

Competition Tribunal



Tribunal de la concurrence

Citation: *Winston Gaskin et al. v Rogers Communications Inc. et al.*, 2024 Comp Trib 02  
File No.: CT-2024-002  
Registry Document No.: 6

**IN THE MATTER OF** an attempted filing of an application for leave under section 103.1 of the *Competition Act* to commence applications under section 79 of the *Competition Act*, RSC 1985, c C-34, as amended;

BETWEEN:

**Winston Gaskin, Standard Land  
Company Inc. and others**  
(proposed applicants)

and

**Rogers Communications Inc. and  
others**  
(proposed respondents)



Decided on the basis of the written record  
Before: Justice Andrew D. Little, Chairperson  
Date of order: April 15, 2024

**DIRECTION TO THE REGISTRY, ORDER AND REASONS WITH RESPECT TO THE  
FILING AND SERVICE OF AN ORIGINATING DOCUMENT AND SUPPORTING  
MATERIALS**

## ***Background***

[1] Over the past several months, Mr Winston Gaskin has been in communication with the Competition Tribunal’s Registry in an effort to file an application under section 103.1 of the *Competition Act*, for leave to file an application under section 79 of that statute.

[2] Mr Gaskin, who is self-represented and advises that he proposes to represent others, has sent documents to the Registry that purport to be originating documents for a section 103.1 application. The Registry has informed Mr Gaskin that the documents are not acceptable for filing and that he must serve originating documents on the proposed respondents in accordance with the *Competition Tribunal Rules*, SOR/2008-141. The Registry has spent considerable time attempting to assist Mr Gaskin with complying with the Rules.

[3] Amongst other documents, Mr Gaskin has attempted to file documents styled as:

- (a) a Notice of Application for Leave (pursuant to section 103.1 of the *Competition Act*) dated February 9, 2024;
- (b) a proposed Notice of Application (pursuant to section 79 of the *Competition Act*) dated February 9, 2024;
- (c) an Affidavit of Winston E. Gaskin dated February 13, 2023, in a proposed class proceeding in Federal Court File No. T-1902-23; and
- (d) a Request to Admit in Federal Court File No. T-353-22.

[4] For the application under section 103.1, the proposed Notice of Application lists, as respondents:

- (a) several individuals,
- (b) an estate,
- (c) two partnerships,
- (d) two trusts,
- (e) Rogers Communications Inc.,
- (f) “all affiliates, directors, trustees, officers agents and assigns, and others”, and
- (g) the “owners and all others interested in The Ship *Rogers Communications Inc.*, and her cargo and freight”.

[5] As purported “Third Parties”, the proposed application lists the “Attorney General of Canada, Canadian Human Rights Commission, Canada Revenue Agency, Competition Bureau Canada, as represented by His Majesty the King”.

***The application for leave under section 103.1 is not accepted for filing***

[6] The application for leave under section 103.1 is not properly constituted and cannot be accepted for filing. The reasons are evident on the face of the documents, having regard to the requirements of the *Competition Act* and the *Competition Tribunal Rules*, and with no substantive legal analysis of the allegations. For ease of explanation, I will organize the deficiencies into four points.

[7] First, an application under section 103.1 must contain, in the notice of application, allegations of fact that support an applicant's request for leave (i.e., permission) to start the proposed section 79 application. The legal test to obtain permission is found in subsections 103.1(7) and (7.1) of the *Competition Act*. An applicant for leave must also comply with Rule 115 of the *Competition Tribunal Rules*, including the form and content requirements for applications, the filing of an affidavit supporting that application and the filing of a memorandum of fact and law (although Rule 115 has not yet been amended to refer expressly to section 79 since Parliament amended section 103.1 to include section 79: see *Budget Implementation Act, 2022, No. 1, S.C. 2022, c. 10, section 266*).

[8] In the present case, the Notice of Application under section 103.1 does not set out any material facts that could support a Tribunal order granting leave. It refers to a Statement of Grounds and Material Facts attached to the proposed Notice of Application under section 79, but no such statement is attached or otherwise filed. The attempted filings for the application for leave under section 103.1 also did not include a memorandum of fact and law, although the Notice of Application refers to such a memorandum.

[9] Second, a proposed notice of application under section 79 must contain material facts to support a cause of action under section 79 and must be accompanied by an affidavit setting out the facts in support of the person's application under that section: see subrules 36(2) and 115(2) of the *Competition Tribunal Rules* and subsection 103.1(1) of the *Competition Act*.

[10] In this case, the proposed Notice of Application under section 79 of the *Competition Act* is inadequate on its face. To be acceptable for filing, it must contain at least some allegations of fact that could support a viable claim under that provision. This one contains no material facts to support a cause of action under section 79. Instead, it lists what the applicants want by way of an order, which is not enough. (The Tribunal will not analyze here whether or not the remedies requested may be available to Mr Gaskin in law.)

