IN THE COURTS

SUPREME COURT OF CANADA RULES B.C. LAW SOCIETY AND MEMBERS EXEMPT FROM COMBINES ACT

The Supreme Court of Canada, in a judgement delivered by Mr. Justice Estey relating to advertising restrictions by the Law Society of British Columbia, ruled unanimously on August 9, 1982 as follows:

Question: "Does the Combines Investigation Act ... apply to the law Society of British Columbia, its governing body or its members?"

Answer: No.

Question: "Does the ruling of the Benchers of the Law Society of British Columbia prohibiting the Appellant from informing the public about the type and cost of the legal services provided, violate the Appellant's right to freedom of speech in Canada?"

Answer: No.

Question: "Does the Federal court, Trial Division, have exclusive jurisdiction to grant declaratory or injuctive relief against the Attorney General of Canada, the Restrictive Trade practices commission, the Chairman of the said commission, and the Director of Investigation and Research, in connection with:

(i) the interpretation or
(ii) constitutional applicability of the Combines Investigation Act to the Law Society of British Columbia, it governing body or its members?"

Answer: No.

The decision holds that a province acting within its jurisdiction can delegate to a trade, industry or profession the function of regulating itself along with the responsibility for determining the public interest principles upon which the self-regulation is to be based, and further holds that compliance with the requirements of such validly enacted provincial legislation by the regulatory body cannot contravene the Combines Investigation Act.

In January, 1978, Mr. Donald E. Jabour, a member of the law Society of British columbia, published newspaper advertisements announcing the opening of "a new concept of law office" and listing his fees for common kinds

of legal services. he also installed a large illuminated sign over his office with the words "The North Shore Neighbourhood Legal Clinic, Donald E. Jabour, Barrister and Solicitor". In February he was given notice of a hearing to be conducted by the Discipline Committee of the Law Society. In March, before the hearing took place, he launched an action in the Supreme Court of B.C. seeking inter alia, a declaration that the Law Society's rulings and policies prohibiting advertising were contrary to the Combines Investigation Act and in violation of the fundamental right of free speech. On May 12 the Discipline Committee found Mr. Jabour guilty of conduct unbecoming a member of the Society and on May 23 recommended that he be suspended from the practice of law for six months. The suspension was held in abeyance pending the outcome of Mr. Jabour's legal action.

On May 15, 1978 the Director of Investigation and Research, Combines Investigation Act, launched a formal inquiry into the conduct of the Law Society and scheduled a hearing for the taking of evidence before a Member of the Restrictive Trade Practices Commission in Vancouver on May 29. On May 24 the Law society started an action in the B.C. Supreme Court seeking declarations that the Combines Investigatin Act does not apply to the Law Society or, if it does, "then to such extent the ... Act ... is ultra vires the Parliament of Canada."

The two actions were heard together and decided by the B.C. Supreme Court in 1979 and by the B.C. Court of Appeal in 1980. In terms of the questions subsequently considered by the Supreme Court of Canada and reproduced above, the B.C. Supreme Court in effect answered the first two questions in the affirmative and the third in the negative. The B.C. Court of Appeal reversed the Trial court on the first two questions and upheld it on the third.

Mr. Justice Estey, in dealing with the applicability of the Combines Investigation Act, considered first the question whether the Benchers had the authority under the British Columbia Legal Professions Act (now the Barristers and Solicitors Act) to discipline Mr. Jabour for his advertising. The Trial Judge had found that the Benchers had the authority to regulate advertising but not to prohibit it as he found they had done. The Court of Appeal, on the other hand, had ruled that the Benchers had the power to prohibit the type of advertising at issue and to discipline Mr. Jabour.

