

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-17-098203-170

DATE : September 6, 2019

BEFORE: THE HONOURABLE KAREN M. ROGERS, J.C.S.

OPENCORPORATES LTD.

Plaintiff

v.

REGISTRAIRE DES ENTREPRISES DU QUÉBEC

Defendant

DECLARATORY JUDGMENT
(Art. 142 C.p.c.)

OVERVIEW

[1] The plaintiff (**OpenCorporates**) is the publisher of one of the largest publicly available databases (**database**), with more than 165 million data related to companies from 130 jurisdictions. The data comes from public sources deemed reliable, such as registers controlled by public bodies.

[2] OpenCorporates requests that the Court declare that the *Act Respecting the Legal Publicity of Enterprises*¹ (**ALPE**) does not allow the Registraire des entreprises du Québec to prohibit OpenCorporates from publishing and distributing the data it has collected from the Register before the implementation of the new terms of use, including the sale of structured data.

[3] The database, located in the United Kingdom, is supported by technological means, which allows users to access it via the Internet. The persons' and legal entities' data are centralized, allowing the public to get a global portrait of those same persons and entities.

[4] The Attorney General of Quebec is acting on behalf of the Registrar for this case.

[5] Being a technology-based document², it is possible to use the available search functions to perform various types of compilations of information, including the name and address of a natural person.

[6] Because of its global content, the database is used by anti-corruption investigators, journalists, financial institutions, companies, and citizens from all over.

[7] In addition, in order to finance its activities, OpenCorporates sells, for private purposes, "structured data" to certain financial institutions, government agencies, journalists and other businesses.

[8] From 2012 to 2016, OpenCorporates collected data from the Registre des entreprises du Québec (**Register**), which contains information on companies incorporated or involved in commercial activities in Quebec, as well as related natural persons.

[9] While at the beginning, it collected the data from the Register through "web scrapping,"³ OpenCorporates quickly changed its way of doing things by using a programming interface that serves as a web robot and allows for several requests on "registrants," outside normal business hours so as not to interfere with the operation of the Register.

[10] OpenCorporates does not claim that its database replaces the official registers of public authorities, as its site contains links that allow the user to access the original source of the data.

[11] In March 2016, the Registraire des entreprises du Québec (**Registrar**) amended the terms of use of the Register and introduced, for the first time, certain restrictions on its users, including:

[...]

- Carry out bulk sampling of the Register data;

¹ RSQ, c. P-44.1.

² *Act to Establish a Legal Framework for Information Technology*, RSQ, c. C-1.1, art. 3.

³ Automated extraction of content to transform it and use it in another technology-based document.

- Use the Register data for the purpose of compiling information, including a compilation of information containing the name and address of a natural person or based on the name and address of such a person;
- Reproduce all or part of the Register for dissemination or publication;
- Use the Register data for profit;
- Use the search service, its contents and features in a way that could damage the service, disable it or compromise its performance and security⁴. [...]

(Our translation.)

(new terms of use)

[12] From now on, users must expressly consent to these new terms of use before they can access the Register.

[13] At the same time, it implemented a security feature that prevents web robots from retrieving information from the Register, which, until then, was OpenCorporates' way of gathering data.

[14] OpenCorporates did not consent to these new terms of use and therefore does not collect data from the Register anymore.

[15] In fact, the method it used to collect data, as well as its use of the data, goes against many of the new terms of use.

[16] In November 2016, it received a letter from the Registrar asking it to "*cease all use of the Register data [...] for commercial purposes as well as any dissemination or publication of such data.*"⁵ (Our translation.)

[17] Specifically, the Registrar asked it to purge its database to remove all data that was collected from the Register between 2012 and the implementation of the new terms of use.

[18] OpenCorporates does not call into question the new terms of use.

[19] Its good faith and its proceedings are not questioned by the Registrar.

[20] The Registrar acknowledges that there is no legislation that allows it to monitor the use of the Register data already collected. Before the implementation of the new terms of use, no legislation limited the use of the collected data.

