



THE CANADIAN  
BAR ASSOCIATION  
L'ASSOCIATION DU  
BARREAU CANADIEN

INFLUENCE. LEADERSHIP. PROTECTION.

*Canadian Bar Association – National Competition Law Section presents*  
**CBA Competition Law Fall Conference**  
**October 1-2, 2015 | Shaw Centre | Ottawa**

## **Competition Law Enforcement and Policy In Canada: Are We Headed In The Right Direction?**

Competition law in Canada has a long and proud history. Canada adopted the first anti-price fixing law in the world and, in recent years, it has been at the forefront of enforcement trends across the globe. As elsewhere, however, challenges to effective, principled and sophisticated competition law enforcement are presenting themselves, given, among other things, the rapid pace at which global businesses are innovating and the comparatively slow pace of regulatory change.

Given that 2015 marks the 30<sup>th</sup> anniversary of the “modern-day” *Competition Act*, there has never been a more appropriate time to ask: Where is Canadian competition law, policy and enforcement today, and what will it look like in five or ten years? Is Canadian competition law becoming relatively more or less sophisticated? Is enforcement keeping pace? Are Canadian consumers and businesses operating under a more predictable regime? What has worked well, and what can be improved?

Join us in Ottawa on October 1 and 2 as the Canadian Bar Association’s National Competition Law Section discusses these important topics at the 2015 Annual Fall Conference.

*\* Registration information for the 2015 Annual Fall Conference is available at [https://www.cbapd.org/Events\\_en.aspx?Code=COMP15&Branch=NA](https://www.cbapd.org/Events_en.aspx?Code=COMP15&Branch=NA) \**

### **WEDNESDAY, SEPTEMBER 30, 2015**

#### **12:00 | 21:00 COMPETITION BUREAU CHARITY GOLF TOURNAMENT & DINNER | RIVERMEAD GOLF CLUB**

This pre-conference event will be held at the exclusive Rivermead Golf Club in Gatineau, Québec (just outside of Ottawa). Space is extremely limited. Participants will have a 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.

Cost. Golf and Reception: \$300 taxes included | Reception only: \$100 taxes included

*\* Register online for the Charity Golf Tournament at [https://www.cbapd.org/Events\\_en.aspx?Code=COMP15&Branch=NA](https://www.cbapd.org/Events_en.aspx?Code=COMP15&Branch=NA) \**

## THURSDAY, OCTOBER 1, 2015

8:30 | 9:00 REGISTRATION AND HOT BREAKFAST | Rideau Canal Atrium  
**Sponsored by NERA Economic Consulting**

9:00 | 9:05 WELCOME & INTRODUCTION | Room 214  
**Susan Hutton**, Section Chair, Stikeman Elliott LLP  
**Navin Joneja**, 2015 Fall Conference Chair, Blake, Cassels & Graydon LLP

9:05 | 10:30 OPENING PLENARY SESSION | Room 214

### “HOT TOPICS” IN COMPETITION / ANTITRUST

The past year has been particularly interesting for practitioners, with Bureau initiatives spanning a range of diverse topics, each with considerable impact on the practice of competition law in Canada. For example, earlier this year, new *Intellectual Property Enforcement Guidelines* (IPEGs) were released reflecting the Bureau’s attempt to modernize its approach to IP issues in competition law; the Bureau appears to be increasingly process driven and focused on data requests in the context of merger reviews, which has had, and could continue to have an impact on the merger review process; and recent case law arguable has conferred upon the Commissioner of Competition an unprecedented amount of enforcement discretion – especially compared to his counterparts in other jurisdictions. Join competition law experts from Canada and the United States for a comparative discussion on these and other hot topics in competition law.