Estey, J. reviewed at some length the relevant provisions of the Legal Professions Act. The Law Society whose membership comprises all members of the B.C. Bar, is governed by the Benchers, being twenty-three elected members along with the B.C. Attorney General who is an ex officio member. The Act directs the Benchers to establish a discipline committee, inter alia, for investigation into the conduct of members and for determining whether a member had been guilty of:

"(i) misappropriation or wrongful conversion by him of money or other property entrusted to or received by him in his capacity as a member of the Society; or

(ii) other professional misconduct; or

(iii) other conduct unbecoming a member of the society; or

(iv) a breach of any provision of this Act or the rules made herunder."

The Act defines conduct unbecoming a member of the society as including:

> "any matter, conduct or thing that is deemed in the judgment of the Benchers to be contrary to the best interests of the public or of the legal profession, or that tends to harm the standing of the legal profession."

A Professional Conduct Handbook had been distributed by the Society for the guidance of members, including detailed rules on advertising by members. Mr. Jabour's advertising violated those rules. However, according to Mr. Justice Estey, the rules were not regulations in law; the regulation of Mr. Jabour's conduct was effected by the disciplinary decision.

The Act expressly protects members of the Benchers from action for anything done in their capacity as Benchers as long as it is done in good faith. A member may appeal any disciplinary action against him to the British Columbia Court of Appeal.

Mr. Justice Estey also noted the provision whereby anyone may appeal his bill for legal services to an officer of the court known as a taxing officer, whose decisions are subject to review by a judge of the B.C. Supreme Court. He mentioned, without resolving, contract problems which might arise where a decision by a taxing officer diverged from an advertised price. Then, while noting that there are advantages and disadvantages in a scheme of self-regulation but that none of the parties and challenged the right of the province to enact the legislation, he stated:

> "These taxing provisions, the sections dealing with insurance, client compensation funds, the trust account provisions and the disciplinary measures, to name a few, may find their origin in the unusual nature of legal services, the fiduciary position of the solicitor, the status of the member of the Bar as an officer of the courts of the Province, or perhaps these provisions are the simple recognition in the community of the fact that by the nature of things the worth of legal services cannot be assessed by the general public on receiving them. The matter reaches even further. The

> general public is not in a position to appraise unassisted the need for legal services or the effectiveness of the services provided in the clients cause by the practitioner, and therefore stands in need of protection. It is the establishment of this protection that is the primary purpose of the Legal Professions Act."

Estey, J. summarized the positions of the appellants in respect of the authority of the Society to act as it did as follows:

> "...the Court of Appeal concluded that the 'Legal Professions Act authorizes the Law Society of British Columbia to do what it has done'. The appellants in the Law Society action do not challenge this on the basis of any inadequacy of provision in the statute itself but rather on the grounds that the Benchers, not being a publicly appointed body have not acted and cannot act with the 'authorization' of the province in the sense of the so-called regulatory industry cases. The appellant in the Jabour action likewise does not challenge the conclusion of the Court of Appeal. The appellant Jabour takes the view that whatever the effect of action by the Benchers under the provincial statute or whatever it be specifically authorized to do by that Act, the provincial statute does not have the effect of removing the action of the Benchers from the reach of the CIA. This position appears to be differently expressed from that of the other appellants and imports the added notion that the provincial statute must go further than simply authorizing the action of the Benchers in regulating advertising, but must in doing so set up 'a regulatory scheme as a substitute for competition', or 'a substitute mechanism for competition to achieve the public interest' ...The appellant Jabour does, however, challenge the notion that statutory authorization to regulate includes the authority to prohibit. The federal appellants phrase this viewpoint by submitting that a prohibition against 'informational advertising' is a blanket prohibition of advertising and when adopted by a self-governing body cannot be a scheme adopted, approved and authorized by the province so as to qualify as a regulated industry immune from prosecution under the CIA. In short the 'prohibited' actions must be organized and specified by the Province and not by the Benchers. At this point the position of all appellants converges."

His Lordship quickly rejected as not advancing the answer to the issue any proposal "to quantify or classify the regulatory effect of the decision of the disciplinary Committee" according to supposed classifications of advertising. Then, regarding the questions whether the statute authorized the Benchers' action in disciplining Jabour, he stated:

> "...I respectfully come to the same conclusion as the Court of Appeal, namely that the action taken by the Benchers is authorized by the statute.

