ICLG

The International Comparative Legal Guide to:

Cartels & Leniency 2015

8th Edition

A practical cross-border insight into cartels and leniency

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Contributing Editors
Simon Holmes and Philipp Girardet, King & Wood Mallesons LLP

Head of Business Development
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Sales Support Manager
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Editor
Gemma Bridge

Senior Editor
Suzie Levy

Group Consulting Editor
Alan Falach

Group Publisher
Richard Firth

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
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EDITORIAL

Welcome to the eighth edition of *The International Comparative Legal Guide to: Cartels & Leniency*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of cartels and leniency.

It is divided into two main sections:

Three general chapters. These chapters are designed to provide readers with a comprehensive overview of key cartels and leniency issues, particularly from the perspective of a European transaction.

Country question and answer chapters. These provide a broad overview of common issues in cartels and leniency laws and regulations in 34 jurisdictions.

All chapters are written by leading competition lawyers and industry specialists and we are extremely grateful for their excellent contributions.

We are also pleased to once again include a Wall Chart, which contains a summary table of key features relating to cartels and leniency laws and regulations in each of the 34 jurisdictions.

Special thanks are reserved for the contributing editors Simon Holmes and Philipp Girardet of King & Wood Mallesons LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Canada

W. Michael G. Osborne

Michael Binetti

Affleck Greene McMurtry LLP

1 The Legislative Framework of the Cartel Prohibition

1.1 What is the legal basis and general nature of the cartel prohibition, e.g. is it civil and/or criminal?

Hard-core cartels involving price-fixing, market allocation, output restriction and bid-rigging agreements between competitors are *per se* indictable criminal offences in Canada. Other agreements between competitors that lessen or prevent competition substantially can be annulled by a special court, the Competition Tribunal.

1.2 What are the specific substantive provisions for the cartel prohibition?

The conspiracy provision (s. 45) makes it an offence for competitors, or potential competitors, to agree: to fix, maintain or control prices for the supply of a product; to allocate customers, territories or markets; or to fix, maintain, control, prevent or lessen the production or supply of a product.

Agreements that are (i) ancillary to a broader agreement that does not itself offend the main part of section 45, and (ii) are directly related to, and reasonably necessary to, giving effect to that broader agreement, are exempt.

Penalties are severe: the offence is an indictable offence punishable by up to 14 years in jail, a maximum fine of $25 million, or both.

Bid-rigging is dealt with in a separate provision (s. 47) and carries equally stiff penalties: up to 14 years in jail or a fine at the discretion of the court.

There is also a special offence created for corporations that implement in Canada directives from foreign parents that give effect to foreign conspiracies (s. 46).

Private parties that suffer losses as a result of cartels can sue for recovery (s. 36).

Other agreements between competitors can be prohibited by the Tribunal if they lessen or prevent competition substantially (s. 90.1). The Act mandates a competitive effects analysis, including factors such as foreign competition, barriers to entry, removal of a renegade competitor and change and innovation. Efficiency gains that outweigh any competitive harm provide a complete defence. No penalties or damages can be imposed on parties to such anti-competitive agreements; the only remedy is an injunction.

Price maintenance (for example, the imposition of minimum resale prices by a supplier) is presumptively lawful in Canada, but the Tribunal can issue an injunction if price maintenance is having an adverse effect on competition in a particular case (s. 76). No other penalties or damages are available.

Both individuals and corporations can be held criminally responsible for cartel offences. Canada has codified the rules for attributing criminal liability to corporations. The *Criminal Code* provides that a corporation is criminally responsible where one of its "senior officers" (essentially, a manager) is a party to the offence.

1.3 Who enforces the cartel prohibition?

Canada's legal system divides responsibility for investigating, prosecuting and adjudicating in criminal cases.

Led by the Commissioner of Competition, the Competition Bureau is responsible for investigating suspected cartel activity and other matters under the *Competition Act*.

The Director of Public Prosecutions (DPP) is responsible for prosecuting criminal offences, through lawyers with the Public Prosecution Service of Canada (PPSC).

Criminal prosecutions can be brought before the superior courts in each province, as well as the Federal Court.

