

Competition Tribunal



Tribunal de la concurrence

Reference: *Coretti v Bureau de la Sécurité Privée and Garda World Security Corporation*, 2019
Comp Trib 4
File No: CT-2019-001
Registry Document No: 11

IN THE MATTER OF an application by Luigi Coretti for an Order granting leave, pursuant to section 103.1 of the *Competition Act*, RSC 1985, c C-34, as amended [Act], to make an application under subsection 77(3) of the Act;

BETWEEN:

Luigi Coretti
(applicant)

and

Bureau de la Sécurité Privée, Garda World Security Corporation, Garda World International Corporation, Garda Canada Security Corporation, The Garda Security Group, Société en Commandite Transport de Valeurs Garda, Garda Alarm Services Corporation
(respondents)



Decided on the basis of the written record.
Before Judicial Member: J. Gagné
Date of Reasons for Order and Order: July 31, 2019

REASONS FOR ORDER AND ORDER DISMISSING AN APPLICATION FOR LEAVE

I. BACKGROUND

[1] Mr. Luigi Coretti is seeking leave from the Tribunal, pursuant to section 103.1 of the *Competition Act*, RSC 1985, c C-34, as amended, to file an application under subsection 77(3) of the Act against the Bureau de la Sécurité Privée (“**Bureau**”), on one hand, and Garda World Security Corporation, Garda World International Corporation, Garda Canada Security Corporation, The Garda Security Group Inc., Société en Commandite Transport de Valeurs Garda, and Garda Alarm Services Corporation (collectively “**Garda**”), on the other hand.

[2] Mr. Coretti essentially states that the Bureau and Garda have acted in concert to restrict the private security services market in the Province of Quebec, by forcing customers to do business exclusively with Garda.

[3] He states that Garda caused him to lose his assets and personal security services business, the Bureau canadien d’investigation et ajustements – BCIA, by initiating a malicious prosecution against it. In fact, he states that current or former employees of Garda were also officers and directors of the Caisse des policiers et policières de Montréal, a creditor in his business’ bankruptcy which also made allegations of fraud against him. Finally, he states that by using a multitude of entities, Garda gained control of the Bureau “by acting as independent persons and appearing to represent the majority of market actors”.

[4] With respect to the Bureau, a self-regulatory body that governs the private security services industry in Quebec, Mr. Coretti argues that it illegally refused to grant him the licence that he requires to provide private security services in Quebec. He held such a licence from 1985 to 2010, but the Bureau refused to grant him a new one in 2017 after the charges of fraud against him were stayed in 2016, on the basis that his training and qualifications were outdated. He has challenged that decision before the Tribunal administratif du Québec and the Quebec Superior Court. Both of these proceedings are pending.

II. ISSUES

[5] In his application for leave, Mr. Coretti raises the following issues:

- A. *Is the applicant directly and substantially affected by the conduct of the respondents?*
- B. *Is the applicant directly and substantially prevented from entering the Québec market for protection of financial assets (namely armoured cars, transportation, security) by a market restriction?*
- C. *If the above is affirmative, is the market restriction caused by the respondents?*

[6] However, the main issue raised by this application is rather:

Does Mr. Coretti’s application meet the test for leave?

III. ANALYSIS

[7] In *Symbol Technologies Canada ULC v Barcode Systems Inc*, 2004 FCA 339, Justice Marshall Rothstein adopted the leave test that has generally been cited since. He stated the following:

[16] In *National Capital News Canada v. Canada (Speaker of the House of Commons)* (2002), 23 C.P.R. (4th) 77 (Comp. Trib.), Dawson J., in her capacity as a member of the Competition Tribunal, reviewed the test for the granting of leave under subsection 103.1(7). After citing authorities on the term “reasonable grounds to believe” she stated at paragraph 14 of her reasons:

Accordingly on the basis of the plain meaning of the wording used in subsection 103.1(7) of the Act and the jurisprudence referred to above, I conclude that the appropriate standard under subsection 103.1(7) is whether the leave application is supported by sufficient credible evidence to give rise to a bona fide belief that the applicant may have been directly and substantially affected in the applicant's business by a reviewable practice, and that the practice in question could be subject to an order.

I agree with Dawson J. and adopt her analysis and conclusion as to the test for granting leave under subsection 103.1(7).

