International Competition Network

ANTI-CARTEL ENFORCEMENT TEMPLATE

CARTELS WORKING GROUP

Subgroup 2: Enforcement Techniques

The Competition Bureau of Canada

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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

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1. Information on the law relating to cartels

A. Implementing regulation(s) (if any):	Provisions covering cartels in Canada are found in the *Competition Act*, R.S.C. 1985, c. C-34 (the Act), primarily under sections 45 (conspiracy), 46 (implementation of foreign directives), and 47 (bid-rigging). Amendments to the Act which included changes to sections 45 and 47 were given Royal Assent on March 12, 2009. Most of the amendments came into force immediately, however, the coming into force of the amendments to section 45 was delayed for one year, until March 12, 2010. Conduct pre-dating the amendments will still be subject to the previous provisions. Information about the amendments to these sections of the Act can be found at: http://competitionbureau.gc.ca The Act is also available in French.

B. Interpretative guideline(s) (if any):	The Competitor Collaboration Guidelines describe the Bureau's general approach in applying sections 45 and 90.1 of the Act to collaborations between competitors. The Guidelines can be found at: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03177.html The Guidelines are also available in French.
C. Other relevant materials (if any):	The Bureau published an updated Immunity and Leniency Bulletin in September 2018. The Bulletin can be found at: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_02000.html The Bulletin is also available in French.

2. Scope and nature of prohibition on cartels

A. Does your law or case law define the term "cartel"? **If not, please indicate the term you use instead.**	No, the Act does not expressly refer to or define "cartel". Section 45 of the Act prohibits conspiracies, agreements or arrangements among competitors or potential competitors to, among other things, fix prices, allocate markets and restrict output. Section 46 of the Act prohibits a corporation carrying on business in Canada from implementing a foreign directive for the purpose of giving effect to a conspiracy, combination, agreement or arrangement in violation of section 45. Section 47 of the Act prohibits agreements or arrangements between or among two or more bidders or tenderers, in response to a call or request for bids or tenders, to not submit a bid, to submit an agreed or arranged bid or to withdraw a bid. The *Criminal Code* (the "Code") also sets out offences which may apply to cartel conduct: - Attempting to commit an offence (subsection 24(1)); - Frauds on the government (subsection 121(1)); - Fraud (section 380); - Attempting to commit an offence or being an accessory after the fact (paragraph 463(b)); and - Conspiring to commit offences (section 465).
B. Does your legislation or case law distinguish between very serious cartel behaviour	Yes. The amendments to the conspiracy provision of the Act create a more effective criminal prohibition that is reserved for agreements commonly recognized as the most egregious forms of anti-competitive conduct; namely, agreements between

("hardcore cartels" – e.g.: price fixing, market sharing, bid rigging or production or sales quotas[1]) and other types of "cartels"?	competitors to fix prices, allocate markets or restrict output that in substance have no purpose or consideration other than restraining competition, and which are deserving of condemnation without requiring proof of their anti-competitive effects. Other forms of competitor collaborations, joint ventures and strategic alliances may be subject to review under a civil provision that prohibits agreements only where they are likely to substantially lessen or prevent competition (section 90.1 of the Act).
C. Scope of the prohibition of hardcore cartels:	The Act is a law of general application with the purpose of preventing anti-competitive practices in the marketplace in order to ensure that Canadian businesses and consumers prosper in a competitive and innovative marketplace. The Act applies to most business activity in Canada. The following are some exceptions, exclusions and defences to sections 45 (conspiracy), 46 (implementing foreign directives) and 47 (bid rigging): 1) The previous version of section 45 (prior to March 12, 2010) does not apply to the following: Subsection 45(3) - Agreements that relate only to certain specified activities such as:(a) the exchange of statistics;(b) the defining of product standards;(c) the exchange of credit information;(d) the definition of terminology used in a trade, industry or profession;(e) cooperation in research and development;(f) the restriction of advertising or promotion, other than a discriminatory restriction directed against a member of the mass media;(g) the sizes or shapes of the containers in which an article is packaged;(h) the adoption of the metric system of weights and measures; or(i) measures to protect the environment. However, subsection 45(3) does not apply if the agreement has lessened or is likely to lessen competition unduly in respect of prices, quantity or quality of production, markets or customers, or channels or methods of distribution; or if the agreement has restricted or is likely to restrict any person from entering into or expanding their business. Subsection 45(5) – Agreements that relate only to the export of products from Canada unless the agreement: (a) has resulted in or is likely to result in a reduction or limitation of the real value of exports of a product; (b) has restricted or is likely to restrict any person from entering into or expanding the business of exporting products from Canada; or (c) has prevented or lessened or is likely to prevent or lessen competition unduly in the supply of services facilitating the export of products from Canada. Subsection 45(7) – Agreements that relate only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public in the practice of a trade

[1] In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as "hardcore cartels". Hereinafter this terminology is used.