The Commissioner has the authority to bring applications under the civil provisions of the *Competition Act*, including the anti-competitive agreements provisions. The Competition Tribunal has exclusive jurisdiction to hear cases under this provision.

1.4 What are the basic procedural steps between the opening of an investigation and the imposition of sanctions?

The Commissioner can commence a formal inquiry under the *Competition Act* if (among other things) he has reason to believe that a person has violated the Act.

The Commissioner uses both informal and formal investigative tools. Formal investigative powers, including search warrants, production orders, orders for the examination of witnesses under oath and wiretaps, require judicial authorisation.

Once an inquiry under the *Competition Act*'s criminal provisions is complete, the Commissioner refers the matter to the PPSC. The PPSC has the discretion to determine whether or not to prosecute. The PPSC applies a two-fold test: (1) is there a reasonable prospect of conviction; and (2) does the public interest require a prosecution to be pursued?

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Once charges are laid, a preliminary inquiry will be held before a provincial court judge to determine whether the case should proceed to a full trial. If the accused is committed for trial, the matter then proceeds to trial before a superior court judge. The PPSC has the ability to skip the preliminary inquiry by preferring a direct indictment.

At trial, the prosecution must prove the charges beyond a reasonable doubt. If the accused is found guilty, a sentencing hearing will then be held.

1.5 Are there any sector-specific offences or exemptions?

Yes.

The *Competition Act* contains two sector-specific offences:

(1) Conspiracies relating to professional sport: it is an offence to conspire to limit unreasonably the opportunities for a person to participate as a player or to negotiate with and play for a team or club.

(2) Conspiracies between federal financial institutions: it is an offence for federal financial institutions (including banks) to conspire on things, including interest rates on deposits or loans.

The *Competition Act* contains three sector-specific exemptions:

(1) Collective bargaining between trade unions and employers.

(2) Underwriting of securities.

(3) Agreements relating to amateur sport.

1.6 Is cartel conduct outside Canada covered by the prohibition?

Section 46 of the *Competition Act* makes it an absolute liability offence for a corporation to implement a foreign conspiracy in Canada.

Neither section 45 (conspiracy) nor section 47 (bid-rigging) expressly extend Canadian jurisdiction to foreign conspiracies. The Competition Bureau and PPSC have consistently taken the position that Canada can take jurisdiction over foreign conspiracies that have effects in Canada. Courts have yet to rule on whether this assumption of jurisdiction is valid.

2 Investigative Powers

2.1 Summary of general investigatory powers.

Table of General Investigatory Powers

Investigatory power	Civil / administrative	Criminal
Order the production of specific documents or information	Yes*	Yes*
Carry out compulsory interviews with individuals	Yes*	Yes*
Carry out an unannounced search of business premises	Yes*	Yes*
Carry out an unannounced search of residential premises	Yes*	Yes*
■ Right to 'image' computer hard drives using forensic IT tools	Yes*	Yes*
■ Right to retain original documents	Yes*	Yes*
■ Right to require an explanation of documents or information supplied	No	No
■ Right to secure premises overnight (e.g. by seal)	Yes*	Yes*

Please Note: * indicates that the investigatory measure requires the authorisation by a court or another body independent of the competition authority.

2.2 Please list specific or unusual features of the investigatory powers referred to in the summary table.

All of the investigative powers referred to in the table require prior judicial authorisation.

The Competition Bureau has no right to require an explanation of documents or information supplied during a dawn raid. Explanations of documents or information can be obtained through the use of orders to examine witnesses or to require written returns (essentially interrogatories) under section 11 of the *Competition Act*.

Warrantless searches are permitted only in exigent circumstances that make it impracticable to obtain a search warrant.

The "plain sight" doctrine allows Bureau officers to seize documents during a search that are not described in a search warrant but contain evidence of other crimes and are in plain sight. The plain sight doctrine also applies to searches of computer systems.

2.3 Are there general surveillance powers (e.g. bugging)?

Yes, sections 183 and 184.2 of the *Criminal Code of Canada* permit the Competition Bureau to obtain a warrant from the court to intercept private communications using wiretaps.

2.4 Are there any other significant powers of investigation?

Canada can seek investigative assistance from 34 other countries under Mutual Legal Assistance Treaties (MLATs), including the United States and the United Kingdom.

