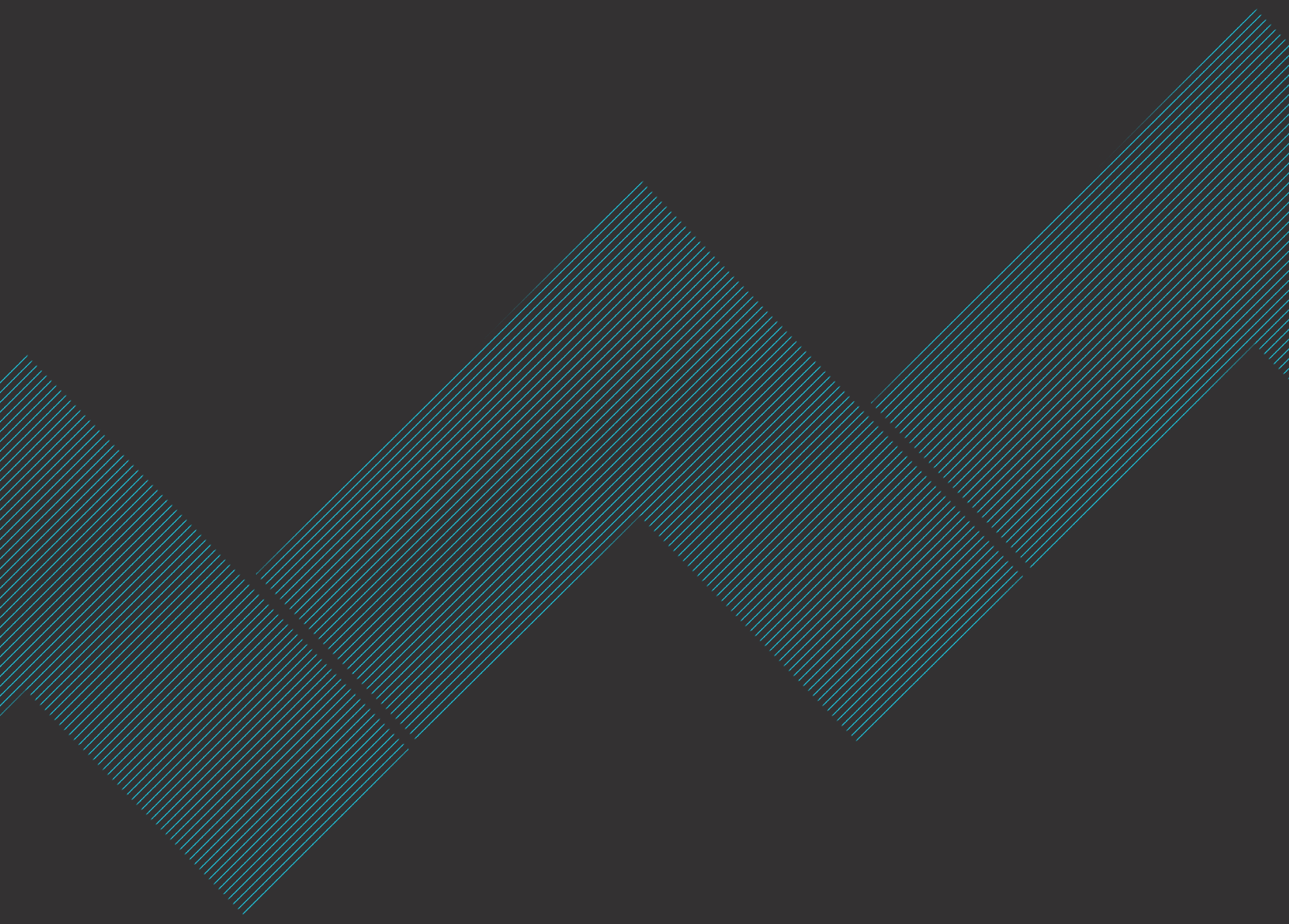
Two Decades of Competition Tribunal Decisions: Data-Driven Insights



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Data-Driven Decisions

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Introduction

In a time of sweeping legislative reform that has fundamentally reshaped Canada's competition law landscape, understanding how the Competition Tribunal has historically handled litigation is more important than ever. Over the past three years, Parliament has enacted three rounds of amendments to the *Competition Act*, culminating in the final provisions of Bill C-59 coming into force in June 2025. Together, these reforms expand the enforcement powers of both the Commissioner of Competition and private parties, setting the stage for a more active (and potentially more adversarial) regime.

For Canadian businesses navigating this new environment, litigation before the Competition Tribunal is no longer a remote possibility; it is a real and growing risk. For legal advisors, empirical insight into how the Tribunal has handled past cases can provide a critical advantage to navigating the risks and opportunities presented by this new regime.

This report delivers a data-driven analysis of every case filed with the Competition Tribunal from 2005 through 2024. Building on our 2020 report, we incorporate the last five years of Tribunal activity, including the period leading up to the most recent statutory changes.

Our analysis draws from our comprehensive dataset developed by coding nearly 70 variables across almost every Tribunal case since the late 1980s. While this report focuses on the last 20 years, our dataset allows us to identify trends in case type, outcomes, timing, and procedural history to generate actionable insights for clients and counsel alike.

As we enter a more litigation-heavy era in Canadian competition law, this report provides a valuable baseline for what enforcement has looked like before the current amendments take full effect — and offers clues as to how litigation might evolve under the new framework.

"As we enter a more litigation-heavy era in Canadian competition law, understanding how the Competition Tribunal has handled past cases can provide a critical advantage in navigating the risks and opportunities presented by this new regime. In this report we offer a comprehensive, data-driven analysis of every case filed from 2005 through 2024."

Changes to the *Competition Act*

Over the past three years, the *Competition Act* has undergone its most significant transformation in decades. Through three waves of legislative amendments — introduced through Bills C-19, C-56, and C-59 — the framework for competition law enforcement in Canada has been fundamentally reshaped. Together, these reforms have expanded the powers of both the Commissioner of Competition and private parties, signaling a more aggressive and proactive enforcement regime.

