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Law suit alleging defamation by Competition Bureau allowed to proceed

by [Michael Osborne](#), *Affleck Greene McMurtry LLP*

Ontario's top court recently allowed parts of a claim that the Competition Bureau defamed suspects when it announced bid-rigging charges against them to proceed to trial.

In February 2009, the Bureau [announced](#) that criminal bid-rigging charges had been laid against 14 individuals and seven companies accusing them of rigging bids for federal government contracts. The Bureau's press release alleged that its investigation had uncovered a bid-rigging scheme by IT companies to "defraud the government by winning and dividing contracts, while blocking out honest bidders".

In a [backgrounder](#) issued the same day, the Bureau elaborated on the alleged bid-rigging conspiracy, and identified the individuals and companies charged, including TPG Technology Consulting Ltd. and Donald Powell. The Bureau alleged that they engaged in bid-rigging in order to maximize prices. The Bureau then provided general background information about bid-rigging. The Bureau commented that "some recent studies suggest that in case where bid-rigging occurs, the price paid for the good or service typically increases by about 20 per cent".

TPG and Mr Powell sued, alleging that the Bureau defamed them in the press release.

They also alleged that the Bureau resumed an inactive investigation and the Crown laid bid-rigging charges as direct response to a law suit the TPG commenced against the Public Works and Government Services Canada. This is a surprising allegation considering that the Bureau's investigation encompassed a large number of individuals and companies, and was commenced before TPG's law suit.

The Bureau moved to strike the defamation claim. The motion judge agreed, striking the claim because the Bureau had not alleged that TPG and Mr Powell had done anything more morally blameworthy than

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bid-rigging.

On appeal, the Ontario Court of Appeal allowed the defamation claim to proceed.

The motion judge reasoned from the wrong distinction, the court held. The correct distinction is between reports that merely report that a person is under investigation or has been charged with an offence and those go further to suggest that the person is guilty of the offence charged. Thus the question is whether the press release goes beyond a fair description of the conduct alleged in the criminal charges. In this case, the court held,

We are, then, left with this. It is at least arguable that the impugned statements suggest that the appellants were guilty of fraud and price inflation. These allegations need not be proven as elements of the offences charged, nor did they form any part of the case that the Crown led at the preliminary inquiry. They are also strenuously denied by the appellants, who plead that they they are part of a deliberate and malicious attempt to discredit and harm the appellants.

Thus, the court concluded, it was not plain and obvious that the statements were not capable of bearing a defamatory meaning; the case must therefore go to trial.

In the end, events may overtake this case: TPG and several other corporate and individual accused were committed to stand trial following the preliminary inquiry. The criminal trial has been scheduled for February 2013.

The case is: [TPG Technology Consulting Ltd. v. Canada \(Industry Canada\), 2012 ONCA 87](#)

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