	or profession relating to the service or in the collection and dissemination of information relating to the service. Subsection 45(7.1) – Agreements between federal financial institutions (a separate conspiracy provision in section 49 applies). Subsection 45(8) – Agreements involving only affiliates. See also section 2 of the Act with regard to affiliates. Under section 86 of the Act, specialization agreements can be registered by private parties with the Competition Tribunal provided they meet certain criteria. Section 90 of the Act provides that section 45 does not apply to specialization agreements that are registered. 2) The current version of section 45 (effective March 12, 2010) is limited in scope by the following: Subsection 45(4) - The ancillary restraints defence recognizes that some desirable business collaborations reasonably require some restraints to make them efficient, or even possible. An ancillary restraint is an agreement or term of an agreement that contravenes the prohibitions in subsection 45(1), but which is directly related to, and reasonably necessary for giving effect to, a broader and lawful agreement. A number of exceptions are carried over from the previous version of section 45, as noted above, including: (i) subsection 45(5); (ii) paragraphs 45(6)(a) and (b) (formerly subsection 45(8) and 45(7.1) respectively); (iii) section 86; and (iv) section 90. The defences under former subsections 45(3) and (7) are no longer available due to the narrowed scope of the new section 45 and the ancillary restraints defence under subsection 45(4). 3) Section 47 of the Act does not apply to an agreement arrived at only by affiliates (subsection 47(3)). 4) The Act does not apply to certain agreements or arrangements in respect of: - collective bargaining activities (section 4); - underwriting (subsection 5(1)); and - amateur sport (subsection 6(1)). 5) There are other laws containing exemptions from the application of all or some of the provisions of the Act. For example, subsection 70.5(3) of the *Copyright Act* provides that section 45 of the Act does not apply in respect of any royalties or related terms and conditions arising under an agreement filed in accordance with the *Copyright Act*.

	Section 33 of the *Energy Supplies Emergency Act* provides that the Energy Board, after consulting with the Minister of Industry (now the Minister of Innovation, Science and Economic Development) may, by order, exempt persons from the application of the Act in respect of an agreement deemed necessary during periods of national emergency caused by shortages or market disturbances. Section 32 of the *Farm Products Agencies Act* provides that nothing in the Act applies to any contract, agreement or arrangement where the regulatory agency has authority over the persons involved under the *Farm Products Agencies Act* or any other Act. The *Status of the Artist Act* excludes certain associations from application of the Act. The *Shipping Conferences Exemption Act* exempts certain agreements involving ocean shipping from the application of the Act. Section 47 of the *Canada Transportation Act* provides that the Governor in Council may take any action considered "essential to stabilize the national transportation system," including the imposition of capacity and pricing restraints, and that the section prevails over the *Competition Act*. 6) Canadian courts have also developed a principle of statutory interpretation called the Regulated Conduct Doctrine which may immunize a regulatory body, exercising its authority under validly enacted federal, provincial or municipal law, from the criminal conspiracy provisions of the Act. The Bureau will always consider the regulatory context in which the conduct was engaged where it is relevant to the application of the provisions of the Act; focusing on the question of whether a validly enacted law authorizes (expressly or impliedly) or requires the conduct that would otherwise constitute a conspiracy under the Act. Subsection 45(7) explicitly provides that the Regulated Conduct Doctrine as it applied to section 45 prior to the 2009 amendments will continue to apply to the amended section 45.
D. Is participation in a hardcore cartel illegal *per se*?	Amendments to the conspiracy provisions of the Act came into force March 12, 2010, repealing the existing criminal offence of conspiracy and replacing it with a new per se criminal provision that prohibits agreements between competitors and/or potential competitors to fix prices, allocate markets and restrict output. As such, the old requirement of proving an undue anti-competitive effect to the criminal burden of proof disappeared. Other forms of competitor collaborations, such as joint ventures and strategic alliances, may be subject to review under a civil provision that prohibits agreements only where they are likely to substantially lessen or prevent competition. Bid-rigging is also a per se illegal offence.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination	Conspiracies, agreements or arrangements between competitors to fix prices, allocate markets or restrict output of a product (current section 45), implementing a foreign directive to give effect to a conspiracy (section 46) and bid-rigging (section 47) are

of these?	criminal offences.

3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	The Commissioner of Competition (Commissioner), an independent official appointed under the Act by the Governor in Council, has the statutory responsibility to enforce and administer the Act. The Commissioner heads the Competition Bureau (the Bureau), which is comprised of various branches, including the Cartels and Deceptive Marketing Practices Branch. Criminal cartel investigations are conducted by the Cartels Directorate of the Cartels and Deceptive Marketing Practices Branch. Investigations into civil offences under the Act, including some forms of competitor collaborations, are conducted by the Mergers and Monopolistic Practices Branch.
B. Contact details of the agency:	Information Centre Competition Bureau 50 Victoria Street Gatineau, Quebec K1A 0C9 Tel: (819) 997-4282 Toll free: 1-800-348-5358 TTY: 1-866-694-8389 Fax: (819) 997-0324 Website: www.competitionbureau.gc.ca (available in French and English) Online complaint form: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/frm-eng/GH%C3%89T-7TDNA5 Regional offices are located in Montreal, Toronto and Vancouver.
C. Information point for potential complainants:	See question 3B.
D. Contact point where complaints can be lodged:	See question 3B.
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	The Bureau may seek assistance from other authorities including municipal or provincial police forces and the Royal Canadian Mounted Police. For investigations regarding international cartels, the Bureau may seek assistance from foreign competition agencies and other foreign enforcement authorities through bilateral and multilateral cooperation instruments, mutual legal assistance treaties for criminal matters, and extradition treaties.

4. Decision-making institution(s)[2]

A. Name of the agency making decisions in cartel cases:	The Competition Bureau investigates alleged cartel activity and may refer matters to the Director of Public Prosecutions (DPP) who is responsible for prosecuting criminal offences under federal jurisidction through lawyers with the Public Prosecution Service of Canada (PPSC). Cartel matters are prosecuted as indictable criminal offences and are judged in the provincial courts of superior jurisdiction or the Federal Court.
B. Contact details of the agency:	See question 3B for the contact details for the Bureau. The following are the contact details for the DPP: Director of Public Prosecutions Public Prosecution Service of Canada 160 Elgin Street - 12th Floor Ottawa, Ontario K1A 0H8 613-957-6489 1-877-505-7772 info@ppsc.gc.ca
C. Contact point for questions and consultations:	See questions 3B and 4B.
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	Typically, the process starts with an informal preliminary examination (see question 5A). Once a formal inquiry is commenced under section 10 of the Act (see question 5), the Commissioner may seek court authority to exercise formal powers of investigation, such as issuing orders for oral examinations or the production of documents and conducting searches (see question 7). Once the inquiry is completed, the Commissioner decides whether to discontinue the inquiry (section 22 of the Act) or to refer the matter under section 23 of the Act to the Attorney General for prosecution. The Bureau provides support and assistance to the PPSC during a prosecution. If a Court finds a party guilty of conspiracy, the Bureau's role in sentencing is to make recommendations to the DPP who then makes recommendations to the Court, which has the final sentencing power.
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	See question 4D.

