

# Please Join Us

## Competition Collective Actions: Leveraging Canadian Legal Principles in the UK's New Regime

In-Person Presentation, Fireside Chat and Reception with Light Food & Beverages

Monday, March 7, 2022 | 3:30 – 8:00 p.m. GMT  
One Moorgate Place, Chartered Accountants' Hall, London

When it comes to class actions in general and competition class actions in particular our team of lawyers literally wrote the book. Two of them in fact. The definitive book for Canadian class action defendants, *Defending Class Actions in Canada: A Guide for Defendants, 5th Edition*, was penned by our Chambers Band 1 renown team of litigators, and our Chambers Band 1 competition team are responsible for *Litigating Competition Law in Canada*, the country's first textbook on the topic. We have been at the forefront of the development of Canadian class action law since the late 1970s, including as counsel on *Pro-Sys Consultants Ltd v. Microsoft* and are proud of our ability to litigate competition class actions across the country, from British Columbia to Ontario to Quebec, and all stops in between.

In light of the influence that Canadian jurisprudence and practice has already had on the development of collective action jurisprudence in the UK, including in the recent decision in *Merricks v. Mastercard*, McCarthy Tétrault and Paul Harris QC of Monckton Chambers have assembled a panel of Canadian leaders in class actions, including competition class actions, who will engage in a lively discussion centred on the UK's new collective action regime, to be co-moderated by Mark Sansom of Freshfields Bruckhaus Deringer.

We will provide insights on developing issues in this area, highlight the differences in approach taken in Canada's common law and civil law jurisdictions and share lessons from Canadian class actions that can be applied to the legal landscape in the UK. Most importantly, we will provide insight into issues that have not yet been determined in England and Wales, but have been considered in Canada based on our experience dealing with Canadian class actions from certification through to trial or settlement.

For questions about this event or additional information, please contact [clientevents@mccarthy.ca](mailto:clientevents@mccarthy.ca).



## AGENDA

Time	Event
3:00 p.m.	Doors Open/Registration
3:30 p.m.	Event Start – Introduction
3:35 p.m. – 4:10 p.m.	<p>Canadian Lessons: Class Action Fundamentals</p> <ul style="list-style-type: none"> <li>• General purpose and key procedural steps (commencing, serving, precertification, certification, common issues, distribution/administration, settlement)</li> <li>• Choosing (or challenging) the representative plaintiff/class</li> <li>• Choosing (or challenging) the list of defendants</li> <li>• Carriage issues, joint class representatives and plaintiff consortia</li> <li>• Common issue trials / individual trials of the remaining non-common issues</li> <li>• Deceased persons and defunct companies at trial and distribution stages</li> </ul>
4:15 p.m. – 4:50 p.m.	<p>Main Pre-Certification Issues/Procedures</p> <ul style="list-style-type: none"> <li>• Motions to strike</li> <li>• Summary judgment</li> <li>• Arbitration clauses and class action waivers</li> <li>• Sequencing</li> </ul>
4:55 p.m. – 5:30 p.m.	<p>Main Competition Law Certification Issues</p> <ul style="list-style-type: none"> <li>• Direct/indirect purchasers, umbrella purchasers, passing on</li> <li>• Expert methodology for determining damages at each layer of the supply chain</li> <li>• Aggregate damages the compensation principle and uninjured class members</li> <li>• The relevance of individual causation stories</li> <li>• Mixing competition and non-competition issues</li> </ul>
5:35 p.m. – 6:30 p.m.	<p>Fireside Chat and Q&amp;A: Lessons from Canada Post-Certification</p> <ul style="list-style-type: none"> <li>• Settlement issues: bar orders, contribution/indemnity, apportionment of damages</li> <li>• Compound interest</li> </ul>
6:30 p.m. – 8:00 p.m.	Reception



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## IN-PERSON PRESENTERS

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**Kristian Brabander** – Partner, McCarthy Tétrault, Montréal | [kbrabander@mccarthy.ca](mailto:kbrabander@mccarthy.ca) T: +1 514-397-4273

Kristian is a partner in the firm's [National Litigation Group](#) and [National Class Actions Group](#). He has unique experience with class actions, generally, and competition class actions, specifically from both the common law and civil law perspective. He is co-Chair of the American Bar Association's Class & Derivative Actions Subcommittee (Business Law Section, Business and Corporate Litigation). He also sits on the Executive Committee of the Class Actions Section of the Canadian Bar Association (Quebec) and is a contributing author to the fifth edition of *Defending Class Actions in Canada*, published by LexisNexis.