"It is true, as argued here and below by all appellants, that a statutory 'power' to regulate does not always include the 'power' to prohibit (vide City of Toronto v. Bridgman, (1951) O.R. 489 (H. Ct.); R. v Shamrock Fuel Company, (1924) 3 W.W.R. 454 (Sask. K.B.)) but that is not the issue here. The statute directs the Law Society acting through the Benchers to determine in the public interest what 'matter, conduct or thing' is ' conduct unbecoming a member of the society', to refer back to s.1 of the Act. The decision of the Discipline Committee presumably reflects the announced policy of the Law Society on the matter of advertising. None of the parties has said otherwise. The statute does not limit the Benchers in the regulation of advertising nor does it confine them to matters of standards of 'competence and integrity' in the words of s. 32(6) of the CIA. The statute authorizes disciplinary action for 'conduct unbecoming a member of the society' and the mandate was broadly styled by the legislature when it saw fit to define 'conduct unbecoming' as including 'any matter, conduct or thing that is deemed in the judgment of the Benchers to be contrary to the best interest of the public or of the legal profession' .

"That is a far cry from a legislative mandate predicated on a single power 'to regulate' where there is no elaboration of the conduct to be regulated. Authorities such as the decision of the Saskatchewan Court of Appeal in Merchant v. Benchers of the Law Society of Saskatchewan, (1973) 2 W.W.R. 109 are of no assistance in this proceeding because the statute there contained no definition of 'conduct unbecoming' or of 'professional misconduct' leaving to the court the duty to establish such a definition. Here the Legislature has expressly directed the Benchers to formulate such a definition. The appellant of course was under no misapprehension in advance of his advertising activities as to the policy of the Benchers in that regard. In the end, therefore, the proceedings find their origin in the simple challenge arising between the member Jabour and the Law Society as to the right of the Benchers to define and prohibit the type of advertising in which Jabour, as a member, engaged. The immediate issue there is the statutory authority granted by the province to the Benchers for its actions and I find this authority to be present."

Mr. Justice Estey then examined the Combines Investigation Act to determine if it applied to the Law society in these proceedings. He noted in particular the following features of the Act:

S. 2 defines certain terms including:

"Product" includes an article and a service.

"Service" means a service of any description whether industrial, trade, professional or otherwise.

"Supply" means (b) in relation to a service, sell, rent or otherwise provide a service or offer so to provide a service;

"Trade, industry or profession" includes any class, division or branch of a trade, industry or profession.

S. 32(1), which contains the principal offence respecting restraint on competition, is qualified by the word "unduly", for example "(c) to prevent or lessen, unduly, competition..."

S. 32(1.1) provides:

"(1.1) For greater certainty, in establishing that a conspiracy, combination, agreement or arrangement is in violation of subsection (1), it shall not be necessary to prove that the conspiracy, combination, agreement or arrangement, if carried into effect, would or would be likely to eliminate, completely or virtually, competition in the market to which it relates or that it was the object of any or all of the parties thereto to eliminate, completely or virtually, competition in that market."

S. 32(6) provides:

" 6) In a prosecution under subsection (1), the court shall not convict the accused if it finds that the conspiracy, combination, agreement or arrangement relates only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public

(a) in the practice of a trade or profession relating to such service; or

(b) in the collection and dissemination of information relating to such service."

Both the appellants and the Law Society cited the so-called regulated industries cases in support of their respective positions. The appellants argued that the position of the federal authority is paramount at least where the provincial statute does not expressly authorize the conduct at issue and the federal statute expressly renders such conduct criminal. The Law Society argued that s. 32 of the Combines Investigation Act does not apply to their activities as a governing body and that, unless the federal statute clearly conflicts with a provincial regulatory statute, the proper interpretation is that which avoids any conflict.

