

Canada Bread lawsuit against Maple Leaf Foods ‘largely unprecedented’: competition law expert

By **John Schofield**

Law360 Canada (September 13, 2024, 2:46 PM EDT) -- One of Canada’s most experienced competition law experts says that Canada Bread’s decision to sue Maple Leaf Foods in a bid to recover costs associated with a long-running bread price-fixing case is “largely unprecedented” and will be watched closely by both the Competition Bureau and the federal Department of Justice (DOJ).

“I’ve never seen pleadings quite like this in an Ontario court,” said Toronto lawyer Calvin Goldman, who served as head of the Competition Bureau from 1986 to 1989 and who has argued competition law cases on the government and corporate side for about 40 years — including two as DOJ special counsel before the Supreme Court of Canada. “I can tell you that this is unusual, to say the least.”

In a Sept. 12 news release, Canada Bread said that its statement of claim alleges that Maple Leaf Foods, as Canada Bread’s controlling shareholder from 1995 to 2014, “used Canada Bread as a shield, causing Canada Bread to assume the liabilities of the wrongful conduct, to the benefit of Maple Leaf.”

In June, an Ontario Superior Court judge fined Toronto-based Canada Bread \$50 million after it pleaded guilty to participating in a criminal price-fixing scheme that raised the wholesale price of fresh commercial bread. It was the highest price-fixing fine ever imposed by a Canadian court. Canada Bread was acquired in May 2014 by Mexico-based multinational food company Grupo Bimbo.

“Today, Canada Bread announced that it took steps to protect its financial and legal interests in connection with the ongoing alleged bread price-fixing matter,” a company spokesperson confirmed in a Sept. 12 email to Law360 Canada. “Canada Bread commenced a claim in the Ontario Superior Court of Justice against Maple Leaf to hold it accountable for Canada Bread’s damages.”

As controlling shareholder, the claim alleges Maple Leaf appointed some of its most senior officers as directors on the Canada Bread board and effectively operated the 113-year-old company, including occupying its most senior executive role.

But under that scenario, the statement of claim contends, Maple Leaf personnel breached management agreements with Canada Bread and acted illegally by directing and participating in “certain anti-competitive conduct,” which resulted in an investigation by the Competition Bureau of Canada.

“The investigation led to class actions being brought against Canada Bread and resulted in Canada Bread paying a fine of \$50 million in 2023,” said the Canada Bread statement.

Through its legal action, Canada Bread and Grupo Bimbo said they are aiming to “hold Maple Leaf to account for any and all of [their] costs, expenses and damages resulting from such breaches,” — including those related to the Competition Bureau’s investigation and any class action settlements.

In July, Loblaw Companies Ltd. and George Weston Ltd. agreed to pay a settlement valued at \$500 million to resolve a long-running class action over the companies’ involvement in the bread price-fixing scheme, which stretched from 2001 to 2015. The law firms involved described it as the largest antitrust settlement in Canadian history, and other settlements are expected in the coming months.

In a statement emailed to Law360 Canada, Maple Leaf Foods senior vice-president and general

counsel Suzanne Hathaway said the company completely rejects Canada Bread's allegations.

"Maple Leaf Foods acted appropriately at all times, including with respect to making full, plain and true disclosure to Grupo Bimbo at the time of its acquisition of Canada Bread," she said.

"The court ruled in 2021 that the plaintiffs had no valid legal claims against Maple Leaf Foods," she added. "That ruling stands today. We will continue to vigorously defend ourselves against these unfounded claims."

Speaking during a break at the respected Fordham International Antitrust Conference in New York City, where he was a panellist, Goldman said he would not comment on the merits of Canada Bread's case.

But if it is proven in court, he added, it could have "potentially very serious legal and financial ramifications."

Goldman said that Canada Bread's \$50 million fine and the Loblaws \$500 million class action settlement reinforce the importance of corporate boards and senior executives in Canada establishing and "vigilantly monitoring" their corporate compliance programs to ensure that they align with provisions of the federal *Competition Act*.

"That's their responsibility because not doing so will put both the company at risk and may put corporate executives and board members at risk," he added. "The stakes are getting higher and higher."

In an email to Law360 Canada, Jay Strosberg, one of the lawyers involved in the Loblaws class action and a partner with Windsor, Ont.-based Strosberg Wingfield Sasso LLP, called Canada Bread's legal action "a significant development."

"Canada bread alleges that Maple Leaf was a part of one of the largest frauds in Canadian history," he said. "If these allegations are true, Maple Leaf is going to have a lot of explaining to do, both to its shareholders and to the Canadian public."

"We hope it is the first step towards ensuring that every company who had any involvement in this conspiracy is before the court, and that is the submission that we will be making next week before Justice Morgan," he added.

Keldon Bester, a fellow with the Centre for International Governance Innovation (CIGI) in Waterloo, Ont., and executive director of the Canadian Anti-Monopoly Project, described the Canada Bread lawsuit as an "unusual twist" in the annals of Canadian competition law.

But the lawsuit and the duration of the bread price-fixing saga, which stretched for almost 15 years, point to underlying problems in Canadian competition law, he said.

"The amount of time required to resolve these issues is pretty extraordinary," he said. "I think that's a bigger problem in Canadian competition law that we need to be talking about."

"In some ways, it's a reflection of the risk of having weak laws and not enforcing them aggressively," he added, noting that there have been some improvements in recent years.

Pointing to another example, Bester said the Competition Bureau has been examining Google's advertising practices for four years and is now expanding its investigation. Competition Bureau cases might move faster, he noted, if the bureau had the ability to directly subpoena witnesses with judicial review, like the U.S. Federal Trade Commission. Currently, the bureau has to go to court to get a subpoena.

If you have any information, story ideas or news tips for Law360 Canada, please contact John Schofield at john.schofield1@lexisnexis.ca or call 905-415-5815.