[21] It maintains that the Court should not limit itself to the actual text of the ALPE but should also consider its global context as well as its object and purpose. By interpreting it as such, the Registrar submits that even without the new terms of use, the way OpenCorporates uses the Register data collected contravenes the ALPE⁶.

[22] First, the Registrar has the sole authority to keep the Register and make public the data it has on Quebec enterprises. In addition, the technological version of the Register must be equipped with the appropriate technological means to protect personal information

⁴ Exhibit P-1.

⁵ Exhibit P-4.

⁶ Par. 69 of the amended defence.

and prevent users from using the Register to conduct extensive searches by name or address.

[23] According to the Registrar, under the ALPE, only the Registrar is authorized to use the search function in the Register to compile information.

[24] In contrast, the database of OpenCorporates integrates the Register data without limiting the search capability of the users. As a result, personal information is not protected.

[25] In doing so, OpenCorporates indirectly does what it cannot directly do.

[26] The Registrar therefore argues that such use violates the object and purpose of the ALPE. It is therefore entitled to intervene to prohibit OpenCorporates from using the information it has collected from the Register before the implementation of the new terms of use.

[27] For reasons set out below, the Court is of the view that the ALPE does not give the Registrar the authority to intervene and prohibit OpenCorporates from using the Register data it has collected between 2012 and 2016.

1. BACKGROUND

[28] Article 2 of the *Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information*⁷ excludes the Register from its legislative scope.

[29] It is undisputed that OpenCorporates has the interest required to seek a declaratory judgment under article 142 of the *Code of Civil Procedure*.

1.1 Legislative Framework

[30] According to the ALPE, the Registrar is a public officer responsible for keeping the Register⁸ by “*receiving documents to be deposited in the register and making the register accessible to the public.*”⁹ It is also responsible for the registration of natural, legal and other persons who must be registered¹⁰.

1.2 Registration and Register

[31] Natural persons who operate a sole proprietorship in Quebec as well as corporations and legal persons constituted in Quebec, among others, must register with the Registrar (collectively, “**the registrants**”)¹¹.

[32] To this end, they must file a registration declaration or a constituting instrument, as the case may be¹², which contains private information about natural persons such as the

⁷ RSQ, c. A-2.1.

⁸ ALPE, art. 12 et seq.

⁹ ALPE, art. 3 and 12.

¹⁰ ALPE, art. 21 et seq. n

¹¹ ALPE, art. 18.

¹² ALPE, art. 30 and 32.

names and addresses of the directors, officers and shareholders of the registrant, as the case may be (**personal information**)¹³.

[33] As soon as the Registrar proceeds to the registration of a registrant, it records the information concerning the registrant in the Register¹⁴, including personal information¹⁵.

[34] For each registrant, in addition to the statement of information, the Registrar draws up an index of documents and an index of names that identify the registrant¹⁶.

2. OBJECTIVES OF THE ALPE AND PROTECTION OF PERSONAL INFORMATION

[35] The Register aims to protect the persons and legal entities that interact with enterprises subject to the ALPE by providing them with easy access to precise and accurate identity information as well as information on the related natural persons, even from a distance.

[36] Indeed, in order to ensure the reliability of the information contained in the Register, the ALPE expressly states that most of the information may be opposable to third parties and the reliability of same information is presumed, the whole to the benefit of third parties in good faith¹⁷.

[37] Any user may thus consult the Register, in person or from a distance by means of technological access, and obtain a copy or an excerpt of an index of documents on a registrant, a statement of information or an index of names¹⁸.

[38] In this context, when a user consults the Register or obtains a copy of a document, personal information is accessible to that user.

[39] The use of a technological support enables the Registrar to provide users with easy and fast access to the information contained in the Register, even from a distance. However, because of its ability to collect, compare and sort information, the technology also allows to compile personal information about natural persons using their personal information as a basis for research, which is not the purpose of the Register¹⁹.

[40] In this context, the *Act to Establish a Legal Framework for Information Technology*²⁰ (**Technology Act**) in articles 24 and 69(2), provides the following:

¹³ ALPE, 33, 34, 35 and 35.1.

¹⁴ ALPE, art. 30 and 37.