[11] Third, both the Notice of Application under section 103.1 and the proposed Notice of Application under section 79 include a paragraph that refers to an affidavit of Mr Gaskin sworn on November 25, 2023, and correspondence with the Competition Bureau. Neither the affidavit nor the correspondence was filed with the proposed Notice of Application. The November 2023 affidavit is an apparent reference to an affidavit of execution, which in turn refers to a February 2023 affidavit sent to the Registry that has a style of cause of a proceeding in the Federal Court. The Registry also recently received a copy of a letter sent to the Competition Bureau in April 2021, without a supporting affidavit.

[12] As noted, Mr Gaskin’s affidavit dated February 13, 2023, has a style of cause in the Federal Court and is not in a suitable form for filing at the Tribunal. In addition, its contents give rise to numerous questions about the application for leave. The affidavit alleges purported breaches of five different sections of the *Competition Act*, in both Parts VII.1 (deceptive marketing) and VIII (reviewable practices). Near the end, this affidavit claims that the alleged infractions in this matter contravene several statutes under which the plaintiff (Mr Gaskin) and the proposed “class” may be eligible for damages. It refers to seeking leave to explore remedies and relief and then lists more than 30 other statutes including the *Aeronautics Act*, the *Shipping Act*, provincial consumer protection legislation, the *Immigration and Refugee Protection Act*, and the *Wrecked, Abandoned or Hazardous Vessels Act*, as well as the Holy Bible. Such claims, most of the listed statutes and the Bible are beyond the purview of the Competition Tribunal.

[13] Both notices of application also refer to an appeal book filed at the Federal Court of Appeal by another party in another proceeding (allegedly “containing approximately 6800 pages of submissions relevant to this matter”), and to a “Dismissal Order” made by an Associate Judge of the Federal Court in an undisclosed proceeding. These materials were not filed. In any event, neither one is acceptable to file with the Tribunal on its own and it is unclear how either one is relevant to the application for leave under section 103.1 or the proposed section 79 application.

[14] The Notice to Admit on its face cannot be filed because it was apparently made in another proceeding, in the Federal Court.

[15] It is an applicant’s responsibility to file notices of application and supporting materials that are acceptable for filing. The Tribunal will not search through all of the other documents sent to the Registry over the past few months, including those sent in recent days, to find allegations of fact that could support an application for leave under section 103.1 or a proposed application under section 79.

[16] Fourth, the Commissioner of Competition must be served with a copy of an application under section 103.1: *Competition Act*, subsection 103.1(2). The Tribunal is aware that in February and early March 2024, the Registry received emails from legal counsel for the Commissioner of Competition which confirmed that the Commissioner had received some documents from Mr Gaskin related to the application for leave. Although an applicant must serve the Commissioner with a copy of the application for leave, the notices of application here list the “Competition Bureau Canada” as a “Third Party” to both applications.

[17] It is not proper practice for an applicant to file a notice of application under the *Competition Act* against a party characterized as a “Third Party” to the lawsuit. It is proper practice for an applicant to name one or more proposed “respondents” in a notice of application filed with the Tribunal. Generally speaking, a “respondent” is a party who, according to an applicant’s allegations, has engaged in some conduct that falls under one or more provisions of the *Competition Act*. In the present case, it is also quite unclear how the “Competition Bureau Canada” could be alleged to have engaged in conduct falling under section 79 of the *Competition Act*.

[18] It may also be helpful to clarify that it is the people at the Competition Bureau, whose leader is the Commissioner of Competition, who conduct investigations and formal inquiries under the *Competition Act*. The Competition Tribunal does not do so. Instead, the Tribunal’s role is

similar to a court – it is an independent adjudicative tribunal that makes decisions in lawsuits commenced under the *Competition Act*.

[19] In light of these readily apparent and material deficiencies, the Tribunal directs the Registry not to accept any of the documents tendered by Mr Gaskin for filing to commence an application under section 103.1 of the *Competition Act*, in their present forms.

### ***Service of Originating Document for an Application under section 103.1***

[20] An applicant must serve a copy of the application for leave under section 103.1 on a person against whom an order under section 79 is sought: *Competition Act*, subsection 103.1(2).

[21] On March 22, 2024, Mr Gaskin sent the Registry an “Affidavit of Service of an Originating Document” sworn on March 21, 2024. It stated that Mr Gaskin “served” a number of parties with the Notice of Application for Leave, the proposed Notice of Application, the Affidavit dated February 13, 2023 and a Notice of Application dated December 7, 2023. Mr Gaskin advised that he did so by sending emails, in particular by “leaving a copy” (or an uncertified copy) with certain stated persons at several different stated email addresses.