After reviewing these cases, His Lordship concluded that the courts have found that neither the provincial statute nor the action of the public agencies administering them conflict with the federal competition legislation, and he stated:

> "It should be noted that in none of these cases so far has there been any requirement in the provincial statute for approval by the province of any regulations adopted by the statutory body for the control of the activities in question. Neither is there any uniformity about the appointment of the agencies or the relationship between members thereof and the community under the agencies' regulation. If the outcome of any of these cases depended upon the distance between the regulated and the regulator or his mode of appointment by the province, none of the courts have been moved to make comment."

Moreover, Estey, J. emphasized the presence of the word "unduly" in the restraint of trade offence in s. 32. He. stated:

> "The courts in these cases have said in various ways that compliance with the edicts of a validly enacted provincial measure can hardly amount to something contrary to the public interest. Since all the cases examined above approach the CIA on the basis of a criminal charge, actually or potentially arising under it, the element of public interest was always present. In Canadian Breweries, supra, (p. 605) the Court proceeded on the basis that the word 'unduly' in s. 32 connotes substantially the same meaning as the more general words in the same statute 'operated or is likely to operate to the detriment or against the interest of the public'. Even the 1975 amendments to s. 32 (supra), by the addition of subs. 1.1, did not remove 'unduly' from the operative provision, subs (1) of s. 32. So long as the CIA, or at least Part V, is styled as a criminal prohibition, proceedings in its implementation and enforcement will require a demonstration of some conduct contrary to the public interest. it is this element of the federal legislation that these cases all conclude can be negated by the authority extended by a valid provincial regulatory statute."

Estey, J. then examined ss. 32(1) to determine if it applied to the actions of the Benchers, and he concluded that it could not. Stating than "When a federal statute can be properly interpreted so as not to interfere with a provincial statute, such an interpretation is to be applied in preference to another applicable construction which would bring about a conflict between the two statutes", he explained his reasoning as follows:

> "The operative words at the beginning of s. 32 are: 'Every one who conspires, combines, agrees or arranges with another person'. These words are broad enough to include all the Benchers acting as a group or individually or the Law Society as a corporate entity and any one or more of the Benchers or of its statutory officers, or indeed any one with whom the Law Society may have acted jointly. Consequently if any two of these persons, natural or legal, voluntarily entered into an agreement condemned by the CIA, the

offence would be constituted, and on suspicion of such a situation an inquiry under s. 48 (sic) might well be ordered. What happened here, however, is something different in character both in fact and in law. In the words of Rand J. in Farm Products Reference, supra, at pp. 219-20, the provincial statute is "coercive" as applied to members of the provincially regulated group, whereas the federal stature is directed towards 'voluntary combinations or agreements'. Here the 'agreement' was apparently the determination by the Discipline committee that the appellant Jabour by advertising as he did was guilty of professional misconduct. In so 'agreeing', the Benchers are said not only to have been doing that which was permitted by their admittedly valid parent statute but were in fact discharging their assigned duties under that Act. Mention has already been made of the Professional Conduct handbook. It is not a regulation with any statutory or regulatory base in law. There has been no regulation promulgated by the Benchers on the subject of advertising. The regulation of such conduct in the record in these appeals has been effected by disciplinary decision.

"It was not argued before us but the adoption of policies by the Benchers as discussed in the Handbook might be included in the alleged criminally conspiratorial conduct. That such determinations were made by the Benchers pursuant to and within the provincial statute was not contested. The question is therefore: by the taking of any of these actions and proceedings have the Benchers 'conspired, combined, agreed or arranged ... (c) to prevent, or lessen, unduly, competition in the ...supply of a product, ...or... (d) to otherwise restrain or injure competition unduly'? I do not believe so. The Benchers were directed by the stature ("The Benchers shall appoint ... a discipline Committee", s. 43 supra) to establish a Discipline Committee with power to inquire into the conduct or competence of members. This duty is found in the context of a wide range of powers granted to the Law Society to govern the profession in the interest of the public and the members of the society. The words adopted by parliament in s. 32 and restated above are not ordinarily found in language directed to the actions of persons holding office under a provincialy authorized regulatory body and discharging their responsibilities to the community pursuant to their constitutive statute. This is particularly so where the group said to be acting 'conspiratorially' was in fact proceeding at the time in question as a deliberative body whose existence was mandated by a provincial statute.