2.5 Who will carry out searches of business and/or residential premises and will they wait for legal advisors to arrive?

Competition Bureau officers carry out the search, typically during business hours (although a search warrant can be executed any time between 6:00am and 9:00pm). In special circumstances, police officers may assist.

While the search team is under no obligation to wait until legal counsel arrive before they commence the search, they will typically wait for a reasonable period of time if asked. The search team may take immediate steps to secure the premises and to ensure that no records subject to the search are concealed or destroyed in the meantime.

2.6 Is in-house legal advice protected by the rules of privilege?

Yes, communications with in-house counsel containing legal advice or for the purpose of obtaining legal advice are subject to solicitor-client privilege.

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2.7 Please list other material limitations of the investigatory powers to safeguard the rights of defence of companies and/or individuals under investigation.

Canadian law provides for a number of limitations that safeguard the rights of defence of companies and individuals under investigation:

Judicial authorisation: to obtain a search warrant, the Commissioner must satisfy a judge that there are reasonable grounds to believe that someone has committed an offence under the *Competition Act*. The test for obtaining orders for the production of documents, examinations under oath, and written returns is less stringent, but courts require the Commissioner to explain the basis for believing that an offence has been committed.

Solicitor-client privilege: the *Competition Act* contains procedures for dealing with records over which privilege is claimed. Typically an agreement is reached between the Bureau and counsel on claims of privilege. If no agreement is reached, a judge will make the determination.

Privilege against self-incrimination: section 11 of the *Canadian Charter of Rights and Freedoms* and s. 5 of the *Canada Evidence Act* protect individuals from being forced to incriminate themselves. Witnesses cannot refuse to answer a self-incriminatory question, but their answer cannot be used against them in any criminal proceedings.

Inspection and copying of seized documents: parties whose documents are seized are entitled to inspect them. In practice, copies are typically made, either during the search or afterwards.

Confidentiality: the *Competition Act* requires the Bureau to conduct inquiries in private, and to keep the information it receives confidential. The Bureau may disclose information for the purpose of enforcing the Act, however.

Updates from the Commissioner: targets of an inquiry are entitled to receive an update on the progress of the inquiry upon request.

2.8 Are there sanctions for the obstruction of investigations? If so, have these ever been used? Has the authorities' approach to this changed, e.g. become stricter, recently?

The *Competition Act* makes it a criminal offence to obstruct investigations. Obstruction is punishable by up to 10 years in jail, a fine at the discretion of the court, or both. It is also an offence to fail to produce documents in response to a production order, to fail to appear in response an order for oral examination or to fail to answer questions in an order for written returns.

The Competition Bureau warns that it takes obstruction seriously, and has laid obstruction charges in the past.

3 Sanctions on Companies and Individuals

3.1 What are the sanctions for companies?

Companies found guilty of conspiracy (s. 45) can be fined up to C$25 million for each count. Fines for bid-rigging (s. 47) and implementing foreign conspiracies (s. 46) are at the discretion of the court. The highest fine imposed to date for bid-rigging is C$30 million.

Prohibition Orders prohibiting the continuation or repetition of the offence can also be imposed on companies.

Recovery of damages through private litigation is also possible, through a statutory cause of action found in the *Competition Act*, as well as economic torts (principally civil conspiracy and unlawful interference with economic relations). In late 2013, the Supreme Court of Canada released a trilogy of cases that confirmed the right of indirect purchasers to claim for antitrust damage.

Companies may also be subject to debarment from bidding on government contracts. Companies convicted of conspiracy offences under the *Competition Act* are ineligible to do business with the federal government.

3.2 What are the sanctions for individuals?

Individuals convicted of conspiracy or bid-rigging can be sentenced to jail for up to 14 years. Individuals can be fined in addition to, or instead of, jail.

3.3 Can fines be reduced on the basis of 'financial hardship' or 'inability to pay' grounds? If so, by how much?

Claims of financial hardship or inability to pay will be factors that will be considered by the court in determining the amount of the fine. There are no express statutory provisions providing for reductions of fine amounts.