¹⁵ ALPE, art. 14; *Regulation Respecting the Application of the Act Respecting the Legal Publicity of Enterprises*, RSQ, c. P-44.1, r. 1.

¹⁶ ALPE, art. 13 and 14.

¹⁷ ALPE, art. 98.

¹⁸ ALPE, art. 99, 105 and 106.

¹⁹ *National Assembly, Journal des débats of the Standing Committee on Public Finance*, 39e leg., 1st sess., vol. 41, No. 59, April 22, 2010, p. 17.

²⁰ RSQ, c. C-1.1.

24. The use of extensive search functions in a technology-based document containing personal information which is made public for a specific purpose must be restricted to that purpose. The person responsible for access to the document must see to it that appropriate technological means are in place to achieve that end. The person may also set conditions for the use of such search functions, in accordance with the criteria determined under paragraph 2 of section 69.

69. In addition to such substitute standards as may be prescribed under section 67, the Government may make regulations determining [...]

(2) criteria for the use of extensive search functions in respect of personal information contained in technology-based documents that are made public for a specific purpose;

[...]

(Emphasis added.)

[41] In addition, according to the ALPE and in order to find a middle ground that promotes access to the Register from a distance through technology and privacy protection, only the Registrar has the right to use the extensive search functions to compile information about a registrant. If a user wishes to obtain the results of such search, that user must make a request to the Registrar. The latter will accede to the user's request, unless the user aims to compile personal information²¹. In other words, the ALPE prohibits the Registrar from compiling personal data or the address of a natural person for transmission to a user, except for specific cases that do not apply hereto.

[42] In fact, the purpose of the Register "*is to make it possible to know, when one has a business name, with whom one does business,*"²² rather than knowing how many enterprises are related to a natural person.

3. ANALYSIS

[43] Can the object and purpose of the ALPE be used to supplement the text of the ALPE as to give authority to the Registrar to monitor the use of the data already collected and intervene if it considers that such data is used in violation of the ALPE?

3.1 Preliminary Remarks

[44] It should be made clear that the parties do not ask the Court to rule on the legality of the database of OpenCorporates, nor on the use made by its users through search engines at their disposal other than in the context of the ALPE and authority of the Registrar.

[45] In Quebec, several legal provisions provide for the protection of the privacy of natural persons, including the *Civil Code of Québec*²³ and the *Charter of Human Rights and Freedoms*²⁴.

²¹ ALPE, art. 101.

²² *Supra* 19.

²³ C.c.Q., art. 35 et seq.

²⁴ RSQ, c. C-12, art. 5.

[46] The natural persons concerned may have recourse whereas the Registrar, which is not authorized to intervene, does not have any. In addition, other laws than those of Quebec and Canada could also apply since the database of OpenCorporates is located in the United Kingdom and the evidence does not specify where the natural persons whose data is concerned are located. It would be surprising if they were all located in Quebec.

[47] The Court's ruling is therefore limited to deciding whether, under the ALPE, the Registrar has authority to prohibit OpenCorporates from using the Register data it has collected before the implementation of the new terms of use.

3.2 Statutory interpretation

[48] The *Interpretation Act*²⁵ provides the following:

41. Every provision of an Act is deemed to be enacted for the recognition of rights, the imposition of obligations or the furtherance of the exercise of rights, or for the remedying of some injustice or the securing of some benefit.

Such statute shall receive such fair, large and liberal construction as will ensure the attainment of its object and the carrying out of its provisions, according to their true intent, meaning and spirit.

41.1. The provisions of an Act are construed by one another, ascribing to each provision the meaning which results from the whole Act and which gives effect to the provision.

41.2. A judge cannot refuse to adjudicate under pretext of the silence, obscurity or insufficiency of the law.

[49] While the Registrar argues that the object and purpose of the ALPE demonstrate the legislator's willingness to extend its powers to limit the use of the Register data already collected, OpenCorporates submits that the text of the ALPE is clear and that even if it considers its object and purpose the Court cannot accept the Registrar's interpretation.

