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Date: October 2, 2024

CT- 2024-007

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File No. CT-2024-007.

OTTAWA, ONT.

1

COMPETITION TRIBUNAL

IN THE MATTER OF the Competition Act, R.S.C. 1985, c. C-34 (the “Act”);

AND IN THE MATTER OF an application by [Goshen Professional Care Inc.] for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75 and 79 of the Act;

AND IN THE MATTER OF an application by [Goshen Professional Care Inc.] for an order pursuant to sections 75 and 79 of the Act;

BETWEEN:

GOSHEN PROFESSIONAL CARE INC.

Applicant

– and –

THE SASKATCHEWAN HEALTH AUTHORITY and THE MINISTRY OF HEALTH

Respondents

**NOTICE OF APPLICATION FOR LEAVE
(Pursuant to section 103.1 of the *Competition Act*).**

TAKE NOTICE THAT:

1. The Applicant will make an application to the Competition Tribunal (“Tribunal”) pursuant to section 103.1 of the Competition Act (the “Act”) seeking leave to bring an application:
 - a. Pursuant to Sections 1.1, 78(1), 79(1), 79(2), and 79(3.1) of the *Competition Act*, requesting that the Tribunal bars the proposed sale of the Applicant, Goshen Professional Care Inc.’s (“Goshen”) assets, including Emmanuel Villa personal care home, to the Saskatchewan Health Authority (“SHA”);
 - b. Pursuant to Sections 1.1 and 75(1) of the *Competition Act*, requesting that as long as the conditions in the applicable market subsist, the Competition Tribunal orders the SHA to reinstate the Pilot Project, or in the alternative, enters into a new agreement with Goshen requiring the SHA to supply Goshen with public sector Long-term Care residents seeking residential care home services in Saskatchewan.

- c. Any such further action that this Tribunal deems appropriate.

AND TAKE NOTICE THAT:

2. The entity against whom the orders are sought is the Respondent, the Saskatchewan Health Authority (“SHA”).
3. The Applicant seeks leave, under section 103.1 of the *Act* to bring an application for an order pursuant to sections 75 and 79 of the *Act*.
4. The Applicant will rely on the Statement of Grounds and Material Facts attached hereto, and the Affidavit of Mrs. Onasanya sworn October 1, 2024.
5. If leave is granted, the Applicant will bring the Proposed Notice of Application before the Tribunal challenging the proposed sale of their Goshen’s assets and business (Emmanuel Villa) to the SHA. Attached is the Applicant’s Proposed Notice of Application and the Applicant’s Memorandum of Fact and Law.
6. In total, the Applicant will rely on the following materials which accompany this Application:
 - a. This Notice of Application for Leave with the attached Statement of Material Facts and Grounds;
 - b. The Affidavit of Mrs. Adebunmi Onasanya sworn October 1, 2024 (with attached exhibits).
 - c. The Applicant’s Proposed Notice of Application; and
 - d. The Applicant’s Memorandum of Fact and Law accompanying this Application.
7. The Applicant requests that the documents for this Application be filed in electronic form.

Dated at Regina, Saskatchewan, this 2nd day of October 2024.



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STATEMENT OF GROUNDS AND MATERIAL FACTS.

I. Summary of Notice of Application.

1. The Applicant, Goshen Professional Care Inc. (“Goshen”), seeks leave, under section 103.1 of the *Competition Act* to bring an application for an order pursuant to sections 75 (Refusal to Deal) and 79 (Abuse of Dominant Position) of the *Competition Act*.
2. Goshen submits that its personal care business (Emmanuel Villa) was directly and substantially affected by the actions of the Saskatchewan Health Authority (the “SHA”), and as additionally facilitated by those of the Saskatchewan Ministry of Health (as contemplated under Rule 103.1(7)). As elaborated in Goshen’s Memorandum of Fact and Law, the SHA wrongfully, deliberately, and prematurely terminated its agreement with Goshen for the SHA to supply care home contracts and residents from the SHA’s public waiting list to Emmanuel Villa (private care home).
3. The SHA’s actions vis-a-vis Goshen amounted to a Refusal to Deal, as contemplated under section 75 of the *Competition Act*, and an Abuse of Dominant Position, as contemplated under section 79 of the *Competition Act*.
4. As a result of the SHA’s actions, and as facilitated by the Saskatchewan Ministry of Health, Canadian Western Bank (“CWB”), which had loaned Goshen the funds to build Emmanuel Villa, forced Goshen into receivership. Under the receivership, Goshen has been prohibited from filling the vacancies in its care home (Emmanuel Villa) and from generating the maximum possible revenue and commercial certainty that could resolve the receivership.
5. On April 1st, 2024, the Receiver initiated a process to sell Goshen’s assets pursuant to Section 3(l) of the Receivership Order. On June 14, 2024, during a teleconference, the Receiver informed Goshen’s principals and legal counsel that the Receiver had received a bid from the SHA, and that the Receiver had accepted it. On July 11th, 2024, the Receiver filed an application with the Saskatchewan Court of the King’s Bench seeking judicial approval of