3.4 What are the applicable limitation periods?

There are no limitation periods for criminal prosecution of cartel offences under the *Competition Act*.

A two-year limitation period applies to actions to recover damages under the *Competition Act*'s statutory cause of action.

3.5 Can a company pay the legal costs and/or financial penalties imposed on a former or current employee?

Corporations can indemnify their employees for legal costs and fines only in limited circumstances. Corporate statutes typically provide that a corporation can only indemnify an employee who has been convicted of an offence if the employee was acting honestly and in good faith with a view to the best interests of the corporation, and had reasonable grounds for believing that the conduct was lawful. It is not uncommon, however, for corporations to pay the legal costs of employees for whom independent counsel is retained.

3.6 Can an implicated employee be held liable by his/her employer for the legal costs and/or financial penalties imposed on the employer?

The defence of *ex turpi causa* will likely block most claims by companies that are convicted of a conspiracy offence against their employees who were responsible for the wrongdoing.

4 Leniency for Companies

4.1 Is there a leniency programme for companies? If so, please provide brief details.

There are two programmes under which a cooperating individual or company may obtain protection: an immunity programme; and a leniency programme. The leniency programme is for those individuals or companies that do not qualify for full immunity.

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Immunity programme: the immunity programme offers full immunity from criminal prosecution, to the first individual or company to admit involvement in criminal activity and agree to cooperate with the Bureau's investigation and subsequent prosecutions. To qualify for immunity, the party must terminate or have terminated its participation in the criminal activity and must not have coerced the participation of other parties. Where the party seeking immunity is the only participant in the criminal activity, immunity is not available.

In order to secure immunity, an applicant must request an immunity "marker" from the Bureau. There is only one immunity marker per offence under the *Competition Act*. The immunity applicant must thereafter, usually within 30 days, provide a detailed description of the criminal activity – or "proffer". Sufficient information must be disclosed that would allow the Bureau to conclude that the applicant qualifies for immunity otherwise a marker may be cancelled. The proffer is usually made orally and on a hypothetical basis; it may include information on documents and records that are available to support the allegations made and evidence or testimony that potential witnesses can give. In some instances, the Bureau may request an interview with individuals or production of some documentary evidence.

While the Bureau is tasked with determining whether or not an applicant *qualifies* for immunity based on the facts, it is another organ of government – the Public Prosecution Service of Canada ("PPSC") – that actually *grants* immunity. A recommendation for immunity from the Bureau to the PPSC includes all relevant information provided during the proffer process. A party granted immunity must also disclose any additional criminal activities under the *Competition Act* known to it or in which it has participated. Full and on-going cooperation is required, in the form of production of documentary evidence, securing the cooperation of current and former officers, directors, employees and agents and facilitating their attendance at interviews with the Bureau officers and the provision of testimony in any subsequent judicial proceedings.

Leniency programme: once a party has claimed an immunity marker, other parties that are willing to cooperate may receive leniency. The Bureau's Leniency Bulletin clarifies the considerations relevant to a recommendation for leniency and the leniency discounts that will be recommended. Leniency recommendations are not binding on the PPSC or on the court. Successful leniency applicants will receive reductions in fines and sentences of up to 50 per cent. Immunity may also be offered to the current directors, officers and employees of "second in" leniency applicants.

The first leniency applicant is eligible for a reduction of 50 per cent of the fine that would otherwise have been recommended, provided that the applicant meets the requirements of the leniency programme, including providing full, frank, timely and truthful cooperation. The second leniency applicant is eligible for a reduction of 30 per cent of the fine that would have otherwise been recommended by the Bureau to the PPSC. Subsequent leniency applicants may benefit from reductions to the fine that would have otherwise been recommended.

4.2 Is there a 'marker' system and, if so, what is required to obtain a marker?

Yes. In cartel cases, markers are obtained from the Senior Deputy Commissioner of Competition, Criminal Matters. The request for a marker is typically communicated by an applicant's lawyers, who outline a hypothetical situation and identify the criminal offence and the specific product involved. The Bureau will determine whether the party seeking immunity is "first in" (i.e., immunity is available) and advise whether a marker is available.

4.3 Can applications be made orally (to minimise any subsequent disclosure risks in the context of civil damages follow-on litigation)?

