



THE CANADIAN
BAR ASSOCIATION

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BARREAU CANADIEN

2010 Annual Fall Competition Law Conference

Presented by the Canadian Bar Association's
National Competition Law Section and the
Continuing Legal Education Committee

September 30-October 1, 2010

**Hilton Lac Leamy
Gatineau, Québec**

CRA Charles River
Associates

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Please join us at the CBA Competition Law Section's 2010 Annual Fall Competition Law Conference.

Competition law in Canada has never been as important as it is today. Fundamental changes in 2009 and 2010 to the *Competition Act* have ushered in a new era of competition law enforcement, most notably: new rules for agreements between competitors, a new merger review process, relaxation of rules regarding certain pricing practices, new penalties for abuse of dominance and increased penalties for misleading advertising. In addition, recent court decisions involving *Competition Act* based class actions may have profound implications for businesses in Canada. The *Investment Canada Act* has also witnessed significant recent amendments, including the introduction of a national security review process.

This year's conference will bring together an outstanding roster of leading Canadian and international competition lawyers, economists and government officials to discuss the current and future state of Canadian competition law. Plenary sessions will address developments in 2009 and 2010 since the amendments were introduced, as well as offer a look ahead from a group of former Commissioners of Competition. The Commissioner's Showcase Panel will bring together an international panel of senior officials from leading competition authorities and private sector organizations. In addition, you will be able to choose from a variety of information-packed sessions dealing with cartels, class actions, compliance programs, abuse of dominance, misleading advertising, mergers, joint ventures and the *Investment Canada Act*.

The conference also features a lunch address from the Commissioner of Competition, Melanie L. Aitken, as well as a dinner address (for dinner registrants) by Andrew Coyne, National Editor of *Macleans*.

All individual conference registrants will receive the new second edition of the book *Fundamentals of Canadian Competition Law*, edited by James Musgrove on behalf of the National Competition Law Section of the CBA.

Make sure to also register for the Competition Bureau's Third Annual Charity Golf Event to be held on Wednesday, September 29, 2010!

WHO SHOULD ATTEND?

Antitrust, competition, commercial, corporate, advertising and marketing, telecommunications and international trade lawyers in private practice, civil and criminal litigators, in-house counsel, economists, enforcement officials, academics and business persons with an interest in competition law and policy.



Agenda

Wednesday, September 29, 2010

Noon | 21:00 **COMPETITION BUREAU CHARITY GOLF EVENT**

Location: The Rivermead Golf Club in Gatineau, Québec

Event: Space is extremely limited. Register on the attached registration form. This event will include one round of golf, a shared power cart, practice balls for the driving range and a bag drop service, with a reception and dinner to follow. Proceeds will be donated to the Government of Canada Workplace Charitable Campaign.

Thursday, September 30, 2010

8:30 | 9:00 **REGISTRATION & CONTINENTAL BREAKFAST**
Breakfast sponsored by Navigant Consulting

9:00 | 9:05 **WELCOME & INTRODUCTION**
Richard Elliott, *2010 Conference Chair, Davies Ward Phillips & Vineberg LLP*
Michelle Lally, *Section Chair, Osler, Hoskin & Harcourt LLP*

9:05 | 10:30 **PLENARY: YEAR (AND A HALF) IN REVIEW**
The past 18 months have witnessed the introduction of the most important changes to the *Competition Act* in the last quarter century. This panel will discuss the impact to date of the amendments and look ahead to the future, with a focus on the extent to which the Canadian system is moving toward a U.S.-style regime in light of the new *per se* conspiracy offence, supplementary information request system for mergers, administrative monetary penalties for abuse of dominance and relaxing of rules on pricing practices.

Moderator: **Michelle Lally**, *Osler, Hoskin & Harcourt LLP*

Panellists: **Adam Fanaki**, *Davies Ward Phillips & Vineberg LLP*
Randy Hughes, *McCarthy Tétrault LLP*
Richard Parker, *O'Melveny & Myers LLP*
John Rook, *Bennett Jones LLP*

10:30 | 10:45 **REFRESHMENT BREAK**

10:45 | 12:15 **CONCURRENT SESSIONS**

Session I: **A Moving Target: The Certification of Price-Fixing Class Actions in Canada**

The recent certification decisions in the hydrogen peroxide and DRAM cases signal a significant shift in the threshold that must be met by plaintiffs at the certification stage of price-fixing class actions and highlight the importance of coordination in multi-jurisdictional cases. This panel will review the recent decisions and discuss their implications in terms of initiating and defending the anticipated increase in price-fixing class actions in Canada.