The appellants contended that ss. 32(6), supra, enlarged the impact of s. 32 so as to include the Law Society. The trial court agreed but the Appeal Court did not, nor did Mr. Justice Estey. He stated:

> "In my view subs. (6) does not operate to make a fundamental change to the plain meaning of the main operating provision of the section, that is sub. (1) of s. 32. By its own terms subs. (6) is a limited directive to a court hearing a charge under subs. (1). It is to subs. (1) that one must look to determine the breadth of the parliamentary grasp. Section 32 is criminal legislation, whatever basis other parts of the CIA may have constitutionally. A defence-creating provision is hardly an appropriate place to find an expansion of the charging provision. There are of course in our community endless associations, professional and otherwise, voluntarily established and embracing persons carrying on activities social, commercial, professional and otherwise, which have no statutory mandate in the sense of a governing body of a profession. It may well be that it was the intent of Parliament to include in subs. (6) (or subs. (1)) such non-statutory bodies. The defence thereby afforded would perhaps in such a circumstance have application to a charge brought against such a non-statutory group or body under subs. (1) of s. 32. That case of course we do not now have before us."

He concluded therefore that on a proper construction of s. 32 taken as an entity it does not apply to the Law Society "in the circumstances of this appeal".

Responding to an argument of the appellants which was based upon Unites States antitrust jurisprudence, His Lordship noted that the Supreme Court that country has disallowed fee setting by a bar association (Goldfarb v. Virginia State Bar (1975), 421 U.S. 773) but has supported an advertising restriction which was authorized by a state agency (Bates v. State Bar of Arizona (1979) 433 U.S. 350). In the latter case the state agency was the Supreme court of Arizona. Mr. Justice Estey stated:

> "The rule in the United States therefore seems to be that where the state legislatures take action directly or authorize a sub-agency to regulate the practice of law, the resultant actions do not offend the federal statute. Conversely where the state does not authorize the action taken by the governing agency purporting to regulate its members, the federal statute does apply."

In dealing with the question whether the prohibition of his advertising by the Law society violated Jabour's right to freedom of speech neither the appellant nor His Lordship made any mention of the Charter of Rights and Freedoms, presumably because the events at issue antedated the Charter. Thus Estey, J. stated:

> "Where the right is not entrenched beyond the reach of Parliament or Legislature, as has been done for example in the first Amendment to the United States Constitution, the right is subject to curtailment by valid statute law."

He compared the Law Society's restriction of advertising to the prohibition of misleading advertising in s. 36 of the Combines Investigation Act, which he described as "just such a lawful regulatory restriction on freedom of expression or freedom of economic speech as has been alleged here".

The question relating to the powers of the Federal Court, Trial division (see page 1 above) was the subject of interlocutory proceedings. The Attorney General of Canada challenged the jurisdiction of the British Columbia Supreme Court to entertain the action of the Law Society which sought declaratory and injunctive relief against the Attorney General for Canada, the Restrictive Trade Practices Commission and its Chairman and Director. he contended that the Federal Court, Trial division had exclusive jurisdiction to grant the relief sought, citing the following subsections of the Federal Court Act:

> 2. (m) "relief" includes every species of relief whether by way of damages, payment of money, injunction, declaration, restitution of an incorporeal right, return of land or chattels or otherwise;
>
> 17. (1) The Trial Division has original jurisdiction in all cases where relief is claimed against the Crown and, except where otherwise provided, the Trial Division has exclusive original jurisdiction in all such cases.
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> 18. The Trial Division has exclusive original jurisdiction
>
> (a) to issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and
>
> (b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