**Alexandra Cocks** – Partner, McCarthy Tétrault, Vancouver | [acocks@mccarthy.ca](mailto:acocks@mccarthy.ca) T: +1 604-643-7199

Alexandra is a partner in the firm's [National Litigation Group](#) and [National Class Actions Group](#). Alex is a contributing author to the fifth edition of *Defending Class Actions in Canada*, published by LexisNexis. She is the co-editor of the "Canadian Class Actions Monitor" blog. She previously acted as the Co-Chair of the Class Actions subsection of the Canadian Bar Association of the BC Branch.



**Nikiforos Iatrou** – Partner, McCarthy Tétrault, Toronto | [niatrou@mccarthy.ca](mailto:niatrou@mccarthy.ca) T: +1 416-601-7642

Former counsel to Canada's Commissioner of Competition (2009-2012), Niki is now a partner in the firm's [Competition/Antitrust and Foreign Investment Group](#). He is regarded by Chambers and other leading directories as one of Canada's top competition litigators. Clients like Facebook, PayPal, eBay, Airbnb, and Rakuten Kobo have turned to Niki when facing serious competition concerns, including where competition law intersects with other areas of regulatory law, like privacy. He focuses on high-stakes, contentious competition issues, including mergers, criminal cartels, abuses of dominance, false and misleading advertising claims, and competition class actions. Niki's book, *Litigating Competition Law in Canada*, was the first Canadian textbook on competition litigation, addressing all manner of competition disputes, including a chapter on competition class actions.

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## HOSTS/MODERATORS

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**Thomas N.T. Sutton** – Partner, McCarthy Tétrault, Toronto | [tsutton@mccarthy.ca](mailto:tsutton@mccarthy.ca) T: +1 416-601-8082

Tom is a partner in the firm's [National Litigation Group](#). He regularly acts as lead counsel before all Canadian tribunals and courts, including the Supreme Court of Canada and before domestic and international arbitral tribunals. In addition to his full time practice, he is an adjunct professor at two Canadian universities, teaching Civil Trial Advocacy, Remedies and Medical Malpractice. He has been recognized as a leading Canadian litigator by Benchmark Litigation Canada, The Canadian Legal Lexpert Directory, Best Lawyers in Canada and Acritas Stars.



**Paul Harris QC** – Monckton Chambers, London | [pharris@monckton.com](mailto:pharris@monckton.com) T: +44 207-405-7211

Paul is the current Lawyer Barrister of the Year. Paul has a trailblazing collective competition law proceedings practice, including in particular his "strong leadership of a novel case" in acting for the opt-out claimants in *Merricks v Mastercard*. This was the first mass consumer claim successfully brought under the new collective action regime and the judges were impressed with Paul's "extremely strong advocacy credentials" in this "relatively new area of law." Paul also currently acts in multiple other collective proceedings, including *Trains and Trucks*.



**Mark Sansom** – Partner, Freshfields Bruckhaus Deringer, London | [mark.sansom@freshfields.com](mailto:mark.sansom@freshfields.com)  
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Mark leads the UK competition litigation team and Freshfields and co-chairs its global antitrust litigation group. He has acted on many of the leading competition damages claims, including successfully defending ABB in *BritNed v ABB*, the first cartel damages claim to go to full judgment in the UK; representing Mastercard in the seminal *Merricks v Mastercard* collective proceedings; acting for London & South Eastern Railway and Govia Thameslink Railway in three class actions concerning *Rail Tickets*; and representing Infineon in its recent success on limitation grounds in *Gemalto v Infineon & Ors*. Mark was recognised as Global Competition Review's Litigator of the Year (worldwide) in 2019.

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## VIRTUAL PRESENTERS

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**Isabelle Vendette** – Partner, McCarthy Tétrault, Montréal | [ivendette@mccarthy.ca](mailto:ivendette@mccarthy.ca) T: +1 514-397-5634

Isabelle is a partner in the firm's [National Litigation Group](#) and [National Class Actions Group](#). She advises and represents financial institutions, telecommunication companies and other public and privately held corporations in complex cases and high-profile class actions. Isabelle is a contributing author to the fifth edition of *Defending Class Actions in Canada*, published by LexisNexis.



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Brandon is a partner in the firm's [National Litigation Group](#) and [National Class Actions Group](#). He previously served on the executive committee of the Class Actions Section of the Ontario Bar Association. Brandon appeared before the Supreme Court of Canada on behalf of the Microsoft respondents in the competition class action trilogy *Pro-Sys Consultants Ltd. v. Microsoft Corporation*. His class actions often involve cross-border issues. He successfully acted as lead counsel before the Ontario Court of Appeal in dismissing part of a proposed \$400 million negligence class action alleging pure economic loss from a foreign import ban involving genetically modified corn: *Darmar Farms Inc. v. Syngenta Canada*.



