returns. Holly Botterill worked for the Respondents as a telemarketer.

F. COLLECTION PRACTICES

100. Edward Leefe was aware that the collection practices for overdue accounts were aggressive and he used these same aggressive tactics himself. Fictitious small claims court documents and false collection agency stamps were used by Edward Leefe and his employees to coerce businesses and organizations into paying for toner product which had been shipped under false pretenses. No court actions were ever filed and no collection agencies were ever engaged to collect monies owed.
101. Edward Leefe often yelled at target customers and used profanity with a specific customer.
102. Targets of telemarketing complained to the Respondents and to law enforcement agencies, including the Competition Bureau, that the telemarketers subjected them to verbal abuse, including harassing and intimidating phone calls, rude, obnoxious, and profane language and bullying tactics.
103. Document numbers NBHA 949sc and NBHA 951s are included at Exhibit "DD" and are typical of a small claims court document and collection agency stamp used by the Respondents to coerce target customers into paying for toner product.

104. Document number NDGL 2856, which is included as Exhibit "CC" is an excerpt from the testimony of Shirley Herrell at the preliminary hearing of this matter on May 31, 2005, wherein at page 119 and 120, she states that small claims court documents were used to convince customers to pay for product. Shirley Herrell is an ex-employee of the Respondents, who worked as the Office Manager.

G. COVERT NATURE OF THE OPERATION

105. Edward Leefe conducted business from an office located at 2558 Danforth Avenue, Toronto, Ontario. Edward Leefe did not reveal this business address on invoices and packing slips which the Respondents sent to target customers until after the Competition Bureau's search of the Respondents' premises in July 2001. There was never signage at this location to identify it publicly as the business premises of the Respondents. Instead, on invoices and packing slips, the business addresses were described as suites, which were actually mail drop locations operated by private mail forwarders. Two of the mail drop locations were in Toronto, Ontario and one was in Chicago, Illinois. This was done so that target customers could not locate the Respondents.
106. Document numbers NDDL 333s and NDDL 509s at Exhibit "M" and document numbers NDDL 401s and NDDL 402s at Exhibit "N" are invoices and packing slips referencing suite numbers in the Respondent's address. These suite numbers were actually mail drop locations.
107. Edward Leefe used "alias names" and instructed other employees, including telemarketers, to use "alias names" for all telemarketing and business purposes. The "alias names" used by Edward Leefe included Philip Johnson, Andrew McCarthy, Jack Johanson, Michael McDonald and Berjon Berger (also referenced as Bjorn Berger).
108. Document NBHA 1334, which is included as Exhibit "P", is a complaint letter from Telus Mobility to Lexcan, dated April 7, 2001, addressed to Edward Leefe's alias "Phillip Johnson".
109. Document NBHA 5357s, which is included as Exhibit "EE", is a complaint letter from Neurose Corporation to Lexcan, dated April 7, 1998, addressed to Edward Leefe's alias "Michael McDonald".
110. Document NDGL 2856, which is included as Exhibit "CC" is excerpts from the testimony of Shirley Herrell at the preliminary hearing of this matter on May 31, 2005, wherein at page 54, she describes how she and the telemarketers used aliases at the direction of Edward Leefe. Shirley Herrell is an ex-employee of the Respondents who worked for the Respondents as the Office Manager.

111. Edward Leefe arranged to have invoices and packing slips, which were sent to target customers, indicate office locations in New York, Tampa, Vancouver, St. Louis, Los Angeles, Seattle, Chicago and Montreal. The Respondents did not, in fact, have business premises in those cities, although they did have a mail drop in Vancouver and Chicago at one time. Document numbers NDDL 333s and NDDL 509s at Exhibit "M" and document numbers NDDL 401s and NDDL 402s at Exhibit "N" are invoices and packing slips showing these false business locations.
112. The main telephone number, used by the Respondents on invoices and packing slips which they sent to target customers, was an unlisted telephone number.
113. Edward Leefe said that he was going to open a company called HP Communications so that people would think he was Hewlett Packard. Target customers were sometimes confused by the similarity of the business names used by the Respondents (Lexcan and Lexam) to the business name used by a major manufacturer of toner product (Lexmark).
114. Document NBHA 413sf, which is included as Exhibit "G", is a fax from the University of New Brunswick to Lexcan dated November 24, 2000, wherein the complainant says they were misled to believe the Respondents were the actual Lexmark distributor.
115. Edward Leefe sometimes rolled accounts over from Calcom to Lexcan because the target customer no longer wanted to deal with Calcom, but would now be contacted by Lexcan. The target customer would not realize there was a relationship between Calcom and Lexcan.