As discussed in question 4.1 above, proffers are usually made orally to minimise the risk that there will be subsequent disclosure in a civil case. However, in that full cooperation is required in order to obtain immunity (or leniency), an immunity applicant is usually required to provide *all* relevant documentary evidence to the Competition Bureau for use in its prosecution of the other parties. These documents are very likely subject to disclosure in civil follow-on litigation.

4.4 To what extent will a leniency application be treated confidentially and for how long?

While there are controls governing confidentiality, applicants must know that the information they provide will eventually be disclosed. Before that time, however, the *Competition Act* effectively draws under its protection nearly all information that is provided to or obtained by the Bureau in the course of executing its mandate. The Bureau has the discretion to communicate information in four circumstances:

- to a Canadian law enforcement agency;
- for the purposes of administration or enforcement of the Act;
- where the information has been made public; or
- when it has been authorised by the person who provided the information.

In practice, applications for immunity and leniency will be treated confidentially until criminal charges are laid against other cartel participants and disclosure of the case is made. Where the Competition Bureau seeks a search warrant, disclosure of an applicant's identity may be required. In those circumstances, the Bureau will attempt to prevent public disclosure of the information, such as seeking sealing orders from the court authorising the search warrant.

The Competition Bureau expects an immunity or leniency applicant to provide it with consent – or a "waiver" – to communicate with foreign competition enforcement agencies where the leniency applicant has made a similar application. Such waivers are to be provided immediately and are expected to cover both substantive and procedural information.

Just as the *Competition Act* prevents the Bureau from disclosing information, the Bureau's immunity and leniency programmes both prohibit applicants from disclosing the facts of their application for immunity or leniency without the Bureau's consent. If a private party launches a civil conspiracy proceeding, the Competition Bureau will only disclose evidence in response to a court order and will, as is the case with search warrants, attempt to protect the confidentiality of the information by seeking sealing orders.

4.5 At what point does the 'continuous cooperation' requirement cease to apply?

The continuous cooperation requirement ceases to apply at the conclusion of the Competition Bureau's investigation and the conclusion of criminal prosecutions and all appeals therefrom.

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4.6 Is there a 'leniency plus' or 'penalty plus' policy?

Applicants that are not first to disclose conduct to the Bureau may nevertheless qualify for immunity if they are the first to disclose information relating to another offence. This concept is known as "Immunity Plus". Immunity Plus encourages targets of on-going investigations to consider whether they may qualify for immunity for other offences, or the same offence in other markets. While the target will not receive immunity for the first offence, it will receive an additional discount on top of the usual leniency discount for that offence. This is the "Plus".

5 Whistle-blowing Procedures for Individuals

5.1 Are there procedures for individuals to report cartel conduct independently of their employer? If so, please specify.

Yes. The *Competition Act*'s whistleblowing provisions require the Competition Bureau to keep the identity of whistleblowers confidential, and prohibit reprisals against whistleblowers.

The Bureau's immunity programme is also available to whistleblowers who may have been involved in offences under the *Competition Act*.

6 Plea Bargaining Arrangements

6.1 Are there any early resolution, settlement or plea bargaining procedures (other than leniency)? Has the competition authorities' approach to settlements changed in recent years?

Plea bargaining is not formalised in Canada. Because of the division of responsibilities between the Competition Bureau as investigator and the DPP as prosecutor, negotiations toward a resolution are unlikely to be entertained before the Bureau's investigation is complete, except in the case of leniency applicants.

It is the PPSC that has the authority to negotiate and approve plea bargains. Discussions will typically involve the Competition Bureau however.

A settlement involves a guilty plea in court followed by a joint submission on sentencing. The court will review the proposed sentence and can reject it if it considers that it is not in the public interest and impose a different sentence.

The broad trend in Canada is toward higher fines and longer sentences for competition offences.

7 Appeal Process

7.1 What is the appeal process?

Both the offender and the DPP can appeal from the verdict of the superior court to the court of appeal for the province in which the trial was held, or to the Federal Court of Appeal if the trial was held before the Federal Court of Canada. The offender can appeal as of right from a conviction on questions of law and mixed fact and law, but needs leave to appeal on questions of fact or from the sentence. The DPP's appeal rights are more limited.