Below is a summary of the key changes, grouped by legislative package.

FIRST WAVE: EXPANDING LIABILITY AND PENALTIES

Bill C-19 (June 2022)

- **Wage-Fixing & No-Poach Agreements Criminalized** — Employers who agree to fix wages or refrain from hiring each other's employees now face criminal sanctions. Penalties are no longer capped at $25 million and are instead left to the discretion of the court.
- **Abuse of Dominance Expanded** — New factors such as network effects, innovation, and consumer privacy must now be considered in abuse of dominance cases. Private parties were also granted limited rights to bring such cases with leave of the Tribunal.
- **Drip Pricing Prohibited** — Drip pricing is now expressly codified as a deceptive marketing practice, and violators face significant monetary penalties.
- **Stronger Penalties for Deceptive Marketing** — Maximum fines increased to the greater of $10 million for first-time violations ($15 million for repeat offenders) or three times the benefit gained.
- **Merger Avoidance Provisions Introduced** — Anti-avoidance measures were added to prevent parties from structuring transactions to avoid pre-merger notification thresholds.

SECOND WAVE: LOWERING THE ENFORCEMENT THRESHOLD

Bill C-56 (December 2023)

- **New Powers for Market Studies** — The Commissioner and Minister of Industry can now initiate market or industry studies, supported by court orders issued without noticed to the other party, which compel the production of documents or testimony.
- **Eased Abuse of Dominance Test** —The Tribunal may now issue prohibition orders based on either anti-competitive intent or effect — previously, both were required. Monetary penalties still require proof of both.
- **Civil Agreements by Non-Competitors Now Reviewable** — The Tribunal can now intervene in agreements between non-competing firms if they substantially lessen competition.
- **Efficiencies Defence Repealed** — The much-debated efficiencies defence under sections 96 and 90.1 has been eliminated, aligning Canadian law more closely with international standards.
- **Greater Monetary Penalties** — Abuse of dominance penalties increased to the greater of $25 million ($35 million for repeat offenders), three times the benefit gained, or 3% of global revenues.

> "Through three waves of legislative amendments — introduced through Bills C-19, C-56, and C-59 — the framework for competition law enforcement in Canada has been fundamentally reshaped."

FINAL WAVE: ENABLING PRIVATE ENFORCEMENT

Bill C-59 (June 2024–2025)

This final package, phased in through June 2025, cements a shift toward broader, more adversarial enforcement, particularly through private rights of action.

- **Greenwashing Now Actionable** — Environmental claims, especially those tied to net-zero goals, must be substantiated using recognized methodologies. Misleading claims can be challenged as deceptive marketing.
- **Expanded Scope of Section 90.1** — Agreements that have already lessened competition can now be challenged, not just those that currently, or are likely to, do so. Penalties include significant administrative monetary penalties (AMPs) and divestiture orders.
- **Refusal to Supply Diagnostic or Repair Tools Prohibited** — "Right to repair" provisions now allow claims where businesses withhold diagnostic software, technical documentation, or parts, even if only part of the business is affected.
- **Reprisal Actions Banned** — Acts taken to punish individuals for cooperating with the Commissioner are now subject to prohibition orders and fines (up to $750,000 for individuals and $10 million for corporations).
- **Stricter Merger Review and Enforcement**
  - A reverse onus applies for mergers that exceed market concentration thresholds.
  - Remedies must fully restore pre-merger competition.
  - The Commissioner can challenge unnotified mergers up to three years after closing.
- **Private Rights of Action Significantly Expanded (Coming into Force June 2025)**
  - Private parties may now challenge deceptive marketing and anti-competitive agreements.
  - The Tribunal can grant damages and restitution orders.
  - The test for leave has been lowered: only a partial effect on an applicant's business is now sufficient.
  - The Tribunal may grant leave where it serves "the public interest" — a standard left open to judicial development.

> "Both the Commissioner and private parties now have expanded enforcement powers, opening the door to a more litigation-driven enforcement approach to competition law."

WHAT THIS MEANS FOR BUSINESSES

The cumulative effect of these amendments is that both the Commissioner and private parties now have expanded enforcement powers, opening the door to a more litigation-driven enforcement approach to competition law. With the new private rights of action provisions in effect as of June 2025, that door is set to swing even wider. These changes lay the groundwork for a potential class action-like system that allows a single applicant to pursue claims in the public interest in an attempt to receive damages for a broader group. While the Tribunal lacks a formal class action process, the practical outcome of this system may nonetheless be similar to that of a class proceeding. This may ultimately pave the way for increased and novel litigation.

Our Methodology

Our analysis is grounded in a comprehensive review of every case filed with the Competition Tribunal between 2005 and 2024. We chose this 20-year period to ensure both the recency and statistical significance of our findings. This allows us to draw meaningful conclusions while capturing the full arc of modern Tribunal practice just before the most recent legislative reforms take effect. Earlier cases remain coded in our full dataset and can be referenced as needed but were excluded from this report for clarity and consistency.

A COMPLETE PICTURE OF TRIBUNAL ACTIVITY

The Competition Tribunal is one of the most accessible adjudicative bodies in Canada for empirical analysis. It publishes not only formal decisions, but also procedural documents and filings for every case. That transparency allowed us to build a robust and near-complete dataset of the Tribunal's work.

We reviewed every case filed with the Tribunal and coded over 70 variables for each, including variables relating to:

- Type of proceeding
- Outcome
- Remedies awarded (e.g., AMPs, injunctions, restitution)
- Time to resolution

We excluded only two narrow categories:

- Cases that involved variations or rescissions of existing consent agreements; and
- Appeals or rehearings, as our focus is on first-instance decisions by the Tribunal.

LIMITATIONS OF THE DATASET

While our dataset captures all Tribunal decisions, it does not reflect all enforcement activity under the *Competition Act*. Notably:

- **Informal Resolutions and Investigations** — Cases resolved privately by the Competition Bureau without Tribunal proceedings are not included.
- **Criminal Matters** — These are prosecuted separately by the Public Prosecution Service of Canada and fall outside the Tribunal's jurisdiction.
- **Alternate Forums** — Some civil matters can be pursued before superior courts or the Federal Court. In certain cases, the Commissioner has opted to proceed outside the Tribunal.