[2] Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases:	Preliminary examinations may begin in various ways, including complaints from the public or a customer, reports from procurement authorities or police forces, whistleblowers or immunity or leniency applicants. They may also be initiated by Bureau staff based on research or media reports that support an assessment that there has been a breach of the Act. Section 10 of the Act provides that the Commissioner shall cause an inquiry to be made: - on application under section 9 of the Act (see question 5B) - whenever the Commissioner has reason to believe that an offence, including a cartel, has been or is about to be committed; or - whenever directed by the Minister of Innovation, Science and Economic Development to inquire into the above.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	Generally, complaints are not required to be made in a specific form. However, a six-resident application for the Commissioner to commence an inquiry under section 9 of the Act must be accompanied by a statement in the form of a solemn or statutory declaration providing: (a) the names and addresses of the applicants; (b) the nature of the allegation and the names of the persons believed to be concerned therein and privy thereto; and (c) a concise statement of the evidence supporting the allegation.
C. Legal requirements for lodging a complaint against a cartel:	There are no legal requirements for lodging a complaint alleging a cartel. As noted above, an application by six persons resident in Canada that the Commissioner commence an inquiry may be made pursuant to section 9 of the Act. Section 9 of the Act sets out certain requirements. See reponse to question 5B.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	Section 10 of the Act provides that the Commissioner shall cause an inquiry to be made into all such matters as the Commissioner considers necessary to inquire into with the view of determining the facts: -on application made under section 9; -whenever the Commissioner has reason to believe that an offence has been or is about to be committed; or -when directed by the Minister.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	The Commissioner is not required to adopt a decision addressed to the complainant, although the Commissioner will typically notify the complainant of a decision not to pursue a complaint relating to a cartel. Section 22 of the Act states that, if the Commissioner decides to discontinue an inquiry made on application under section 9 of the Act (six-resident complaint), the Commissioner shall advise the applicants of the decision and the grounds for the

	decision.
F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?	There is no time limit established under the Act.

6. Leniency policy[3]

A. What is the official name of your leniency policy (if any)?	The official name of Canada's immunity and leniency policies is "the Immunity and Leniency Programs under the *Competition Act*". The Immunity and Leniency Bulletin provides information about these policies. It is available to the public at: http://www.competitionbureau.gc.ca.
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	Yes. Both full leniency (under the Immunity Program) and partial leniency (under the Leniency Program) may be available. See questions 6F and 6G.
C. Who is eligible for full leniency?	Only the first party (business organization or individual) who comes forward and meets all the requirements of the Immunity Program qualifies for full immunity (i.e., a grant of immunity from prosecution under the Act). If the first party fails to meet the requirements, a subsequent party that does meet the requirements may be recommended for immunity.
D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation? **In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the**	The Commissioner will recommend to the DPP that immunity be granted to a party in the following situations: a) the Bureau is unaware of an offence, and the applicant is the first to disclose all elements of the offence; or b) the Bureau is aware of an offence, and the applicant is the first to come forward before the Bureau gathers sufficient evidence to warrant a referral of the matter to the DPP. A recommendation by the Bureau that the applicant be granted immunity will occur only if the party has met all other requirements. See question 6F.

[3] For the purposes of this template the notion of 'leniency' covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like 'leniency' 'amnesty' and 'immunity' are considered as synonyms.

outcome of leniency applications?	
E. Who can be a beneficiary of the leniency program (individual / businesses)?	Both business organizations and individuals are eligible for immunity.
F. What are the conditions of availability of full leniency:	As set out in the Immunity Program, the following requirements must be met: - The party must terminate its participation in the illegal activity. - The party must not have coerced others to be party to the illegal activity. - Companies and individuals must demonstrate that they were a party to the offence (as described in sections 21, 22 and 22.2 of the *Criminal Code*). - The disclosed conduct must constitute an offence under the Act and be supported by credible and reliable evidence that demonstrates all elements of the offence - Where the party requesting immunity is the only party involved in the offence it will not be eligible for immunity. Throughout the course of the Bureau's investigation and subsequent prosecution, the party must provide complete, timely and ongoing cooperation: a) Confidentiality - unless made public by the Commissioner or the DPP, or as required by law in Canada or elsewhere, the applicant shall not disclose its application for an immunity marker, its cooperation and subsequent grant(s) of immunity, or any related information, to a third party. b) Exhaustive internal investigation - the applicant must reveal any and all offences in which it may have been involved; c) Full, complete and truthful disclosure - the applicant must provide full, complete and truthful disclosure of all non-privileged information, evidence and records in its possession, under its control or available to it, wherever located, that in any manner relate to the unlawful conduct for which immunity is sought. Absent compelling reasons, an applicant is expected to identify all of the other jurisdictions where it has made a similar application for immunity or leniency. There must be no misrepresentation of any material facts. d) Witness cooperation - companies must take all lawful measures to secure the cooperation of current directors, officers and employees suspected of being involved in an offence for the duration of the investigation and any ensuing prosecution. Companies must also take all lawful measures to secure the cooperation of former directors, officers and employees as well as current and former agents suspected of being involved in the offence, where doing so will not jeopardize the investigation and where the company has the consent of the Bureau or the DPP. e) Financial commitment - parties must cooperate with the Bureau's investigation and any subsequent prosecution at their own expense.

