

STORM CLOUDS LOOMING: THE IMPACT OF *COMPETITION ACT* CHANGES ON LEASING

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The *Affordable Housing and Groceries Act* (the “**2024 Amendments**”)^[1] introduced changes to the *Competition Act* (the “**Act**”)^[2] which should concern all landlords and tenants, not just those in the grocery industry. The following high-level summary sets the stage for [an upcoming McMillan Webinar that will dive deeper into the consequences and considerations for interpreting, negotiating and drafting leases in light of these changes.](#)

The Act previously granted the Competition Bureau power, if the Tribunal finds an agreement or arrangement between competitors that lessens or is likely to prevent or lessen competition, to make an order to (i) prohibit any person from doing anything under the agreement or arrangement; or (ii) to require any person (with the consent of that person and the Commissioner) to take any other action.^[3] The new Section 90.1(1.1), which comes into effect on December 15, 2024, vastly expands this concept by granting the Tribunal power to make an order under Section 90.1(1) if it finds that a significant purpose of the agreement or arrangement, or any part of it, is to prevent or lessen competition – even if none of the persons in the agreement or arrangement are competitors. The scope of parties eligible to bring enforcement actions for violating this Section is being broadened beyond the Bureau in proposed legislation currently before Parliament.

While the federal government promoted the 2024 Amendments as measures focused on reducing grocery store prices and leveling the playing field for smaller grocers, the changes to the Act are not restricted to grocery stores. As a result, many questions remain unanswered including how existing agreements will be treated. While there may be some non-binding guidance coming from the Bureau later this year, there are many leases and related agreements that require re-examination due to the 2024 Amendments, particularly in light of the forthcoming increased penalties for non-compliance.

Despite the current uncertainty relating to the 2024 Amendments, landlords and tenants should carefully consider the impact of these changes on new and existing leases, as clauses like exclusivities and radius restrictions may raise the ire of the Tribunal or private parties seeking to challenge the agreement. Landlords and tenants may need to look for inventive ways to protect their interests within the confines of the amended Act and rents may need to be structured differently if tenants are not guaranteed an exclusive position in a

market.

Examining the 2024 Amendments through a real estate lens is crucial for landlords and tenants in order to comply with the Act in both their current leases and new deals, and to avoid hefty penalties for failing to comply. Join us for the McMillan Webinar to learn more and be part of the conversation.

[1] SC 2023, c 31 (formerly Bill C-56).

[2] RSC 1985, c C-34 [the Act].

[3] The Act, supra note 2, s 90.1(1).

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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