Competition and Antitrust

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 other conspiracy cases. We also represent defendants in class actions alleging violations of the Act. Our clients include leading multinational manufacturers, auto parts companies, and technology companies, among others.

The breadth of 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. For example, we acted for Canada's Commissioner of Competition in one of the only misleading advertising cases to proceed to trial in recent years.

We also assist our clients with matters before they hit the courtroom, in order to make sure they never get there. Lenczner Slaght 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. We also advise our clients on all types of competition law issues, including marketing and advertising programs, business strategies and practices, and compliance programs.

RECOGNITION

- Canadian Legal Lexpert® Directory (2018-2025)
  Class Actions, Competition Law (2024), Litigation - Corporate Commercial, Litigation - Regulatory & Public Law, Medical Negligence, Professional Liability
- The Legal 500 Canada (2014-2025)
  Dispute Resolution (Hall of Fame), Competition and Antitrust (Recommended Lawyer 2018), Intellectual Property (Recommended Lawyer 2018)
- The Legal 500 Canada (2017-2018)
  Competition and Antitrust (Tier 4)
- Best Lawyers in Canada (2018-2025)
  Administrative & Public Law, Class Action Litigation, Competition / Antitrust Law, Corporate and Commercial Litigation, Health Care Law, Medical Negligence
- Benchmark Canada (2012-2024)
  Top 50 Trial Lawyer in Canada & Litigation Star – Commercial, Competition, Insolvency, Professional Liability, Securities

SELECT CASES

- **Multinational Retailer –** Counsel providing ongoing competition law advice to a multinational retailer.
- **Sheridan Chevrolet Cadillac Ltd v Kyungshin-Lear Sales and Engineering –** Counsel to a defendant in a multi-jurisdictional class action involving alleged price-fixing among automotive parts manufacturers.
- **Commissioner of Competition v Rogers Communications Inc –** Counsel to the Commissioner of Competition in proceedings against Rogers Communications Inc. and Chatr Wireless Inc. relating to misleading advertising under the Deceptive Marketing Practices provisions of the *Competition Act*. The application involved successful defence to a constitutional challenge to certain provisions of the *Competition Act* brought by the respondents.
- **Ali Holdco Inc v Archer Daniels Midland Company –** Counsel to the defendant Corn Products International Inc. in a class proceeding alleging conspiracy to fix prices and restrain competition in the market for high fructose corn syrup.
- **Windsor Glass Company Limited v Asahi Glass Company Limited –** Counsel to one of the defendants in a class proceeding against numerous flat glass manufacturers alleging a price fixing conspiracy and breach of the *Competition Act* in the Canadian flat glass market.
- **Nutech Brands Inc v Air Canada –** Counsel for a defendant in a class action relating to an alleged price-fixing conspiracy in the market for air freight shipping services.
- **Currie v McDonald's Restaurants of Canada Ltd –** Counsel to defendant, McDonald's Restaurants of Canada Ltd., in a class action alleging misrepresentation arising out of a marketing and promotion campaign.

SELECT PUBLICATIONS AND PRESENTATIONS

- **Unpacking the Process: 4 Ways to Challenge False Advertising –** Paul-Erik Veel was invited to share his expertise at the Canadian Bar Association program titled *Unpacking the Process: 4 Ways to Challenge False Advertising.* Paul-Erik discussed the different ways consumers and competitors can challenge false or misleading advertising and his experience with the different approaches.
- **2023 Snapshot: Through the Lens of Lenczner Slaght –** Lenczner Slaght launches our *2023 Snapshot*, a look at the most significant developments, decisions, business takeaways, and trends in litigation from the last year, across 15 practice areas. Revisit 2023 and look ahead to 2024 through the lens of our expert litigators.
- **ESG, Greenwashing and Legal Obligations Under Competition Law –** Paul-Erik Veel was invited to share his expertise on the CCCA's In-House Counsel ESG Series. Paul-Erik's panel will discuss greenwashing, its implication as well as practical tips to help you build and/or improve your organization’s ESG Framework.