the sale of Goshen's business to the SHA. The Court convened a hearing on August 26th, 2024.

6. During the hearing, Goshen vehemently opposed the Receiver's sale application on various grounds, including conflict of interest on the part of the Receiver, and grounds based in the *Competition Act*. Based on the sparse available caselaw, the Court may have concurrent or overlapping jurisdiction over *Competition Act* issues that arise in insolvency sale proceedings under the *Bankruptcy and Insolvency Act*. Goshen informed the Court of Goshen's intention to file for leave to challenge the proposed sale before the Competition Tribunal. Justice Bergbusch reserved his decision, which remains outstanding.
7. If granted leave, Goshen will make a fulsome application regarding the violations of section 75 and section 79 of the *Competition Act*. Suffice to say that allowing the SHA to benefit from its refusal to deal and its abuse of its dominant position would greatly undermine the interests of a competitive market for care home services and would be inconsistent with S. 1.1 of the *Competition Act*.

II. Summary of Material Facts.

8. The Applicant, Goshen, runs a personal care home, Emmanuel Villa, in Emerald Park, Saskatchewan. Emmanuel Villa is a newly constructed 80-bed personal care home. Emmanuel Villa's construction was complete in February 2019. When construction was complete, Goshen licensed the home with the Ministry of Health and opened its home to residents.
9. In January 2020, Goshen entered into an "Accountability Agreement" with the SHA regarding a pilot project whereby the SHA would house 40 long-term care (publicly funded) residents in Goshen's 80-bed home (Emmanuel Villa).
10. In June 2022, the SHA unilaterally terminated their agreement part way through the renewed contractual period, arguing that the SHA would be transferring its residents to Goshen's

competitor in Regina under a new pilot project. The SHA informed Goshen that it was ineligible for the new pilot project because that new project was limited to homes “in Regina”. This was despite the fact that, a) the Saskatchewan Minister of Health had approved Emmanuel Villa for the initial pilot project for the “Regina area”, b) that Emmanuel Villa is located in Emerald Park which is within 5 kilometer or 10 minutes of the Regina city limits and forms part of the Regina metropolitan area, c) given that Emerald Park has only 1,500 residents, many if its residents work, access services, and have family and social links in Regina, d) about 95% of Emmanuel Villa’s resident had moved there from the Regina area, which was proximal to their family and support bases, and e) the Saskatchewan Minister of Health had previously acknowledged that Emmanuel Villa’s location and proximity to Regina was ideal in that it allowed the 40 SHA residents to be close to their homes, and presumably families in Regina.

11. Effectively, the SHA’s subsequent rationale for excluding Emmanuel Villa from the new pilot project on the basis that Emmanuel Villa is not “in Regina” was arbitrary and/or designed to wrongfully deprive Goshen of the supply for residents from the public system. By so doing, the SHA, alongside the Ministry of Health, abused its dominant position and access to the extensive public waiting list in the elder care market to deprive Goshen of the supply of care contracts and residents, and to substantially undermine Goshen’s financial and operational viability.
12. Shortly after the SHA prematurely terminated the pilot project, Canadian Western Bank (“CWB”), the lender that financed the construction of Emmanuel Villa, became aware of this development. On November 30th, 2022, CWB deemed the SHA’s premature termination to be a material change under the loan agreement and demanded full repayment of the outstanding loan amount, which at the time was approximately \$12.5 million. Goshen was unable to repay the entirety of the loan, which reached maturity several months later. Upon CWB’s application, the Saskatchewan Court of the King’s Bench declared Goshen insolvent and approved the appointment of MNP Debt as the interim receiver on August 2nd, 2023. Subsequently, on January 10th, 2024, the Court granted CWB full receivership over Goshen.