Estey, J. confirmed the rulings of the lower courts that the B.C. Supreme Court has the necessary jurisdiction, although for somewhat different reasons. He stated:

> "It is difficult to see how an argument can be advanced that a statute adopted by Parliament for the establishment of a court for the better administration of the laws of Canada can at the same time include a provision that the provincial superior courts may no longer declare a statute enacted by Parliament to be beyond the constitutional authority of Parliament. Sections 17 and 18 of the

> Federal Court Act must, in the view of the applicants, be so construed. In my view Parliament lacks the constitutional authority to so provide. To do so would strip the basic constitutional concepts of judicature of this country, namely the superior courts of the provinces, of a judicial power fundamental to a federal system as described in the Constitution Act. At the same time it would leave the provincially-organized superior courts with the invidious task of execution of federal and provincial laws, to paraphrase the Valin case, supra, while being unable to discriminate between valid and invalid federal statutes so as to refuse to 'execute' the invalid statutes. For this second and more fundamental reason I conclude that the British Columbia courts have the requisite jurisdiction to entertain the claims for declarations herein made. Moreover, it would amount to an attempt by Parliament to grant exclusive jurisdiction to the Federal Court to administer the 'laws of Canada' while the validity of those laws remained unknown. Any jurisdiction in Parliament for the grant of exclusive jurisdiction to the Federal Court must be founded on exclusive federal powers under s. 91 of the Constitution Act. Insofar as there is an alleged excess of that jurisdiction by Parliament, s. 101 of the Constitution Act cannot be read as the constitutional justification for the exclusion from the superior courts of the jurisdiction to pronounce upon it."

The Supreme Court of Canada also had before it the question whether, if the Combines Investigation Act applies to the Law Society it is in that respect intra vires. In view of his finding that the Act does not apply, Mr. Justice Estey declined to consider the constitutional question. The Court of Appeal also found it unnecessary to decide the question. The Trial Court found the Act to be intra vires in that respect.

ONTARIO COURT OF APPEAL UPHOLDS IMMUNITY OF CROWN URANIUM FIRMS FROM COMBINES ACT

The Ontario Court of Appeal, in an oral judgment by Mr. Justice Cory on June 11, 1982, dismissed an appeal by the Attorney General of Canada against the decision of Mr. Justice Holland of the Supreme Court of Ontario that Uranium Canada Limited and Eldorado Nuclear Limited are immune from prosecution under the Combines Investigation Act. The Attorney General of Canada has been granted leave to appeal to the Supreme Court of Canada.

The two crown companies were among those charged in July, 1981 under s. 32(1)(c) of the Act in connection with the former uranium cartel. They applied to the Supreme Court of Ontario for writs of prohibition against a provincial court judge ordering him not to continue proceeding with a preliminary inquiry into the charge against them. The judgment of the Trial Court is described in the June, 1982 issue of Canadian Competition Policy Record.

Cory, J.A. summarized his reasons for dismissing the appeal as follows:

> "Firstly, the Combines Investigation Act ...is not applicable to the respondent companies insofar as the acts alleged in the indictment are concerned. Secondly, in the circumstances of this case, s. 16 of the Interpretation Act ...provides immunity to the respondents as agents of Her majesty for the Combines Investigation Act does not indicate that the Crown is to be bound by its terms. Thirdly, it cannot be said that by the doctrine of necessary implication the Combines Investigation Act should apply to the respondents."