Moderator: Adam Kalbfleisch (*Bennett Jones LLP*)  
Panellists: Stephen Weissman (*Deputy Director, U.S. Federal Trade Commission*)  
John Bodrug (*Davies Ward Phillips & Vineberg LLP*)  
Calvin Goldman, Q.C. (*Goodmans LLP*)  
Linda Plumpton (*Torys LLP*)

10:30 | 10:45 REFRESHMENT BREAK

10:45 | 12:15 CONCURRENT SESSIONS

Session I: **Evolution of Merger Remedies in Canada and Globally – Enforcement Trends and Potential Pitfalls** | Room 212

The panel will discuss recent trends in merger remedies, both globally and in Canada, including measuring effectiveness and performance, the growing importance of behavioural remedies, and agency experiences with identifying and approving remedy partners. There has been a resurgence of late in Canada and globally with respect to the use of behavioural remedies to resolve specific concerns. What should be made of this resurgence? Is this part of a long term trend and does it line up with global practice? The panel will also discuss the importance of identifying potential remedy partners for the Bureau. How early should the Bureau be brought into the discussion? And how

does one avoid potential pitfalls in case a suitable remedy partner cannot be found? Is Canada ahead of the curve?

Moderator: Debbie Salzberger (*Blake, Cassels & Graydon LLP*)

Panellists: Andrew Lacy (*Simpson Thacher & Bartlett LLP*)

James Musgrove (*McMillan LLP*)

Kaarli Eichhorn (Executive Counsel - Competition Law & Government Relations, General Electric Company)

Russell Damtoft (*Associate Director, Federal Trade Commission's Office of International Affairs*)

Session II: **Scholars Panel: Disruptive Business Models: Is Canadian Competition Law Keeping Up with Technological Change? Can It?** | Room 210

The panel will explore the impact of innovation and disruptive business models (such as Netflix, mobile payments, online advertising, eBay, Amazon, AirBnB and Uber) on the Canadian competitive landscape. Panelists will discuss the application of competition law to industries characterized by innovation and disruptive business models, including how innovation and disruptive business models impact market definition, the usefulness of market shares as indicators of market power in industries characterized by innovation, other methods to measure market power in these circumstances, and the economics of disruptive entry.

Moderator: Thomas Ross (*University of British Columbia*)

Panellists: Mihkel Tombak (*University of Toronto-Mississauga*)

Joshua Gans (*Rotman School of Management, University of Toronto*)

David Rosner (*Blake, Cassels & Graydon LLP*)

Session III: **Sound Advice for the Advisor – Creating an Effective Relationship with Today's In-House Counsel** | Room 209

The relationship between competition counsel and client can take many forms. Hear directly from in-house counsel and leading practitioners on a range of “best practices” in developing and maintaining an effective client relationship with respect to competition law advice. The panel will incorporate real-life scenarios to illustrate some of the do's and don'ts associated with effectively managing a successful client relationship.

Moderator: Omar Wakil (*Torys LLP*)

Panellists: Genevieve Richard (*Senior Corporate Counsel, Belron Canada Inc.*)

Phil Abraham (*Associate General Counsel, Cenovus Energy*)

Jim Fishkin (*Dechert LLP*)

Brian Henry (*Senior Managing Counsel, Venturing & Emerging Brands and Business Transformation, The Coca Cola Company*)

12:15 | 14:00 LUNCHEON | Trillium Ballroom 4<sup>th</sup> Floor Shaw Centre  
**Sponsored by Analysis Group**

*Keynote address: The Honourable Mr. Justice Marshall Rothstein*  
*Presentations: James H. Bocking Memorial Award for Young Lawyers; Announcement of the Miller Award for Contribution to the Canadian Competition Law Review*

14:00 | 15:15 PLENARY SESSION

**THE INTERVIEW 2015: COMPETITION LAW IN THE PUBLIC SPOTLIGHT | Room 214**

Pocketbook issues are a frequent topic in the media, and the spotlight on consumer protection shines even brighter during an election. Join an award winning journalist for an interactive discussion with leading competition law practitioners and government/public relations advisors regarding the latest high profile competition law enforcement matters and the government's evolving approach to consumer protection using competition law as an enforcement tool.

Moderator: Drew Hasselback (*Legal Post Editor, Financial Post*)  
Panellists: Goldy Hyder (*President & CEO, Hill + Knowlton Strategies Canada*)  
Brian Facey (*Blake, Cassels & Graydon LLP*)  
Lawson Hunter, Q.C. (*Stikeman Elliott LLP*)  
Michelle Lally (*Osler, Hoskin & Harcourt LLP*)

15:15 | 15:30 REFRESHMENT BREAK | RIDEAU CANAL ATRIUM

15:30 | 17:00 CONCURRENT SESSIONS

Session I **Hot Topics in Foreign Investment Review: National Security, Enterprise Value, SOEs and More | Room 212**

Foreign investment review has never been "hotter". National security reviews are becoming more frequent – or are they? Who knows? It's classified! The introduction after a long delay of the "enterprise value" thresholds brings with it a host of questions and complications. SOE and cultural business reviews are evolving. And now we are seeing foreign investment in uranium mining. What's next? This panel of leading experts will discuss the current "hot topics" in foreign investment review in Canada.

