

Competition Tribunal



Tribunal de la Concurrence

Reference: *Annable v. Capital Sports and Entertainment Inc.*, 2008 Comp. Trib. 5

File No.: CT-2008-002

Registry Document No.: 0011

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

AND IN THE MATTER of an application under section 103.1 of the *Competition Act* by John Guy Annable for leave to make an application for an order under section 77 of the *Competition Act*.

B E T W E E N:

**John Guy Annable**  
(applicant)

and

**Capital Sports and Entertainment Inc.**  
(respondent)



Decided on the basis of the written record

Presiding Judicial Member: Simpson J. (Chairperson)

Date of Reasons and Order: April 11, 2008

Reasons and Order signed by: Madam Justice Sandra J. Simpson

**REASONS FOR ORDER AND ORDER DISMISSING AN APPLICATION FOR LEAVE  
UNDER SECTIONS 103.1 AND 77 OF THE *COMPETITION ACT***

## **I. INTRODUCTION**

[1] John Guy Annable (the “Applicant”) has applied to the Competition Tribunal (the “Tribunal”) pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the “Act”), for leave to make an application under section 77 of the Act.

## **II. THE PARTIES**

[2] The Applicant is a private individual who works for ADT as a senior security representative.

[3] The Respondent is the owner of the Ottawa Senators. The Respondent sets ticket prices and decides how tickets for the Senators’ NHL hockey games will be sold to consumers.

## **III. THE PARTIES’ POSITIONS**

[4] The Applicant alleges in his Notice of Application that the Respondent’s practice of offering multi-game ticket packages for Ottawa Senators games (the “Alleged Practice”) is tied selling under section 77 of the Act. The Applicant attached an article about the Senators’ ticket sales published in The Ottawa Citizen on February 7, 2008 to his Notice of Application and appears to base his application for leave on the facts stated therein.

[5] In its written representations of March 28, 2008, the Respondent opposes the application for leave and asserts, *inter alia*, that the Applicant has failed to allege that he has been directly and substantially affected in his business by the Respondent’s Alleged Practice.

## **IV. DISCUSSION**

[6] In *National Capital News Canada v. Milliken*, 2002 Comp. Trib. 41, the Tribunal held that the “appropriate standard under subsection 103.1(7) of the Act 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.”

[7] The Federal Court of Appeal adopted this analysis in *Symbol Technologies Canada ULC v. Barcode Systems Inc.*, 2004 FCA 339. Justice Rothstein, as he then was, stressed that all the elements of the reviewable practice must be considered on an application for leave and that the facts relevant to those elements must be set out in the affidavit filed in support of the leave application.

[8] The affidavit sworn by Mr. Annable on March 12, 2008 (the “Affidavit”) in support of his application for leave contains four paragraphs of one sentence each. There are no exhibits. In

the Affidavit, the Applicant describes his employment with ADT, says that he has personal knowledge of the matters about which he deposes, says that Capital Sports & Entertainment Inc. is the owner of the Ottawa Senators Hockey Club and states that the Respondent engages in tied selling because purchasers are required to buy secondary event tickets in order to purchase primary event tickets.

[9] The Affidavit includes no evidence about the effect of the alleged tied selling on the Applicant's business as required by subsection 103.1(7) of the Act and no evidence showing that the Alleged Practice is likely to have any of the effects described in subsection 77(2) of the Act.

## **V. CONCLUSIONS**

[10] Given the evidentiary vacuum, I have concluded the Tribunal has no reason to believe that the Applicant is directly and substantially affected in his business by the Alleged Practice and that it could be the subject of an order under section 77 of the Act.

[11] I have also concluded that this application is presented with such disregard for the provisions of the Act that it constitutes an abuse of the Tribunal's process.

[12] I should note that in view of subsection 103.1(11) of the Act, I have not entertained the Respondent's submission that it should be awarded costs because the Commissioner has not taken any action in this matter.

## **FOR THESE REASONS, THE TRIBUNAL ORDERS THAT:**

[13] The application for leave is hereby dismissed with costs in the amount of \$300.00 payable forthwith to the Respondent by certified cheque.

DATED at Ottawa, this 11<sup>th</sup> of April, 2008

SIGNED on behalf of the Tribunal by the Chairperson of the Tribunal

(s) Sandra J. Simpson

**COUNSEL:**

For the applicant

John Guy Annable

Not represented

For the respondent

Capital Sports and Entertainment Inc.

Christopher Hersh  
Yana Ermak