

Competition Tribunal Clarifies Public Interest Test

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Effective June 20, 2025, amendments to the [*Competition Act*](#)¹ created a new pathway for private parties to seek leave from the Competition Tribunal (**Tribunal**) to bring applications grounded in the public interest. This expansion of private enforcement raised questions about how the Tribunal would apply the new public interest standard. On January 13, 2026, the Tribunal released its first decision addressing this issue in [*Martin v Alphabet Inc., Google LLC, Google Canada Corporation, Apple Inc., and Apple Canada Inc.*](#) (**Martin**)² setting out its approach to the public interest test under section 103.1(7) of the *Competition Act*.³

Background

The applicant, Alexander Martin, was an independent video game developer who relied on search engines to sell and publish his video games online. He applied to the Tribunal for leave to commence an application against Google and Apple.⁴ The applicant alleged that Google holds a dominant position in the search engine market and has reinforced that power through deals, including a default search engine agreement with Apple, which limits competition and violates the *Competition Act*.⁵ The applicant sought leave under Section 103.1(7) of the *Competition Act* to make an application directly to the Tribunal to consider the applicant's allegations. Pursuant to section 103.1(7) of the *Competition Act* the Tribunal may grant leave "if it is satisfied it is in the public interest to do so."

Meaning of "Public Interest"

The Tribunal focused on the following question: what does it mean for the Tribunal to "be satisfied it is in the public interest" to grant leave? To interpret the term "public interest", the Tribunal modified the common law's [**public interest standing test**](#). Recognizing that this framework does not map neatly onto competition matters, the Tribunal has adapted the public interest standing test by proposing a modified three-part test grounded in the *Competition Act*'s unique context and purposes, as outlined below.

1. Is the proposed application a substantial and genuine competition law dispute that warrants resolution by the Tribunal under the provision for which leave is requested?

The first step reflects the purposes of the *Competition Act* and the provisions listed in section 103.1. To assess whether the dispute is substantial, the Tribunal looks for a sufficient factual foundation – typically affidavits supporting the elements of the *Competition Act* provisions at issue. At this stage, the Tribunal does not weigh evidence or resolve complex facts.

¹ *Competition Act*, RSC 1985, c C-34 [**Competition Act**].

² *Martin v Alphabet Inc., Google LLC, Google Canada Corporation, Apple Inc., and Apple Canada Inc.*, 2026 Comp Trib 3 at para 219.

³ Section 103.1(7) of the *Competition Act* provides that "**The Tribunal may grant leave to make an application under section 75, 77, 79 or 90.1** if it has reason to believe that the applicant is directly and substantially affected in the whole or part of the applicant's business by any conduct referred to in one of those sections that could be subject to an order under that section or **if it is satisfied that it is in the public interest to do so**" [emphasis added].

⁴ The named respondents were Alphabet Inc., Google LLC, Google Canada Corporation, Apple Inc., and Apple Canada Inc.

⁵ The alleged violations fell under sections 79 and 90.1 of the *Competition Act*.

To assess whether the dispute is genuine, the Tribunal examines whether the application's true focus is enforcing a provision in section 103.1(1) to address competition in the market, including any effects on market power or competitive dynamics. The purpose is to screen out litigants pursuing unmeritorious, frivolous or vexatious claims.

2. Does the applicant have a genuine interest in the proposed application?

In the second step, the Tribunal requires evidence to show that the applicant has a "real stake" in the proposed proceeding.⁶ The Tribunal will consider the applicant's engagement with the issues at hand, their reputation, as well as whether they have a real and continuing interest in the matter.⁷

3. Is the proposed proceeding a reasonable and effective means to determine the competition issues raised?

For the third step, the Tribunal adopts the Supreme Court of Canada's "reasonable and effective means" framework, focusing on the applicant's ability to present a solid factual record, the presence of broader public interest issues that transcend the interests of persons most directly affected by the actions, whether there are more efficient and effective alternative forums to address the issues, and the broader impact on other stakeholders.⁸

The Tribunal adds competition-specific considerations: the factual basis for the application, its own exclusive jurisdiction over certain matters, and the statutory rule that no inference may be drawn from the Commissioner of Competition's decision to pursue or not pursue the issue.⁹

Flexible Application of the Test

The Tribunal advises that a flexible application of the test is required, and that Tribunal should weigh each element cumulatively, practically, pragmatically and purposively, applying its expertise in competition-related matters¹⁰ (while noting that the flexible application of the test does not treat each stage as a mandatory checklist or technical requirement).¹¹

Key Takeaways

Martin provides important guidance on how the Tribunal will assess future public interest applications. Although the Tribunal characterizes the threshold for leave as "low," applicants must still satisfy the modified three-part test. The key takeaway is that the applicant must provide sufficient supporting evidence. Simply making allegations is not sufficient.

The decision brings greater certainty by confirming that the Tribunal will rely on an adapted version of the public-interest standing framework, tailored to the *Competition Act's* context and purposes. It also underscores that the test is intended to screen out unmeritorious, frivolous, vexatious, or strategically motivated applications, as it preserves a relatively accessible pathway for legitimate claims.

If you have questions about the implications of *Martin* for your business, our [Competition Law](#), [Litigation](#) and [Business Law](#) teams are available to assist.

⁶ *Martin* at para 135.

⁷ *Martin* at para 135.

⁸ *Martin* at para 138-139.

⁹ *Martin* at para 146.

¹⁰ *Martin* at para 164.

¹¹ *Martin* at para 149.