13. Since CWB recalled its loan, Goshen has been attempting to secure refinancing. However, potential lenders have persistently expressed their primary concern that since the SHA withdrew its residents, Emmanuel Villa has not exceeded 25% of capacity. Initially, it was a challenge for Goshen to quickly replace the 40 residents that the SHA had suddenly withdrawn. Over time, Goshen gradually began to make up for the sudden loss of residents. However, Goshen's ability to fill Emmanuel Villa and improve its chances of a successful refinancing despite emergent and accelerating interest from potential residents over the past few months has been hampered by the fact that the Saskatchewan Ministry of Health is refusing to expand the licencing capacity of the home to all 80-beds, and is keeping the licencing number capped at 20 residents.
14. Further, the Receiver, MNP, has prohibited Goshen from admitting more residents to Emmanuel Villa. Unfortunately, the Receiver and Ministry cite each other as the reason for denying Goshen the ability to fill the home, while neither takes any responsibility of this limitation. Despite Goshen's persistent requests for clarification, both have refused to explain which of them is responsible for the decision. This has placed Goshen in limbo, effectively impeding its ability to secure refinancing.
15. On July 11th, 2024, the Receiver (MNP) filed an application seeking the Saskatchewan King's Bench's approval of the SHA's offer to purchase Emmanuel Villa. Justice Bergbusch heard the application on August 26, 2024, and reserved his decision. That decision is still pending. However, Goshen informed the Court that notwithstanding the Court's decision, Goshen was filing a parallel challenge to the sale with the Competition Tribunal.
16. Goshen opposes the sale of Emmanuel Villa to the SHA, as it was the direct actions of the SHA, alongside those of the Saskatchewan Ministry of Health, which pushed Goshen into insolvency, and triggered the receivership and the Receiver's authority to initiate sale proceedings. Now, the SHA seeks to benefit from its anti-competitive practices by submitting a bid that is well below Emmanuel Villa's market value, but which the Receiver was prepared to accept.

17. The SHA's actions amount to refusal to deal (Section 75) and abuse of a dominant position in the market for the care of the elderly and infirm in Saskatchewan (Section 79).

BASIS FOR APPLICATION PURSUANT TO SECTION 103.1.

18. Section 103.1(1) of the *Competition Act* provides that:

103.1 (1) Any person may apply to the Tribunal for leave to make an application under section 75, 76, 77 or 79.

19. The test the Tribunal must apply to leave applications is laid out in section 103.1(7):

(7) The Tribunal may grant leave to make an application under section 75, 77 or 79 if it has reason to believe that the applicant is directly and substantially affected in the applicant's business by any practice referred to in one of those sections that could be subject to an order under that section.

20. The Competition Tribunal defined the test for section 103.1(7) in *National Capital News Canada v. Canada* (*Speaker, House of Commons*), [2002] C.C.T.D. No. 38 (Competition Tribunal), aff'd [2004] F.C.J. No. 83 (C.A.) ("National Capital News"):

Accordingly on the basis of the plain meaning of the wording used in subsection 103.1(7) of the Act and jurisprudence referred to above ... 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.¹

21. This test is satisfied as:

¹ *National Capital News Canada v. Canada* (*Speaker, House of Commons*), [2002] C.C.T.D. No. 38 (Competition Tribunal), aff'd [2004] F.C.J. No. 83 (C.A.) ("National Capital News"), para 14. <https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/464444/index.do>.

- a. The Applicant, Goshen, has tendered sufficient and credible evidence that gives rise to a bona fide belief that Goshen has been directly and substantially affected by a reviewable practice, as outlined in section 75 (Refusal to Deal) and section 79 (Abuse of Dominant Position); and
 - b. That practice could be subject to an order from the Tribunal.
22. In *Allan Morgan and Sons Ltd. v. La-Z Boy Canada Ltd.*, 2004 Comp. Trib. 4, the Competition Tribunal stated that at the leave stage, the applicant is not required to meet any higher standard of proof threshold:

[21] The data provided by Morgan's Furniture is sufficient to convince me the applicant may have been directly and substantially affected by the actions of La-Z-Boy. Morgan's Furniture, at the leave stage, is not required to meet any higher standard of proof threshold.²

I. Section 75(1) of the *Competition Act*.

23. In this matter, the Applicant seeks leave to bring an application for an order pursuant to Section 75(1) of the *Act* which states:

Section 75- Refusal to Deal Jurisdiction of Tribunal where refusal to deal

75 (1) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that

- (a) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,
- (b) the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,

