

## DAVID W. KENT\*



**Categories:** [People](#), [Lawyers](#)

David Kent is recognized as a leading antitrust lawyer and litigator. His practice focuses on complex corporate commercial litigation involving competition, intellectual property, commercial, regulatory and securities and governance disputes in a wide variety of industries, including media, communications and entertainment. He has extensive experience in domestic, international and cross-border cartels, conspiracies and class actions, appearing before federal and provincial trial and appellate courts and administrative tribunals across the country.

Acting in precedent-setting cases on a wide range of issues, David represents client in matters relating to securities law, cartel jurisdiction, cross-border discovery, and class action certification and settlement. He was defence counsel in two of the largest Canadian criminal cartel prosecutions, and in many major Canadian civil cartel cases involving vitamins, linerboard, copper futures, rubber chemicals, travel agents, computer components (including DRAM, SRAM, Flash, and LCD and CRT monitors), e-books and credit cards.

David has advised Canadian and US broadcasters and cable networks and online music services on copyright issues for over 30 years, including issues arising from the use of music on the internet.

David is a fellow of the American College of Trial Lawyers, and served as law clerk to the chief justice of Ontario before rejoining the firm in 1984.

**Email:** david.kent@mcmillan.ca

**Expertise:** Class Actions, Competition, Antitrust & Foreign Investment, Corporate Commercial Litigation, Intellectual Property, Media, Communications & Entertainment

**Location:** Toronto

**Phone:** 416.865.7143

**Position/Title:** Partner, Corporate Commercial Litigation | Class Actions

**Community Involvement:**

- Casey House – "The 100"

**Directorships & Affiliations:**

- Canadian Bar Association
- Intellectual Property Institute of Canada
- American Bar Association (Section on Antitrust)
- Fellow of the American College of Trial Lawyers

**Publications:**

- "Will "Deferential Correctness" Impact Your Business?", TerraLex Connections - Newsletter (July 2014)
- "[Gatekeepers or Ticket Takers: Canadian and US Courts Diverge on the Role of Evidence in Antitrust Class Action Certification](#)", The 2011 Lexpert®/American Lawyer Guide to the Leading 500 Lawyers in Canada (January 2011)
- "[Canada Chapter in: Getting the Deal Through - Private Antitrust Litigation 2011](#)" Reproduced with permission from Law Business Research. This article was first published in Getting the Deal Through - Private Antitrust Litigation 2011, (published in October 2010; contributing editor Samantha Mobley). (2011)

- "[Gatekeepers or Ticket Takers? Canadian and American courts diverge on the role of evidence in antitrust class action certification](#)", Lexpert 2010 Guide to the Leading US/Canada Cross-border Litigation Lawyers in Canada (November 2010)
- "[Conspiracy Class Actions: Evidence on the Motion for Certification](#)", Article (April 2006)
- "[Prospectus Disclosure and the Business Judgement Rule: Lessons from Danier](#)", Securities & Public Markets Bulletin (February 2006)
- "[Private Antitrust Litigation In Canada The Antitrust Review of the Americas 2006](#)", A Global Competition Review Special Report (November 2005)
- "*Kerr v. Danier* Leather ups the ante for class action defendants", The Lawyers Weekly (June 24, 2005)
- "[Costly Class Action Costs Awards: 'Legal Premiums' Raise The Bar In Ontario](#)", Litigation Bulletin (May 2005)
- "[Canada Chapter in Getting the Deal Through - Dispute Resolution 2005](#)", Published by Global Competition Review in association with McMillan (May 2005)
- "[Excerpt from 'Placing a Premium on Prevention'](#)", Counsel to Counsel - Brief Advice (January 2005 )
- "[Cross-Border Class Action Settlements - Can US Courts Bind Canadians?](#)", "Points North" Column in For the Defense Magazine (May 2004)
- "Canada Chapter in Arbitration World", (March 2004)
- "[Indirect Purchaser Claims - A Canadian Approach](#)", American Bar Association Canadian Law Newsletter, Volume XXXIX No.2 (November 2003)
- "[Indirect Purchaser Price Fixing Claims- A Canadian Approach](#)", International Bar Association Business Law International (May 2003)
- "[Certification of class actions in Canada - has the tide turned for product liability class actions?](#)", Australian Product Liability Reporter, Volume 14 Number 3 (May 2003)
- "[Class Actions Canadian Style](#)", Corporate Counsel (February 2003)
- "[Canada chapter in Cartel Regulation 2003: Getting the Deal Through](#)", London: Global Competition Review, 2002 (January 2003)
- "[British Columbia Court of Appeal Rules on Purchasers Entitled to Statutory Cause of Action for Prospectus Misrepresentation](#)", Corporate Finance Bulletin (December 2002)

#### **Education & Admissions:**

**Degree:** Called to the Ontario bar

**Year:** 1983

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**Degree:** LLB (Honours, Dean's Key)

**University:** University of Toronto

**Year:** 1981

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**Degree:** BA (with Distinction)