**Michael Rosenberg** – Partner, McCarthy Tétrault, Toronto | [mrosenberg@mccarthy.ca](mailto:mrosenberg@mccarthy.ca) T: +1 416-601-7831

Michael is a partner in the firm's [National Litigation Group](#) and vice-chair of the firm's [National Class Actions Group](#). He has litigated class actions for defendants and plaintiffs, at trial and before all levels of court, including the Supreme Court of Canada. Michael has served as an adjunct professor of class actions law at the University of Toronto Faculty of Law for a decade, and he is co-author of two leading texts on the subject. Most recently Michael led the prosecution of national class actions seeking safe drinking water for First Nations, which resulted in a settlement worth at least \$8 billion, one of the largest in Canadian history. Michael also led the successful defence of the first secondary market securities class action to be decided on its merits, and he obtained judgment for a class of inmates that had been subjected to prolonged solitary confinement in Canadian prisons. Michael was a member of the Law Commission of Ontario's advisory committee on class action reform and he has been recognized by *Lexpert* as a Leading Lawyer in the area of class actions.



**Donald B. Houston** – Counsel, McCarthy Tétrault, Toronto | [dhouston@mccarthy.ca](mailto:dhouston@mccarthy.ca) T: +1 416-601-7506

Donald is Counsel in the firm's [Competition/Antitrust & Foreign Investment Group](#). He is widely recognized as one of Canada's leading practitioners in competition law and litigation. His experience litigating cases before the Competition Tribunal is unsurpassed in Canada. Mr. Houston is a former Chair of the Canadian Bar Association's National Competition Law Section. Mr. Houston's competition practice includes cartel investigations and prosecutions, mergers, civil cases before the Competition Tribunal and private actions (including class actions) in the Courts. He has frequently represented the Commissioner of Competition in the Tribunal and before the Courts.



**Frank McLaughlin** – Partner, McCarthy Tétrault, Toronto | [fmclaugh@mccarthy.ca](mailto:fmclaugh@mccarthy.ca) T: +1 416-601-7531

Frank is a partner in the firm's [National Litigation Group](#) and [National Class Actions Group](#) specializing in the defence of pharmaceutical product liability class actions. He has represented clients at all levels of court in Canada in a variety of types of cases. Frank has an established track record of success in the defence of pharmaceutical class actions. He was lead counsel for AstraZeneca in a ground-breaking class action (*Martin v. AstraZeneca*) involving the atypical anti-psychotic medication Seroquel. Frank and his team defeated class certification, which, at that time, was the first successful defence of a contested certification hearing for a prescription pharmaceutical medication in Ontario.



**Kara L. Smyth** – Partner, McCarthy Tétrault, Calgary | [ksmyth@mccarthy.ca](mailto:ksmyth@mccarthy.ca) T: +1 403-260-3724

Kara is a partner in the firm's [National Litigation Group](#) and [National Class Actions Group](#). Recognized for her innovative approach to handling complex business disputes, Kara's practice focuses primarily on corporate commercial, class action, and public law litigation. Kara represents a broad scope of clients from a wide range of industries including oil and gas, wind farm development, agribusiness, commercial real estate, retail, and technology in disputes concerning class actions and a variety of other matters concerning complex commercial transactions. Kara is a contributing author to the fifth edition of *Defending Class Actions in Canada*, published by LexisNexis.



**Jill Yates – Partner, McCarthy Tétrault, Vancouver | [jjates@mccarthy.ca](mailto:jjates@mccarthy.ca) T: +1 604-643-7908**

An experienced commercial litigator, Jill is the Chair of the firm's **National Class Actions Group** and Practice Lead of its Vancouver **Litigation Group**. During her career, Jill has defended clients in industries such as financial services, retail and consumer markets, technology, and manufacturing, against class actions lawsuits. These class actions have included wide-ranging allegations such as breach of contract, economic torts and restitution, price-fixing, product liability, and breach of privacy. Jill is the editor of the fifth edition of *Defending Class Actions in Canada*, published by LexisNexis, and was an editor and contributing author to the previous editions. She is also the past chair of the Class Actions Section of the Canadian Bar Association, British Columbia.

## 2021 Awards & Rankings – Class Actions and Competition/Anti-Trust

### Chambers Global and Chambers Canada – Band 1

Dispute Resolution – Class Action Defence

### Chambers Global and Chambers Canada – Band 1

Competition/Anti-Trust

### The Canadian Legal Lexpert Directory

Litigation – Class Action – Leading Firms – Major Full Service

### Best Lawyers

Class Action Firm of the Year

### Global Competition Review

Elite

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