[22] The parties that were allegedly “served” in this manner included certain named individuals, the estate, the partnerships and trusts, Rogers Communications Inc., all individual directors, officers, trustees, agents and assigns, the Ship *Rogers Communications Inc.*, the Commissioner of Competition, this Tribunal, the Canadian Human Rights Commission and other purported “Third Parties”.

[23] In each case, Mr Gaskin’s Affidavit requested that the Tribunal dispense with formality under Rules 2 and 3 and “other relevant provisions” of the *Competition Tribunal Rules* “with urgency”. In several cases, Mr Gaskin’s Affidavit referred to “reasons of severe hardship” allegedly brought about by the proposed respondents and “legal disability”.

[24] Under Rule 2, the Tribunal may dispense with, vary or supplement the *Competition Tribunal Rules* in a particular case in order to deal with all matters as informally and expeditiously as the circumstances and considerations of fairness permit.

[25] An “originating document” is defined in Rule 1 to include an application for leave under section 103.1 of the *Competition Act*. Rule 8 prescribes the ways in which service of originating documents shall be effected. The Tribunal may also validate service under Rule 9 if certain conditions are met.

[26] In the present circumstances, the Tribunal will take the “Affidavit of Service of an Originating Document” sworn on March 21, 2024, and sent to the Registry on March 22, 2024, as an informal request under Rule 2 to dispense with or vary the requirements of service under Rule 8.

[27] The Tribunal will not make an order under Rule 2 to dispense with or vary the requirements of service under Rule 8 if the originating documents are not acceptable for filing with the Registry. The Tribunal will, however, provide further explanation and guidance on service issues.

[28] Proper personal service of an originating document is a fundamental step in any proceeding. Proper personal service ensures that the documents that commence a lawsuit come to the attention of each respondent, so that each respondent has an opportunity to take steps to respond to the lawsuit commenced by the originating document.

[29] In this case, even if the various application for leave documents were in a form acceptable for filing (which, as explained above, they are not), the proposed applicants have not demonstrated sufficient reasons to support an order to dispense with or vary the requirements for personal service on any (or all) of the proposed respondents. Concerns such as “severe hardship” and “legal disability” must be supported by clear and cogent evidence explaining what that means and how it impacts an applicant’s ability to effect service of originating documents and other materials in the manner required by the Rules. The allegations in this case imply financial hardship, but without details supported by satisfactory evidence. The evidence also does not show that the documents purporting to be originating documents have come to the attention of each, or any, of the proposed respondents. For example, there is no suggestion that any of the proposed respondents, or their counsel, formally accepted service of an originating document or acknowledged receipt of the emails and their attachments. Mr Gaskin did not attach any of the emails he sent to attempt to serve the section 103.1 application as exhibits to his Affidavit.

[30] The Tribunal is aware that Mr Gaskin has sent many other documents to the Registry over the past months and again in recent days, including documents that appear to have been filed in proceedings in a court. The Tribunal will not search through those other documents to attempt to piece together for itself any possible reasons or support for a request under Rule 2.

[31] The proposed applicants’ informal request under Rule 2 must therefore be dismissed.

### ***Concluding Points***

[32] The conclusions in this ruling do not prevent Mr Gaskin from filing acceptable application materials seeking leave under section 103.1 that comply with the requirements of the *Competition Act* and the *Competition Tribunal Rules*, and then serving them on proper respondents in accordance with the statute and the Rules. These conclusions also do not prevent Mr Gaskin from seeking further relief related to service at a later date, with sufficient supporting evidence.

[33] The Tribunal is aware of recent Federal Court proceedings involving Mr Gaskin in which the Court has made orders under Rule 74 of the *Federal Courts Rules*, SOR/98-106. One proceeding involves some of the same parties that are named as proposed parties here. See *Gaskin v Canada*, 2023 FC 1542 and *Gaskin v Rogers*, 2023 FC 1588.

[34] The Registry will continue to respond to questions from Mr Gaskin about Tribunal matters, as it does with every litigant (whether self-represented or represented by counsel). In addition, as in every proceeding, the Registry and the Tribunal will continue to review documents sent to the Registry to ensure that they are acceptable for filing.

**THEREFORE THE TRIBUNAL:**

**[35]** Directs the Registry not to accept any of the documents tendered by Mr Gaskin for filing to commence an application under section 103.1 of the *Competition Act*, in their present forms; and

**[36]** Dismisses the proposed applicants' informal request under Rule 2 of the *Competition Tribunal Rules*, to dispense with or vary the requirements for personal service of originating documents under Rule 8.

DATED at Ottawa, this 15 day of April 2024.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Andrew D. Little