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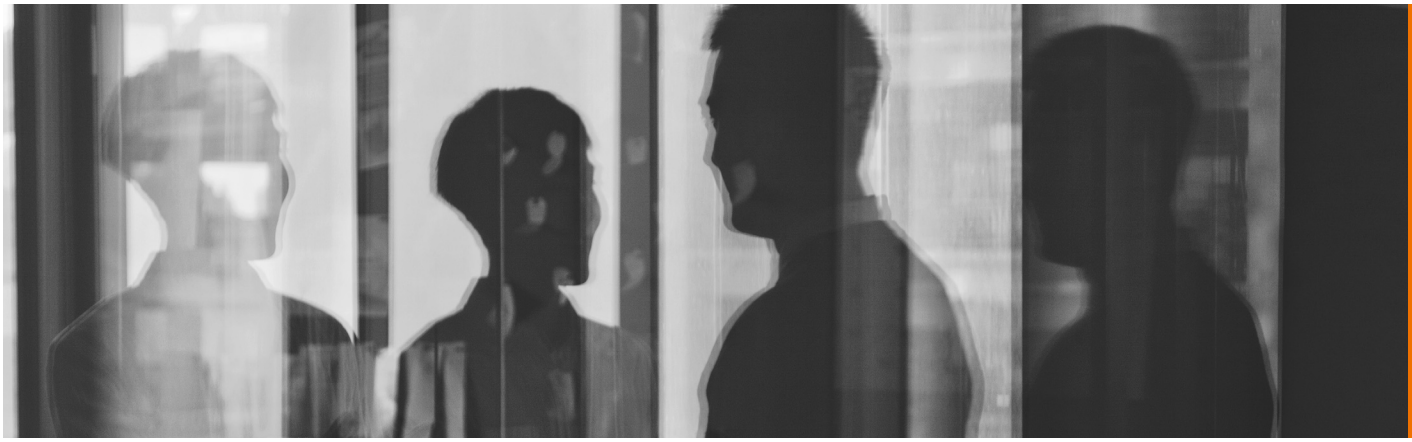

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From the Publisher

Dear Reader,

Welcome to the 13th edition of *The International Comparative Legal Guide to: Cartels & Leniency*, published by Global Legal Group.

This publication, which is also available at www.iclg.com, provides corporate counsel and international practitioners with comprehensive jurisdiction-by-jurisdiction guidance to cartels & leniency laws and regulations around the world.

This year, three general chapters cover trends, decisions and judgments in recent cartels cases.

The question and answer chapters, which cover 29 jurisdictions in this edition, provide detailed answers to common questions raised by professionals dealing with cartels & leniency laws and regulations.

As always, this publication has been written by leading cartels & leniency lawyers and industry specialists, to whom the editors and publishers are extremely grateful for their invaluable contributions.

Global Legal Group would also like to extend special thanks to contributing editors Geert Goeteyn, Matthew Readings and Elvira Aliende Rodriguez of Shearman & Sterling LLP for their leadership, support and expertise in bringing this project to fruition.

Rory Smith
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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?

Canada's *Competition Act*, a federal statute, establishes a two-track regime for agreements between competitors. Agreements between competitors to fix prices, allocate markets or restrict output are *per se* criminal offences, as is bid rigging. 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 s. 45, and are (ii) directly related to, and reasonably necessary to, giving effect to that broader agreement are exempt. It is important to note, the ancillary agreements defence has not been tested in Canada.

Penalties for violations of s. 45 are severe; the offence is an indictable offence punishable by up to 14 years in jail, a maximum fine of C$25 million or both. Furthermore, s. 36 allows private parties that suffer losses due to cartel conduct to bring a civil damage claim for recovery. These claims often take the form of a class action and can be extremely costly; one recent settlement exceeded C$500 million.

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

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 the extent of change and innovation in the market. 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.

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. The Competition Bureau, led by the Commissioner of Competition, 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 of 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. Additionally, the Commissioner can seek judicial authorisation to obtain phone and text records.

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?

If criminal 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.

In proceedings brought before the Competition Tribunal, the ordinary civil standard of proof on a balance of probabilities is applied.

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 your jurisdiction covered by the prohibition?

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

Neither s. 45 (conspiracy) nor s. 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 above table require prior judicial authorisation.

