Court File Number: CT-2019-001

IN THE COMPETITION TRIBUNAL

LUIGI CORETTI

Applicant

vs

BUREAU DE LA SÉCURITÉ PRIVÉ
6363 Route Transcanadienne Ouest Bureau 206
Montréal QC H4T 1Z9

and

GARDA WORLD SECURITY CORPORATION
GARDA WORLD INTERNATIONAL CORPORATION
GARDA WORLD SECURITY CORPORATION
GARDA CANADA SECURITY CORPORATION
THE GARDA SECURITY GROUP
SOCIÉTÉ EN COMMANDITE TRANSPORT DE VALEURS GARDA
GARDA ALARM SERVICES CORPORATION
GARDA ALARM SERVICES CORPORATION
1390 rue Barré, Montréal QC H3C 1N4

Respondent

APPLICANT'S REPLY TO THE RESPONSES
[Rule 120]

IN REPLY TO THE RESPONSE OF THE RESPONDENT BUREAU DE LA SÉCURITÉ PRIVÉ AND THE GARDA GROUP OF RESPONDENTS, THE APPLICANT LUIGI CORETTI STATES THE FOLLOWING:

A. **In regards to the Respondent Bureau de la Sécurité Privée**

I. The Respondent Bureau de la Sécurité Privé argues in its written representation 3 states 3 grounds to dismiss the Application namely:

- That it is a Crown Agency that is not bound by the Competition Act because it is exercising a regulatory rather than a commercial activity [Subparagraph 3(a)];
- That the Competition Tribunal is not the appropriate forum to challenge and administrative decision [Paragraph 3(b)];
- That the Applicant did not meet the burden of proof set by section 103.1 of the Competition Act:
    - Because it alleges there is no proof of the Bureau's conduct to warrant an order under s.77(3) [Subparagraph 3(c)(i)]
    - Because the Applicant is not directly affected in his business;

II. The Applicant respectfully replies the following:

a) <u>Applicability of the Competition Act</u>

Section 2.1 of the *Competition Act* does apply to agents of the Provincial Crown, even if they exercise monopoly in certain respects, if they are in competition with other entities. As stated, in the particular case of security services described in the application, there is competition against internationally licensed professionals who may work across provincial and national borders as was the case in *Babstock v. Atlantic Lottery Corp. Inc./Société de Loteries de l'Atlantique [2014] N.J. No. 288* and Sebastian v. Saskatchewan (Dept. of Highways & Transportation) (1987) 61 Sask R. 71.

The Applicant also respectfully submits that, if its conduct conspires with another person to favour that other person over other competitors, that conduct is not in the public interest and may not be excluded from application of the Competition Act. *Cherry v. The King [1938]* 1 D.L.R. 156.

The Applicant submits that, as stated by Professor Michael Trebilcock:

> While the regulated conduct defence limits the application of the *Competition Act* to regulated industries and thus prevents the nature of the regulatory schemes themselves from being subject to the scrutiny of the court under that Act, the common law of restraint of trade could arguably allow the courts to review the actions of regulatory bodies **for arbitrarily depriving people of their livelihood.** British cases suggest that legal monopolies (such as those created through provincial and federal regulation) must exercise their power so as not unreasonably to restrain the freedom of trade of members or aspiring members. €∞∞ {Citing Dickson v. Pharmaceutical Society of Great Britain [1967] 1 Ch. 708 (C.A.) & [1970] A.C. 403 (H.L.)}[1].

See Also *Garland v. Consumer's Gas [2004] 1 S.C.R. 629 par 76*

Contrary to what the Respondent Bureau alleges, the issuing of permits and assessment of qualifications of a person interested in the private security market of Québec is not part of the "Regulatory Powers" granted to it by provincial statute. These regulatory powers are:

> CHAPTER V
> REGULATORY POWERS
> 107. The Bureau must make regulations determining
> (1) the form in which an application for a licence must be filed and the documents and fee that must be submitted with the application;
> (2) the annual fee that a licence holder must pay, which may vary according to the verification required;
> (3) the coverage and other features of the liability insurance that an agency licence holder must take out;
> (4) the amount and form of the security that an agency licence holder must furnish;
> (5) the cases in and conditions on which a temporary agent licence may be issued; the conditions set in a regulation under this paragraph may be different from those set in section 19 or in a regulation made under paragraph 2 of section 108; and
> (6) the standards of conduct to be followed by agent licence holders in the exercise of their functions.

The conduct subject of the application is commercial, and there can be competition from individuals who are not licensed provided they work full-time for a company whose main business is not private security and the individual is not primarily dedicated to private security as provided in ss. 16 and 17 of the Private Security Act:

> 16. A natural person carrying on a private security activity and that person's immediate superior must hold an agent licence of the appropriate class.
> However, if they are carrying on the private security activity exclusively for an employer whose business does not consist in carrying on a private security activity, they are required to hold an agent licence only if the private security activity is their main activity.

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[1] Michael TREBILCOCK, Ralph A. WINTER, Paul COLLINS & Edward M. IACOBUCCI, The Law and Economics of Canadian Competition Policy, 1982, University of Toronto Press, p.701

2006, c. 23, s. 16; 2011, c. 23, s. 5.

17. The Bureau issues agent licences for the following classes:

(1) security guard agent;

(2) investigation agent;

(3) locksmith agent;

(4) electronic security systems agent for one or more of the following sectors of activity:

(a) installing, repairing and maintaining;

(b) continuous remote monitoring;

(c) technical consulting;

(5) valuables transport agent; and

(6) security consulting agent.

Furthermore, the Applicant states that the composition of a Board of Directors is not a regulatory function and is a commercial activity (See Civil Code of Québec Art. 311). The managing entity of the Respondent Bureau de la Sécurité Privée, the Applicant restates that under s. 44 of Québec's *Private Security Act* [RSQ c. S-3.5] the Bureau's is managed by a Board of Directors:

44. The Bureau is administered by a board of directors composed of 11 members, as follows:

(1) four members appointed by the Minister, one of whom must be from the police community; and

(2) seven members appointed by associations representative of the private security industry that are recognized by the Minister.

2006, c. 23, s. 44.

As the Respondent states in its Memorandum at p. 26, the Applicant is in fact applying to the Superior Court challenging the apparent partiality of the Bureau for the following reasons:

- The Bureau's President, Mr. Pierre C. Richard is the President of the *Association Provinciale des Agences de Sécurité.* The Respondent Garda is a member of this Association.
- The Vice-President Louis Laframboise works for Enquête et Services Conseils GW Div. Groupe Sécurité Générale.
- Member Martin Régimbald is a Vice-President of Human Ressources with Garda World.
- Member Pierre Dussault who appears to be a member of the *Association des maîtres serruriers du Québec* as well as the *Corporation des maîtres serruriers du Québec*, an association incorporated contemporaneously to his appointment to the board of the Bureau.
- Normand Fiset who appears to be a member of the *Association Canadienne de la Sécurité* which was not registered.

The composition of the Board, which is a commercial and not a regulatory activity, places those who are direct competitors of Garda, such as the Applicant, in a clear disadvantage and literal impediment to earn a living in the relevant market.

b) Jurisdiction of the Tribunal

The Applicant relies on section 8 of the *Competition Tribunal Act* and reiterate that if the conduct complained of is contrary to the statutory provisions already mentioned, the Tribunal has the full and effective authority to hear evidence and arguments. See *B-Filer v. Bank of Nova Scotia (2005) 43 C.P.R. (4th) 37 (Competition Trib.).* The Tribunal has sole and exclusive jurisdiction to apply s. 77(3) and given the powers already described in s.2.1 above, there is no estoppel or lack of jurisdiction.

c) Lack of evidence to meet the *prima facie burden of s.103.1*

The Applicant, in the Application, described conduct that effectively prevents him from earning a living in Québec, even after having already worked prior to his bankruptcy and stayed and unproved criminal accusation. As such, he has established that the complained affects him substantially and directly.

The Respondent limits his arguments to disqualifying the Applicant's testimony and asking this Tribunal to reject it. This is contrary to the principle of not assessing credibility from affidavit evidence. The Applicant respectfully submits that if his testimony is to be dismissed, it can only be after being heard by the Tribunal.

In his own exhibits, the Respondent has provided the proof of the proximity between the Bureau, which is supposed to be the regulator and one competitor. The Respondent has admitted that the Applicant is and was a competitor as appears from pages 24 to 27 of his Memorandum

Finally, in regards to the allegation that there is no evidence to support granting leave, the Applicant reminds the Tribunal of the reasons stated in the case *The Used Car Dealers Association of Ontario v. Insurance Bureau of Canada 2011 CACT 10 (CanLII)* where there was affidavit evidence. As written by Justice Sandra Simpson:

> THE MEANING OF "COULD"
>
> [32] I now turn to the question of whether an order could be made under section 75 and I think it useful at this juncture to reflect on the meaning of the word "could". The context is important. The question of whether an order "could" be made is being considered in an application for leave which is not supported by a full evidentiary record. Parliament decreed that an applicant would file an affidavit and a respondent would file representations. This means that there will inevitably be incomplete information on some topics. As well, the process is to be expedi-

tious and the burden of proof is lower than the ordinary civil burden which is "a balance of probabilities".

[33] **In my view, the lower threshold means that the question is whether an order is "possible" and "could" is used in that sense.**

[34] In deciding whether an order is possible the Tribunal must assess whether there is sufficient credible evidence to give rise to a bona fide belief that an order is possible. However, given the context described above, it is not reasonable to conclude that hard and fast evidence is required on every point. In my view, reasonable inferences may be drawn where the supporting grounds are given and circumstantial evidence may be considered.

The Applicant thus restates the affirmations made in his affidavit.

B. In regards to Respondent GARDA

I. Respondent GARDA's arguments were that only one of its entities should be targeted by the proposed order. and also argues that there is lack of evidence.

The Applicant reiterates that the relevant activity is **Private Security** as described in the Québec Act and **namely but not exclusively** armoured car transportation of valuables.

As alleged, all entities are co-ordinated to dominate the entire private security market and have acted to restrain competition.

As for the allegation of an arms-length with the Bureau, the Applicant repeats the arguments already made above and points to pages 24 to 27 of the Bureau's Memorandum to repeat the evidence already provided to the Québec Court in support of that allegation.

Montréal May 16, 2019

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Reply to Responses File CT-2019-001

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Thu 2019-05-16 11:33 AM

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1 attachments (265 KB)
Reply to the BSP & GARDA.pdf;

Please find enclosed the Applicant's Reply which is served to you.

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