  Lenczner Slaght is pleased to partner with the OBA and CCCA on this program.
- **CBA Competition Law Online Symposium –** Sahar Talebi shared her expertise on the session titled "What is Happening with Injunction

Jurisprudence at the Competition Tribunal?".

- **Competition Bureau Goes After 'Greenwashing' –** Paul-Erik Veel and Mari Galloway co-authored the article *Competition Bureau Goes After 'Greenwashing'*, which was published by The Lawyer's Daily. In their article, they discuss the Competition Bureau's growing focus on greenwashing, the practice of making false or misleading environmental ads or claims about a product's environmental benefits.
- **Antitrust Convergence in a Divergent Regulatory Environment: The IPEGs' Treatment of Reverse Payment Settlements of Pharmaceutical Litigation –** Paul-Erik Veel's article was published in the latest volume of the Canadian Competition Law Review. In this article, he discusses competition law aspects of pharmaceutical litigation settlements.
- **Competition Law In The "Mainstream" - The Rise of Hipster Antitrust? –** Paul-Erik Veel spoke at the CBA Competition Law Section's Young Lawyers Half Day Symposium in Ottawa. His panel discussed whether the practice of competition law is about to enter the era of "Hipster Antitrust" and its potential implications on mergers and conduct in the coming years.
- **Price-Fixing Actions After Pro-Sys v. Microsoft: Worrying Implications of the Supreme Court's Decision –** Paul-Erik Veel co-authored article *Price-Fixing Actions After Pro-Sys v. Microsoft: Worrying Implications of the Supreme Court's Decision* that appeared in the Fall 2014 issue of the Canadian Competition Law Review.

  "In *Pro-Sys Consultants Ltd. v Microsoft Corporation* and its companion cases, the Supreme Court of Canada recognized the right of indirect purchasers to advance claims for losses arising from price-fixing conspiracies. The Supreme Court's decision, while settling a long-standing doctrinal debate in Canadian law, gives rise to a number of additional problems..."
- **Beyond Refusal to Deal: A Cross-Atlantic View of Copyright, Competition, and Innovation Policies –** Paul-Erik Veel co-authored an article *Beyond Refusal to Deal: A Cross-Atlantic View of Copyright, Competition, and Innovation Policies* that appeared in Volume 79 of the Antitrust Law Journal.
- **Private Party Access to the Competition Tribunal: A Critical Evaluation of the S. 103.1 Experiment –** Paul-Erik Veel's article *Private Party Access to the Competition Tribunal: A Critical Evaluation of the S. 103.1 Experiment* appeared in Volume 18 of the Dalhousie Journal of Legal Studies.
- **New Evidentiary Requirements for Certification: The Future of Price-Fixing Class Proceedings in Ontario –** Ronald Slaght co-authored the article *New Evidentiary Requirements for Certification: The Future of Price Fixing Class Proceedings in Ontario* for the 2004 Canadian Class Action Review. ((2004) 1 Canadian Class Action Review 159)

BLOG POSTS

- **Private Actions at the Competition Tribunal: What Businesses Need to Know –** 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.
- **A New Era of Canadian Competition Law –** 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.

- **The Competition Bureau's Final Word on Greenwashing: What Businesses Need to Know –** In light of concerns that unsubstantiated or misleading sustainability claims are eroding consumer trust, Canadian legislators took steps last year to increase oversight into environmental claims under the *Competition Act*.
- **Class Actions for Reviewable Conduct Under the Competition Act? No, Not Really, but Sort Of –** Recent years have seen a wave of reforms to the *Competition Act* being discussed and implemented. That wave has become a veritable tsunami with omnibus legislation introduced in Parliament in November 2023. That legislation proposes a number of fundamental changes to the *Competition Act*, which have the potential to dramatically impact Canadian businesses. While a detailed discussion of all of the amendments is beyond the scope of this blog post, perhaps the most interesting thing to litigators and businesses concerned about litigation risk, is the creation of what may prove to be a kind of pseudo-class action regime before the *Competition Tribunal* that ultimately allows consumers to recover losses as a result of certain types of reviewable conduct.
- **Rebuck v Ford Provides More Fuel for Defending False Advertising Class Actions –** Historically, many class actions practitioners considered certification the primary fight in a case. It was common that cases would settle not long after certification, so the whole ballgame was perceived to be in the certification motion. Yet with the courts consistently reaffirming the low bar for certification, we are seeing a greater number of class actions determined on their merits *after* certification. And as the recent case of *Rebuck v Ford Motor Company* shows, success on certification is by no means a guarantee of success on the merits.
- **Is Increased Enforcement of the Competition Act Coming? –** On February 8, 2022, the Competition Bureau released several recommendations for amending the *Competition Act* in its response to Senator Wetston's call for submissions on Canada's competition policy framework. The paper, entitled "Examining the Canadian C*ompetition Act* in the Digital Era", identifies areas that the Competition Bureau believes are ripe for modernization. The paper, and Senator Wetston's request for submissions, occur during a time when the federal government has indicated an openness to amending the *Competition Act*. While nothing in the Bureau's submission has the force of law, the Bureau's views on these matters will undoubtedly be taken very seriously, and some of the amendments the government is already considering mirror those in the Bureau's submission. Consequently, the Bureau's paper provides insight into the future direction of competition law in Canada.
- **Competition Bureau Prioritizes Greenwashing: Keurig Fined $3 Million Over Recyclability Claims –** The Competition Bureau's focus on greenwashing continues to grow. This past week, the Bureau announced in a news release that it had reached a $3 million settlement agreement with Keurig Canada Inc. in respect of concerns over misleading and false claims about the recyclability of its single use Keurig K-Cup Pods. The agreement marks a growing trend in enforcement activities against "greenwashing", the practice of making false or misleading environmental ads or claims about a product's

environmental benefits.

- **Can an "Episodic" Price-Fixing Conspiracy be Certified as a Class Action? –** Many price-fixing class actions allege a reasonably uniform conspiracy. The stereotypical scenario alleged is that executives from different companies meet in a dark, smoke-filled room and agree to raise prices or restrain output in some uniform fashion. While that is an oversimplification, and reality is always much more complex, the basic core of most price-fixing allegations is that there was a uniform conspiracy that impacted all, or at least most, consumers in a broadly similar way. This is what has made so many price-fixing class actions amenable to certification.
- **My Kingdom for a Horse: Rules Against Price Gouging Come to Ontario –** Laws against price-gouging have come to Ontario. On Saturday, March 28, 2020, the provincial government issued a press release announcing that it was enacting an Order to prohibit price-gouging. The press release announced that that Order "prohibits persons, including retailers, from selling necessary goods for unconscionable prices". The press release also announced that the definition of unconscionable prices would be "consistent with well-established principles from the Consumer Protection Act."
- **Competition Law in the Time of Coronavirus –** The rapid spread of the novel Coronavirus (COVID-19) is causing significant dislocation to every aspect of our daily lives. For businesses, COVID-19, and the public health responses being taken to try to limit its spread, will have a significant financial impact. Social distancing and self-isolation will result in fewer customers visiting brick-and-mortar retailers, and uncertain economic times will result in an overall drop in consumer demand. Each of these will cause pain for businesses.
- **Let it Rain: Supreme Court Green Lights Umbrella Purchaser Class Actions –** On September 20, 2019, the Supreme Court released its long-awaited decision in *Pioneer Corp v Godfrey*. *Godfrey* is the Supreme Court's latest decision involving price-fixing class actions, and expands on and clarifies the basic approach to these cases that the Court laid out six years ago in *Pro-Sys Consultants Limited v Microsoft Corporation*.
- **Confusion over "some basis in fact" rolls on in British Columbia Court of Appeal's RoRo decision –** Certification is a vital step in every class action. In order for a class action to be certified, the proposed representative plaintiff must show "some basis in fact" to believe that the certification requirements are met. These requirements include that there are common issues of fact or law and that a class action would be the preferable procedure for resolving those common issues. The Supreme Court of Canada was clear in its decision in *Pro-Sys Consultants Ltd v Microsoft Corporation* that the some basis in fact standard is less onerous than a balance of probabilities standard. However, how that standard is to be applied remains a source of great difficulty for courts.
- **No March Break for Competition, as Bureau Releases New Abuse of Dominance and Intellectual Property Enforcement Guidelines –** March 2019 has been a busy month for the Competition Bureau. On March 7, the Bureau released its updated Abuse of Dominance Enforcement Guidelines. Then, on March 13, the Bureau released its updated Intellectual Property Enforcement Guidelines ("IPEGs"). While neither new enforcement guideline reflects a fundamental shift in the Bureau's approach to these issues, they provide new guidance and reflect important nuances in the Bureau's consideration of these issues, particularly regarding abuse of dominance.
- **Foreign Discovery in Advance of Certification in a Class Action? Not So Fast, says Divisional Court –** Given the expansive discovery