**University:** Carleton University

**Year:** 1976

**Media Mentions:**

- "[Judges are unmoved on pre-certification challenges](#)" by Drew Hasselback, National Post, June 2013
- "B.C. Court of Appeal approves DRAM memory class action", National Post, November 2011
- "Managing Global Class Actions", Canadian Lawyer InHouse Magazine, September 2011
- "Copyright bill may spark battle over who owns what", CBC Online, May 2011
- "Copyright reform", CBC Radio One Business Report, May 2011
- "Made in the U.S.A" by Robert Todd, Canadian Lawyer InHouse Magazine, December 2010
- "Unsettled law" by Kelly Harris, Canadian Lawyer InHouse Magazine, April 2010
- "The price is right", National Post, December 2009

**Rankings & Recognition:**

- Recognized in the 2022 *Benchmark Litigation: Canada Guide* as a Top 50 Trial Lawyer and Litigation Star
- Recognized in the 2022 Canadian Legal Lexpert Directory as a Most Frequently Recommended Lawyer in the areas of Class Actions and Competition Law and a Consistently Recommended Lawyer in the area of Litigation: Corporate Commercial
- Recognized by Chambers Global (2022) as a leading lawyer in the area of Competition / Antitrust: Litigators
- Recognized in the 2022 *Lexpert / American Lawyer Guide to the Leading 500 Lawyers in Canada*: Competition Law
- Recognized by Chambers Canada (2022) as a leading lawyer in the areas of Competition / Antitrust: Litigators; Dispute Resolution: Class Action (Defence) and Litigation: General Commercial (Ontario)
- Recognized by *Best Lawyers in Canada* (2022) as a leading lawyer in the areas of Class Action Litigation and Competition / Antitrust Law
- Listed in Who's Who Legal: Global 2021 as a leader in Commercial Litigation
- Listed in Who's Who Legal: Canada 2021 as a leader in Competition and Commercial Litigation
- Recognized in the 2021 Lexpert Special Edition on Canada's Leading Litigation Lawyers as a Leading



#### Litigation Lawyer

- Recognized in the 2021 Benchmark Litigation: Canada Guide as Competition Litigator of the Year, Top 50 Trial Lawyer and Litigation Star
- Recognized in the 2021 Canadian Legal Lexpert Directory as a Most Frequently Recommended Lawyer in the areas of Class Actions and Competition Law and a Consistently Recommended Lawyer in the area of Litigation: Corporate Commercial
- Recognized by Chambers Global (2021) as a leading lawyer in the area of Competition / Antitrust: Litigators
- Recognized by the Best Lawyers in Canada (2021) as a leading lawyer in the areas of Class Action Litigation and Competition / Antitrust Law
- Recognized by Chambers Canada (2021) as a leading lawyer in the areas of Competition / Antitrust: Litigators; Dispute Resolution: Class Action (Defence) and Litigation: General Commercial (Ontario)
- Recognized in the 2020 Canadian Legal Lexpert Directory as a Most Frequently Recommended lawyer in the areas of Class Actions and Competition Law and a Consistently recommended lawyer in the area of Litigation: Corporate Commercial
- Recognized in the 2020 *Benchmark Litigation: Canada Guide* as a Top 50 Trial Lawyer and Litigation Star
- Listed in *Who's Who Legal: Canada 2020* as a leader in Competition and Litigation
- Recognized by Chambers Global (2020) as a leading lawyer in the area of Competition / Antitrust: Litigators
- Recognized in the 2020 Lexpert / American Lawyer Guide to the Leading 500 Lawyers in Canada: Class Actions and Competition Law
- Listed in *Who's Who Legal: Canada 2019* as a leader in Competition and Litigation
- Listed in the Legal500 Canada 2020 as a "Recommended Lawyer" – Dispute Resolution
- Recognized in the 2019 Lexpert/ROB Litigation – Special Edition as one of Canada's Leading Litigation Lawyers
- Recognized by Chambers Canada (2020) as a leading lawyer in the areas of Competition / Antitrust: Litigators; Dispute Resolution: Class Action (Defence); and Litigation: General Commercial (Ontario)
- Recognized by Best Lawyers in Canada (2020) as a leading lawyer in the areas of Class Action Litigation and Competition / Antitrust Law
- 2019 Managing Intellectual Property's IP Stars - Listed in the Guide to the World's Leading IP Firms and Practitioners
- 2019 Canadian Legal Lexpert Directory - Recognized as a Most Frequently Recommended lawyer in the areas of Competition Law, Class Actions and Litigation – Corporate Commercial
- 2019 Benchmark Litigation Canada Guide - Recognized as a Litigation Star