H. DURATION OF DECEPTIVE TELEMARKETING

116. The Respondents telemarketing activity commenced in approximately 1990, with the registration by Edward Leefe of the business name "The Calcom Business Centre".
117. The Competition Bureau has received approximately 180 complaints from targets of telemarketing in Canada and the United States about the sales tactics of the Respondents. These complaints relate to occurrences between 1994 and 2004.
118. The substantive sales tactics described in sections B to G above of this Agreed Statement of Facts were engaged in by the Respondents both prior to and after the inception of the new deceptive telemarketing provisions of the *Competition Act*, which occurred on March 18, 1999. Charge 8 of the Indictment (Amended), which is attached as Annex "1" to this Agreed Statement of Facts reflects the misleading advertising provisions which were in effect prior to March 18, 1999.

I. OTHER CONSIDERATIONS

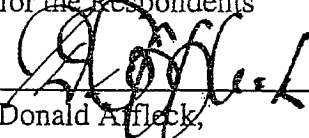
- 119. In acknowledgment of the conduct engaged in by the Respondents, Edward Leefe and the Corporations have plead guilty to the charges as stated in the Indictment (Amended) which is attached as Annex "1" to this Agreed Statement of Facts.
- 120. The decision by Edward Leefe to plead guilty and consent to an Order of Prohibition pursuant to subsection 34(1) of the *Competition Act* has saved considerable costs of further investigation and possible trial which would otherwise have been incurred by the Government of Canada.
- 121. Edward Leefe has cooperated with the Competition Bureau in reaching a resolution in this matter.

J. CONCLUSION

- 122. The conduct engaged in by the Respondents and described above constitutes acts or things, that are directed toward the commission of offences contrary to paragraphs 52(1)(a) (as in effect prior to March 18, 1999), 52.1(2)(a), 52.1(2)(b) and 52.1(3)(a) of the *Competition Act* and offences contrary to paragraphs 380(1)(a), 354(1)(a), and 145(5.1) of the *Criminal Code*.
- 123. Edward Leefe consents to the imposition of an Order of Prohibition pursuant to subsection 34(1) of the *Competition Act* in the terms set out in the attached Annex "2" to this Agreed Statement of Facts.

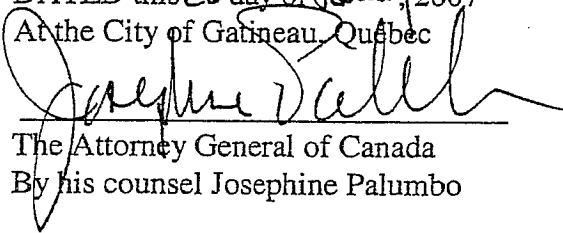
DATED this ^{20th} day of ^{FEB.}, 2007
At the City of Toronto, Ontario

Edward Harry Leefe
for the Respondents



Donald Affleck,
Counsel for the above Respondents

DATED this ^{26th} day of ^{January}, 2007
At the City of Gatineau, Québec



The Attorney General of Canada
By his counsel Josephine Palumbo

CANADA
PROVINCE OF ONTARIO
TORONTO REGION

ANNEX "1"
Court File No.: F609/05

Information No.: 48119980312004675-00

IN THE SUPERIOR COURT OF ONTARIO
JUDICIAL DISTRICT OF TORONTO

INDICTMENT
ACTE D'ACCUSATION
(Amended)

BETWEEN:
ENTRE:

HER MAJESTY THE QUEEN
SA MAJESTÉ LA REINE

- and -
- et -

EDWARD HARRY LEEFE
LEXCAN INTERNATIONAL CORP. (ONTARIO CORPORATION NUMBER 1038191)
ALSO DOING BUSINESS AS
THE CALCOM BUSINESS CENTRE, LEXAM INTERNATIONAL CORP., MPL
H & P COMMUNICATIONS INC. (ONTARIO CORPORATION NUMBER 1038192)