G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):	The Bureau has a formal policy for partial leniency set out in the Leniency Program. Any individual or organization who has breached the cartel provisions under the Act and does not qualify for immunity can apply for leniency. The Bureau will recommend to the DPP that qualifying applicants be given lenient treatment for their complete, timely and ongoing cooperation with the Bureau's investigation and any subsequent prosecution. Leniency applicants may be entitled to a cooperation credit of up to 50%, to be applied to the base fine. The amount of credit awarded will be based on the value and timing of the applicant's cooperation. The DPP, in consultation with the Bureau, will determine whether to recommend a reduced sentence to the Court. The Court will make the final decision on sentence. Like the Immunity Program (see question 6F), there are certain eligibility conditions for an applicant to benefit from a lenient treatment recommendation to the DPP. The applicant must: - apply for leniency before the Bureau has referred the results of its investigation to the DPP for prosecution; - have terminated its participation in the cartel; - agree to cooperate fully and in a timely manner, at its own expense, with the Bureau's investigation and any subsequent prosecution; - demonstrate that it was a party to the offence; and - agree to plead guilty. A recommendation for leniency will only be made when the disclosed conduct constitutes an offence under the Act and is supported by credible and reliable evidence that demonstrates all elements of the offence. See question 6N for information regarding "Immunity Plus".
H. Obligations for the beneficiary after the leniency application has been accepted:	See questions 6F and 6G.
I. Are there formal requirements to make a leniency application?	Apart from meeting the requirements for leniency as set out in the Immunity and Leniency Programs, there are no specific requirements as to the form an application must take. The Bureau accepts both written and oral proffers in immunity and leniency applications. See questions 6F and 6G for additional information on the requirements to qualify for immunity or leniency.
J. Are there distinct procedural steps within the leniency program?	Immunity Process: Step 1: Initial Contact / Marker Request; Step 2: Proffer; Step 3: Grant of Interim Immunity (GII) Recommendation from the Bureau to the DPP; Step 4: GII by the DPP; Step 5: Full Disclosure and Cooperation Step 6: Immunity Recommendation from the Bureau to the DPP; Step 7: Final Grant of Immunity by the DPP. Leniency Process:

	Step 1: Initial Contact / Marker Request; Step 2: Proffer and Limited Disclosure (including witness interviews); Step 3: Leniency Recommendation from the Bureau to the DPP; Step 4: Plea Agreement between the DPP and Leniency Applicant; Step 5: Full Disclosure; Step 6: Court Proceedings - Entering the Plea; Step 7: Ongoing Cooperation and Testimony.
K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?	See the response to question 6J.
L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?	The DPP has the sole authority to grant immunity to a party implicated in an offence under the Act. The Bureau investigates the matter and makes a recommendation to the DPP. The DPP then independently considers if the interests of the public are best served by granting immunity. The DPP's policy on granting immunity for offences under the Act is explained in the PPSC deskbook available at: https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/index.html.
M. Does your legislation have a marker system? If yes, please describe it.	The Bureau does have a marker system (a policy rather than a law). An "immunity marker" is the confirmation given to an applicant that it is the first party to approach the Bureau requesting a recommendation of immunity with respect to an offence under the Act. A "leniency marker" is the acknowledgement given to a leniency applicant that records the date and time of a leniency applicant's application to the Leniency Program. It establishes the leniency applicant's position in line in relation to other individuals or organizations seeking to participate in the Leniency Program. Immunity and leniency markers guarantee the applicant's position in line, subject to the applicants meeting all of the criteria of the Immunity or Leniency Programs. Markers may be requested for cartel offences by contacting the Deputy Commissioner of the Cartels Directorate. Typically, marker requests are made by an applicant's legal representative. An applicant can make the first contact on the basis of a limited hypothetical disclosure that identifies the nature of the criminal offence in respect of a specified product or business interest. The applicant's identity does not need to be disclosed until the marker is granted. The Bureau requires sufficient information to determine whether an applicant is "first-in" under the Immunity Program or qualifies

	for leniency under the Leniency Program. It does this by comparing the product or business interest description received to information in its marker database and determining if another party has already requested a marker for the same conduct. Once a marker is granted, the applicant then has 30 calendar days to provide the Bureau with a detailed statement, known as a "proffer", describing the unlawful conduct. In the proffer, an applicant describes in detail the unlawful conduct demonstrating each element of the offence, the applicant's role in the offence and the connection of the unlawful conduct to Canada. The applicant must also outline all of the supporting evidence and witnesses that it is aware that it can provide at that point in time.
N. Does the system provide for any extra credit[4] for disclosing additional violations?	If a leniency applicant discloses evidence of conduct constituting a further criminal offence under the Act unknown to the Bureau, the leniency applicant may be eligible for Immunity Plus status. If the leniency applicant meets the requirements set out in the Immunity Program regarding the newly-disclosed offence, the Bureau will recommend that the DPP grant the applicant immunity from prosecution with respect to the newly-disclosed offence. In addition, for second-in and later leniency applicants, the Bureau will recommend that any individuals qualifying under the Leniency Program be afforded further lenient treatment in respect of the offence for which leniency is being sought. In recognition of the leniency applicant's full cooperation in reporting the further offence, the Bureau will typically recommend that an additional five to ten percent be added to the applicant's leniency credit.
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	The confidentiality provisions of the Immunity and Leniency Programs provide that: The Bureau treats the identity of immunity and leniency applicants or any information provided by the applicant as confidential, except where: - disclosure is required by law; - disclosure is necessary to obtain or maintain the validity of a judicial authorization for the exercise of investigative powers; - disclosure is for the purpose of securing the assistance of a Canadian law enforcement agency in the exercise of investigative powers; - the party has agreed to disclosure; - there has been public disclosure by the party; - disclosure is necessary to prevent the commission of a serious criminal offence; or - in the case of information other than the immunity or leniency applicant's identity, where disclosure of such information is for the purpose of the administration or enforcement of the Act. The Bureau's policy with respect to private actions under section 36 of the Act is to disclose the identity of, or any information