² *Allan Morgan and Sons Ltd. v. La-Z Boy Canada Ltd.*, 2004 Comp. Trib. 4, para 21, <https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/464360/index.do>

(c) the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,

(d) the product is in ample supply, and

(e) the refusal to deal is having or is likely to have an adverse effect on competition in a market,

the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

24. Applying the test under S. 103.1 to the facts and evidence underlying Goshen's Section 75 application, the SHA's conduct amounts to a refusal to deal because:

(a) Goshen was substantially affected in its business by:

- i. the SHA suddenly, unilaterally, arbitrarily, and wrongfully cancelling the Accountability Agreement with Goshen under the pilot project, and withdrawing SHA residents from Emmanuel Villa;
- ii. the SHA refusing to deal with Goshen by denying Goshen the ability to participate in the new pilot project for the Regina area, and doing so on an arbitrary and illogical basis; and
- iii. the Ministry of Health refusing to lift the cap on licensing capacity of Emmanuel Villa.

(b) Goshen struggled to obtain adequate replacement supply of residents for Emmanuel Villa (with the SHA controlling such a large share of the market), and was subsequently rendered unable to expand the number of residents due to the Ministry of Health's cap on the intake of new residents, and the Receiver's prohibition on such additions.

- (c) Goshen is willing and able to meet the usual terms of providing services to residents in the market for the elderly and infirm in Saskatchewan;
- (d) There is a high and increasing demand for long-term care/personal care beds in the Regina area and the province of Saskatchewan, as demonstrated by the long waitlists, especially in the public sector (long-term care homes);
- (e) The SHA's refusal to deal with Goshen is having an adverse effect on the competitive market and an adverse effect on the consumers in the relevant market. Many consumers are sitting on the SHA's long waitlist for care home services, in dire need of special care, while many of Goshen's beds are available.

25. All of these substantial effects to Goshen's business are also "direct" as set forth in the applicable legal test. There is no doubt that the SHA has acted in a manner which is directly targeted towards Goshen, specifically given the fact that Goshen's pilot project was terminated (without cause) while other private care homes were allowed to continue providing care to long-term care patients provided by the SHA. To this end, the effects felt by Goshen satisfy the requirements of Section 103.7 for leave regarding an application under Section 75.

II. Section 79 of the *Competition Act*.

26. The Applicant, Goshen, also seeks leave to bring an application for an order pursuant to Section 79 of the *Act*:

Abuse of Dominant Position

Definition of *anti-competitive act*

78 (1) For the purposes of [section 79](#), *anti-competitive act* means any act intended to have a predatory, exclusionary or disciplinary negative effect on a competitor, or to have an adverse effect on competition, and includes any of the following acts:

- (a) squeezing, by a vertically integrated supplier, of the margin available to an unintegrated customer who competes with the supplier, for the purpose of impeding or preventing the customer's entry into, or expansion in, a market;
- (b) acquisition by a supplier of a customer who would otherwise be available to a competitor of the supplier, or acquisition by a customer of a supplier who would otherwise be available to a competitor of the customer, for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;
- (c) freight equalization on the plant of a competitor for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;
- (d) use of fighting brands introduced selectively on a temporary basis to discipline or eliminate a competitor;
- (e) pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market;
- (f) buying up of products to prevent the erosion of existing price levels;
- (g) adoption of product specifications that are incompatible with products produced by any other person and are designed to prevent his entry into, or to eliminate him from, a market;
- (h) requiring or inducing a supplier to sell only or primarily to certain customers, or to refrain from selling to a competitor, with the object of preventing a competitor's entry into, or expansion in, a market;
- (i) selling articles at a price lower than the acquisition cost for the purpose of disciplining or eliminating a competitor;
- (j) a selective or discriminatory response to an actual or potential competitor for the purpose of impeding or preventing the competitor's entry into, or expansion in, a market or eliminating the competitor from a market; and
- (k) directly or indirectly imposing excessive and unfair selling prices.

Prohibition if abuse of dominant position

79 (1) On application by the Commissioner or a person granted leave under section 103.1, if the Tribunal finds that one or more persons substantially or completely control a class or species of business throughout Canada or any area of Canada, it may make an order prohibiting the person or persons from engaging in a practice or conduct if it finds that the person or persons have engaged in or are engaging in

- (a) a practice of anti-competitive acts; or
- (b) conduct

- (i) that had, is having or is likely to have the effect of preventing or lessening competition substantially in a market in which the person or persons have a plausible competitive interest, and
- (ii) the effect is not a result of superior competitive performance.