The decision of the court of appeal can be appealed to the Supreme Court of Canada. If there is a dissenting opinion in the court of appeal, the appeal is as of right. Otherwise leave is required. The Supreme Court only grants leave in cases that it considers raise issues of national importance.

Committal for trial following a preliminary inquiry is not appealable, but can be challenged by *certiorari* on very limited grounds relating to jurisdiction and fairness of the proceeding.

7.2 Does an appeal suspend a company's requirement to pay the fine?

There is no automatic suspension of the requirement to pay the fine. The appeal court can order the suspension of any obligation to pay fines, restitution, etc., pending the determination of the appeal.

7.3 Does the appeal process allow for the cross-examination of witnesses?

Generally, no. Witnesses are cross-examined at the preliminary inquiry and then again at trial. In exceptional circumstances, the appeal court may allow an appellant to tender fresh evidence as part of an appeal, where the evidence was not previously available. Where the appeal court allows fresh evidence, it may also allow cross-examination of witnesses.

8 Damages Actions

8.1 What are the procedures for civil damages actions for loss suffered as a result of cartel conduct? Is the position different (e.g. easier) for 'follow on' actions as opposed to 'stand alone' actions?

The *Competition Act* contains a statutory cause of action permitting anyone who has suffered a loss caused by criminal conduct under the Act, including price-fixing, to sue for damages.

Plaintiffs typically also plead various ancillary common law and equitable causes of action in bringing private actions under the *Competition Act*. Since these other causes of action are not available in the Federal Court, private actions are almost always commenced in provincial superior courts.

The *Competition Act* provides that proof of a criminal conviction can be used as proof of the offence in a subsequent private action. Thus follow on actions are easier.

8.2 Do your procedural rules allow for class-action or representative claims?

Private actions can be structured as class actions in any of Canada's 14 legal jurisdictions (10 provinces, three territories, and the Federal Court), although each jurisdiction has its own particular rules.

8.3 What are the applicable limitation periods?

Private actions under the *Competition Act* must be brought within two years of the later of when the conduct was engaged in or when criminal proceedings were finally disposed of.

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Ancillary causes of action, such as the torts of civil conspiracy and unlawful interference with economic relations, are subject to provincial statutes of limitations, which in most provinces are two years, subject to discoverability.

8.4 Does the law recognise a "passing on" defence in civil damages claims?

No. The Supreme Court of Canada has rejected the passing on defence. In 2013, that Court ruled that indirect purchasers, including consumers, have standing to assert claims for damages suffered as a result of price-fixing or other criminal anti-competitive conduct. The rejection of the passing-on defence does not prevent indirect purchasers from asserting that unlawful overcharges were passed on to them.

8.5 What are the cost rules for civil damages follow-on claims in cartel cases?

Canada has a "loser pays" legal system whereby a successful party in most cases is entitled to recover a portion of its legal costs from the unsuccessful party. The *Competition Act* also provides for recovery of investigation costs.

8.6 Have there been any successful follow-on or stand alone civil damages claims for cartel conduct? If there have not been many cases decided in court, have there been any substantial out of court settlements?

Settlements of price-fixing class actions now total over $200 million in Canada. To date, no price-fixing class action has gone to trial. A few claims by individual plaintiffs for damages under the *Competition Act* have gone to trial. Most have been unsuccessful due to the high burden of proof under pre-2010 conspiracy provisions.

9 Miscellaneous

9.1 Please provide brief details of significant recent or imminent statutory or other developments in the field of cartels, leniency and/or cartel damages claims.

Parliament enacted major changes to the *Competition Act* in 2009, including:

- The current dual track approach to conspiracy, involving a *per se* criminal offence of price-fixing, market allocation and production-fixing (section 45), and a civil remedy for other anti-competitive agreements (section 90.1). These provisions came into force in 2010.
- Price maintenance was decriminalised, but can be prohibited in particular cases if competition is adversely affected.