[4] Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

	provided by, an immunity or leniency applicant only in response to a court order. In the event of such an order, the Bureau will take all reasonable steps to protect the confidentiality of the information and the identity of the applicant, including seeking protective court orders. The Bureau will not disclose the identity of an immunity or leniency applicant or the information provided by that applicant to any foreign law enforcement agency without the consent of the applicant or unless required by law (e.g., in response to an order of a Canadian court of competent jurisdiction).
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	The Bulletin does not address the question of appeals and to date no decisions by the Bureau or the DPP to reject a leniency application have been contested in court.
Q. Contact point where a leniency application can be lodged:	Anyone wishing to apply under the Commissioner's Immunity or Leniency Programs with respect to cartel activity, may contact the following: Deputy Commissioner, Cartels Directorate Tel: 819-994-8270 Fax: 819-997-3835
R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?	As a result of the Bureau's recommendation, or on its own initiative, the DPP may revoke a Grant of Interim Immunity (GII) or a plea agreement (in the case of leniency applicants) where the applicant does not meet all of the terms and conditions of the GII or plea agreement (see sections F and G), and take further action against the applicant as appropriate in the circumstances. Where the DPP determines that the applicant has failed to fulfil the terms and conditions set out in the GII or the plea agreement, the DPP will provide a minimum of 14 calendar days notice to the applicant so that it has an opportunity to remedy its failure before it is revoked. Revocation of a GII or plea agreement will affect only the individual or organization that fails to comply with it.There may also be circumstances under which the Bureau, in consultation with the DPP, rescinds its recommendation to the DPP for lenient treatment. The Bureau may resume investigating a party who has agreed to co-operate but does not fulfill its obligations under the agreement and may thereafter refer the matter to the DPP. In 2010, the DPP repudiated a plea agreement it had reached with a company for fixing retail gas prices and subsequently charged a different (related) company who then applied for a stay of charges. In 2014, the appeal court upheld the lower court's decision staying the price−fixing charges. The court found that, while the repudiation of a plea agreement does not generally constitute an abuse of process, in this case it caused irreparable harm to the fairness of the trial process because the company had revealed its defence and that, by doing so, its right to a fair and equitable trial had been compromised.
S. Does your policy allow for "affirmative leniency", that is the possibility of	The Immunity and Leniency Programs do not specifically address the issue of "affirmative leniency" nor does it preclude the possibility for "affirmative leniency". The Bureau's Programs are designed to encourage potential applicants to come forward and

the agency approaching potential leniency applicants?	to disclose their participation in an offence. In certain circumstances, the Bureau may advise companies or individuals (through letters or unscheduled meetings) that they are the subject of an investigation and provide information about the Programs in the event that the party would like to apply for immunity or leniency. The decision to apply for immunity or leniency remains with the potential applicants.

7. Investigative powers of the enforcing institution(s)[5]

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids[6], electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	a) Orders for oral examination, production or written return (subpoenas) There are three types of orders under section 11 of the Act. Paragraph 11(1)(a) requires a person to give testimony under oath before a presiding officer. Paragraph 11(1)(b) requires a person or a corporation to provide records or other things. Paragraph 11(1)(c) is an interrogatory power requiring written answers to questions set out in the order. To obtain an order under section 11 of the Act, a judge must be satisfied by information on oath or solemn affirmation that the Commissioner has commenced an inquiry and that the person or corporation named in the order has, or is likely to have, information relevant to the inquiry. Subsection 11(2) provides that a corporate party named in the order must provide records being sought from its affiliates, including foreign affiliates. However, subsection 11(2) requires that the judge issuing the order be satisfied that the affiliate has (not merely is likely to have) records that are relevant to the inquiry. b) Search and Seizure Section 15 of the Act provides the Commissioner with the power to apply to the courts for a warrant authorizing representatives of the Commissioner to enter premises to search for records or other things, and copy or seize for examination or copying those falling within the scope of the warrant. Section 16 of the Act authorizes the search of computer systems. Electronic records may be reproduced or they may be caused to be reproduced from data in the form of a printout or other intelligible output. The printout or other output may be seized for examination or copying. Pursuant to section 15 of the Act, on an *ex parte* application by the Commissioner, a judge may issue a warrant if satisfied by information on oath or solemn affirmation that there are

5 "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

6 "Searches/raids" means all types of search, raid or inspection measures.

	reasonable grounds to believe that an offence has been, or is about to be, committed and that there are reasonable grounds to believe that relevant records are located at the premises to be searched. Following the execution of the search warrant, where records or other things are seized, the Commissioner shall, as soon as practicable, take the record or other thing before the judge or make a report to the judge describing the record or other thing seized, the premises searched and the location in which the records or things are detained (section 17 of the Act). c) Expert Opinion Section 25 of the Act allows the Commissioner to employ temporary technical and special assistants. d) Interception of Private Communications (Wiretap) Part VI of the Code, which covers the interception of private communications (wiretap), can be used in the context of investigations under sections 45 (conspiracy) and 47 (bid-rigging) of the Act, among other offences, provided that specific legal criteria are met. Pursuant to section 185 of the Code, the Attorney General or a specially designated agent, on behalf of the Bureau, can apply for judicial authorization to intercept private communications. Section 186 provides that judicial authorization may be given if the judge is satisfied that it would be in the best interests of the administration of justice to do so and that other investigative procedures have been tried and have failed, other investigative procedures are unlikely to succeed or the urgency of the matter is such that it would be impractical to carry out the investigation using only other investigative procedures. Judicial authorization is required whether or not the originator of the private communications, or the person intended by the originator to receive the communications, has consented to the interception. e) Mutual Legal Assistance Treaty Requests Mutual Legal Assistance Treaties (MLATs) are useful tools to gather evidence located in foreign jurisdictions as they permit law enforcers to request formal assistance from each other in relation to the gathering of evidence, including documents, affidavits and witness testimony; lending of exhibits; search and seizure; and other areas. The *Mutual Legal Assistance in Criminal Matters Act* (MLACMA) gives Canada the legal authority to obtain court orders on behalf of countries that are parties to MLATs with Canada. MLATs are not specific to competition matters. The Minister of Justice (International Assistance Group) plays a pivotal role as Canada's "central authority" in the administration of the MLACMA and MLATs. The Minister of Justice approves the sending of an MLAT request to a central authority in another jurisdiction. Canada has entered into 35 MLATs. f) Extradition involves the surrender of persons to or from

	Canada. Canada may seek extradition from other countries under a bilateral treaty (e.g., the United States) or on the basis of reciprocity (e.g., the United Kingdom).
B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?	Under the *Canadian Charter of Rights and Freedoms* (the Charter), everyone has the right to be secure against unreasonable search and seizure. A search will be considered reasonable if the search is authorized by law pursuant to section 15 of the Act and is carried out in a reasonable manner. A warrant does not confer any power to arrest or search individuals present at the search premises. However, it can confer power to search private residences, automobiles and briefcases as long as it is within the scope of the search warrant. A search can be executed without a warrant if the things to be seized are in plain view or where by reason of exigent circumstances it would not be practical to obtain a search warrant (subsection 15(7) of the Act).
C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?	In most circumstances, another warrant (pursuant to sections 15 or 16 of the Act) would have to be obtained in order to be able to seize the additional evidence. However, as mentioned in the response to question 7B, a search can be executed without a warrant if the things to be seized are in plain view or where by reason of exigent circumstances it would not be practical to obtain a search warrant.
D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.	Challenges regarding the use of orders under section 11 of the Act have been based on grounds that include the following: - failure to comply with the threshold requirements; - violation of section 7 of the Charter (life, liberty and security of person); - violation of section 8 of the Charter (right to be secure against unreasonable search or seizure); - violation of section 13 of the Charter (protection against self-incrimination); and - violation of section 2(d) of the *Canadian Bill of Rights* (protection against self incrimination). Challenges regarding the search and seizure powers under sections 15 and 16 have been based on grounds including the following: - abuse of process arguments linked to the use of a confidential informant; and - facial invalidity of the affidavit used to obtain the warrant authorizing the search and seizure.

8. Procedural rights of businesses / individuals

A. Key rights of defence in cartel cases:	Accused are entitled to exercise their rights under the Charter, including, the right to life, liberty and security of the person (section 7), the right to be secure against unreasonable search or seizure (section 8), the right not to be arbitrarily detained or imprisoned (section 9), the right to retain counsel on arrest or detention (section 10) and protection against self incrimination (section 13). Subsection 11(3) of the Act provides, in part, that no testimony given by an individual or written return made by an individual pursuant to an order made under section 11 shall be used or received against the individual in any criminal proceedings thereafter instituted against that person (other than a prosecution under the Code for perjury or giving contradictory evidence). Subsection 12(3) of the Act provides that a presiding officer shall permit a person who is being examined pursuant to an order under paragraph 11(1)(a) and any person whose conduct is being inquired into to be represented by counsel. Subsection 12(4) provides that any person whose conduct is being inquired into at an examination pursuant to an order under paragraph 11(1)(a) and that person's counsel are entitled to attend the examination unless it is established that the presence of the person whose conduct is being inquired into would be prejudicial to the effective conduct of the examination or the inquiry or result in the disclosure of confidential commercial information that relates to the business of the person being examined or his/her employer. Section 50 of the *Canada Evidence Act* provides that any person examined under any order made under Part II of the *Canada Evidence Act* (which applies to the taking of evidence relating to proceedings in courts out of Canada) has the right to refuse to answer questions tending to criminate him/herself. It is a fundamental element of the fair and proper operation of the Canadian criminal justice system as established by the jurisprudence that an accused person has the right to the disclosure of all relevant information in the possession or control of the DPP, whether inculpatory or exculpatory, unless there is a legally justifiable basis for witholding it (e.g., privileged, personal or irrelevant information). In practice, in the context of inquiries under the Act, the evidence in the possession of the DPP required to be disclosed is the evidence collected by the Bureau during its inquiry.
B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation?	Subsection 10(3) of the Act provides that all inquiries shall be conducted in private. Section 29 of the Act states that no person shall communicate or allow to be communicated to any other person: - the identity of the person from whom information was obtained; - information obtained pursuant to sections 11 (orders), 15 (search and seizure), 16 (search and seizure of electronic evidence); and - information provided voluntarily under the Act.

	Section 29 of the Act further provides that information that would otherwise be required to be kept confidential may be communicated to a Canadian law enforcement agency or for the purposes of the administration or enforcement of the Act. The Immunity and Leniency Programs both contain confidentiality provisions (see question 60 above). See the Bureau's Information Bulletin on the Communication of Confidential Information under the *Competition Act* at http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03597.html If a trial is held, it may be possible for confidential records to be protected from public disclosure through publication bans, confidentiality orders, confidential schedules to public documents or in camera proceedings.

9. Limitation periods and deadlines

A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?	The Act does not set out a limitation period in relation to the termination of the infringement and the commencement of an investigation or decision on the merits in relation to sections 45 to 47 of the Act.
B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?	There is no statutory deadline for the completion of an investigation or to make a decision on the merits in relation to sections 45 to 47 of the Act. However, limits have been established under case law once charges have been laid (after the investigation has been completed). In 2016, the Supreme Court of Canada adopted a new analytical framework based on a ceiling beyond which delay – from the charge to the actual or anticipated end of trial – is presumed to be unreasonable, unless exceptional circumstances justify it. That presumptive ceiling is 18 months for cases tried in the provincial court, and 30 months for cases in the superior court (or cases tried in the provincial court after a preliminary inquiry) (*R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631).
C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?	There are no deadlines to challenge the commencement or completion of an investigation or a decision regarding sanctions in relation to sections 45 to 47 of the Act by the Bureau. There are relevant statutory time limitations under the process and practice regulations of the federal and provincial courts in Canada.

10. Types of decisions

A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.	Accused persons found guilty of an offence under the former section 45 (conspiracy) of the Act may be sentenced to prison for a maximum of 5 years and/or a fine not exceeding $10 million. The maximum penalties for the former section 47 are a fine in the discretion of the court and/or imprisonment for five years. Under the new provisions of the Act, the penalties range from 14 years imprisonment and a fine of $25 million dollars (s.45) and 14 years imprisonment and a fine at the discretion of the court (s.47). Corporations guilty of section 46 (foreign directives) of the Act may receive a fine in the discretion of the court. Individuals cannot be found guilty of an offence or fined under section 46 of the Act. Under subsection 34(1) of the Act, where a person has been convicted of a conspiracy offence under the Act, the court may (in addition to any other penalty imposed) prohibit the continuation or repetition of the offence or prohibit the doing of any act or thing directed toward the continuation or repetition of the offence. Under subsection 34(2) of the Act, where a court is satisfied that a person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of a conspiracy offence under the Act, the court may prohibit the commission of the offence or the doing or continuation of any act or thing constituting or directed toward the commission of the offence. Prohibition Orders may also include prescriptive terms requiring positive steps or acts to ensure compliance with the law, such as, implementing a corporate compliance program.
B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).	See question 10A.
C. Can interim measures[7] be ordered during the proceedings in cartel cases? (if different measures for hardcore	Section 33 of the Act provides that, on application by the DPP, a court may issue an interim injunction forbidding any person from doing any act or thing that could constitute or be directed toward the commission of a cartel offence, pending the commencement or completion of a proceeding under subsection 34(2) (prohibition order) or a prosecution against that person. An interim injunction

[7] In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

cartels please describe both[8].) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?	may be issued if it appears to the court that the person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of the offence; and if the offence is committed or continued, (i) injury to competition that cannot adequately be remedied under any other provision of this Act will result, or (ii) serious harm is likely to ensue unless the injunction is issued and the balance of convenience favours issuing the injunction. If an interim injunction is issued, the DPP shall proceed as expeditiously as possible to institute and conclude any prosecution or proceedings arising out of the acts or things on the basis of which the injunction was issued. Subsection 34(2) of the Act provides that where a court is satisfied that a person has done, is about to do or is likely to commit an offence under Part VI of the Act, which includes sections 45 to 47, it may issue a prohibition order. The order may prohibit a person from committing the offence or the doing or continuation of any act by the person or any other person constituting or directed toward the commission of an offence.

11. Sanctions for procedural breaches (non-compliance with procedural obligations)[9]

A. Grounds for the imposition of procedural sanctions / fines:	Act Obstruction: Section 64 of the Act provides that no person shall impede or prevent or attempt to impede or prevent, an inquiry or examination under the Act. Failure to comply with an order or warrant: Subsection 65(1) of the Act states that it is an offence to, without good and sufficient cause, fail to comply with an order under section 11 of the Act or refuse to permit the Commissioner's representatives from entering and searching a premises and examining and seizing records (subsection 15(5) of the Act) or to refuse to permit them to search data available to a computer system to produce a record or obtain a physical copy and seize it (subsection 16(2) of the Act). Destruction of evidence: Subsection 65(3) of the Act provides that it is an offence for a person to destroy or alter a record or

8 Only for agencies which answered "yes" to question 2.C. above

9 In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.

	other thing required to be produced under section 11 or in respect of which a warrant under section 15 is issued. Code Wilfully obstructing a public officer in the execution of his or her duty (Section 129). Perjury: With intent to mislead, making a false statement under oath or solemn affirmation knowing that the statement is false (Subsection 131(1)). Witness giving contradictory evidence: With intent to mislead, a witness, in a judicial proceeding, giving evidence that is contrary to his/her previous evidence in a judicial proceeding (Section 136). Fabricating evidence: With intent to mislead, fabricating anything with intent that it shall be used as evidence in a judicial proceeding (Section 137). Obstructing justice: Wilfully attemping to obstruct, pervert or defeat the course of justice (e.g., disuading a person by threat, bribe or other corrupt means from giving evidence; influencing a juror by threat, bribe or other corrupt means; accepting a bribe or other corrupt consideration to abstain from giving evidence or to refrain from doing anything as a juror) (Subsections 139(2) and (3)).
B. Type and nature of the sanction (civil, administrative, criminal, combined):	All of the offences listed in question 11A are criminal offences. Act Obstruction: On summary conviction, the person is subject to a fine not exceeding $100,000 or to imprisonment for a term not exceeding two years, or to both (par. 64(2)(b)). On conviction on indictment, a person is subject to a fine in the discretion of the court or to imprisonment for a term not exceeding 10 years or to both (par. 64(2)(a)). Failure to comply with an order or warrant: On summary conviction, the person is subject to a fine not exceeding $100,000 or to imprisonment for a term not exceeding two years, or to both (par. 65(1)(b)). On conviction on indictment, a person is subject to a fine in the discretion of the court or to imprisonment for a term not exceeding two years or to both (par. 65(1)(a)). Destruction of evidence: On summary conviction, the person is subject to a fine not exceeding $100,000 or to imprisonment for a term not exceeding two years, or to both (par. 65(3)(b)). On conviction on indictment, a person is subject to a fine in the discretion of the court or to imprisonment for a term not exceeding 10 years, or to both (par. 65(3)(a)). Code Wilfully obstructing a public officer: On summary conviction, a person is liable to a fine of not more than $5,000 or to a term of

	imprisonment not exceeding six months or to both. By way of indictment, a person is liable to imprisonment for a term not exceeding two years. Perjury, a witness giving contradictory evidence and fabricating evidence are punishable by imprisonment for a term not exceeding 14 years. Obstructing justice is punishable by imprisonment for a term not exceeding 10 years.
C. On whom can procedural sanctions be imposed?	Fines may be imposed on both individuals and corporate entities. Individuals may also be subject to imprisonment.
D. Criteria for determining the sanction / fine:	In addition to the legislated parameters under the Act and the guidance given in the Leniency Bulletin, section 718 of the Code sets out the purpose and principles of sentencing: The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives: (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct; (b) to deter the offender and other persons from committing offences; (c) to separate offenders from society, where necessary; (d) to assist in rehabilitating offenders; (e) to provide reparations for harm done to victims or the community; and (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community. According to section 718.1 of the Code, a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Paragraph 718.2(b) of the Code provides that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Section 718.21 lists additional factors that a court shall consider in sentencing an organization: (a) any advantage realized by the organization as a result of the offence; (b) the degree of planning involved in carrying out the offence and the duration and complexity of the offence; (c) whether the organization has attempted to conceal its assets, or convert them, in order to show that it is not able to pay a fine or make restitution; (d) the impact that the sentence would have on the economic viability of the organization and the continued employment of its employees; (e) the cost to public authorities of the investigation and

	prosecution of the offence; (f) any regulatory penalty imposed on the organization or one of its representatives in respect of the conduct that formed the basis of the offence; (g) whether the organization was — or any of its representatives who were involved in the commission of the offence were — convicted of a similar offence or sanctioned by a regulatory body for similar conduct; (h) any penalty imposed by the organization on a representative for their role in the commission of the offence; (i) any restitution that the organization is ordered to make or any amount that the organization has paid to a victim of the offence; and (j) any measures that the organization has taken to reduce the likelihood of it committing a subsequent offence.
E. Are there maximum and / or minimum sanctions / fines?	See response to question 11B.

12. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): **On whom can sanctions be imposed?**	Cartel activity is subject to criminal sanctions. Offences under section 45 (price fixing, market allocation, output restriction) are punishable by fines up to $25 million and a term of imprisonment of up to 14 years. Bid-rigging under section 47 of the Act is punishable by a fine at the discretion of the court and imprisonment for a term not exceeding fourteen years or both. Upon conviction, the court can also issue a prohibition order pursuant to section 34 of the Act to prohibit repetition of the offence in the future. Fines can be imposed on both companies and individuals. Individuals may also be subject to imprisonment, or alternative measures such as probation or community service. Corporations convicted of offences under section 46 of the Act (implementation of foreign directives to fix prices, allocate markets, restrict output) are liable to a fine in the discretion of the court.
B. Criteria for determining the sanction / fine:	Sections 718, 718.1, 718.2 and 718.21 of the Code set out the principal purpose and principles of sentencing (see response to question 11D). The following specific sentencing factors have been pleaded in previous conspiracy cases and are well accepted:

	- the size and influence of the accused, both specifically in the conspiracy and, more generally, in terms of market share, sales and affected volume of commerce; - the role of the accused in the offence, whether it initiated or resisted participation in the offence; - the duration of the conspiracy is very significant: the longer the conspiracy, the greater the profit and the greater the economic harm; - geographical scope of the market; - the nature of the product or service; - recidivism or recent convictions of criminal conduct, degree of planning, efforts to conceal and the complexity of the cartel conduct as serious aggravating factors; - factors in mitigation include the extent of cooperation with the Crown, restitution, the timeliness of cooperation and ability to pay.
C. Are there maximum and / or minimum sanctions / fines?	See response to question 12A.
D. Guideline(s) on calculation of fines:	Canada does not have legislated sentencing guidelines. However, the Bureau does provide guidance regarding its approach to the calculation of fines to recommend to the DPP within the Leniency Program. Sections 718, 718.1, 718.2 and 718.21 of the Code set out the principal purpose and principles of sentencing (see response to question 11D).
E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?	There is no automatic suspension of the sentence when an application for leave to appeal is made before the Court of Appeal. Subsection 683(5) of the Code states that the court may, where it considers it to be in the interests of justice, order that any obligation to pay a fine or a conditional sentence order under section 742.1 of the Code be suspended until the appeal has been determined. The interests of justice do not refer exclusively to the merits of the appeal and include the interests of the state, and the public's confidence in and respect for the court in its administration of the criminal law. Pursuant to section 679 of the Code, a person found guilty and sentenced to a prison term may apply for release pending the determination of his/her appeal against sentence. The person must establish under subsection 679(4) of the Code that his/her appeal has sufficient merit that it would cause unnecessary hardship if he/she were detained in custody, he/she will surrender him/herself into custody in accordance with the terms of the order, and his/her detention is not necessary in the public interest.

13. Possibilities of appeal

A. Does your law provide	Section 675(1)(a) of the Code provides for a right of appeal from a conviction for an indictable offence (includes sections

	for an appeal from a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?	45 to 47 of the Act) based on questions of law or fact.
B.	**Before which court or agency should such a challenge be made?**	Appeals are to the provincial or federal court of appeal, whichever is appropriate. A decision of a court of appeal may be appealed to the Supreme Court of Canada, with permission or leave to appeal.