Private-party access to the Tribunal was introduced in 2002. By starting in 2005, we ensured our analysis reflects the full modern procedural regime, while allowing for a 20-year data set large enough to support statistical significance.

Volume of Cases

From 2005 to 2024, the Competition Tribunal received 195 filings in our dataset, including both contested applications and consent agreements, amounting to just under 10 cases per year, on average. While modest in volume, these cases often involve high-stakes commercial issues, and the Tribunal's decisions frequently shape competition law enforcement across Canada.

WHO BRINGS CASES? THE COMMISSIONER, PRIMARILY

Of the 195 filings, 172 cases (88%) were brought by the Commissioner of Competition and 23 cases (12%) were initiated by private parties.

This breakdown confirms that the Tribunal remains primarily a forum for Commissioner-led enforcement. Despite legislative efforts to expand private rights of action over the past two decades, private access has remained rare — a trend we explore in more detail later in this report.

AMENDMENTS HAVEN'T YET SHIFTED THE NUMBERS

Interestingly, the overall volume of filings has changed very little since our last analysis in 2020. That suggests that early rounds of legislative reform (Bills C-19 and C-56) have not yet translated into an increase in Tribunal litigation. However, this may change with the full implementation of Bill C-59 in mid-2025, particularly as private enforcement becomes more viable.

ENFORCEMENT ACTIVITY CLUSTERS OVER TIME

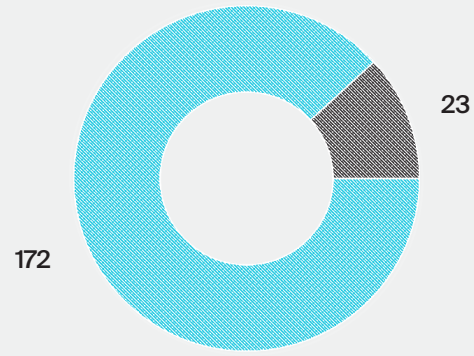
While there is no consistent upward or downward trend in case volume, we observed notable periods of activity:

- **2010–2014:** Fewer than 8 new cases filed each year.
- **2015–2018:** At least 11 cases filed annually.
- **2020–2024:** A range of 7 to 10 filed each year.

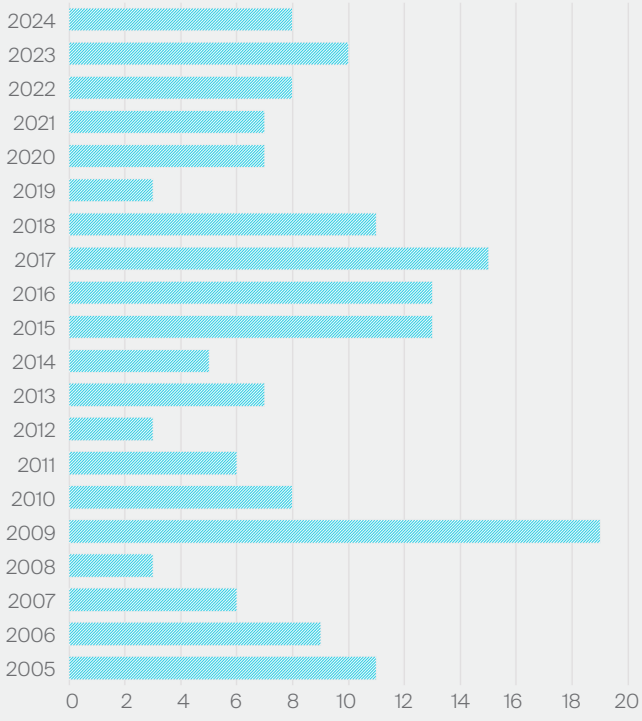
LOOKING AHEAD

With the 2025 amendments expanding access for private parties and enhancing the Commissioner's enforcement toolkit, the historical pattern of modest, Commissioner-led enforcement may not hold. Businesses facing merger scrutiny, marketing compliance issues, or competitor complaints should expect a more active litigation environment ahead.

 # OF CASES STARTED BY THE COMMISSIONER VS # OF CASES STARTED BY PRIVATE PARTIES (2005–2024)



 # OF CASES STARTED BY THE COMMISSIONER BY YEAR (2005–2024)



Types of Cases

To better understand the Tribunal's docket, we categorized each case filed from 2005 to 2024 into one of four key types:

- Merger Cases
- Deceptive Marketing Practices Cases
- Horizontal Agreement Cases (under section 90.1)
- Unilateral Reviewable Conduct Cases (including abuse of dominance, refusal to deal, exclusive dealing, tied selling, and resale price maintenance)

MERGERS AND MARKETING DOMINATE THE DOCKET

Of the 172 cases started by the Commissioner during that period:

- 52% of cases involved merger-related concerns.
- 38% of cases involved deceptive marketing practices.
- 6% of cases involved unilateral reviewable conduct.
- 5% of cases involved horizontal agreements.

This distribution is striking: nearly 80% of the Tribunal's work involves either mergers or deceptive marketing. This reinforces that Tribunal litigation is most likely to arise from high-profile mergers or visible marketing practices, not from behind-the-scenes conduct like abuse of dominance or horizontal collaborations.

DECEPTIVE MARKETING CASES: VOLATILE BUT SIGNIFICANT

Deceptive marketing cases vary widely from year to year. For instance:

- In 2009, the Commissioner filed 13 such cases.
- In 2012, the Commissioner filed 0.
- Over the last five years, the Commissioner's filings ranged from 0 to 4.

Despite this volatility, deceptive marketing has been a major enforcement priority, likely because these cases are procedurally faster, easier to prove, and often resolved by consent.

"Tribunal litigation is most likely to arise from high-profile mergers or visible marketing practices (accounting for nearly 80% of the Tribunal's work) and not from behind-the-scenes conduct like abuse of dominance or horizontal collaborations."

MERGERS CASES: A STEADY STREAM

Merger enforcement is more consistent. The Commissioner has filed at least one merger case every year, with a maximum of eight in a single year. Since 2020 (excluding the anomalous pandemic year), filings have ranged from four to seven annually. This suggests that merger review remains a core and stable component of the Bureau's litigation strategy.

UNILATERAL AND HORIZONTAL CASES: SMALL NUMBERS, HIGH STAKES

With only a handful of cases in each category, unilateral and horizontal conduct account for just over 10% of the Tribunal's docket combined. But their impact shouldn't be underestimated. When these cases do arise, they tend to be complex, high-profile, and precedent-setting. Notably:

- 6 of the 8 horizontal agreement cases related to a single event (the eBooks market settlement).
- Unilateral conduct cases are rare, but disproportionately likely to proceed to contested hearings where, as we'll see, the Commissioner's track record is weakest.

VARIATION AND VOLATILITY

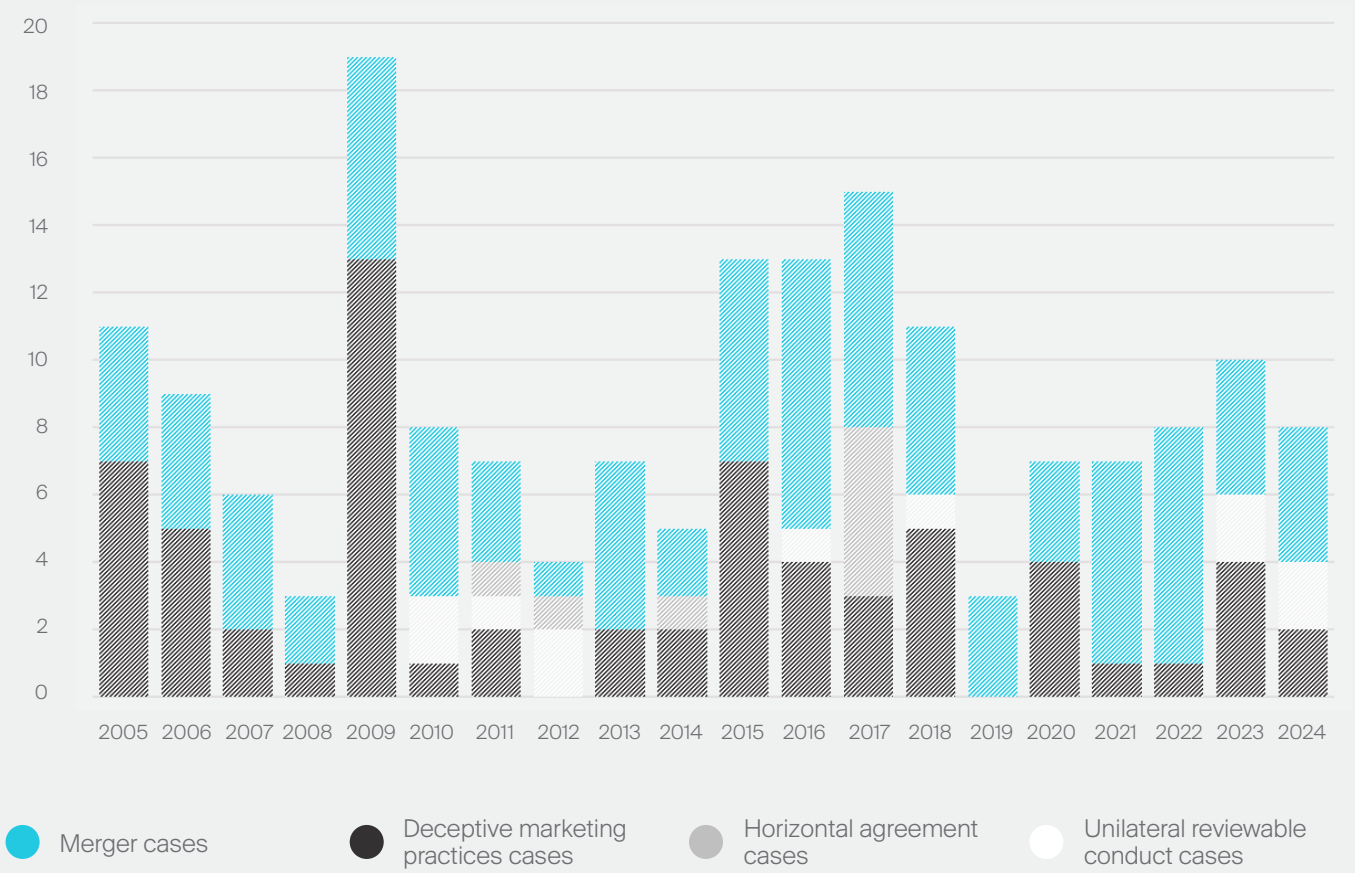
We also analyzed variation across years:

- **Deceptive Marketing Cases** — The Commissioner brought an average of 3.3 cases per year, with a standard deviation of 3.1 — reflecting volatility.
- **Merger Cases** — The Commissioner brought an average of 4.4 per year, with a standard deviation of 1.9 — indicating greater consistency.

This suggests that marketing enforcement tends to surge or pause depending on Bureau priorities, while merger enforcement hums along more predictably.

> "Marketing enforcement tends to surge or pause depending on Bureau priorities, while merger enforcement hums along more predictably."

OF CASES STARTED BY THE COMMISSIONER BY TYPE
(2005–2024)



Outcomes of Cases

Most cases before the Competition Tribunal don't end in a contested hearing. In fact, the vast majority are resolved through consent agreements, often before any significant litigation takes place. But when matters do go to a hearing, outcomes differ significantly depending on the type of case.

CONSENT AGREEMENTS DOMINATE

Of the 172 cases filed by the Commissioner from 2005 to 2024:

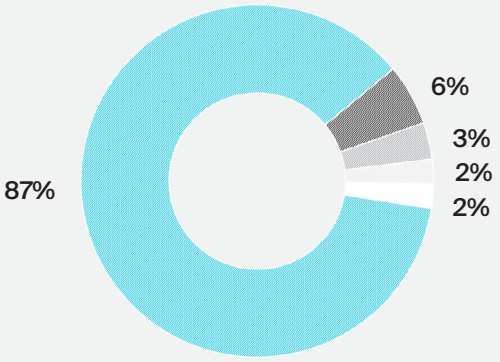
- 81% were resolved by consent agreement at the outset (i.e., registered at the time of filing).
- 10% were resolved later by consent, after the issuance of a Notice of Application.
- 1% were withdrawn or discontinued.
- 8% went to a contested hearing on the merits.

BREAKDOWN BY CASE TYPE

Consent rates depend on the type of case. In merger cases, deceptive marketing practices cases, and horizontal agreement cases, the rates of consent agreements are very high.

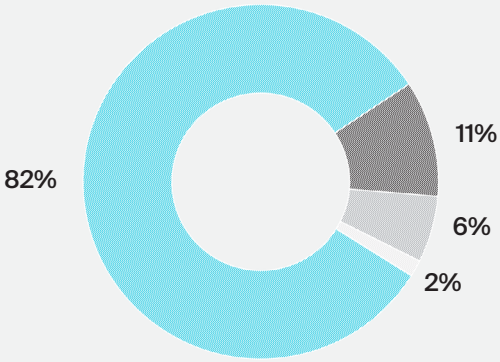
- **Merger Cases** – 87% were consent agreements from the outset, while a further 6% of cases were subsequently resolved with a consent agreement.
- **Horizontal Agreement Cases** – Although there were only 8 in our sample, every single one was resolved by either a consent agreement at the outset or after a Notice of Application.
- **Deceptive Marketing Cases** – 82% were resolved by a consent agreement at the outset, while a further 11% were resolved with a consent agreement after a Notice of Application.
- **Unilateral Reviewable Conduct Cases** – Here the situation is different. Of the 11 cases brought by the Commissioner, 4 were resolved by a consent agreement from the outset and 3 more were resolved by a consent agreement after a Notice of Application. The remaining 4 went to hearings. The lower consent rate in unilateral reviewable conduct cases reflects their complexity and the Commissioner's willingness to litigate when cooperation isn't forthcoming.

MERGER CASES BY OUTCOME
(2005–2024)



- Consent agreement from the outset
- Consent agreement after Notice of Application
- Cases dismissed after hearing on merits
- Cases allowed after hearing on merits
- Case discontinued/withdrawn/stayed/dismissed on consent

DECEPTIVE MARKETING PRACTICES
CASES BY OUTCOME
(2005–2024)



- Consent agreement from the outset
- Consent agreement after Notice of Application
- Cases allowed after hearing on merits
- Cases dismissed after hearing on merits

WHEN CASES GO TO HEARING: A MIXED TRACK RECORD

Of the 14 cases that proceeded to a contested hearing:

- 43% resulted in a win for the Commissioner at first instance.
- 57% resulted in a loss for the Commissioner at first instance.

Success Rates by Type

- **Merger Cases** – 2 wins, 3 losses
  - Recent losses in *Parrish & Heimbecker* and *Rogers-Shaw* weigh heavily on the Commissioner's recent track record.
- **Deceptive Marketing Cases** – 4 wins, 1 loss
- **Unilateral Conduct Cases** – 0 wins, 4 losses
  - Some were reversed or partially successful on appeal or at rehearing (e.g., the *Toronto Real Estate Board* case.)

WHY THE COMMISSIONER LOSES (SOMETIMES)

Even counting the Commissioner's ultimate win in the *Toronto Real Estate Board* case, there is no question that the Commissioner's track record remains worse in unilateral conduct cases. This reality likely stems from:

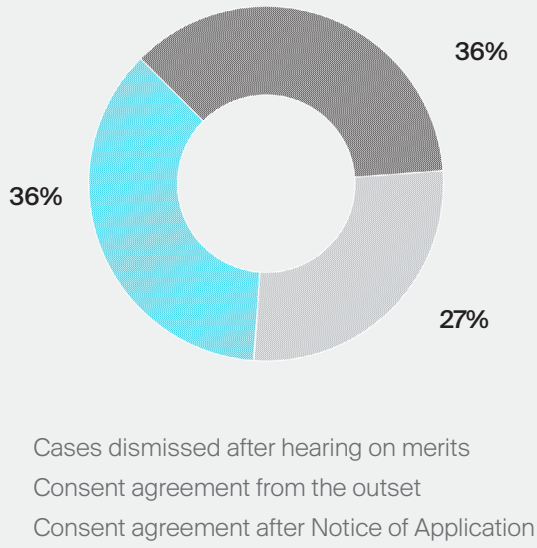
- A relatively undeveloped body of jurisprudence;
- Challenges in proving the required elements (particularly in abuse of dominance); and
- Case selection in uncharted or high-risk areas.

These difficulties may have directly informed the recent legislative amendments, which aim to lower the threshold for proving abuse of dominance and broaden the available remedies for both public and private applicants.

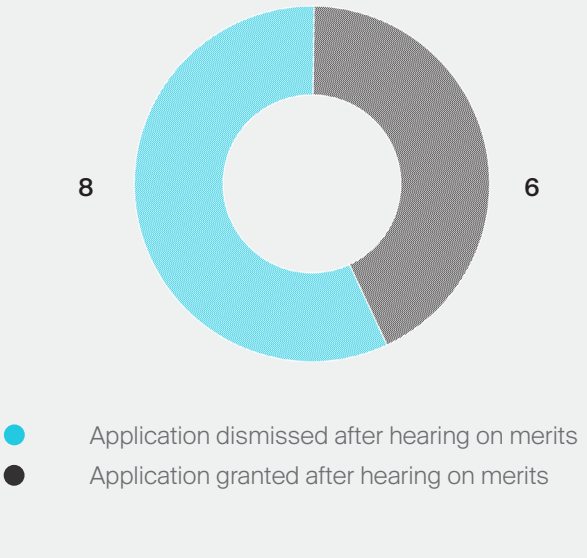
WHAT THIS MEANS FOR BUSINESSES

The data paints a clear picture: the Commissioner's preference is to resolve cases when possible. But the Commissioner will not shy away from a fight, even when there is no guarantee of success.

UNILATERAL CONDUCT CASES BY OUTCOME (2005-2024)



CONTESTED CASES BY OUTCOME (2005-2024)



Length of Time to Resolution

We also looked at the length of time between the start of the case (the date the Notice of Application was issued) and the date the case was resolved, either by consent agreement, withdrawal of the case by the Commissioner, or a disposition by the Tribunal. (Again, this data includes only proceedings before the Tribunal, and does not include time relating to appeals or rehearings.)

HOW LONG DOES RESOLUTION TAKE?

The answer depends heavily on how the case proceeds. Most cases are resolved by consent, and we don't have any systematic data to tell us how long it took to negotiate those consent agreements. But for those that proceed to a contested hearing, the timeline is significantly longer, often spanning multiple years.

BASELINE TIMELINES: ALL INITIALLY CONTESTED CASES

We looked at all cases between 2005 and 2024 that were initiated by a Notice of Application (i.e., not resolved by consent at the outset), and excluded temporary relief applications under section 100.

- **Cases Identified** — 30
- **Average Time to Resolution** — 536 days (just under 18 months)

This figure includes cases resolved by consent after the filing of a Notice of Application, as well as cases withdrawn or discontinued. It gives a realistic benchmark for non-consensual litigation that doesn't reach a full hearing.

CONTESTED HEARINGS: MUCH LONGER TIMELINES

For contested hearings (i.e., cases that proceeded to a full decision on the merits), the timeline stretches even further:

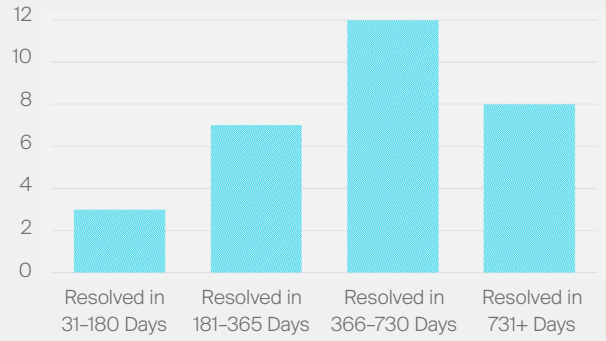
- **Cases Identified** — 13 (excluding one section 100 case)
- **Average Time to Resolution** — 669 days (nearly 22 months).

No contested hearing was resolved in under one year, and only one case (the *Rogers-Shaw* merger) was resolved within two years, under extraordinary procedural timelines.

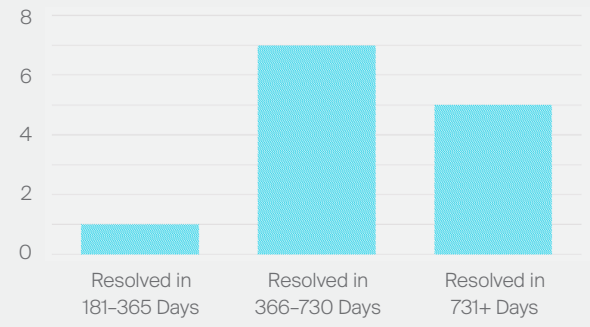
WHAT THIS MEANS FOR BUSINESSES

- **Contested litigation before the Tribunal is a long-term commitment.** Businesses involved in these cases must be prepared for multi-year proceedings with substantial internal resource demands.
- **Early resolution is not just common; it's efficient.** Most cases are resolved within weeks or months by consent. But once formal litigation begins, delays mount quickly.
- **Strategic choices matter early.** Resisting a consent agreement, challenging the Bureau's evidence, or pushing for dismissal all have major consequences for timeline and exposure.

TIME TO RESOLUTION OF CASES BROUGHT BY THE COMMISSIONER (2005–2024)



TIME TO RESOLUTION OF CASES BROUGHT BY THE COMMISSIONER, CONTESTED HEARINGS ON MERITS ONLY (2005–2024)



Deceptive Marketing Cases

Deceptive marketing remains one of the most actively litigated areas before the Competition Tribunal. These cases are attractive from an enforcement perspective; they're often factually straightforward, easier to settle, and can result in meaningful penalties. For businesses, that means a higher risk of investigation and real financial and reputational consequences if things go wrong.

60 RESOLVED CASES: A WINDOW INTO REMEDIES

We looked closely at 60 deceptive marketing practices cases from 2005 to 2024 that resulted in either a consent agreement or a successful outcome for the Commissioner at a hearing. These cases provide the clearest insight into the remedial toolkit the Tribunal has used and how it has evolved.

Common Remedies

- In 100% of cases, cease-and-desist orders were issued.
- In 83% of cases, compliance program orders were issued.
- In 73% of cases, administrative monetary penalties (AMPs) were imposed.
- In 20% of cases, restitution was a feature.

> "Deceptive marketing cases are attractive from an enforcement perspective. For businesses, that means a higher risk of investigation and real financial and reputational consequences if things go wrong."

AMPS: RISING FAST AND HITTING HARD

Among the 44 cases where an AMP was imposed:

- **Average AMP** – $2.7 million
- **Lowest AMP** – $2,000
- **Highest AMP** – $39 million (imposed in the *Cineplex* case in 2024)

But averages don't tell the whole story. The data shows a clear upward trajectory:

PERIOD	SIZE OF AVERAGE AMP ANNUALLY
2005–2008	$22,000 – $200,000
2011–2024	$500,000+ in every year; $1 million+ in almost all
2024	Record-setting $39 million (*Cineplex*)

This trajectory suggests that the Commissioner has shifted from targeting small-scale violators to pursuing high-impact penalties against major players.

WHAT THIS MEANS FOR BUSINESSES

Deceptive marketing enforcement is no longer limited to minor infractions or symbolic fines. Today's Tribunal outcomes frequently include multi-million dollar penalties, compliance mandates, and reputational fallout. The risk is especially high for large consumer-facing companies or those making bold advertising claims, including environmental or "green" representations, now squarely in the Commissioner's sights.

Private Actions

Although private access to the Competition Tribunal has steadily expanded over the past two decades, very few private applications have actually been brought and even fewer have succeeded. But with sweeping new rights in force as of June 2025, that may soon change.

EVOLUTION OF PRIVATE ACCESS RIGHTS

Historically, competition law, at least at the Tribunal, has been primarily enforced by the Commissioner. Over the years, that has gradually changed:

- **Until 2002** — Only the Commissioner could bring a proceeding before the Tribunal.
- **In 2002** — The *Competition Act* was amended to add section 103.1, which allowed private-party applications to be brought under section 75 (refusal to deal) and section 77 (exclusive dealing and tied selling).
- **In 2009** — The ability to bring claims in respect of proceedings in respect of a new resale price maintenance provision under section 76 was added.
- **In 2022** — The ability to bring applications in respect of abuse of dominance claims under section 79 was added.
- **In 2024** — The amendments coming into force in June 2025 expand private rights of access to include the civil agreements provision in section 90.1 as well as deceptive marketing practices under section 74.1. The 2024 amendments also create broader rights of access as well as making a new disgorgement remedy available to private parties.

Throughout this evolution, critics warned of a potential surge in litigation by competitors or aggrieved parties. But that wave never arrived — likely because the leave threshold was high, and available remedies were limited.

KEY STATS SINCE PRIVATE ACCESS WAS INTRODUCED

From 2002 to 2024:

- Only 32 applications for leave have been filed, a rate of just 1.3 per year.
- Of those, only 9 leave applications have been granted.
- No leave application has been granted since 2015.

From 2015 to 2024, a full decade, only 9 private leave applications were even filed. Most were dismissed or withdrawn before adjudication.

JUNE 2025: A TURNING POINT?

The final amendments under Bill C-59, in force on June 20, 2025, change the landscape:

- **Expanded Scope** — Private parties will be able to bring claims under the civil agreements provision (section 90.1) and deceptive marketing provision (section 74.1).
- **Lowered Leave Threshold** — The Tribunal may now grant leave where only a part of the applicant's business is affected, not the entire business.
- **"Public Interest" Standard** — The Tribunal may grant leave if it considers the claim serves the public interest (a broader, more discretionary test).
- **New Remedies** — Successful applicants can seek a broader range of remedies, including disgorgement.

These changes align private enforcement more closely with class proceedings, particularly in cases framed around public interest or market-wide harm. While the Tribunal doesn't have a formal class action regime, private applications under the new provisions may function much the same in practice.

WHAT THIS MEANS FOR BUSINESSES

- **More Competitor-initiated Litigation** — Businesses may face applications from rivals or industry associations, especially in sectors with aggressive marketing or complex collaboration arrangements.
- **Higher Stakes for Compliance** — With AMPs and restitution now in play, the cost of losing a private action is no longer symbolic.
- **Precedent-setting Uncertainty** — The Tribunal and appellate courts will be interpreting many of these new provisions for the first time, creating risk and opportunity for strategic litigants.

Conclusion

This report illustrates the value of empirical analysis in understanding legal risk and shaping litigation strategy. By analyzing two decades of Competition Tribunal activity, we've identified clear patterns about who brings cases, how they're resolved, what remedies are imposed, and how long litigation typically lasts.

These findings are particularly relevant today. With recent legislative reforms dramatically expanding both Commissioner-led and private-party enforcement powers, Canadian competition law is entering a more litigious phase. For clients and counsel alike, understanding the past is now essential to preparing for the future. This report offers a pre-amendment benchmark against which a new era of competition litigation will soon be measured.

WHAT THIS MEANS FOR BUSINESSES

- **Litigation is becoming more likely.** With private rights of action expanding and the Bureau signaling more aggressive enforcement, businesses should expect greater exposure to Tribunal proceedings.
- **Resolution pathways are diverging.** Consent agreements remain common, but when cases go to hearing, especially in novel or unilateral conduct cases, outcomes are less predictable, timelines are longer, and stakes are higher.
- **Data-driven strategy matters.** Whether considering a marketing claim or business practice that may result in litigation, clients benefit from advice that's grounded in deep understanding of litigation strategy and Tribunal practice.

MORE INSIGHTS TO COME

As Tribunal activity likely increases under the amended *Competition Act*, we'll continue to publish targeted insights on emerging litigation patterns, strategic trends, and enforcement risk.

"By analyzing two decades of Competition Tribunal activity, we've identified clear patterns about who brings cases, how they're resolved, what remedies are imposed, and how long litigation typically lasts. Whether considering a marketing claim or business practice that may result in litigation, a data-driven strategy matters and businesses will benefit from advice that's grounded in deep understanding of litigation strategy and Tribunal practice."

Our Competition and Antitrust Practice

Lenczner Slaght has extensive experience in all areas of competition litigation. We regularly act in cases involving alleged breaches of the *Competition Act*, including misleading advertising, price-fixing and conspiracy cases. We also represent defendants in class actions alleging violations of the *Act*. Our clients include leading multinational electronics manufacturers, auto parts companies, and technology companies, among others.

Our lawyers' courtroom experience, combined with their deep understanding of strategic business issues, allows our firm to provide effective representation for both Canadian and international clients in the most vigorously contested disputes. In addition, our lawyers have a wealth of experience in successfully guiding clients through all types of regulatory and criminal investigations, including those conducted by the federal Competition Bureau.

24

Years at the centre of the Lexpert® Bull's-Eye, Commercial Litigation – Toronto

30+

Years representing our clients in competition litigation disputes

Band 1

Chambers Canada, Dispute Resolution: Ontario

We provide our extensive experience in advising clients through civil, regulatory, and criminal competition law proceedings.

Litigate.com

"They continue to have a reputation as being Canada's number one litigation firm. I believe it to be well deserved. Their performance is excellent."