The Competition Bureau has no right to require an explanation for documents or information supplied during the execution of a search warrant (dawn raid). Explanations of documents or information can be obtained through the use of orders to examine witnesses under oath or to require written returns under oath (essentially interrogatories) under s. 11 of the *Competition Act*. Witnesses are not excused from answering questions that may incriminate themselves, but their answers cannot be used in criminal proceedings instituted against the individual.

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, s. 183 and s. 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 54 countries under bilateral Mutual Legal Assistance Treaties (MLATs), including the United States and the United Kingdom, as well as the *Inter-American Convention on Mutual Assistance in Criminal Matters*.

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 searches 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.

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**: s. 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, however, disclose information for the purpose of enforcing the Act.
- **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 to 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. These orders can include a provision for paying money to the Crown (essentially a fine).

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).

Companies convicted of conspiracy offences under the *Competition Act* are ineligible to do business with the federal government under federal government procurement policies.

3.2 What are the sanctions for individuals (e.g. criminal sanctions, director disqualification)?

Individuals convicted of conspiracy or bid rigging can be sentenced to jail for up to 14 years and fined up to C$25 million in addition to, or instead of, jail. Debarment sanctions may also be applied to individuals under federal government procurement policies.

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 are factors considered by the court in determining the amount of the fine. In the case of an organisation, the *Criminal Code*'s sentencing provisions require the court to consider the impact that a fine would have on the economic viability of an organisation and the continued employment of its employees (s. 718.21). In the case of individuals, the court can only impose a fine if it is satisfied that the individual is able to pay it.

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?

Corporate statutes typically provide that a corporation can only indemnify a director or officer who has been convicted of an offence if the director or officer 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.

There are no restrictions on corporations indemnifying employees for legal costs or financial penalties and, in certain circumstances, an employee may even be entitled to indemnification.

It is common for corporations to pay the legal costs of directors, officers and other 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?

There are no reported cases of corporations holding an employee liable for legal costs or financial penalties imposed on the corporation as a result of conduct of an employee contrary to the *Competition Act*. The defence of *ex turpi* causa may block claims by companies that are convicted of a conspiracy offence against their employees who were responsible for the wrongdoing. As a practical

matter, employees rarely have the resources to pay the employer's legal costs or financial penalties.

3.7 Can a parent company be held liable for cartel conduct of a subsidiary even if it is not itself involved in the cartel?

Corporations cannot be held liable for the actions of their subsidiaries based solely upon the parent-subsidiary relationship, even if the subsidiary is a wholly-owned subsidiary. The test for determining when a corporation is a party to an offence, set out in the *Criminal Code* (s. 22.2), would likely be applied to determine whether a parent corporation should be considered to be a party to an offence committed by its subsidiary. Generally speaking, that test would require the involvement of a "senior officer" of the parent corporation in the offence (the term "senior officer" is given an expansive definition in the *Criminal Code* and caselaw).

The *Competition Act* creates an offence where a Canadian corporation implements directives from a foreign parent that give effect to foreign conspiracies in Canada, even if the Canadian company does not know about the conspiracy (s. 46).

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. In the summer of 2018, the Bureau released draft bulletins proposing major changes to these programmes (see question 9.1 below for more information). Additionally, the PPSC has recently indicated an openness to using negotiated prohibition orders to settle cases without admissions of liability. The criteria used by the PPSC are unknown, as there is no guidance on when a prohibition order may be available. They will likely be available only in exceptional cases.

Immunity programme: the immunity programme offers full immunity from criminal prosecution to the first individual or company to both admit involvement in criminal activity and agree to cooperate with the Bureau's investigation and subsequent prosecutions. Generally, immunity is only available where the Bureau does not already know about the offence or is aware but does not have enough evidence to prosecute before the immunity applicant comes forward.

To be eligible for immunity, an applicant must end its participation in the illegal activity and must not have coerced others to join in the illegal activity. Throughout the course of the Bureau's investigation and any subsequent prosecution, the applicant must provide complete, timely and ongoing cooperation at its own expense.

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". The proffer is usually made orally and on a hypothetical basis. Increasingly, a number of proffers of information are made before the Bureau decides whether to recommend granting immunity.

While the Bureau determines whether or not an applicant qualifies for immunity based on the facts, the PPSC actually grants immunity following a recommendation from the Bureau.

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.

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.

Prohibition Orders: s. 34 of the *Competition Act* permits a court to issue prohibition orders to prevent future conduct contrary to the Act. In two recent instances, this provision has been used to settle cases without prosecution. While the corporations admitted the elements of the offence, they did not plead guilty to the offence. The corporations also agreed to make a payment to the government. These settlements are thus comparable to deferred prosecution agreements. There is no guidance on what criteria the PPSC will apply in determining whether to agree to a prohibition order instead of prosecution.