Moderator: **Laura Cooper**, *Fasken Martineau DuMoulin LLP*

Panellists: **Katherine Kay**, *Stikeman Elliott LLP*
John Laskin, *Torys LLP*
Jeffrey Shinder, *Constantine Cannon LLP*
Charles Wright, *Siskinds LLP*

Session II: "Right this Way, SIR": Evaluating the Direction of the New Canadian Merger Review Process

The 2009 amendments to the *Competition Act*, which introduced an American-style two stage merger review process, are dramatically reshaping the strategic approach towards merger review in Canada. This panel will examine the experience of both the Competition Bureau and the private bar with the new merger review paradigm, including the SIR process, and compare it with the US experience under the *HSR Act*.

Moderator: **Omar Wakil**, *Torys LLP*

Panellists: **Paul Collins**, *Senior Deputy Commissioner of Competition, Mergers*

Nelson Fitts, *Wachtell, Lipton, Rosen & Katz*

Susan Hutton, *Stikeman Elliott LLP*

Mark Opashinov, *McMillan LLP*

Session III: Key Developments in Advertising & Marketing under the *Competition Act*

New higher monetary penalties have heightened the role of Competition Bureau enforcement under the deceptive marketing practices provisions of the *Competition Act*. At the same time, private parties have looked increasingly to the *Competition Act* as a basis for major civil actions alleging misleading advertising. This panel will discuss significant developments over the past year, including substantiation of performance claims, "made in Canada" claims, and the challenges presented by green claims and social media advertising.

Moderator: **Catherine Bate**, *Heenan Blaikie LLP*

Panellists: **Chris Martin**, *Assistant Deputy Commissioner of Competition, Fair Business Practices*

Lesley Fair, *Senior Attorney, Bureau of Consumer Protection, Federal Trade Commission*

Donald Affleck, Q.C., *Affleck Greene McMurtry LLP*

Julie Laurence, *Rogers Communications Inc.*

12:15 | 14:00 LUNCH – ADDRESS BY MELANIE L. AITKEN, COMMISSIONER OF COMPETITION

Sponsored by Analysis Group

14:00 | 15:15 PLENARY: THE COMMISSIONER'S SHOWCASE PANEL

Transparency and Agency Decision-Making: International Enforcement Perspectives

With a renewed focus on competition enforcement as a means of promoting economic growth and prosperity, competition authorities are being challenged to improve the predictability and transparency associated with all aspects of their enforcement policy. This panel brings together senior officials from leading competition authorities and private sector organizations to discuss transparency and accountability in agency decision-making, including perspectives on the necessarily conflicting values and considerations of confidentiality and measures to increase transparency.

Moderator: **Melanie L. Aitken**, *Commissioner of Competition*

Panellists: **Jon Leibowitz**, *Chairman, U.S. Federal Trade Commission*

Philip Collins, *Chairman, U.K. Office of Fair Trading*

Marcelo Calliari, *President, Brazilian Institute for Competition, Consumer Law and International Trade (IBRAC)*

15:15 | 15:30 REFRESHMENT BREAK



Agenda

15:30 | 17:00 CONCURRENT SESSIONS

Session I: Abuse of Dominance or Aggressive Competition?

New significant monetary penalties for abuse of dominance have considerably raised the stakes, yet the line between aggressive competition and anticompetitive conduct remains difficult to draw. This panel will consider some of the most pressing issues regarding enforcement of the abuse of dominance provisions, including joint dominance, business justification and essential facilities.

Moderator: **Jason Gudofsky**, *Blake, Cassels & Graydon LLP*

Panellists: **Douglas Clark**, *Assistant Deputy Commissioner of Competition, Civil Matters*

Lilla Csorgo, *Charles River Associates*

Mark Nicholson, *Cassels Brock & Blackwell LLP*

Session II: Joint Ventures: Lessons from U.S. Experience for the New Canadian Law

U.S. antitrust law features extensive experience on the appropriate treatment of joint ventures and other forms of competitor collaborations. Most recently, the U.S. Supreme Court this year in *American Needle* considered when parties to a joint venture should be considered “separate economic actors” so as to attract scrutiny applicable to agreements between competitors. Drawing on the U.S. experience, this panel will discuss the status of various forms of joint ventures in Canada, given the new provisions of the *Competition Act* which came into force this year regarding agreements between competitors.

Moderator: **Kevin Wright**, *Davis LLP*

Panellists: **Mike Sullivan**, *Acting Deputy Commissioner of Competition, Legislative and International Affairs*

John Clifford, *McMillan LLP*

David Feher, *Dewey & Leboeuf LLP*

James Musgrove, *Lang Michener LLP*

Session III: Foreign Investment Review in Canada: The Uncertain Road

The past year has been among the most active in the 25-year life of the *Investment Canada Act*. This panel will address recent key developments, including the new provisions for national security reviews with a comparison to the national security review system in the United States, investments by state-owned enterprises and the first-ever action alleging breach of undertakings.