[17] The threshold for an applicant obtaining leave is not a difficult one to meet. It need only provide sufficient credible evidence of what is alleged to give rise to a *bona fide* belief by the Tribunal. This is a lower standard of proof than proof on a balance of probabilities which will be the standard applicable to the decision on the merits.

[8] Justice Rothstein also underlined the importance of the affidavit filed in support of an application for leave:

[20] [...] Subsection 103.1(1) requires that the application for leave be accompanied by an affidavit setting out the facts in support of the application [...]. That affidavit must therefore contain the facts relevant to the elements of the reviewable trade practice of refusal to deal set out in subsection 75(1) [in the instant case, it would be the elements of the reviewable trade practice of market restriction set out in subsection 77(3)]. It is that affidavit which the Tribunal will consider in determining a leave application

under subsection 103.1(7). While the standard of proof on the leave application is lower than when the case is considered on its merits, nonetheless, the same considerations are relevant to both and must be taken into account at both stages.

[9] Applying the above leave test to the case before me, I must be satisfied that there is sufficient credible evidence to give rise to a *bona fide* belief (1) that the applicant may have been directly and substantially affected in his business by the alleged practice, and (2) that the practice in question could be subject to an order under subsection 77(3) of the Act.

[10] In my view, Mr. Coretti's failure to meet this second element of the test is dispositive of his leave application.

[11] Under subsection 77(3) of the Act, three elements must be met before the tribunal can issue an order: (1) there is a "market restriction"; (2) that market restriction is engaged in by a major supplier of a product or is widespread in relation to a product, and (3) that market restriction is likely to substantially lessen competition in relation to the product (because it is widespread or engaged in by a major supplier).

[12] Mr. Coretti brings no evidence supporting a *bona fide* belief that there has been a market restriction. A "market restriction" is defined in subsection 77(1) of the Act as "any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to supply any product only in a defined market, or exacts a penalty of any kind from the customer if he supplies any product outside a defined market".

[13] Yet, Mr. Coretti's affidavit filed in support of the application is silent as to the alleged requirement or penalty exacted. He states that the respondents "have restricted the market by forcing customers to buy only from it and by effectively destroying competitors". He essentially asserts that he cannot supply security services unless he joins Garda. However, there is no explanation in his application as to how the definition of a market restriction is met and I fail to see how any reasonable inference can be drawn from his affidavit or application to conclude that there is a *bona fide* belief that the practice in question could be the subject of an order under subsection 77(3).

[14] This finding, in and of itself, is sufficient to dismiss the present application for leave.

[15] However, with respect to the Bureau, I would add that section 17 of the *Interpretation Act*, RSC 1985, c I-21 states that no enactment of Parliament is binding on Her Majesty except as mentioned or referred to in that enactment. Section 17 of the *Interpretation Act* not only applies to the Crown in right of Canada, but also to the Crown in right of a province and extends to agents of the Crown.

[16] Section 2.1 of the Act provides that the statute is binding on and applies to an agent of Her Majesty in right of Canada or a province that is a corporation solely in respect of commercial activities engaged in by that agent in competition with other persons.

[17] In my view, the Act is not binding on the Bureau because the alleged conduct at issue (the issuance of a licence under the Quebec *Private Security Act*, CQLR c S-3.5) does not constitute a commercial activity engaged in by the Bureau in competition with other persons. The fact that individuals linked to potential competitors of Mr. Coretti sit on the Bureau's board of directors, in accordance with legislative requirements (subsection 44(2) of the *Private Security Act*), does not transform the issuance of licences into a commercial activity for the purposes of section 2.1 of the Act.

[18] The Bureau enjoys Crown immunity in accordance with section 17 of the *Interpretation Act*, and the application for leave against the Bureau is also dismissed on that basis.

IV. CONCLUSION

[19] The evidence contained in Mr. Coretti's affidavit falls far short of meeting the test for leave and his application is therefore dismissed.

FOR THE ABOVE REASONS, THE TRIBUNAL ORDERS THAT:

[20] The application for leave is dismissed;

[21] Costs in the amount of \$1,000 each are granted to the respondents.

DATED at Ottawa, this 31st day of July 2019.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Jocelyne Gagné

COUNSEL OF RECORD:

For the applicant:

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Felipe Morales

For the respondents:

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