[50] The Registrar's position is based on the principle that statutory interpretation must go beyond the text to determine the rule of law set out therein. It is based on the principle of Driedger's interpretation described as "modern," which author Pierre-André Côté explains as follows in his book entitled *Interprétation des lois*²⁶:

1449. Today, the pendulum always seems halfway between a purely conscious interpretation of the text of the law and an interpretation attached exclusively to the accomplishment of the object. As Professor Elmer Driedger wrote:

"Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context in their grammatical and ordinary sense

²⁵ RSQ, c. I-16.

²⁶ Pierre-A. Côté, with the collaboration of Stéphane Beaulac and Mathieu Devinat, *Interprétation des lois*, 4th ed (Montréal: Éditions Thémis, 2009), pp. 455-456.

harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

1450. In fact, a review of the decisions of the Supreme Court of Canada using Driedger's "modern principle" highlights the fact that it is used both for the letter of the law and for the legislative objective.

(Our translation.)

[51] These excerpts reflect the essence of what is provided for in the *Interpretation Act* cited above.

[52] OpenCorporates admits that the modern principle of statutory interpretation should apply in this case. It adds that according to this principle, it is necessary to read the terms of the law in their global context by following the ordinary and grammatical meaning of the words in harmony with the spirit of the law, its object and the intention of the legislator²⁷.

[53] Moreover, OpenCorporates draws the attention of the Court to the following excerpts from Côté's work:

1042. If the law is well drafted, an interpretation which would lead to add words or provisions, or to deprive them of usefulness or meaning must be regarded as suspect. As the Ontario Court of Appeal recently pointed out: "In general, a Court must presume that the legislator explains what he means and means what he expresses."

1043. Since the function of the judge is to interpret the law and not to write it, the general principle is that the judge must disregard an interpretation that would lead to the addition of words to the law: it is supposed to be well drafted and to fully express what the legislator intended to say: "It is a serious thing to introduce words in a law that are not there and in the absence of obvious necessity, it should be avoided."²⁸

(Our translation; References omitted.)

[54] The Court is of the view that the modern principle is the one that must be used in this case. It will therefore analyze the relevant terms as well as the context of the ALPE and, subsequently, its object and purpose.

3.3 The Terms and Context of the ALPE

[55] The functions of the Registrar derive from the ALPE. It assumes the responsibilities conferred therein as well as those entrusted to it by other laws²⁹. "[...] *The registrar must engage exclusively in the work and duties relating to those functions and responsibilities.*"³⁰

²⁷ Argument plan of OpenCorporates, par. 18. This is consistent with the teachings of the Supreme Court of Canada, namely in *Ewert v. Canada*, 2018 RCS 30; and the essence of the *Interpretation Act*, RSQ, c. I-16.

²⁸ *Supra* 26, pp. 316-317.

²⁹ ALPE, art 2.

³⁰ *Id.*

[56] The ALPE provides that it maintains “*the register described in Chapter II*” (the Register) and that its mission is “*keeping and preserving the register [...], receiving documents to be deposited in the register and making the register accessible to the public.*”³¹

[57] The parties acknowledge that the text of the ALPE does not prohibit OpenCorporates from collecting the Register data by means of a web robot, nor from having a publicly available technological database, through the use of extensive search functions, nor to sell structured data for financing.

[58] Article 24 of the *Technology Act* provides that the person responsible for access, in this case the Registrar, must take steps to restrict access to extensive search functions in a technology-based document in order to protect personal information.

[59] Under the ALPE, extensive search functions are indeed restricted since only the Registrar is allowed to use them to compile information from the Register³². It may provide the results of its searches to users who request it, unless it is a compilation based on personal information as it is prohibited to share this type of compilation.

[60] There is no mention in the ALPE that these restrictions extend to a public technology-based document other than the Register, even if it contains personal information obtained from the Register, or to users or third parties that hold this information or use the technology-based document.

[61] As for the *Technology Act*, it expressly entrusts to the person responsible for access the responsibility to set up the technological means to restrict the search functions to the purpose of the technology-based document, therefore to OpenCorporates in the case of the database, and to the Registrar in the case of the Register.