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

Yes. Typically, markers are obtained by counsel for the applicant by telephone. Counsel must identify the nature of the offence, and the product and geographic markets, but does not need to name the applicant.

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

Yes. As discussed in question 4.1 above, proffers are usually made orally to minimise the risk that there will be subsequent disclosure of admissions 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. Since parties to civil litigation, including follow-on damages claims, have an obligation to disclose all relevant documents to the opposing party, the provision of these documents to the Competition Bureau does not materially change a party's civil disclosure obligations.

4.4 To what extent will a leniency application be treated confidentially and for how long? To what extent will documents provided by leniency applicants be disclosed to private litigants?

While there are controls governing confidentiality, applicants must know that the information they provide will eventually be disclosed once charges are laid, as part of Crown disclosure. Crown disclosure may even include notes taken by Competition Bureau officers during the proffer.

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:

1. to a Canadian law enforcement agency;
2. for the purposes of administration or enforcement of the Act;
3. where the information has been made public; or

4. when it has been authorised by the person who provided the information.

Private litigants can obtain evidence collected by the Competition Bureau, but they must seek a court order in order to do so. The Competition Bureau's position, as stated in the *Information Bulletin on the Communication of Confidential Information under the Competition Act*, is that it will not voluntarily provide information to private litigants and will seek protective court orders to maintain the confidentiality of the information provided to it. As such, evidence will only be disclosed to private litigants where they obtain a court order compelling its disclosure.

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.

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

Leniency applicants can also obtain immunity for offences if they are the first to disclose information relating to another offence. This concept is known as "Immunity Plus". Immunity Plus encourages targets of ongoing 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.

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. Individuals can apply for immunity or leniency in the same manner as corporations. An individual who is the first-in leniency applicant receives special treatment; he or she will not be prosecuted for the offence.

S. 66.1 of the *Competition Act* requires the Competition Bureau to keep the identity of whistle-blowers confidential, and s. 66.2 prohibits reprisals against whistle-blowers.

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. Due to 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.

Quite recently, the PPSC has negotiated settlements based on a prohibition order with no prosecution. While prohibition orders have been available for a long time, until very recently, the Competition Bureau and the PPSC were not typically willing to consider them as an alternative to a prosecution and guilty plea. It is unclear under what circumstances this type of negotiated resolution will continue to be available in the future.

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 to 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?

S. 36 of the *Competition Act* permits anyone who has suffered a loss caused by criminal conduct under the Act, including price-fixing, to sue for damages sustained as a result of the conduct in question.

Plaintiffs frequently also plead various ancillary common law and equitable causes of action in bringing private actions under the *Competition Act*. The availability of these ancillary causes of action is currently the subject of an appeal to the Supreme Court of Canada.

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?

Yes. 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. There is conflicting jurisprudence on whether this limitation period can be extended by the doctrine of discoverability. This issue is currently before the Supreme Court of Canada.

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 from the date of discovery.

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

The Supreme Court of Canada has rejected the passing on defence, but permitted indirect purchaser claims based on the passing on of the overcharge. Courts can apportion the damages among the various distribution levels and make adjustments to avoid double recovery by plaintiffs.

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 the costs of the investigation. Some provincial class proceedings statutes limit the availability of costs in class proceedings.

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 more than C$1.2 billion 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.

In May 2018, the Competition Bureau released a draft version of the proposed revised leniency programme for comments.

The most important change to the immunity programme is that immunity will not be granted until the conclusion of the prosecution of other members of the cartel. Instead, the applicant will receive an interim grant of immunity after completing the proffer.

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

There are no other issues to report.

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The authors would like to acknowledge the assistance of their colleagues Tegan O'Brien and Katelyn Leonard in the preparation of this chapter.

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Digital Health
Drug & Medical Device Litigation
Employment & Labour Law
Enforcement of Foreign Judgments
Environment & Climate Change Law
Family Law
Financial Services Disputes
Fintech
Foreign Direct Investments Regimes
Franchise
Gambling
Insurance & Reinsurance
International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law
Oil & Gas Regulation
Outsourcing
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Sanctions
Securitisation
Shipping Law
Telecoms, Media & Internet Laws
Trade Marks
Vertical Agreements and Dominant Firms

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