rights available under US law, plaintiffs may be tempted to try to use those rights in pursuit of proceedings under Canadian law. In its recent decision in *Mancinelli v RBC*, the Divisional Court placed an important limit on the ability of parties to do so. The Divisional Court upheld an order requiring plaintiffs in a proposed class action to obtain Court approval before taking any steps in furtherance of a subpoena issued by an American court.

- **Sweet Justice for IP Rights Holder: Agreement not in Restraint of Trade –** The intersection of intellectual property law and competition law is an area that gains greater significance with each passing year. Much of the focus in this area recently has been on the appropriate scope of action to take by regulators. For example, in Canada, the Intellectual Property Enforcement Guidelines promulgated by the Competition Bureau in 2016 have attracted significant attention.

- **The regulated conduct defence: we'll drink to that –** It says something about Canada that many famous cases throughout Canadian legal history relate to the regulation of alcohol. Through the early 20th century, the regulation of alcohol was a fertile domain for disputes about Canadian federalism. Now, in the 21st century, the complicated regulatory scheme of governing alcohol sales in Ontario is once again making new law. This time, however, the dispute is not over arcane principles of federalism, but rather over the scope of the regulated conduct defence to conspiracies under the *Competition Act*. While early 20th century federalism cases may be of interest to only a select few, the decision of the Ontario Superior Court of Justice in *Hughes v Liquor Control Board of Ontario* is likely to attract significantly broader interest, particularly among companies operating in regulated industries.

- **Toll the death knell for class-based public interest privilege in competition proceedings? –** The Competition Bureau relies heavily on voluntary cooperation from corporate Canada in order to enforce the *Competition Act*. Companies typically want assurances of confidentiality in order to cooperate with the Bureau. In recognition of the fact that companies are less likely to cooperate with the Competition Bureau if commercially sensitive information might be disclosed to third parties, the *Competition Act* provides a number of confidentiality protections for information acquired by the Bureau from third parties.

- **Voluntary Gift Cards: An Effective Strategy for Reducing Liability? –** The recent admissions by supermarket chain Loblaws and a related group of companies that they engaged in conduct to fix the retail price of bread products have drawn significant public attention to price-fixing. And Loblaws' response to those revelations of price-fixing—including giving consumers gift cards to be used at Loblaws—has also attracted significant interest, not just from the public, but also from businesses and the antitrust and class actions bar. For organizations that have engaged in misconduct looking to make a public response, Loblaws' actions highlight both the potential benefits and risks of such voluntary remediation.