Additional or alternative order

(2) If, on an application under subsection (1), the Tribunal finds that a practice of anti-competitive acts amounts to conduct that has had or is having the effect of preventing or lessening competition substantially in a market in which the person or persons have a plausible competitive interest and that an order under subsection (1) is not likely to restore competition in that market, the Tribunal may, in addition to or in lieu of making an order under subsection (1), make an order directing any or all persons against whom an order is sought to take actions, including the divestiture of assets or shares, that are reasonable and necessary to overcome the effects of the practice in that market.

27. As noted previously, Section 103.1(7) requires the Tribunal to make a finding that the Tribunal, “has reason to believe that the applicant is directly and substantially affected in the applicant’s business by any practice referred to in one of those sections that could be subject to an order under that section”.
28. Two conditions must be met for leave to be granted under section 103.1 with respect to Section 79(1) of the *Competition Act*:
- a. the Tribunal finds that one or more persons substantially or completely control a class or species of business throughout Canada or any area of Canada, and
 - b. the person(s) have engaged in or are engaging in
 - (a) a practice of anti-competitive acts; or
 - (b) conduct that had, is having or is likely to have the effect of preventing or lessening competition substantially in a market in which the person(s) have a plausible competitive interest, and the effect is not a result of superior competitive performance.
29. The SHA wields substantial and dominant control over the market for the care of the elderly and infirm in Saskatchewan. This control arises from the SHA statutory mandate as the sole

health authority in Saskatchewan; the SHA's *de facto* jurisdiction over the publicly subsidized waiting list for care beds in Saskatchewan; the SHA's ability to provide publicly subsidized care beds at a cost that would be uneconomical for private sector players; the economies of scale that the SHA enjoys over its private sector competitors; the significant public funding that the SHA receives from the Saskatchewan Ministry of Health; and the fact that the SHA operates more than half of Saskatchewan's care homes. These factors collectively establish the SHA's dominant position in the market for the care of elderly and infirm in Saskatchewan.

30. Specifically, the SHA and Government's dominance over the market for the care of the elderly and infirm in Saskatchewan is evident from the SHA's direct operation of 157 long-term care homes in Saskatchewan, and the SHA/Government's regulatory oversight of, and sub-contracting relationships with some of the approximately 208 privately-owned personal care homes in Saskatchewan. The SHA either owns or controls approximately 61% of the care beds in Saskatchewan and exerts significant compliance and contractual/financial influence over the private sector players via public-private contracts for the care of public care home residents. This affirms the SHA's dominant position in the market for the care of elderly and infirm residents of Saskatchewan.
31. Further, as alluded to above, the Ministry of Health, which funds the SHA in its licensing capacity for private care homes, controls these private homes' ability to operate. In this case, the Ministry of Health funded, guided, endorsed, and has significantly hindered Goshen's ability to operate in the market under the receivership by disallowing Goshen's request to increase Emmanuel Villa's licenced capacity beyond 20 residents. The Ministry of Health has ignored Goshen's application to expand its licensed capacity number to the maximum of 80 beds. As previously stated, this cap has significantly hindered Goshen's ability to obtain refinancing.
32. Section 78(1) of the *Competition Act* provides a non-exhaustive list of actions that amount to "anti-competitive acts". Thus, the list is not closed. The Tribunal can find an unenumerated act to be uncompetitive for the purposes of section 79, if the act is "...intended to have a predatory, exclusionary or disciplinary negative effect on a competitor, or to have an adverse

effect on competition.” As elaborated in Goshen’s Memorandum of Fact and Law and highlighted in the Affidavit of Mrs. Onasanya with its supporting evidence, the SHA’s conduct under the Accountability Agreement, and in its subsequent efforts to purchase Goshen’s assets after forcing Goshen into receivership, satisfy this legal test.

33. The SHA’s conduct also meets the test for anti-competitive acts under the enumerated instances of S. 78(1)(e):

- (e) A selective or discriminatory response to an actual or potential competitor for the purpose of impeding or preventing the competitor’s entry into, or expansion in, a market or eliminating the competitor from a market.