ACCUSED

EDWARD HARRY LEEFE, LEXCAN INTERNATIONAL CORP. (ONTARIO CORPORATION NUMBER 1038191) ALSO DOING BUSINESS AS THE CALCOM BUSINESS CENTRE, LEXAM INTERNATIONAL CORP., MPL, H & P COMMUNICATIONS INC. (ONTARIO CORPORATION NUMBER 1038192)
STAND CHARGED/SONT ACCUSÉS D'AVOIR:

Charge 1

That sometime between and including the 18th day of March in the year 1999 and the 17th day of September in the year 2003, in the City of Toronto, in the Toronto Region and elsewhere in Canada, engaged in telemarketing within the meaning of section 52.1 of the *Competition Act* and pursuant to subsection 52.1(7) of the *Competition Act*, failed to disclose, in a fair and reasonable manner at the beginning of each telephone communication, the nature of the toner product being promoted, contrary to paragraph 52.1(2)(a) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, committing thereby an indictable offence contrary to subsection 52.1(9) of the said *Act*.

Charge 2

That sometime between and including the 18th day of March in the year 1999 and the 17th day of September in the year 2003, in the City of Toronto, in the Toronto Region and elsewhere in Canada, engaged in telemarketing within the meaning of section 52.1 of the *Competition Act* and pursuant to subsection 52.1(7) of the *Competition Act*, failed to disclose, in a fair, reasonable and timely manner, the price of the toner product whose supply or use was being promoted, contrary to paragraph 52.1(2)(b) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, committing thereby an indictable offence contrary to subsection 52.1(9) of the said *Act*.

Charge 3

That sometime between and including the 18th day of March in the year 1999 and the 17th day of September in the year 2003, in the City of Toronto, in the Toronto Region and elsewhere in Canada, engaged in telemarketing within the meaning of section 52.1 of the *Competition Act* and pursuant to subsection 52.1(7) of the *Competition Act*, made representations that were false or misleading in a material respect, namely, conveyed the general impression that the businesses had placed an order for a certain quantity of toner product, contrary to paragraph 52.1(3)(a) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, committing thereby an indictable offence contrary to subsection 52.1(9) of the said *Act*.

Charge 4

That sometime between and including the 18th day of March in the year 1999 and the 17th day of September in the year 2003, in the City of Toronto, in the Toronto Region and elsewhere in Canada, engaged in telemarketing within the meaning of section 52.1 of the *Competition Act* and pursuant to subsection 52.1(7) of the *Competition Act*, made representations that were false or misleading in a material respect, namely, that they operated from an office in Chicago, Illinois, contrary to paragraph 52.1(3)(a) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, committing thereby an indictable offence contrary to subsection 52.1(9) of the said *Act*.

Charge 5

That sometime between and including the 18th day of March in the year 1999 and the 17th day of September in the year 2003, in the City of Toronto, in the Toronto Region and elsewhere in Canada, engaged in telemarketing within the meaning of section 52.1 of the *Competition Act* and pursuant to subsection 52.1(7) of the *Competition Act*, made representations that were false or misleading in a material respect, namely, that a cheque was damaged, contrary to paragraph 52.1(3)(a) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, committing thereby an indictable offence contrary to subsection 52.1(9) of the said *Act*.

Charge 6

That sometime between and including the 1st day of January in the year 1997 and the 28th day of November in the year 2003, in the City of Toronto, in the Toronto Region and elsewhere in Canada, did by deceit, falsehood or other fraudulent means defraud the Rexdale Community Health Centre and other businesses and institutions of a sum of monies of a value which exceeded five thousand dollars (\$5,000.00), thereby committing an indictable offence pursuant to paragraph 380 (1) (a) of the *Criminal Code*.

Charge 7

That sometime between and including the 1st day of January in the year 1997 and the 28th day of November in the year 2003, in the City of Toronto, in the Toronto Region and elsewhere in Canada, did illegally have in their possession proceeds of business, to wit: a sum of monies of a value which exceeded five thousand dollars (\$5,000.00), knowing that all or part of the said proceeds were derived directly or indirectly from the commission of an indictable offence, to wit: while engaged in telemarketing, illegally make misleading representations in a material respect and failed to disclose mandatory information, pursuant to paragraphs 52.1 (2) (a), 52.1 (2) (b), 52.1 (3) (a), and 52.1 (9) (a) of the *Competition Act*, R.S.C. 1985, c. C-34, contrary to paragraph 354 (1)(a) of the *Criminal Code*, thereby committing an indictable offence pursuant to paragraph 355 (a) of the *Criminal Code*.