- **Competing Fairly from a Monopoly Position: Six Things to Know about Abuse of Dominance After TREB –** Under Canadian law, many provisions of the *Competition Act* can only be enforced by the Commissioner of Competition, and not by private parties. That has led to a dearth of jurisprudence, and certainty, regarding the interpretation of several provisions of the *Competition Act*. For that reason, both major businesses and industry groups will want to take careful note of the recent decision in *Toronto Real Estate Board v Commissioner of Competition*, where the Federal Court of Appeal gave further guidance as to when a party will be liable for abuse of dominance.
- **Absent foreign claimants at the gates of Canadian class actions –** Class actions are almost invariably complicated and expensive matters for businesses to deal with. Such class actions only become more complicated and expensive the bigger the classes are. Now, in *Airia Brands Inc v Air Canada*, the Ontario Court of Appeal has given the green light to a class action that includes class members all around the world. This decision has significant implications for virtually all multinational businesses.
- **Compelling disclosure from the Competition Bureau for use in class actions: where are we now? –** A recurring source of challenging legal problems in the price-fixing class actions, and in class actions more generally, is the issue of what information and evidence the Courts can compel government investigators to provide to private litigants for use in those class actions.
- **Umbrella purchasers: Who are they, what do they want, and why are Courts (sometimes) certifying their claims? –** While competition law specialists are familiar with the ongoing debate about umbrella purchaser claims, most Canadian lawyers could be forgiven for wondering what all the fuss is about umbrellas. Far from being individuals who rejected raincoats or ponchos in favour of a more traditional option, umbrella purchasers are now at the center of a heated debate in Canadian competition law.
- **A risky rule of thumb for estimating damages in competition class actions –** Using rules of thumb to generate estimates can be very useful in a variety of circumstances: for example, when the detailed information necessary to generate a precise answer is unavailable, or when it's too difficult to analyze that detailed information. Lawyers use such rules of thumb in a number of circumstances, sometimes as an initial rough estimate, and sometimes to confirm the results of more detailed analysis.
- **Waiting forever for the axe to drop? Discoverability and the limitation period for Competition Act claims –** The limitation period for claims under s. 36 of the *Competition Act* is a longstanding question of Canadian competition law. The plain language of the statute suggests that such claims must be brought within two years of the anticompetitive conduct. But in *Fanshawe College of Applied Arts and Technology v AU Optronics Corporation*, the Ontario Court of Appeal has reached a conclusion that is much more generous to Plaintiffs, holding that such claims must be brought within two years of the Plaintiff discovering the anticompetitive conduct.
- **Supreme Court Offers Guidance on Standard of Review and Efficiency Defence Under the Competition Act –** The Supreme Court in Tervita Corp. v. Canada (Commissioner of Competition) held that a merger between landfill operators would prevent competition but provide efficiency gains, and allowed the deal to proceed. In so doing, it has provided important guidance three issues:

SELECT NEWS ARTICLES

- **Lenczner Slaght Named One of the Best Law Firms in Canada –** Lenczner Slaght is proud to announce its recognition as Law Firm of the Year in Corporate and Commercial Litigation and Medical Negligence in the inaugural edition of *Best Law Firms in Canada.*
- **Gift cards–a new way to reduce liability –** Paul-Erik Veel is quoted in the Canadian Underwriter article *Gift cards–a new way to reduce liability* on January 26, 2018. This article discusses Loblaws' response to the revelations of bread price-fixing.
- **Lenczner Slaght is Named a Top-Tier Firm in Legal 500 Rankings –** Along with the firm's Tier 1 ranking in Dispute Resolution with four leading lawyers and one next generation lawyer recognized, Lenczner Slaght is also ranked in Intellectual Property, Labour and Employment, and Competition and Antitrust.
- **20 Lenczner Slaght Lawyers Recognized in 2015 Lexpert Directory –** Recognized by Canadian Legal Lexpert® Directory as leading practitioners.
- **Lenczner Slaght - "a fortress inhabited by litigation royalty" –** 13 Lenczner Slaght lawyers recognized in the 2015 Benchmark Litigation Directory.
- **SCC clarifies merger review requirements –** Tom Curry was quoted in the Lawyers Weekly on February 6, 2015 in relation to the Supreme Court of Canada decision in *Tervita Corp. v. Canada (Commissioner of Competition)*.
- **Supreme Court says mergers can't block future competition –** Tom Curry was quoted in the Financial Post on January 23, 2015 in regards to the Supreme Court of Canada ruling in *Tervita Corp. v. Canada (Commissioner of Competition).*
- **Supreme Court allows blocked merger in landfill case –** Scott Rollwagen was quoted in the Canadian Lawyer in regards to the Supreme Court of Canada ruling in *Tervita Corp. v. Canada (Commissioner of Competition).*
- **Art of the Case: How the Chatr Wireless case avoided incivility despite the high stakes –** Tom Curry, Jaan Lilles and Paul-Erik Veel were quoted in the September, 2014 issue of Lexpert Magazine in relation to Commissioner of Competition v. Rogers Communications Inc. et al.