Moderator: **Kevin Ackhurst**, *Ogilvy Renault LLP*

Panellists: **Marie-Josée Thivierge**, *Deputy Director of Investments, Investment Review Division*

Oliver Borgers, *McCarthy Tétrault LLP*

Mark Plotkin, *Covington & Burling LLP*

Sandra Walker, *Fraser Milner Casgrain LLP*

17:00 | 18:30 COCKTAIL RECEPTION

Sponsored by Charles River Associates

18:30 | 22:00 DINNER (FOR TICKET HOLDERS ONLY)

Sponsored by Cole & Partners

Speaker: **Andrew Coyne**, *National Editor of Maclean's*

22:00 YOUNG LAWYERS' RECEPTION

Open to all

Friday, October 1, 2010

8:30 | 9:00 **CONTINENTAL BREAKFAST**
Sponsored by MiCRA

9:00 | 10:30 **CONCURRENT SESSIONS**

Session I: Competition Compliance Programs – What You Don't Know Will Hurt You

With increased fines and jail terms, the new *per se* criminal conspiracy offence and monetary penalties for abuse of dominance under the amended *Competition Act*, it is more important than ever for corporate counsel to have a well developed competition law compliance program. Join our panellists as they lead you through the implications of the new law and discuss the risks that every effective competition law compliance program should address.

Moderator: **Madeleine Renaud**, *McCarthy Tétrault LLP*

Panellists: **Jeanne Pratt**, *Special Legal Advisor to the Commissioner of Competition*

Shuli Rodal, *Osler, Hoskin & Harcourt LLP*

Christa Wessel, *McCain Foods Limited*

Session II: Advanced Topics in Merger Analysis

How relevant are issues such as market definition, market shares and efficiencies in Canadian merger review? This panel will draw on extensive case experience as well as this year's revisions exercise on the U.S. Horizontal Merger Guidelines to discuss how best to present merger submissions to the Competition Bureau and Competition Tribunal, including the use of the Merger Enforcement Guidelines.

Moderator: **Richard Annan**, *Goodmans LLP*

Panellists: **The Honourable Paul Crampton**, *Judge of the Federal Court and Judicial Member of the Competition Tribunal*

Joe Krauss, *Hogan Lovells US LLP*

Frederick Warren-Boulton, *MiCRA Inc.*

Micah Wood, *Blake, Cassels & Graydon LLP*

Session III: International Roundtable on Cartel Enforcement

This panel of leading cartel experts from Canada, the European Union and the United States will discuss current enforcement approaches in these jurisdictions to cartel cases, and explore the practical and strategic implications of immunity and leniency programs and inter-agency co-operation.

Moderator: **Janet Bolton**, *Osler, Hoskin & Harcourt LLP*

Panellists: **John Pecman**, *Senior Deputy Commissioner of Competition, Criminal Matters*

Ewoud Sakkers, *Head of Unit, Cartel Directorate, DG Competition*

James Mutchnik, *Kirkland & Ellis LLP*

10:30 | 10:45 **REFRESHMENT BREAK**



Agenda

10:45 | 12:15 PLENARY: COMPETITION LAW IN THE 21ST CENTURY: A LOOK AHEAD

This distinguished group of former Commissioners of Competition will discuss the future of competition law in Canada in the 21st century, with a particular spotlight on the application of competition policy to the communications and new media sectors. Topics will include: how foreign ownership restrictions are impacting the development of competition policy; evaluating the best institutional roles for the Competition Bureau, Competition Tribunal and CRTC; assessing the merits of competition law versus sector-specific regulation; and the challenges of applying traditional competition law principles to the new media environment.

Moderator: **George Addy**, *Davies Ward Phillips & Vineberg LLP*

Panellists: **The Honourable Konrad von Finckenstein, Q.C.**, *Chairman, Canadian Radio-television and Telecommunications Commission*

Calvin Goldman, Q.C., *Blake, Cassels & Graydon LLP*

Lawson Hunter, Q.C., *Stikeman Elliott LLP*

Sheridan Scott, *Bennett Jones LLP*

12:15 CLOSING REMARKS

Accreditation

This program has been accredited by the following organizations:

- The Law Societies of British Columbia and Northwest Territories
- The Law Specialty Committee of the Law Society of Upper Canada
- The Law Society of Saskatchewan
- The Prince Edward Island Law Society
- The Law Society of New Brunswick

All accreditation details for this program are available at
http://www.cba.org/pd/details.aspx?id=NA_comp10