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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.

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 relating to 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 Most were dismissed or withdrawn before adjudication.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, changed 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.

This is only one excerpt of our publication, Two Decades of Competition Tribunal Decisions: Data-Driven Insights,

which analyzes how the Competition Tribunal has historically handled litigation. Read more here:

- A New Era of Canadian Competition Law