

WEDNESDAY, OCTOBER 16, 2019

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

THURSDAY, OCTOBER 17, 2019

8:30-8 :50 **REGISTRATION AND HOT BREAKFAST**

Sponsored by: 

8:50-9 :05 **WELCOME AND INTRODUCTION**

CBA Competition

Section Chair: **Huy Do, Fasken (Toronto, ON)**

Conference Chair: **Neil Campbell, McMillan LLP (Toronto, ON)**

9:05-10:30 **OPENING PLENARY: LESSONS FOR 2020 FROM THE YEAR IN REVIEW (1.5 hours of substantive law)**

The opening session will examine the key developments from the past year and will assess the trends and implications for future competition law enforcement in Canada. In addition to key cases and the Commissioner's enforcement priorities, the discussion will include: the implications of recent institutional developments at the Bureau such as the appointment of a Chief Digital Enforcement Officer; the Bureau's intelligence gathering and enforcement action regarding non-notifiable transactions; and the Bureau's use of examinations under oath in merger reviews.

Moderator: **Elisa Kearney, Davies Ward Phillips & Vineberg LLP (Toronto, ON)**

Speakers: **Adam Goodman, Dentons Canada LLP (Toronto, ON)**
Susan Hutton, Stikeman Elliott LLP (Ottawa, ON)
John Pecman, Fasken (Ottawa, ON)

10:30-10:45 **REFRESHMENT BREAK**

10:45-12:15 **CONCURRENT SESSIONS (1.5 hours of substantive law)**

SESSION I: VERTICAL, CONGLOMERATE, NATIONAL CHAMPION AND KILLER ACQUISITIONS: HAS MERGER REVIEW ABANDONED THE CHICAGO SCHOOL?

Non-traditional theories of harm appear to be on the rise as seen in AT&T/Time Warner, Qualcomm/NXP, the renewed debate over national champions in Europe and claims that the burden of proof should be shifted to the acquirer in potential “killer acquisitions” by incumbents. This session will consider how these issues are or may be dealt with by the Competition Bureau in the context of both domestic and multi-national transactions.

Moderator: **Oliver Borgers**, McCarthy Tétrault (*Toronto, ON*)

Speakers: **Elizabeth Bailey**, NERA Economic Consulting (*San Francisco, CA*)
Anita Banicevic, Davies Ward Phillips & Vineberg LLP (*Toronto, ON*)
Jessica Delbaum, Shearman & Sterling (*New York, NY*)
Frank Montag, Freshfields Bruckhaus Deringer (*Brussels, Belgium*)

SESSION II: PROSYS v. MICROSOFT – ANATOMY OF A CLASS ACTION TRIAL

After the Supreme Court of Canada’s seminal decision on certification in 2013, this proceeding moved into an extended discovery and modified trial process until it was settled in 2018. This case study will dissect how a competition law class action actually goes to trial, including the approaches taken by plaintiffs and defendants in respect of factual and expert evidence as well as the customized procedures adopted by the BC Supreme Court to manage this type of litigation.

Moderator: **Catherine Beagan Flood**, Blake, Cassels & Graydon LLP (*Toronto, ON*)

Speakers: **Geoffrey Cowper**, Fasken (*Vancouver, BC*)
Reidar Mogergerman, Camp Fiorante Matthews Mogergerman (*Vancouver, BC*)

SESSION III: A ROUNDTABLE WITH CORPORATE COUNSEL— ADVISING IN A WORLD OF DIGITIZATION, POPULISM, PRIVACY AND CONSUMERISM

This roundtable discussion will feature leading corporate counsel discussing the challenges of achieving compliance and approaches for advising on competitor interactions as well as pricing, marketing, and distribution practices. The panel will consider the changes arising from the digital economy including online platforms and the collection and use of data in the context of populist political pressures for increased consumer protection and privacy.