- 2018 Benchmark Litigation Canada Guide - Recognized as a Top 50 Trial Lawyer in Canada and a Litigation Star
- Chambers Global (2019) - Recognized as a leading lawyer in the area of Competition / Antitrust: Litigators
- Lexpert / American Lawyer Guide to the Leading 500 Lawyers in Canada 2019: Class Actions; Competition Law; Litigation – Corporate Commercial
- 2018 Canadian Legal Lexpert Directory - Recognized as a Most Frequently Recommended lawyer in the areas of Competition Law and Class Actions and a Consistently Recommended lawyer in the area of Litigation – Corporate Commercial
- Lexpert Report on Business on Litigation 2018 – Special Edition - Recognized as one of Canada’s leading litigation lawyers
- Who’s Who Legal Canada: 2018 - Listed as a leader in Competition Law and Litigation
- Chambers Canada 2019 - Recognized as a leader in Competition/Antitrust: Litigators and Dispute Resolution: Class Action (Defense) and Litigation: General Commercial (Ontario)
- The Best Lawyers in Canada 2019 - Recognized as a leading lawyer in the areas of Class Action Litigation and Competition / Antitrust Law
- Chambers Global 2018 - Represented as a leading Lawyer in Competition/Antitrust: Litigators, Dispute Resolution: Class Action (Defence)
- Chambers Canada 2018 - Competition/Antitrust: Litigators, Dispute Resolution: Class Action (Defence) and Dispute Resolution: Ontario
- Lexpert Guide(2017) - Represented as a leading US/Canada Cross-Border Litigation Lawyer in Canada
- Benchmark Canada - Top 50 Trial Lawyers in Canada, Competition Litigator of the Year 2017, Litigation Star (Class Action, Competition, General Commercial, Intellectual Property)
- Chambers Global 2017 - Competition/Antitrust: Litigators, Dispute Resolution: Class Action (Defence)
- Chambers Canada 2017 - Competition/Antitrust: Litigators, Dispute Resolution: Class Action (Defence) and Dispute Resolution: Ontario
- LEXPERT and American Lawyer - Guide to the Leading 500 Lawyers in Canada - Class Actions, Competition Law and Litigation - Corporate Commercial
- LEXPERT - "Most Frequently Recommended" for Class Actions, Competition Law, and Litigation - Corporate Commercial
- LEXPERT Guide to the Leading US/Canada Cross-Border Corporate Lawyers in Canada - Competition Law
- LEXPERT's Special Edition Report on Canada's Leading Litigation Lawyers 2016
- The Legal 500 Canada - Competition and Antitrust & Dispute Resolution
- The Best Lawyers in Canada - Class Action Litigation and Competition/Antitrust Law
- Who's Who Legal - Competition Law

- PLC - "Recommended" for each of Competition/Antitrust and Media and Communications
- Euromoney - Guide to the World's Leading Competition and Antitrust Lawyers
- International Law Office Client Choice Award - Intellectual Property: Copyright, Ontario
- Managing Intellectual Property - IP Stars 2015
- Martindale and Hubbell - AV

### **Speaking Engagements:**

- Litigating Contract Disputes, The Advocates' Society
- June 18, 2020

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- Competition Law Implications for Use of Big Data in Canada, McMillan Toronto Intellectual Property Group, Rosewater Supper Club
  - June 5, 2018

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- March of the Plaintiffs - How Counsel Should Prepare for an Open Season of Litigation, CBA Competition Law, Spring Conference, Toronto, Ontario
  - May 25, 2017

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- What you need to know about Corporate Governance in 2016, LexisNexis Webinar
  - May 2016

### **Representative Matters:**

- *Competition Commissioner v. Visa et al* (RPM proceeding before Competition Tribunal – for MasterCard)
- Credit Card conspiracy class actions (for MasterCard)
- E-Books conspiracy class actions (for Penguin)
- Computer Memory conspiracy class actions (DRAM/SRAM/Flash) (for Micron)
- Gmail privacy class action (for Google)
- Children's medicines consumer deception class actions (for Novartis)
- Cross-border vehicle manufacturers conspiracy class action (for Honda)
- Cross-border import restriction conspiracy class action (for Mercedes Benz)
- Copper Futures conspiracy class actions (for JP Morgan/UBS)
- Rubber Chemicals conspiracy class actions (for Crompton)
- Vitamins conspiracy class actions (for BASF)

- Re:Sound v. Motion Picture Theatre Associations of Canada, 2012 SCC 38 (for MPTAC)
- Copyright Royalty Rate Proceedings (for Canadian Association of Broadcasters, CBC, MPA-Canada, Motion Picture Theatre Associations of Canada, YouTube, Microsoft, Netflix, Pandora)

**Teaching Engagements:**

- Osgoode Hall Law School – Alternate Dispute Resolution (2005-2007)
- Queen's University Law School – Alternate Dispute Resolution (1999-2004)
- Assistant Program Director – Copyright Master Class – McGill (August 2013)
- Program Director - Copyright Master Class - McGill (August 2014)

**Industries:** Media, Communications & Entertainment

**Practices:** Class Actions, Competition, Antitrust & Foreign Investment, Corporate Commercial Litigation, Intellectual Property