[62] The ALPE also provides the possibility for the Minister to enter into agreements with certain government entities in order to provide them with all the information contained in the Register³³, while limiting their ability to compile information for third parties based on personal information.

[63] Again, the ALPE does not extend this restriction to other technology-based documents or to third parties who hold Register data, such as OpenCorporates, which obtained information piece by piece and incorporated it into another technology-based document.

[64] Thus, OpenCorporates did not evade the procedure provided by the ALPE because it did not obtain the information with the help of extensive search functions, but simply consulted the Register and collected information for each registrant, thanks to the evolution of data collection technologies.

³¹ ALPE, art. 3.

³² ALPE, art. 101.

³³ ALPE, art. 121 and 122.

[65] This consultation, which was conducted in accordance with article 99 of the ALPE, as well as the dissemination of the collected data, does not violate the text of the ALPE although it is possible that it violates other legislative texts. Moreover, no article of the ALPE has the effect of creating a monopoly on the keeping of a Register containing information on Quebec enterprises. The restrictions set out therein only apply to the Registrar, as a public officer, the government bodies, or third parties, as identified in the ALPE, with whom it is authorized to enter into agreements to provide Register data.

[66] Let us now see if OpenCorporates' use of the Register data violates the object and purpose of the ALPE.

3.4 Object and Purpose of the ALPE

[67] When interpreting a law, it is possible to use the concept of object or purpose to restrict or extend the meaning of a provision:

1492. In order to facilitate the accomplishment of what appears to be the purpose of a legislative text, the judge may have to give one of its provisions a broader meaning than it would have if only the literal meaning of the words were taken into account³⁴.

(Our translation.)

[68] The objective of the ALPE is to promote transparency with respect to Quebec enterprises in order to protect the people with whom they do business:

The main purpose of a law on legal publicity is to protect the public by making information about enterprises accessible, including the identification of people related to a business which is using a corporate name. To that end, all the information contained in the register established under the *Act Respecting the Legal Publicity of Enterprises* is public, available and accessible, and the majority of this information has a legal value solely because of its insertion in the register³⁵.

[69] This objective of the legislator is reflected in several provisions of the ALPE³⁶.

[70] The Registrar is correct in stating that, under the ALPE, the legislator's concern is to protect the personal information available from the technological version of the Register.

[71] In addition, article 24 of the *Technology Act* explicitly states that the legislator wishes to restrict the extensive search functions of a technology-based document that contains personal information, in this case the technological version of the Register, to the purpose for which it is made public. The Register should not be used as a search tool based on personal information³⁷.

³⁴ *Supra* 26, p. 471.

³⁵ Registraire des entreprises du Québec, *Loi sur la publicité légale des entreprises : Présentation*, Direction du registraire des entreprises (Service de l'expertise, de la qualité du registre et des recours), version 1, 30 mai 2010, p.5, quoted in N. N. Antaki and C. Bouchard, *Droit et pratique de l'entreprise: entrepreneurs et sociétés de personnes*, 3rd ed., 1st tome (Cowansville : Éditions Yvon Blais, 2014), par. 312.

³⁶ Namely ALPE, art. 3, 12, 13, 14, 21, 33, 34, 35, 39 et seq., 90, 98. et seq., 99, 101, 124 et seq.

³⁷ *Supra* 19, pp.16-17.

[72] The main objective of the ALPE is to allow the public greater access to information as well as the identification of enterprises, which the technological version of the Register allows to do. In order to protect personal information, the ALPE restricts access to search functions to the Registrar and prohibits the Registrar from providing third parties with compilations based on personal information.

[73] The technological means necessary to comply with the legislator's concerns about the extensive search functions in the technological version of the Register have been put in place.

[74] As for the *Technology Act*, it aims to limit the search functions to the purpose of the document in question. As such, it allows the person responsible for access to set conditions for the use of the search functions in the technology-based document³⁸.

[75] According to this law, the person responsible for access to the Register is the Registrar, while the person responsible for access to the database is OpenCorporates.

[76] Contrary to what is claimed by the Registrar, the ALPE does not delegate to the Registrar the responsibility to protect the personal information that has been collected from the Register in order to eliminate any privacy risk. Rather, it aims to ensure that the technological version of the Register is consistent with the one on paper while preventing extensive searches on natural persons.