Speakers: **Andrea Cotroneo**, Capital One Canada (*Toronto, ON*)
Kelly Kwan, Uber Canada (*Toronto, ON*)

12:15-13:45 LUNCHEON

13:15-13:45 **INTRODUCTORY REMARKS**
FIRESIDE CHAT WITH THE CHIEF JUSTICE OF THE COMPETITION TRIBUNAL (*0.5 hours of substantive law*)

Moderator: **Antonio Di Domenico**, Fasken (*Toronto, ON*)

Speaker: **The Honourable Chief Justice Paul Crampton**, Federal Court (*Ottawa, ON*)

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13:45-15:15 **PLENARY: IS THE BUREAU'S ENFORCEMENT APPROACH TO ABUSE OF DOMINANCE TOO LENIENT, TOO AGGRESSIVE OR OPTIMAL?** (*1.5 hours of substantive law*)

This session will explore the scope of abuse of dominance in Canada, including the Competition Bureau's updated guidelines, recent changes to its enforcement approach, including plans to seek injunctive relief where warranted, how Canadian enforcement compares to that of the US and EU and current economic thinking about unilateral conduct.

Moderator: **Chris Hersh**, Cassels Brock & Blackwell LLP (*Toronto, ON*)

Speakers: **Chris Cook**, Cleary Gottlieb Steen & Hamilton LLP (*Brussels, Belgium*)
Jonathan Gleklen, Arnold & Porter Kaye Scholer LLP (*Washington, DC*)
Michelle Lally, Osler, Hoskin & Harcourt LLP (*Toronto, ON*)
John Syme, John Syme Law (*Ottawa, ON*)

15:15-15:30 **REFRESHMENT BREAK**

15:30-17:00 **CONCURRENT SESSIONS** (*1.5 hours of substantive law*)

SESSION IV: RESOLVING CARTEL MATTERS WITHOUT GUILTY PLEAS

This session will examine the recent return to use of prohibition orders under the *Competition Act* in the *Genivar* and *Dessau* cases, as well as the possible scope for employing deferred prosecution agreements in regimes with leniency programs, as has occasionally occurred in the United States.

Moderator: **Rob Kwinter**, Blake, Cassels and Graydon LLP (*Toronto, ON*)

Speakers: **Scott Hammond**, Gibson, Dunn & Crutcher LLP (*Washington, DC*)
Professor Jennifer Quaid, University of Ottawa Faculty of Law (*Ottawa, ON*)
John Rook, Bennett Jones LLP (*Toronto, ON*)
Dominic Thérien, McCarthy Tétrault (*Montréal, QC*)

SESSION V: COMPETITION LAW ENFORCEMENT IN AID OF A DIGITAL CHARTER

The Canadian government has introduced a broad-based Digital Charter and enlisted the Competition Bureau as one of the key institutional contributors in respect of data, privacy and innovation competition issues. This session will explore what role competition law and enforcement may play in addressing concerns arising from profound changes in how consumers and suppliers transact and communicate, taking cues from European developments and the recent FTC hearings.

Moderator: **Subrata Bhattacharjee**, Borden Ladner Gervais LLP (*Toronto, ON*)

Speakers: **Bill Hearn**, Fogler, Rubinoff LLP (*Toronto, ON*)
Alex Okuliar, Orrick Herrington & Sutcliffe LLP (*Washington, DC*)
Dr. Christian Steinle, Gleiss Lutz (*Stuttgart, Germany*)

SESSION VI: THE FUTURE OF COMPETITION CLASS ACTIONS AFTER *GODFREY*

The Supreme Court of Canada's *Godfrey* decisions will be the latest word on class certification, umbrella purchasers, competition torts and limitation periods. The panelists will discuss what's new, what's the same, what questions still remain, the implications for future class action litigation and how Canada's regime will interface with the US and UK/EU on international cases.

