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**W. Michael G. Osborne**

[mosborne@casselsbrock.com](mailto:mosborne@casselsbrock.com)

t: 416 860 6732

f: 416 360 8877

**Toronto**

Suite 2100, Scotia Plaza

40 King Street West

Toronto, ON

Canada

M5H 3C2

“Detailed knowledge of Canadian competition law, both in terms of the substantive law as well as the process.”  
– *Client Testimonial, Chambers Canada*

Michael Osborne is a partner in our [Advocacy and Competition, Antitrust & Foreign Investment](#) Groups.

Michael advises and defends clients in inquiries and proceedings commenced by the Competition Bureau, including criminal matters, abuse of dominance, and marketing and advertising matters. He defends clients in private proceedings under the *Competition Act*, including price fixing class actions.

Michael acts for and advises parties in a wide range of commercial disputes, including contractual disputes, shareholders' disputes, commercial fraud, and employment matters. He also offers experience in a range of regulatory and white collar crime matters.

Michael has acted as trial and appellate counsel before all levels of court across the country, the Competition Tribunal and other administrative tribunals, and arbitral tribunals in international and domestic arbitrations, both institutional and ad hoc.

Michael is a Fellow of the Chartered Institute of Arbitrators and a member of ICDR Canada's roster of arbitrators.

### Representative Highlights

- **Optical disk drives price fixing class action:** Defending an optical disk drive manufacturer
- **Capacitors price fixing class actions:** Defending a capacitors manufacturer
- **Visa / MasterCard interchange class actions & related litigation:** Acting for a Schedule III bank and its acquirer subsidiary
- **MD Financial Management v. RBC Dominion Securities:** Obtained judgment at trial on liability for breaches of non-solicitation clauses (2017 ONSC 2772)
- **Hamdy v. Wickham:** Defeated interpleader application (2016 ONSC 5933)
- **Stargrove Entertainment Inc. v. Universal Music Publishing:** Defended Casablanca Media Publishing and ABKCO Music & Records Inc. Defeated Stargrove's attempt to obtain leave under s. 75 and 77 (2015 Comp. Trib. 26)



- **Expedia Cruiseshipcenters:** Acted for Expedia Cruiseshipcenters in franchise dispute with Ontario sub-franchisor and subsequent purchase by Expedia Cruiseshipcenters of the business of the Ontario sub-franchisor
- **Low-rise concrete forming cartel investigation:** Acted for a target of this investigation
- **Mobile advertising deceptive marketing practices investigation:** Acted for a target of an investigation into advertising involving text messages
- **Royal Bank of Scotland v. Canada (Commissioner of Competition):** Obtained stay of s. 11 order pending challenge, [2011] OJ No 6729. The Competition Bureau later terminated inquiry (Libor).
- **Laxey Partners Ltd. v. Strategic Energy Management Corp.:** Represented an investor suing because of a dilution of its interest in an investment fund resulting from an exchange offering, 2011 ONSC 6348
- **Chocolate price fixing inquiry:** Acted for two individuals involved in a Competition Bureau investigation into the alleged chocolate cartel
- **Ottawa federal procurement bid-rigging inquiry:** Acted for an immunity/leniency applicant in the Competition Bureau's investigation into alleged bid-rigging in federal procurements
- **International sale of goods arbitration under Swiss Rules:** Represented a purchaser of a product that allegedly did not comply with relevant safety standards.
- **Conflict of Interest and Ethics Commissioner investigation:** Successfully represented the Hon. Lisa Raitt, Minister of Labour, in an investigation by the Commissioner.
- **Abuse of dominance – telecommunications:** Represented a cable company that complained of abuse of dominant position by a competitor.
- **Abuse of dominance – airlines:** Represented certain airlines in an abuse of dominance complaint
- **Abuse of dominance – software:** Represented a software developer in an abuse of dominance complaint
- **Alberta Utilities Commission:** Counsel to this administrative tribunal at hearings on "specified penalty" (administrative monetary penalties) and "complaints" hearings.
- **"The Osborne Report" for the Canadian Radio-television and Telecommunications Commission:** Prepared a report for the CRTC's Review of regulatory framework for wholesale services and definition of essential service proceeding.
- **Royal Bank of Canada v Société Générale:** Acted for an insurance company in connection with a \$100 million lease kiting scheme that involved forged endorsements on cheques. This case turned on the interpretation of the Bills of Exchange Act. Several decisions in this case are reported.
- **B-Filer Inc. v. Bank of Nova Scotia:** Acted for applicant in first full hearing of a private application under the Competition Act's refusal to deal provisions.
- **Allan v Ontario:** Challenged a decision of a provincial marketing board to re-regulate milk exports, on



constitutional and administrative law grounds. Reported at 76 O.R. (3d) 616.