Moderator: Peter Glossop (*Osler, Hoskin & Harcourt LLP*)  
Panellists: Ailish Campbell (*Vice President, Policy, International and Fiscal Issues, Canadian Council of Chief Executives*)  
Ronald Atkey, Q.C. (*Professor, Osgoode Hall Law School*)  
Anthony Baldanza (*Fasken Martineau DuMoulin LLP*)  
William Pristanski (*Prospectus Associates*)

Session II: **The Known Unknown: Disclosure and Privilege in the Practice of Competition Law in Canada | Room 210**

Whether your practice focuses on private litigation, cartel cases, large M&A or all of the above, competition law practitioners need to have a firm grasp on the law of privilege

and disclosure. This panel will discuss the latest developments concerning law of disclosure and privilege, with a focus on its practical applications for competition law practitioners in a variety of settings, including the use of experts.

Moderator: Donald Houston (*McCarthy Tetrault LLP*)  
Panellists: Sandra Forbes (*Davies Ward Phillips & Vineberg LLP*)  
Christopher Naudie (*Osler, Hoskin & Harcourt LLP*)  
Subrata Bhattacharjee (*Borden Ladner Gervais LLP*)

Session III: **Wakelam and Bram: Implications for Class Actions Going Forward** | Room 209

This panel will explore the recent decisions in *Wakelam* and *Bram* and their implications for competition class actions founded on “parasitic” torts and/or seeking equitable remedies, from the perspective of both plaintiff’s counsel and defence counsel. What is their impact on certification hearings? Are plaintiffs limited to statutory causes of action under the *Competition Act*? How have courts applied (and distinguished) the decisions in recent cases? Plaintiff’s counsel and defence counsel will engage on the arguments on either side of this issue and discuss how well the courts have done at resolving it.

Moderator: William Vanveen (*Gowling Lafleur Henderson LLP*)  
Panellists: David Kent (*McMillan LLP*)  
Luciana Brasil (*Branch MacMaster LLP*)  
Reidar Mogerman (*Camp Fiorante Matthews Mogerman*)  
Michael Brown (*Norton Rose Fulbright*)

17:00 | 18:30 COCKTAIL RECEPTION | Daly's Restaurant Ottawa, located on the 4<sup>th</sup> floor at The Westin Ottawa Hotel  
**Sponsored by Charles River Associates**

18:30 | 22:00 DINNER | Restaurant 18 | 18 York Street, Byward Market  
**Sponsored by Duff & Phelps**

*Guest Speaker: John Ibbitson, Governor General’s Award winner, political writer and columnist for the Globe and Mail, and author of the forthcoming biography “Harper”*

## FRIDAY, OCTOBER 2, 2015

8:00 | 9:00 YOUNG LAWYERS’ SPEED MENTORING EVENT AND BREAKFAST | Room 213  
**Sponsored by Epiq Systems**

8:00 | 9:00 HOT BREAKFAST | Rideau Canal Atrium  
**Sponsored by Thomson Reuters**

9:00 | 10:30 CONCURRENT SESSIONS

Session I: **Falling Through the Cracks? Are there limits on competition policy enforcement under the Competition Act?** | Room 212

A number of business practices that have also been reviewed in other jurisdictions – including real estate associations, e-books, credit card fees and “hub and spoke” conspiracies – have proven more difficult to address under the precisely-defined provisions of Canada’s *Competition Act*. Are there gaps in our legislation? Is it time for a general vertical restraints provision in Canada? If so, what should it look like? What lessons can be learned from monopolization laws and cases in the US, Europe and elsewhere? Are all anti-competitive agreements between competitors subject to the Act? If there are gaps, is that necessarily bad?