This occurred through the SHA’s sudden termination of the pilot project on arbitrary, bad faith, and specious grounds, as abetted by the Ministry’s rejection of Goshen’s requests to expand its licenced operating capacity beyond the current license of 20 residents. In both cases the SHA/Ministry of Health have selectively and discriminatorily responded to Goshen as a competitor for the explicit purpose of driving them out of the long-term care patient care market specifically, and the general market for the care of elderly and infirm in the province of Saskatchewan. As such, Goshen asserts that the SHA individually, and as endorsed and abetted by the Saskatchewan Ministry of Health, engaged in anti-competitive acts as contemplated under S. 79 of the *Competition Act*.

34. In summary, the SHA engaged in anticompetitive acts and substantially, or completely, controls the market for the residential care of the elderly and infirm throughout Saskatchewan. The SHA’s conduct had, is having, and is likely to have the effect of preventing or lessening competition substantially in this market in which Goshen has a plausible competitive interest. This effect is not a result of the SHA’s superior competitive performance but its statutory dominance and access to substantial public resources that private suppliers such as Goshen do not have access to. As such, Goshen asks to be granted leave under section 103.1 to more fulsomely establish this case.

III. Overarching principles regarding Motions for Leave.

35. In regard to the Nature of Motion for Leave, the FCA in *Lukács v. Swoop Inc.*, 2019 held that:

[15] First is the nature of motions for leave to appeal. Motions for leave to appeal are not full determinations of the merits of the matter. Motions for leave to appeal are supposed to be summary—a quick assessment whether a full review of the administrative decision is warranted. Further, parties moving for leave to appeal need only show a fairly arguable issue: *Canadian National Railway Company v. Emerson Milling Inc.*, 2017 FCA 79, [2018] 2 F.C.R. 573 at paras. 13 and 56; *Canadian Pacific Railway Co. v. Canada (Transportation Agency)*, 2003 FCA 271, [2003] 4 F.C.R. 558 at para. 17; *CKLN Radio Incorporated v. Canada (Attorney General)*, 2011 FCA 135, 418 N.R. 198; *Rogers Cable Communications Inc. v. New Brunswick (Transportation)*, 2007 FCA 168, 367 N.R. 78. In this context, a “fairly arguable case” should be seen in a functional and purposive way and can be resolved down into a question: has enough been raised in the motion for leave to appeal to warrant a full review of the administrative decision, a review that will entitle a party to use all of the procedural rights and investigative techniques associated with reviews?³

36. Goshen asserts that its case meets the standard of a “fairly arguable case” and once again asks that leave be granted pursuant to Section 103.1 of the *Competition Act*.

CONCLUSION.

37. Goshen seeks leave, under section 103.1 of the *Competition Act* to bring an application for an order pursuant to section 75 (Refusal to Deal) and 79 (Abuse of Dominant Position) of the *Competition Act*. Goshen’s application satisfies this test as:

- a. the Applicant, Goshen, has been directly and substantially affected by the SHA’s reviewable practices as contemplated under section 75 (Refusal to Deal) and section 79 (Abuse of Dominant Position) of the *Competition Act*, and
- b. the SHA’s practices could be subject to an order from the Tribunal.

³ *Lukács v. Swoop Inc.*, 2019 FCA 145 (CanLII), at para 15 <https://canlii.ca/t/j0ctw#par15>

38. Allowing the SHA to benefit from its Refusal to Deal and Abuse of Dominant Position would also greatly undermine the interests of a competitive market as contemplated under S. 1.1 of the *Competition Act*. Goshen seeks leave under section 103.1 to assert a more fulsome application under section 75 and section 79 of the *Competition Act*.

October 2nd, 2024.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Tavengwa Runyowa

Counsel to the Applicant, Goshen Professional Care Inc.
Runyowa Law Professional Corp.
Tavengwa Runyowa.

COMPETITION TRIBUNAL
IN THE MATTER OF the Competition Act, R.S.C.
1985, c. C-34 (the “**Act**”);

AND IN THE MATTER OF an application by JAMP
Pharma Corporation for an order pursuant to section
103.1 of the Act granting leave to bring an application
under section 75 and 79 of the Act;

AND IN THE MATTER OF an application by
Goshen Professional Care Inc., for an order pursuant to
section 75 and 79 of the Act;

BETWEEN:
GOSHEN PROFESSIONAL CARE INC.

Applicant

– and –

THE SASKATCHEWAN HEALTH AUTHORITY
and THE MINISTRY OF HEALTH

Respondents

NOTICE OF APPLICATION FOR LEAVE
(Pursuant to section 103.1 of the Competition Act).

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