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Opening the Door, But Not Wide: Public Interest Leave After *Martin v. Apple* and *Google*

What Martin v. Alphabet tells Canadian and American counsel about the new private access regime

Author Joshua Abaki **Date** March 2026 **Abaki Law** abakilaw.com

Introduction

One of the most consequential changes in Canada's recent competition law reform is the expansion of private enforcement. Effective June 20, 2025, any person, not only businesses directly harmed, may seek leave to bring an application before the Competition Tribunal on 'public interest' grounds. On January 13, 2026, the Tribunal released its first decision interpreting this new pathway: *Martin v. Alphabet Inc., Google LLC, Google Canada Corporation, Apple Inc., and Apple Canada Inc.*, 2026 Comp Trib 3.

Although the Tribunal denied leave on the facts, *Martin* is the leading authority on the test for public interest standing under section 103.1(7) of the Competition Act. For practitioners advising parties considering, or facing, a private enforcement action, understanding this framework is now essential.

Background

The applicant, Alexander Martin, was an independent video game developer who sold his games through the Steam platform and relied on online search to reach customers. He sought leave to bring an application against Google under section 79 (abuse of dominance) and against both Google and Apple under section 90.1 (civil anti-competitive agreements). His core allegation was that Google and Apple had entered into an agreement, reportedly worth approximately US\$20 billion annually, under which Apple agreed to set Google as the default search engine on its devices in exchange for a revenue-sharing arrangement.

The Commissioner of Competition participated as a non-party and supported a modified, flexible version of the public interest standing test. Google and Apple argued for a higher threshold, drawing on analogies to securities class action leave regimes and prima facie case standards.

The Statutory Framework

Under section 103.1(7) of the Competition Act, the Tribunal may grant leave if it has reason to believe that the applicant is directly and substantially affected in whole or in part of the applicant's business by the alleged conduct, *or* if it is satisfied that it is in the public interest to do so. These are distinct gateways with different standards. *Martin* addresses only the public interest branch.

The Tribunal's Test

The Tribunal adopted a modified version of the Supreme Court of Canada's public interest standing framework from *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45, and *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, adapted to the competition law context.

The test has three components, to be applied flexibly, cumulatively, practically, and purposively; it is not a mechanical checklist:

- **Is there a substantial and genuine competition law dispute?** The issue must raise a serious and genuine question of competition law, not a personal grievance reframed as a public interest concern.

- **Does the applicant have a genuine interest in the issue?** The applicant need not be the most directly affected party, but must demonstrate a real and genuine connection to the competition issue at stake.
- **Is the proposed application a reasonable and effective means of bringing the issue before the Tribunal?** The Tribunal will consider whether the applicant has the capacity and resources to prosecute a complex competition proceeding.

Application to the Facts: Why Leave Was Denied

The Tribunal denied leave on several grounds. Most significantly:

- Martin's evidentiary record was thin. His affidavit was brief and conclusory, and failed to establish a meaningful connection between Google's alleged conduct and the specific competitive harm he claimed as a game developer.
- Martin failed to demonstrate the capacity to prosecute the complex competition proceedings he proposed to bring.
- The Tribunal was concerned that the application bore the hallmarks of a 'copycat' proceeding mirroring ongoing U.S. enforcement activity, without Canadian-specific evidentiary grounding.

Implications for Practitioners

Martin is significant for both plaintiffs' counsel and respondents in the new private enforcement landscape:

- **For applicants:** The leave threshold is described as 'low' and 'not difficult to meet,' provided the applicant adduces a coherent evidentiary record. Canadian-specific evidence, a genuine connection to the competition issue, and a credible litigation plan are not optional.
- **For respondents:** *Martin* provides a clear basis to challenge under-prepared leave applications at the threshold stage.
- **For dominant firms:** The pending public interest application by CIPPIC against Apple in respect of App Store practices signals that well-resourced, institutionally credible applicants will test this framework further.

REFERENCES

Martin v. Alphabet Inc., Google LLC, Google Canada Corporation, Apple Inc., and Apple Canada Inc., 2026 Comp Trib 3.

Competition Act, RSC 1985, c C-34, s. 103.1(7), as amended by Bill C-59 (SC 2024, c 15).

Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society, 2012 SCC 45.

British Columbia (Attorney General) v. Council of Canadians with Disabilities, 2022 SCC 27.

JAMP Pharma Corporation v. Janssen Inc., 2024 Comp Trib 10 (precursor on the affected business branch).

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