Charge 8

That sometime between January 1st, 1997 and March 17th, 1999, in the City of Toronto, in the Toronto Region and elsewhere in Canada, for the purpose of promoting, directly or indirectly, the supply of products, to wit: toner products, by means of telemarketing, did illegally make representations that were misleading, to wit: conveyed the general impression that the businesses had placed an order for a certain quantity of toner product, contrary to paragraph 52 (1) (a) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, thereby committing an indictable offence pursuant to paragraph 52 (5) (a) of the said *Act*.

Charge 9

That Edward Harry Leefe and Lexcan International Corp. (Ontario Corporation Number 1038191) sometime between the 1st day of July in the year 2003 and the 28th day of November in the year 2003, in the City of Toronto, in the Toronto Region and elsewhere in Canada, engaged in telemarketing within the meaning of section 52.1 of the *Competition Act*, R.S.C. 1985 c. C-34(as amended) (the "*Competition Act*") and pursuant to subsection 52.1(7) of the *Competition Act*, failed to disclose, in a fair, reasonable and timely manner, the price of the toner product whose supply or use was being promoted, contrary to paragraph 52.1(2)(b) of the *Competition Act*, committing thereby an indictable offence contrary to subsection 52.1(9) of the said *Competition Act*.

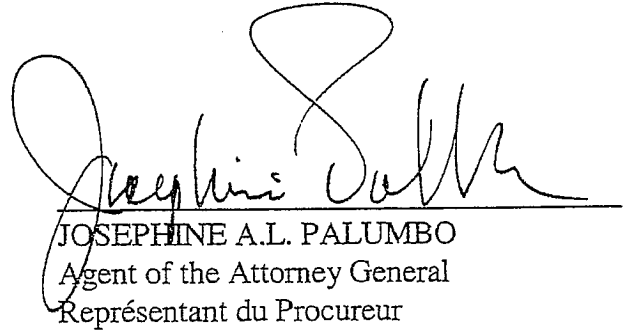
Charge 10

That Edward Harry Leefe and Lexcan International Corp. (Ontario Corporation Number 1038191) sometime between the 1st day of July in the year 2003 and the 28th day of November in the year 2003, in the City of Toronto, in the Toronto Region and elsewhere in Canada, engaged in telemarketing within the meaning of section 52.1 of the *Competition Act* R.S.C. 1985 c. C-34(as amended) (the "*Competition Act*") and pursuant to subsection 52.1(7) of the *Competition Act*, made representations that were false or misleading in a material respect, namely, conveyed the general impression that a business had placed an order for a certain quantity of toner product, contrary to paragraph 52.1(3)(a) of the *Competition Act*, committing thereby an indictable offence contrary to subsection 52.1(9) of the said *Act*.

Charge 11

That Edward Harry Leefe sometime between the 1st day of July in the year 2003, and the 28th day of November in the year 2003, in the City of Toronto, in the Toronto Region and elsewhere in Canada, did being at large on his undertaking given to an Officer in Charge and being bound to comply with a condition of that undertaking directed by the said Office in Charge fail without lawful excuse to comply with that condition to wit: refrain from deceptive telemarketing, contrary to subsection 145(5.1) of the *Criminal Code*.

DATED THIS 26th DAY OF Aug 2007,
FAIT LE 26th JOUR DE 2007,
AT/A GATINEAU, QUEBEC.


JOSEPHINE A.L. PALUMBO
Agent of the Attorney General
Représentant du Procureur

SECTION(S):

52(1)(a), 52(5)(a)52.1, 52.1(2)(a), 52.1(2)(b),52.1(3)(a), 52.1(3)(c), 52.1(7), 52.1(9) of the *Competition Act*

145(5.1), 354(1)(a), 355(a), 380(1)(a) of the *Criminal Code*

ACCUSED

ENDORSEMENTS

ALL ARRAIGNMENTS: , 2007