- **Canada (Commissioner of Competition) v. Canadian Waste Services Holdings Inc.:** Acted for the Commissioner of Competition in successfully opposing, under the merger provisions of the Competition Act, CWS' acquisition of a landfill in southwestern Ontario. Reported at: (2001), 11 C.P.R. (4 th) 425 (Comp. Trib.), (2001), 15 C.P.R. (4 th) 5 (Comp. Trib.), affirmed, (2003) 24 C.P.R. (4 th) 178 (F.C.A.).
- **Canadian Waste Services Holdings Inc. v. Canada (Commissioner of Competition):** Acted for the Commissioner of Competition in successfully opposing an application by CWS for rescission of order of the Competition Tribunal that it divest itself of a landfill in southwest Ontario. This is now one of the leading cases under s. 106 of the Competition Act. Reported at: (2004), 33 C.P.R. (4th) 275.
- **Canada (Commissioner of Competition) v. Air Canada:** Acted for the Commissioner of Competition in a case involving an alleged abuse of dominance by Air Canada arising from Air Canada's response to entry by WestJet and CanJet into eastern Canada. The Tribunal's decision defines the 'avoidable costs' of Air Canada. The Tribunal accepted Commissioner's approach to avoidable costs. Its decision will likely be applicable to future predatory pricing cases. Reported at: (2003), 26 C.P.R. (4th) 476 (Comp. Trib.).
- **3Com Corp. v. Intelligent Decisions Inc. and 3Com Corp. v. Zorin International Corp.:** Obtained judgments after trials of nearly US\$10 million against companies and certain individuals who fraudulently obtained significant discounts on computer products by claiming that they were for governmental and educational end users when in fact the equipment was grey-marketed. Jim Orr was lead counsel. Reported at: [2004] O.J. No. 2348 and [2004] O.J. No. 1767.

Michael serves as editor of the *Canadian Competition Law Review*. He has held numerous positions in the CBA Competition Law Section, including chair of the Section's Reviewable Matters and Unilateral Conduct Committee, and member of the working group that assisted in preparing the new Competition Tribunal Rules. He is a Vice-Chair of the Books and Treatises committee of the ABA's Antitrust Section. Michael contributes frequently to legal periodicals, teaches in CPD programs sponsored by The Advocates' Society, and regularly speaks on competition and commercial litigation topics.

## CLIENT COMMENTARY

- "Detailed knowledge of Canadian competition law, both in terms of the substantive law as well as the process." – *Chambers Canada* (Competition/Antitrust)
- "Highly regarded for competition litigation." – *Chambers Global* (Competition/Antitrust)

## Achievements

- *The Best Lawyers in Canada* (Competition/Antitrust)
- *Chambers Canada* (Competition/Antitrust)
- *Chambers Global* (Competition (Litigation))



- *Martindale Hubbell*, AV Peer Review Rated
- *Who's Who Legal Canada* (Competition)
- *Canadian Legal Lexpert Directory* (Competition)

## **Call to the bar**

Ontario, 1998

## **Associations**

- Canadian Bar Association (Member, Competition Law Section; Editor of Canadian Competition Law Review)
- American Bar Association (Member, Section of Antitrust Law; Vice Chair, Books & Treatises Committee)
- Ontario Bar Association (Member)
- The Advocates' Society (Member)
- Toronto Commercial Arbitration Society (TCAS) (Member)
- Chartered Institute of Arbitrators (Fellow)
- Litigation Counsel of America (Fellow)

## **Expertise**

Class Actions  
Competition, Antitrust & Foreign Investment  
Litigation  
White Collar Crime & Regulatory Response