Moderator: Sandy Walker (*Dentons*)

Panellists: Andrea Hamilton (*McDermott Will & Emery LLP*)  
Dominic Thérien (*McCarthy Tetrault LLP*)  
Jeff Brown (*Stikeman Elliott LLP*)  
Paul Feuer (*Senior Corporate Legal Counsel, Canadian Real Estate Association*)

Session II: **The Next Frontiers: Cutting Edge Issues in Advertising and Marketing** | Room 210

The misleading advertising sections of the *Competition Act* are among the most frequently applied provisions. In the past few years, the application of these provisions has become increasingly interesting with the advent of new media. In particular, social media applications and other innovative delivery methods such as native advertising are increasingly becoming the forum of choice for companies to promote and represent their products both in the US and Canada. From an enforcement perspective, in the *Brick / Leon’s* case we began to see the application of behavioural economics to misleading advertising enforcement and in *Avis/Budget* we are seeing the application of new provisions that were introduced as part of the CASL-related amendments. This panel will explore cutting edge issues in advertising in Canada and the U.S. and discuss whether the *Competition Act* needs amending to keep up with the times.

Moderator: Martha Healey (*Sole Practitioner*)

Panellists: Rebecca Kirk Fair (*Managing Principal, Analysis Group Inc.*)  
Elisa Kearney (*Davies Ward Phillips & Vineberg LLP*)  
Christie Thompson (*Kelley Drye & Warren LLP*)  
Eric Dufour (*Miller Thomson LLP*)

Session III: **A New World Order? Implications of the Supreme Court’s Decision in *Tervita* for Mergers?** | Room 209

The Supreme Court of Canada’s decision in *Tervita* provided guidance on a number of important merger law topics, including the law of prevention of competition, the requirement that quantifiable anti-competitive effects be quantified and the scope of the efficiencies defence, and the treatment of non-notifiable mergers. What will be the most significant impact of the SCC’s ruling, and what does *Tervita* mean for the future of merger review in Canada?

Moderator: Dr. Neil Campbell (*McMillan LLP*)  
Panellists: Dr. Roger Ware (*Queens University*)  
Renée Duplantis, Ph.D. (*The Brattle Group*)  
Rob Van Wallegem, Q.C. (*Vice President & General Counsel, Tervita Corporation*)  
Nikiforos Iatrou (*WeirFoulds LLP*)

10:30 | 10:45 REFRESHMENT BREAK | Rideau Canal Atrium

10:45 | 11:00 Remarks from Deborah Garza, ABA Antitrust Section Committee Officer | Room 214

11:00 | 12:15 CLOSING PLENARY SESSION | Room 214

### **TIME TO REDESIGN THE *COMPETITION ACT*? EXPLORING POTENTIAL CHANGES ON THE ACT'S 30<sup>TH</sup> ANNIVERSARY**

What would you change at the Competition Bureau if you were Commissioner of Competition? What legislative changes would you make if you were Minister of Industry? What has worked well and what needs to go? Hear from leading private practitioners and former senior Bureau officials explaining in an interactive setting what has worked, what changes ought to be made to the Competition Bureau's current enforcement approach, and why.

Moderator: Chris Hersh (*Cassels Brock & Blackwell LLP*)  
Panellists: Paul Collins (*Stikeman Elliott LLP*)  
Neil Finkelstein (*McCarthy Tetrault LLP*)  
Margaret Sanderson (*Charles River Associates*)  
John Rook, Q.C. (*Bennett Jones LLP*)

12:00 | 12:15 CLOSING REMARKS | Room 214

**Susan Hutton**, Section Chair, Stikeman Elliott LLP

**Navin Joneja**, 2015 Fall Conference Chair, Blake, Cassels & Graydon LLP

12:15 | 14:00 CANADIAN WOMEN IN COMPETITION LAW (CWCL) NETWORKING LUNCH | Room 215  
**Sponsored by Deloitte**

### **COMPETITION LAW ACROSS BORDERS: OPPORTUNITIES AND CHALLENGES**

In the last few years, global investigations, merger remedies, enforcement and collaboration have become increasingly common in the practice of competition law in Canada and the United States. Deborah Garza (ABA Antitrust Section Committee Officer) and Susan Hutton (Chair of Canadian Bar Association Competition Law Section) will be joining us to discuss their respective experiences and perspectives on the practice of antitrust law in a global environment.



***SPEAKERS AND TOPICS SUBJECT TO CHANGE***