[77] The same is true of the *Technology Act* which requires, namely the Registrar, to put in place mechanisms to limit the possibility of conducting extensive searches beyond the purpose of the ALPE through the use of technology.

[78] The legislator's concerns rather stem from the publication, on technological support, of personal information that can be extensively researched through functions offered by this technology.

[79] The purpose of these provisions is to counter the substantial research capacity of the extensive search functions associated with a technology-based document.

[80] The means used by the Registrar to restrict extensive search functions place remote users in the same position as if they were viewing the Register in paper form, which was the intention of the legislator under the ALPE and when it adopted article 24 of the *Technology Act*:

Some complained about the adoption of this article. The extensive search functions convincingly illustrate one of the perverse effects of IT. These functions make it possible to find individuals according to one or more characteristics. [...] However, because of its public character, a register should not be used to satisfy the curiosity of a neighbour, co-worker, family member or marketing firm but rather to compare the value of the buildings assessed.

In order to protect the privacy of individuals, for a number of years, the Commission d'accès à l'information has been asking to limit the use of extensive search

³⁸ *Technology Act*, art. 24.

functions. The Commission believes that personal information stored in public databases should only be accessible by the unit. Opting for this type of access would be the preferred way to ensure, as implicitly required by article 24, that the specific purpose pursued by the decision to confer a public character to personal data banks is respected³⁹.

(Our translation; Emphasis added.)

3.5 Is the Registrar the only one allowed to hold a register containing data on Quebec enterprises and their personal information?

[81] One last word on the Registrar's argument that the Registrar is the only one allowed to keep a register which compiles data on Quebec enterprises.

[82] The ALPE does not prohibit any entity other than the Registrar from implementing a register or database of Quebec enterprises.

[83] In addition, the database of OpenCorporates is not equivalent to the Register. Indeed, only the Registrar can register the registrants and compile and ensure the publicity of the information. Only the information collected directly from the Register has an official value that demonstrates its content and is enforceable against third parties.

[84] Thus, the database of OpenCorporates has no official value and is clearly distinguishable from the Register, mainly by providing a link to redirect users to the official site of the Register, but also by organizing information differently, by centralizing such information in order to make links with information collected from other sources.

[85] Neither the text of the ALPE nor its context or object leads to the conclusion that only the Registrar is authorized to hold a technology-based document containing information about registrants.

4. CONCLUSION

[86] Before the implementation of the new terms of use, OpenCorporates complied with the terms of use of the Register.

[87] The ALPE is written in a clear and precise manner. There is no need to add responsibilities to the Registrar, which would be a heavy burden on the Registrar.

³⁹ André Ouimet, *Révolution technologique et accès à l'information*, in Barreau du Québec, Service de la formation permanente, *Développements récents en droit de l'accès à l'information* (2003), volume 188, (Cowansville : Éditions Yvon Blais, 2003) [online].

[88] Under the ALPE, the legislator certainly wanted to prevent any invasion of privacy without, however, incorporating measures other than those limiting access to the search functions on the Register's technology platform.

[89] Given the words, context and purpose of the ALPE, the Court believes that the ALPE does not give the Registrar the authority to monitor the use of the data collected by a user prior to March 2016. Neither the ALPE nor the *Technology Act* entrusts the Registrar with the authority to monitor and prohibit OpenCorporates from using information it has collected from the Register before the implementation of the new terms of use.

FOR THESE REASONS, THE COURT:

[90] **AUTHORIZES** the amended application for declaratory judgment;

[91] **DECLARES** that the *Act Respecting the Legal Publicity of Enterprises* does not allow the Quebec Enterprise Registrar, as defined by the Act, to prevent Petitioner OpenCorporates Ltd. from publishing and distributing the data it has collected from the Quebec Enterprise Registry prior to the March 2016 terms and conditions, including for commercial purposes.

[92] **THE WHOLE** with legal costs.

KAREN M. ROGERS, J.C.S.

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Dates of hearing : March 19-20, 2019