In 2013, the Competition Bureau obtained its first guilty verdict in a contested conspiracy trial in many years when three individuals were convicted of fixing retail gasoline (petrol) prices after a trial. As the conducted predated the new conspiracy provisions, the Crown had to prove that the accused conspired to lessen competition unduly, the conspiracy provision in effect before 2010.

In 2013, the Competition Bureau updated its Immunity and Leniency Frequently Asked Questions.

In 2013, the Competition Bureau granted 95 immunity markers and 24 leniency markers and imposed $46.5 million in fines resulting from cartel investigations. As of mid-September 2014, the Competition Bureau had granted 93 immunity and 26 leniency markers, respectively.

9.2 Please mention any other issues of particular interest in Canada not covered by the above.

In 2014, the Competition Bureau sought input on its draft update to its 2010 Corporate Compliance Programs Bulletin. The draft update provided that the Bureau would take into consideration the existence of a credible and effective compliance programme as a mitigating factor when making recommendations on sentencing. This consideration implements the requirement in the *Criminal Code* to take into account measures taken by a corporation to reduce the likelihood of it committing a subsequent offence. The existence of a compliance programme would also be taken into account in determining whether a matter should be pursued along a criminal or civil track (where both options are available) and in assessing the magnitude of Administrative Monetary Penalties in a reviewable matter.

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W. Michael G. Osborne

Affleck Greene McMurtry LLP
365 Bay Street, Suite 200
Toronto, Ontario, M5H 2V1
Canada

Tel: *+1 416 360 5919*
Fax: *+1 416 360 5960*
Email: *mosborne@agmlawyers.com*
URL: *www.agmlawyers.com*

Michael Osborne leads Affleck Greene McMurtry LLP's competition law team. He also practises commercial litigation, international arbitration, and anti-corruption law.
Michael regularly represents clients targeted by Competition Bureau cartel and other investigations, as well as defendants in class actions. He has also acted as trial and appellate counsel before all levels of court, the Competition Tribunal, and domestic and international arbitral tribunals.
Michael was called to the Bar in 1998, after completing his articles as a Law Clerk to the late Justice John Sopinka of the Supreme Court of Canada. He received his LL.B. from Dalhousie University in 1996, his M.A. from the University of Toronto in 1991, and his B.A. from the University of Saskatchewan in 1988.
Michael is an active member of several legal associations. He writes and speaks frequently on competition law and commercial litigation topics.

Michael Binetti

Affleck Greene McMurtry LLP
365 Bay Street, Suite 200
Toronto, Ontario, M5H 2V1
Canada

Tel: *+1 416 360 0777*
Fax: *+1 416 360 5960*
Email: *mbinetti@agmlawyers.com*
URL: *www.agmlawyers.com*

Michael Binetti is a litigator with a focus on competition law, commercial litigation and administrative law. A partner of Affleck Greene McMurtry LLP, he appears regularly in all levels of court in Ontario.
Michael represents clients who are targeted by the Competition Bureau and defends multinational corporations in Canadian class actions, often as part of larger, multijurisdictional class actions.
Michael was called to the Bar in Ontario in 2006 after articling with Affleck Greene McMurtry LLP. He graduated with a *Juris Doctor* from the French Common Law Section of the University of Ottawa, Canada. He obtained an Honours Bachelor of Arts from Glendon College of York University in Toronto and was a visiting student at the *Institut d'Études Politiques de Rennes* in France.
Michael is an active member of the Canadian Bar Association and the Advocates' Society and is proud to be part of Big Brothers and Big Sisters of Toronto.

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Affleck Greene McMurtry LLP is a highly respected competition law and commercial litigation boutique firm. AGM's competition law team is one of Canada's leading competition law practices. We defend businesses and individuals facing Competition Bureau inquiries and criminal and administrative prosecutions before the courts and the Competition Tribunal. We act for businesses involved in price-fixing class actions and other private litigation. We prepare merger notifications. We also help businesses comply with the *Competition Act* by providing practical advice.

AGM's commercial litigation practice extends to all aspects of commercial litigation and arbitration. We are accomplished litigators with extensive trial and appeal experience before courts, arbitrators, administrative tribunals and regulatory authorities. We have particular expertise in handling complex cases and legal emergencies such as injunction proceedings.

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GLG
Global Legal Group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk