THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN

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Via email: jean-sebastien.rivard@canada.ca

Jean-Sébastien Rivard
Cartels and Deceptive Marketing Directorate
Competition Bureau
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50 Victoria Street
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Dear Jean-Sébastien:

Re: Competition Bureau's Proposed Revisions to the Immunity Program

The Competition Law Section of the Canadian Bar Association (CBA Section) is grateful for the opportunity to participate in the Competition Bureau's consultation on the proposed changes to the Immunity Program.

Since its adoption in 2000, the Program has proven to be one of the Bureau's most effective tools for detecting and investigating domestic and foreign conspiracies that contravene the criminal provisions of the *Competition Act*. In the Bureau's own assessment, the Program's contribution to enforcement has been "unmatched" and it constitutes "the Bureau's single most powerful means of detecting criminal activity".[1]

Over time, the Bureau has revised and updated the Program. Since 2003, the Bureau has published an accompanying Frequently Asked Questions and has updated the FAQs in 2005, 2007, 2010 and 2013.[2] However, most of these changes and refinements have been procedural and incremental in nature. In most instances, the Bureau's updates to the Program were implemented to reflect changes in practice and substantive changes in the law (such amendments to the *Act* in 2009).

1 Competition Bureau, *Immunity Program under the Competition Act* (June 7, 2010), online (http://bit.ly/2DosuiF)

2 Competition Bureau, Immunity Program: Frequently asked questions (November 2015), online (http://bit.ly/2mFpiF6)

The CBA Section believes that the existing Program is working well and the Bureau's past approach of incremental review and refinement has ensured that the Program has remained current. The existing Program also strikes a balance between the interests of law enforcement, immunity applicants and the criminally accused. The Program reflects the Public Prosecution Service of Canada (PPSC) Deskbook on grants of immunity under the *Act*[3] and is generally aligned with similar amnesty and leniency programs offered by enforcement agencies in the United States, Europe and elsewhere.

While certain aspects of the Program could be clarified and improved, we believe that the existing Program does not need a fundamental overhaul.

The CBA Section has serious concerns about the nature and substance of many of the proposed revisions to the Program. The changes could add significant burdens on immunity applicants and put Canada's immunity program out of sync with existing leniency and amnesty programs available in other jurisdictions. Perhaps most importantly, the combined effect of the changes would alter and undermine the incentives to self-report. In short, the proposed changes will undermine one of the Bureau's crucial tools for enforcing the criminal provisions of the *Act*.

A fundamental premise of the Program is that a cooperating party should not be made "worse off" by self-reporting to the Bureau. However, the proposed revisions impose new obligations on immunity applicants and introduce significant uncertainty in the timelines for cooperation. In addition, the proposed revisions create exposure to new risks for the applicant, by abandoning the existing "paperless process" and by creating recordings of privileged proffer exchanges and witness interviews that may be the subject of future production and discovery demands. The proposed revisions also substantially extend the timeline for when an applicant could receive a binding immunity agreement from the PPSC.

With these new burdens and risks, the CBA Section believes that an applicant could be placed at a distinct disadvantage relative to non-cooperating parties, particularly in responding to anticipated civil litigation. Given the misalignment that the proposed changes would create with other international immunity or leniency programs, an applicant may reasonably determine that it is in its best interests to self-report its conduct in the United States and Europe, for example, but not in Canada.

The CBA Section shares the PPSC's and the Bureau's goals of promoting the effective and fair enforcement of the criminal provisions of the *Act*. Indeed, the CBA Section (the Criminal Matters Committee in particular) includes former members of the PPSC and the Bureau's Cartels Directorate. In the spirit of this shared interest, we strongly encourage the Bureau to reconsider a number of the contemplated changes. As proposed, the changes not only risk undermining the goal of effective criminal enforcement in Canada, they also risk creating the perception that Canada is an outlier jurisdiction whose program imposes unique demands and risks on prospective applicants.

The CBA Section's specific comments and concerns on the proposed changes to the Program are set out below.

Proposed Obligation to Produce "Credible and Reliable Evidence" of an Offence

Under the existing program, an applicant must reveal to the Bureau and the PPSC "any and all conduct of which it is aware, or becomes aware, that *may constitute* an offence under the Act and in which it may have been involved".[4] The PPSC's model immunity agreement contains similar

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3 Public Prosecution Service of Canada Deskbook, s. 5.2 (*Competition Act*) (dated March 1, 2014).

4 *Immunity Program*, paras. 10, 17b.

language[5], and in practice, the Bureau has applied these to require a prospective applicant to admit that it committed an offence in order to participate in the Program.

The proposed revisions make this requirement more express, by directing that *"[a]pplicants must admit and be able to demonstrate that they were a party to the offence* in order to be eligible for immunity".[6] But in addition to this proposed clarification, the Bureau says that an applicant would now be required to produce "credible and reliable evidence" that an offence has occurred. To quote the Bureau's proposed policy revision, "[i]mmunity will *only* be recommended when the disclosed conduct constitutes an offence under the Act *and* can be supported by credible and reliable evidence which demonstrates all elements of the offence."[7] Based on the Bureau's news release, it is proposing this change to ensure that the Bureau and the PPSC will be "prosecution-ready" at an earlier stage in the process.[8]

The CBA Section is concerned with the introduction of a new obligation of an immunity applicant to produce "credible and reliable evidence" of an offence. Given the nature of the Program, applicants typically seek immunity shortly following the discovery of conduct that potentially falls within the criminal provisions of the Act. At that time, applicants are often not able to assess whether the uncovered information is credible and reliable, particularly if their investigation is at an early stage. Further, given the complexities inherent in this area of law, reasonable minds may differ as to whether an immunity applicant's information constitutes credible and reliable evidence of an offence.

Perhaps more fundamentally, and consistent with the existing practice, a corporate applicant should be entitled to seek immunity under the Program, even if certain witnesses are ultimately determined to have credibility or reliability issues. The traditional role of the immunity applicant is to provide "complete, timely and ongoing cooperation", typically by producing business records and facilitating witness interviews. It is up to the PPSC (and ultimately the Court) to assess the credibility and reliability of that information for the purposes of trial. The applicant has no role in a future prosecution except as a witness, and is not in a position to deliver assurances on the credibility or reliability of witnesses at trial.

Moreover, from a practical perspective, this new requirement would create new uncertainties for prospective applicants. In considering whether to seek immunity, an applicant would presumably have to weigh and assess the credibility and reliability of its witnesses prior to seeking a marker and throughout the process. A prospective applicant would also have to assess the risk that the Bureau might be unprepared to grant interim immunity in light of discrete witness issues, even if the applicant is willing to admit to an offence and give full cooperation. The CBA Section believes that this change, coupled with the other proposed changes, will add to the uncertainties of the immunity process and create disincentives for self-reporting conduct to the Bureau.

Proposed Elimination of the Paperless Proffer Process

Under the existing program, once an applicant has obtained a marker, the applicant is required to deliver a "proffer". At the proffer stage, the applicant's legal representative will typically meet with representatives of the Bureau and give a description of the conduct in hypothetical terms. While the Bureau will accept written proffers, the majority of applicants complete their proffers verbally, to

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5 Competition Bureau, *Corporate immunity – Agreement* (November 5, 2015), online (http://bit.ly/2Djembb). (*Corporate Immunity Model Agreement*).

6 Competition Bureau, Proposed Revisions to *Immunity Program under the Competition Act*, at s. 24 (October 26, 2017), online (http://bit.ly/2DnrBqx) (*Proposed Revised Immunity Program*) [Emphasis added].

7 *Proposed Revised Immunity Program*, para. 25 [Emphasis added].

8 See Bureau, *News Release* (October 26, 2017), online (http://bit.ly/2B9tEyj)

expedite the proffer process and to minimize the creation of records that may be subject to future discovery disputes. During the course of these verbal proffers, the Bureau's representatives will take detailed notes for enforcement purposes, but otherwise there is no record (audio, video or transcript) of the exchanges that occur during the proffer.

This "paperless process" has been a hallmark of the Program for many years and reflects an important protection for the applicant from potential enforcement and private actions in other forums, particularly given the sensitive and potentially incriminating nature of the disclosures that occur in the proffer process.[9] However, the proposed revisions drop any reference to the paperless process. In its place is new language stating that Bureau officers may take "an electronic audio recording" of proffers. The Bureau has not given any further explanation on why such a recording would be necessary or what use could properly be made of the recording. The Bureau also has not given any explanation of the circumstances under which it would require a recording.

We believe this proposed change is unnecessary and would create new risks and burdens for the applicant. The paperless process has been an integral part of the program for over a decade. By reducing the flow and production of paper, the paperless process has contributed to the speed and timeliness of the immunity process. The paperless process is also similar to the practice of the U.S. Antitrust Division and other antitrust agencies, and the Bureau's enforcement record does not appear to have been impaired in any way as a result of its acceptance of verbal proffers.

More fundamentally, the Bureau has not identified any evidentiary need to record a proffer. A lawyer's description of what a witness might say or what a document may indicate has no evidentiary value and would not be admissible in a future criminal prosecution. Moreover, a lawyer's proffer delivered with a view to reaching an eventual immunity agreement is presumptively subject to settlement privilege, and could not be used in a subsequent proceeding against the applicant.

In public statements, senior representatives of the Bureau have suggested that this change has become necessary as a result of cases in which inconsistent or incomplete information is given in the course of a proffer. Even if the Bureau may have experienced some instances of inconsistency, the CBA Section believes that these incidents are likely rare and do not warrant abandoning the significant benefits of the paperless process.

By recording proffers, the Bureau would be creating another documentary record of sensitive exchanges that will be the subject of future disclosure and discovery disputes. While a lawyer's proffer has no evidentiary value in the context of a criminal prosecution, a prospective private plaintiff may perceive the proffer as having significant value in formulating and pursuing a class proceeding. In a number of recent cases, private plaintiffs have been successful in compelling the Bureau to provide information from their investigative files.[10] If the Bureau begins recording proffers as a matter of practice, applicants will be required to invest more time and effort in preparing proffers and in qualifying statements to mitigate the risks of any potential disclosure during civil litigation. In other words, the Bureau's proposed changes will increase the costs and risks associated with the proffer process. Again, an applicant weighing a difficult decision on whether to self-report in Canada will have to take these new costs and risks into account.

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9 As stated in the Bureau's FAQs, "[t]he Bureau is sensitive to the concerns of Applicants about written proffers and other exchanges and, as a result, it has developed a "paperless process" when dealing with Applicants." See the FAQs, Q#25 [Emphasis added].

10 *Imperial Oil v. Jacques*, [2014] 3 SCR 287.

Proposal to Record Witness Interviews

Under the existing Program, an applicant is required to take all lawful measures to secure the cooperation of current directors, officers and employees, including the facilitation of witness interviews. In past practice, Bureau officers have typically conducted these interviews in the presence of the applicant's counsel, and regularly take detailed notes.

However, the Bureau is now proposing that "[w]itness interviews may be taken under oath and *may be video and/or audio recorded*."[11] The Bureau further states that it may request and record the interviews before the proffer process has been completed, on the understanding that "any interview will be conducted on the basis that information provided not be used against the applicant for investigative purposes".

The CBA Section is concerned that this change would create significant new exposure for applicants (particularly in civil proceedings) and as a result, may make the applicant worse-off for choosing to cooperate with the Bureau.

The CBA Section's specific concerns with this proposed change are as follows:

First, it is typically the case that the immunity applicant will request a marker and seek to complete its proffer before its internal investigation is completed. As a result, the proposal to video or audio record witness evidence at an early stage may result in an imperfect and unrefreshed recording or transcript, resulting in evidentiary inconsistencies that may undermine the Bureau's future enforcement action. Similarly, the proposal creates unnecessary exposure and risks for the applicant. As more relevant documents become available and as the witness' recollection is refreshed, the Bureau will likely request more interviews, resulting in more recordings. During each of these recordings, the witness will be expected to make significant admissions, and the witness's evidence will inevitably evolve and become more precise over time. In other forums, the applicant may need to disclose the outcome of the witness's multiple interviews, and to identify and explain any inconsistencies. In short, recording a witness interview before the applicant's or the Bureau's investigation has been completed may create needless risks for both the applicant and the Bureau.

Second, the proposed recording of witness interviews will add an additional layer of formality, cost and delay to the cooperation process. As a general matter, preparation of a witness for a recorded interview or deposition requires far more time than informal interviews. In addition, lay witnesses typically express additional levels of anxiety with recorded interviews, and there will be a greater need for the involvement of independent counsel in preparing the witness and attending those interviews. Further, in international cartel cases, recording a witness interview at an early stage of the case will likely require the involvement and attendance of multiple counsel, resulting in increased scheduling challenges and potential delay.

Third, recording witness interviews will very likely result in additional discovery and production demands, particularly in the context of follow-on civil litigation. Given the nature of admissions that may occur during witness interviews, civil plaintiffs will have a strong interest in accessing these interviews, resulting in new exposure risks for the applicant.

Fourth, the proposed change may complicate and potentially undermine the goals of international antitrust enforcement. We understand the U.S. Antitrust Division does not typically insist on recording witness interviews as part of a leniency application. Indeed, the former head of the criminal unit of the U.S. Antitrust Division recently expressed concern about the prospect of recording witness interviews in Canada at an early stage of an international cartel case, given the

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11 *Proposed Revised Immunity Program*, para. 62 [Emphasis added]. See also para. 90 (Witness interviews may be taken under oath and may be video and/or audio record).

risk that the witness's recollection may not be fully refreshed.[12] Moreover, in an international cartel case, each witness may be subject to many interview requests and multiple recorded interviews conducted by multiple enforcement agencies may only magnify the risks of inconsistencies and may lengthen the time for prosecuting the case.

The CBA Section acknowledges the Bureau's and the PPSC's interest in recording witness interviews. A recorded interview offers some assurance to the Crown that witnesses will not recant their evidence at trial. However, in our view this interest is ultimately outweighed by the negative impact of recording interviews on participation in the Program.

In summary, the proposed change adds to the disincentives to self-report, given the risks of recorded witness statements. The Bureau's proposed change is also a departure from the practice of other international antitrust enforcers, and may undermine the Bureau's goal of achieving effective cross-border cooperation and enforcement.

Proposed Changes for an Interim Grant of Immunity

The proposed changes to the Program would add an interim grant of immunity (IGI) to the existing immunity process. As proposed, once the proffer process has been completed, the PPSC may issue an IGI to the applicant. Under the IGI, the applicant will receive a conditional form of immunity, subject to the applicant's obligations of continuing cooperation and compliance with the other requirements of the Program. If the applicant fails to comply with those requirements, the IGI may be revoked. If the applicant complies with the requirements of the Program, the PPSC will enter into a final immunity agreement with the applicant.

Under these proposed changes, the PPSC will enter into a final immunity agreement only once the Bureau has completed its investigation and the PPSC has completed its prosecution: "the DPP[13] will ordinarily not issue the immunity agreement prior to: 1. the lapse of the statutory period to file a notice of appeal, when no party seeks to appeal the trial court decision in the event of prosecution; or 2. when the Commissioner and DPP have no reason to believe that further assistance from the applicant could be necessary."[14]

The CBA Section does not take issue with the concept of an interim or conditional grant of immunity agreement. Under the existing Program and the PPSC's model immunity agreement, an applicant is already subject to continuing obligations of disclosure and cooperation, and may lose its immunity if the applicant fails to comply with its obligations.[15] In other words, an immunity agreement is already conditional. Moreover, the proposed IGI has some parallels with the Bureau's process for provisional grants of immunity (PGI) prior to the 2010 amendments to the Program.

However, the CBA Section is concerned about the impact of this proposed change on the timing of a final immunity agreement. In assessing whether to participate, an applicant would weigh the benefits of seeking immunity, including its prospects and the timing to obtain a final immunity agreement. The proposed changes appear to introduce new uncertainties in the process and push back the horizon for a final agreement by a number of years.

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12 Comments of Brent Snyder, at CBA/ABA Panel on The State of Cross-Border Criminal and Cartel Enforcement: Enforcement Trends in the U.S. and Canada (May 2, 2017).

13 Director of Public Prosecution

14 *Proposed Revised Immunity Program*, para. 102.

15 *Corporate Immunity Model Agreement,* s. 7.

Under the existing Program, the applicant may receive an immunity agreement in a matter of months. For example, based on the public disclosures in the chocolate case, the applicant received its immunity agreement within ten months of its marker request. Under the proposed process, given the time it takes to complete a prosecution, an applicant will have to wait years before it receives a final agreement. For example, again in the chocolate case, eight years elapsed from the applicant's original request for a marker (2007) to the PPSC's decision to enter a stay of proceedings against the remaining accused (2015). Under the proposed changes, the applicant would not have received a formal and binding assurance of immunity for a period of eight years. In a fully contested case involving a trial and an appeal, an applicant could conceivably wait for over a decade before receiving a final immunity agreement.

An applicant that cooperates with the Program should be entitled to receive a legally binding grant of immunity in the form of a signed agreement on a shorter, more reasonable time frame. While the Bureau's proposed revisions give a number of assurances on the force of an IGI, the IGI is not a binding agreement and can be revoked at the discretion of the Bureau. To maintain the existing incentives to self-report or cooperate under the Program, the Bureau should consider setting a more reasonable and certain timeline for finalizing an immunity agreement. For example, a more reasonable date for a final grant of immunity might correspond with the completion of substantial cooperation with the Bureau's investigation, or the issuance of charges – subject always to a requirement of ongoing cooperation by the immunity applicant.

Proposed Protocol for Reviewing and Adjudicating Privilege Claims by Immunity Applicants

Under the existing Program, once an applicant has entered into an immunity agreement with the PPSC, the applicant must provide "full, complete, frank and truthful disclosure of all non-privileged information, evidence or records" in the applicant's possession or control that relate to the anti-competitive conduct.[16]

Under the proposed revisions, the applicant is subject to the same general obligation of cooperation. More specifically, once the applicant enters into an IGI with the PPSC, the applicant must provide "full, complete, frank and truthful disclosure of all non-privileged information, evidence or records" in the applicant's possession or control. In a helpful clarification, the Bureau acknowledges that "[t]he Immunity Program does not require applicants to waive applicable legal privileges as a condition for obtaining immunity".[17] However, the Bureau has proposed to adopt a new binding protocol for identifying, reviewing and adjudicating privilege claims made by the applicant.[18] In general terms, the Bureau's proposed protocol would work as follows:

- Within 30 days of the IGI, the applicant must disclose the identity of its privilege claims, presumably by delivering a form of privilege log.
- On the receipt of this disclosure, the Bureau will seek the advice of the DPP/PPSC.
- If the DPP/PPSC is not persuaded of the applicant's privilege claims, the DPP/PPSC will appoint an independent counsel (IC) from "its list of available crown agents", and the applicant must submit its documents to the IC under seal.
- The DPP/PPSC and the applicant may each make "observations and representations" to the IC relating to the applicant's privilege claim.[19]

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16 *FAQs*, Q#28.

17 *Proposed Revised Immunity Program*, para. 32c.

18 The detailed protocol is set out in Appendix 4 of the *Proposed Revised Immunity Program*.

19 *Proposed Revised Immunity Program*, Appendix 4, para. 5. The Appendix refers to the exchange of a "copy" of the DPP/PPSC's and the applicant's observations and representations – which suggest that the process will be completed in writing without a hearing.

- The IC will then assess and determine the applicant's privilege claims, and "[t]he applicant is expected to *abide* by the determinations made by the IC who will determine the validity of the claim of privilege".[20]
- More specifically, if the IC determines that the applicant's claim of privilege is not "reasonably supportable in law and fact", the applicant is then *obliged* to disclose the information.[21]
- If the applicant fails to comply with the protocol or abide by the determinations of the IC, the failure "may constitute a breach of the cooperation requirements" and may result in the cancellation of a marker or a denial of a grant of immunity.[22]

Given the fundamental importance to the legal system of protecting privilege, the CBA Section has a number of concerns with the proposed protocol.

First, we believe the Bureau and the PPSC should firmly and clearly support the ability of an applicant to assert privilege over the *investigative work product of its external counsel*. In the absence of this assurance, the CBA Section believes that the intrusion into an applicant's right to assert privilege creates yet another strong disincentive for prospective applicants to participate in the Program.

In recent years, the Supreme Court of Canada has repeatedly affirmed the fundamental importance of solicitor-client privilege in our justice system. The Court has recognized solicitor-client privilege to be a principle of fundamental justice protected under section 7 of the *Canadian Charter of Rights and Freedoms*, and has ruled that a client has a reasonable expectation of privacy in communications with a lawyer that is guaranteed under section 8 of the *Charter*. Moreover, the Court has held that the protection of solicitor-client privilege is an integral feature of a fair, just and efficient law enforcement process. The Court has similarly recognized the importance of litigation privilege. While litigation privilege serves different purposes, the Court has held that the two doctrines "serve a common cause", namely "[t]he secure and effective administration of justice according to law".

An internal investigation conducted by external counsel in an antitrust case will often contain findings and advice that are very sensitive and possibly incriminating, and may lead to criminal, regulatory or civil exposure in multiple forums. The disclosure of an internal investigation to one regulator may lead to arguments of waiver and loss of privilege for all purposes and in all jurisdictions. An applicant required to produce its external counsel's work product will be placed at a distinct disadvantage relative to non-cooperating parties, particularly in civil litigation. Given the uncertainty of the intended scope or application of the proposed privilege protocol, such a change could fundamentally alter the calculus for seeking immunity in Canada in a domestic or international cartel case, and will ultimately harm the goals of competition enforcement in Canada.

Second, we are troubled that the proposed protocol lacks some basic elements of due process necessary for adjudicating privilege claims in Canada. The fact that the IC would be appointed from a list of crown agents raises institutional independence and impartiality concerns. Under the protocol, there is also no opportunity to make oral submissions to the IC. In our view, the protocol should always allow the applicant to seek recourse to the court in respect of any binding determination of privilege.

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20 *Proposed Revised Immunity Program*, para. 96 [Emphasis added].

21 *Proposed Revised Immunity Program*, Appendix 4, para. 8 [Emphasis added].

22 *Proposed Revised Immunity Program*, para. 32c. See also Appendix 4, para. 9 ("Failure to disclose this information may constitute a basis for removal of an applicant from the program")[Emphasis added].

The CBA Section acknowledges that in some instances, parties have voluntarily agreed to an expedited mechanism to determine privilege claims in their dealings with the Bureau, such as in response to a search. But it is important to note that in those instances, the parties voluntarily agreed to that process, given their own interests in controlling costs or in expediting a transaction. Under the proposed protocol, however, an applicant has no choice but to abide by the Bureau's protocol or risk losing any possibility of obtaining immunity from criminal prosecution.

Third, the Bureau's proposed consequences for failing to comply with the protocol are unfair. Under the proposed changes to the Program, if an applicant fails to abide by the determinations of the IC under the protocol, the failure "may constitute a breach of the cooperation requirements" and may result in the cancellation of a marker or a denial of a grant of immunity. In other words, an applicant that disagrees with the determinations of the IC or seeks a determination by a court may be ejected from the program. The CBA Section believes that this sanction is unwarranted and disproportionate, particularly given the fundamental importance of privilege to our legal system. The Bureau's proposed approach to the privilege protocol (and in particular the proposed consequences of failing to comply) may also raise potential constitutional issues.

Fourth, the proposed protocol creates a significant misalignment with the practice of other antitrust regulators in international cartel cases. To the knowledge of the CBA Section, no other major international antitrust regulator requires such a protocol for dealing with privilege claims. Again, the uncertainty of relying on an IC to determine privilege claims (where failure to abide by the determination would have significant implications) may act as a further disincentive for immunity applicants.

Cumulative Impact of the Proposed Changes

We believe that many of the proposed changes are unnecessary, create new risks and burdens for future applicants, and lead to more production disputes and delays for the Bureau and the PPSC in managing a cartel case.

An underlying premise of the Program is that a cooperating party should not be made worse off by deciding to self-report to the Bureau. However, the cumulative impact of the proposed changes creates materially new risks and exposures for parties that are weighing the prospect of seeking immunity in Canada – including the potential disclosure of recorded proffers and recorded witness interviews – all of which may result in increased exposure to penalties and damages in other forums. In addition, the proposed IGI process creates new uncertainties, by pushing the timeline for the applicant to receive a binding immunity agreement into the distant future. Under the circumstances, the CBA Section believes that the proposed changes would fundamentally alter the decision-making calculus for seeking immunity, and might encourage some prospective applicants to "skip Canada" given the burdens and uncertainties of obtaining immunity.

The CBA Section believes that the proposed revisions would undermine the goal of effective criminal enforcement in Canada. As such, we strongly encourage the Bureau to reconsider a number of its proposed revisions to the Program.

Conclusion

We appreciate the opportunity to comment on the proposed changes to the Immunity Program. We encourage the Bureau to continue to involve the CBA Section in the ongoing consultation process, including on the forthcoming changes to the Leniency Program.

In closing, we note that when the Bureau initiated its 2006 consultation process on proposed changes to the Program, it published a written response to the concerns identified by the CBA Section and other stakeholders. Given the importance of the Program and the significance of the proposed changes, we encourage the Bureau to publish a similar response, in the interests of offering transparency and guidance to stakeholders in Canada and internationally.[23]

Yours truly,

(original letter signed by Marc-André O'Rourke for Anita Banicevic)

Anita Banicevic,

Chair, National Competition Law Section

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[23] Competition Bureau, *Adjustments to the Immunity Program and the Bureau's Response to Consultation Submissions* (2006), online (http://bit.ly/2riGNR4).