Chambers Canada

"They are masters of strategic thinking, planning and execution."

Chambers Canada

Our Data-Driven Decisions Program

We believe in data-driven decision-making and are committed to creating a culture of practicing "evidence-based litigation." That means that we advocate for and advise clients based not just on our judgment and analysis of applicable case law, but based on research and empirical data, where it is available.

In practice, this approach means three things:

- Harnessing available technology and products that make use of data analytics. As the legal technology industry develops, we will be on the front lines, harnessing technology that we believe can provide us with better insights to advise our clients.
- Remaining constantly engaged with pioneering empirical research on litigation and advocacy. Legal scholarship is increasingly relying on empirical legal research, and we remain connected to cutting-edge developments from leading legal scholars.
- Developing our own proprietary datasets and analytics. We have built and will continue to build our own databases — sometimes collaboratively with third parties, and sometimes by ourselves — that help us give clients the best advice possible based on real-world data.

We view these tools as important complements to conventional legal analysis that can help us provide more effective advice and advocacy to our clients.

Our Authors

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Paul-Erik's litigation practice focuses on class actions, competition law, intellectual property matters, complex commercial disputes, and professional liability. Paul-Erik has extensive trial experience, having acted as counsel in trials involving a number of industries and subject matters, and appearing repeatedly before both the Supreme Court of Canada and the Ontario Court of Appeal. Paul-Erik leads Lenczner Slaght's Data-Driven Decisions program. In 2022, he was recognized as one of the Top 25 Most Influential Lawyers for his innovation in and advocacy of using data analytics to advance the practice of law and achieve exceptional outcomes for clients.

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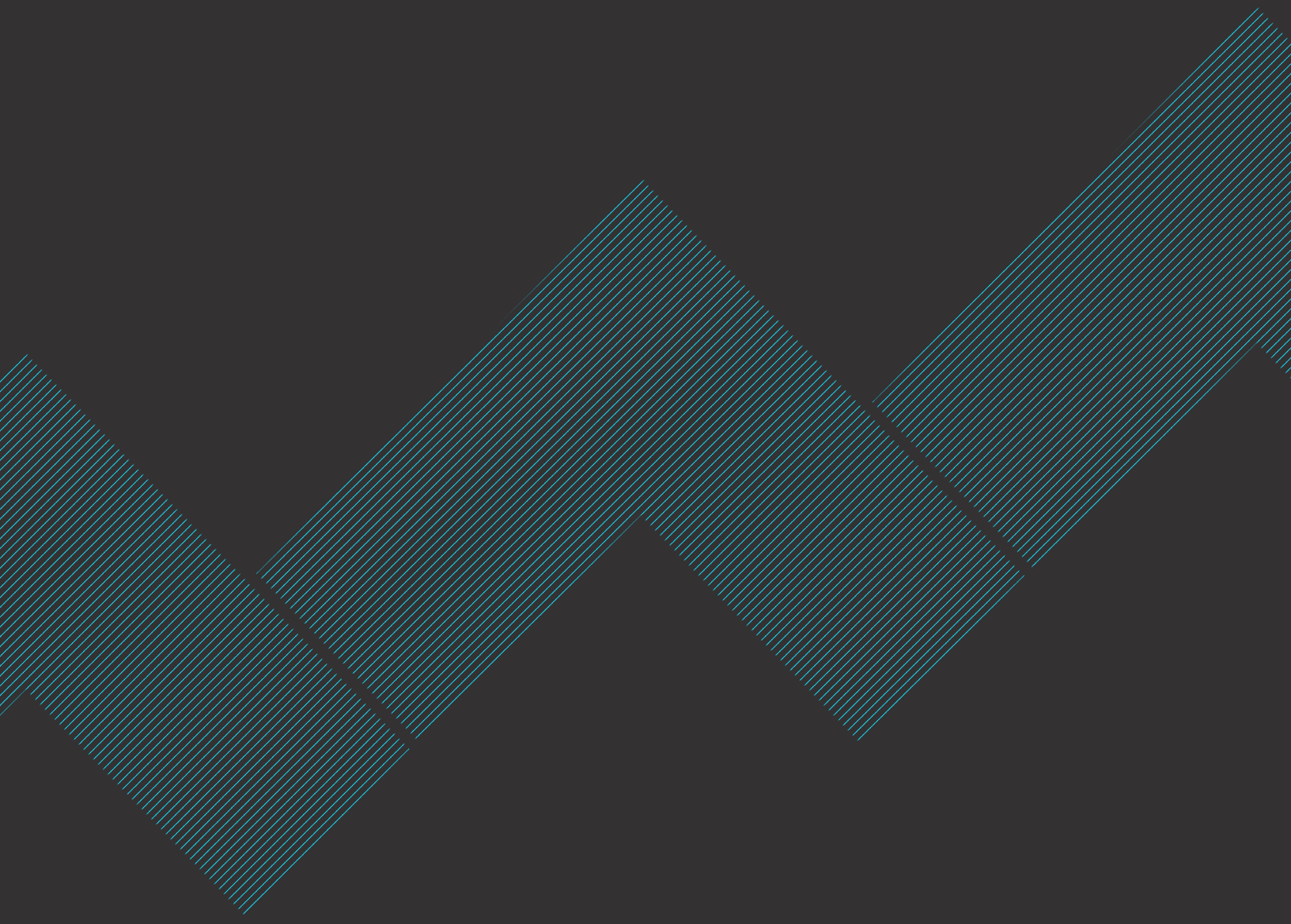
Donya is a summer student at Lenczner Slaght and a JD candidate at Osgoode Hall Law School. She has a strong background in advocacy, having earned top oralist distinctions at several moot competitions, including the Baby Jessup Moot, the Baby Gale, and the Adam Fanaki Competition Law Moot. Donya developed her research and writing skills through clinical work with Osgoode's Community & Legal Aid Services Program and as Co-Managing Editor of *TheCourt.ca*. She holds an Honours Specialization in Politics, Philosophy, and Economics from Western University, with a concentration in economics.



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