Moderator: **The Honourable Marshall Rothstein**, Osler, Hoskin & Harcourt LLP

Speakers: **Kim Dietzel**, Herbert Smith Freehills LLP (*London, England*)
John Roberti, Allen & Overy LLP (*Washington DC*)
Linda Visser, Siskinds Law Firm (*London, ON*)
Kevin Wright, DLA Piper (*Vancouver, BC*)

17:00-18:30 NETWORKING RECEPTION

Sponsored by:  CRA Charles River Associates

18:30-22:00 DINNER WITH KEYNOTE SPEAKER (0.75 hours of substantive law)

Sponsored by:  Deloitte.

22:00 -24:00 CALL TO THE BAR NETWORKING EVENT



FRIDAY, OCTOBER 18, 2019

8:00–8:45 REGISTRATION AND HOT BREAKFAST

8:45-10:00 CONCURRENT SESSIONS *(1.25 hours of substantive law)*

SESSION VII: THE GROWING ROLE OF DATA PRIVACY AND CRITICAL INFRASTRUCTURE CONCERNS IN NATIONAL SECURITY REVIEWS

Concerns relating to the protection of personal data have arisen in the context of national security reviews of acquisitions in the US and financial sector regulation in Canada. In addition, national security concerns have been invoked by the US and Canadian governments in relation to critical infrastructure such as telecommunication networks. This panel will explore how the expanding scope of potential national security concerns may constrain investments by state-owned and other enterprises.

Moderator: **Kaeleigh Kuzma**, Osler, Hoskin & Harcourt LLP (*Toronto, ON*)

Speakers: **Kevin Ackhurst**, Norton Rose Fulbright Canada LLP (*Toronto, ON*)
Milos Barutciski, Borden Ladner Gervais LLP (*Toronto, ON*)
Philip Harwood, Longview Communications and Public Affairs (*Toronto, ON*)
Mario Mancuso, Kirkland & Ellis LLP (*Washington, DC*)

SESSION VIII: SCHOLARS PANEL: PERSONALIZED PRICING — AN ANTITRUST ISSUE?

The dramatic growth in digital platforms and the corresponding increase in the use of artificial intelligence enables price discrimination on an unprecedented scale. This session will explore whether and how competition law can address this type of pricing activity.

Moderator: **Markus von Wartburg**, Analysis Group (*Montreal, PQ*)

Speakers: **Professor Ramsi Woodcock**, University of Kentucky College of Law (*Lexington, KY*)
Antonio Gomes, OECD (*Paris, France*)
Terrell McSweeney, Covington & Burling LLP (*Washington, DC*)
David Rosner, Goodmans LLP (*Toronto, ON*)

SESSION IX: WHEN DOES AGGRESSIVE MARKETING CROSS THE LINE?

This panel will examine the boundaries between aggressive and unfair comparative advertising as well as the application of deceptive marketing practices and consumer protection laws to direct selling activities.

Moderator: **Mona Shah**, Kellogg Canada (*Mississauga, ON*)

Speakers: **Catherine Bate**, Advertising Standards Council (*Toronto, ON*)
Janine MacNeil, McMillan LLP (*Toronto, ON*)
John Villafranco, Kelley Drye & Warren LLP (*Washington, DC*)

10:00–10:15 REFRESHMENT BREAK

10:15–12:00 CLOSING PLENARY: CANADA WANTS COMPETITION! (1.5 hours of substantive law)

Four “policy entrepreneurs” will pitch their proposals for the most important improvements that are needed to ensure that Canada’s cartel, merger and unilateral conduct laws and enforcement are effective for the 2020s. A distinguished judging panel will weigh in with their assessments and recommendations, and the audience will vote for the “Canadian competition law priority for 2020”.

Host: **Dany Assaf**, Torys LLP (*Toronto, ON*)

Contestants: **To be confirmed**

Judges: **To be confirmed**

12:00-12:15 CLOSING REMARKS

12:15-14:00 WOMEN IN COMPETITION LAW LUNCH (1 hour of substantive law)

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