In dealing with the first of the foregoing reasons, His Lordship found, as the Trial Judge had found, that the respondents in carrying out the purposes of their companies were agents of the Crown and as such had immunity from prosecution. In addition, after citing from the acts incorporating the two companies and from the Atomic Energy Control Act, he concluded that the companies were authorized to do the things for which they were charged and that the more specific Atomic Energy Control Act should prevail over the more general Combines Investigation Act. He stated:

> "It can be seen that the respondents are charged with doing acts which by their objects they are authorized to perform. Assuming, as we must, for the purposes of the appeal that the respondent companies performed the acts attributed to them in the indictment then the performance of those acts prima facie fell within the powers conferred on them by their objects clauses and their authorizing legislation."
>
> "Further by the provisions of the statutes referred to, the respondent companies acted as agents of Her Majesty and only as agents of Her Majesty.
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> "The Atomic Energy Control Act emphasizes that it is in the national interest to control and supervise atomic energy and to participate in its international control. This is the thrust of the Act in both its general provisions as indicated by the preamble and its specific provisions contained for example in s. 10. The specific provisions of the Atomic Energy Control Act should prevail over the general provisions of the Combines Investigation Act. If that be so the Combines Investigation Act may be viewed as not applying to the respondent companies in connection with the activities alleged in the indictment."

The Attorney General for Canada argued that the application for prohibition was at least premature because, until completion of the preliminary hearing, it could not be determined if the agents of the Crown had exceeded their authority and lost their immunity. His Lordship rejected that argument.

He held that s.16 of the Interpretation Act which immunized the respondents from prosecution was determinative of the issue, that the rights of the Crown would not be unaffected should the respondents be required to comply with the Combines Investigation Act, and that such compliance might run counter to the "specified need to control and supervise the production of substances capable of producing atomic energy".

Mr. Justice Cory also stressed the difference between the case at bar from R. v. Canadian Broadcasting Corporation et al. (1980), 30 O.R. (2nd) 239. In that case the same Court of Appeal held that the CBC was not immune from prosecution for having exhibited an obscene film; the case is now before the Spreme Court of Canada. Cory, J.A. stated:

> "Once again the case is very different from the one before us and should be distinguished. It should be noted that by its statute the CBC is an agent of the Crown for all purposes of the Act and only its powers under the Act may be exercised as an agent of Her majesty. In light of the wording of the CBC statute it was necessary for the Court to look to the purposes of the Broadcasting Act to ascertain the scope of the agency of the CBC. That Act provides that the CBC is established to provide a national broadcasting service subject to any applicable regulations one of which prohibited the showing of an obscene film. The scope of the CBC. agency was thus restricted by the regulations applicable to it. The Court concluded that because the CBC. had clearly breached a binding regulation it had acted outside the scope of its authority and had thus lost its immunity to prosecution."
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> "In the present case the respondent companies are agents of Crown for all their purposes and their powers may only be exercised as agents of the Crown. Here there are no limitations on the status of the agency and there is no indication that they have exceeded their authority."

THOMSON AND SOUTHAM NEWSPAPER CHAINS FACE ADDITIONAL COMBINES ACT CHARGE

The Thomson and Southam newspaper chains were indicted in June, 1982 on eight counts under the Combines Investigation Act, one count of which was additional to those in the Information which was laid in May 1981. They were to appear in assignment court on September 16, 1982.

On May 5, 1982, following a lengthy preliminary inquiry by Judge J.L. Addison of the Provincial court of the Judicial district of York, the two chains were committed for trial on the seven counts in the Information. One count alleges conspiracy relating to major English language newspapers in

Montreal, Winnipeg, Vancouver and Ottawa. Three counts allege conspiracy, merger and monopoly offences respectively in relation to english newspapers in Montreal. Three othere counts allege conspiracy, merger and monopoly offences respectively in relation to newspapers in Winnipeg.

The indictment, which is dated June 17, 1982, was signed by Attorney General Jean Chrétien and contains an additional count alleging a merger offence in connection with newspapers in Vancouver. The Criminal Code authorizes the Attorney General of Canada to proceed directly by indictment (see sections 496, 505 and 507).

The history of newspaper ownership in Vancouver is complex. Prior to 1957 there were three separately owned dailies. The Sun owned by Sun Publishing, and the Province owned by Southam were evening papers, while the Herald owned by Thomson was published in the morning. In 1957 Sun Publishing and Southam became joint owners of Pacific Press Limited, which acquired both the Sun and the Province. Thomson sold certain assets of the Herald to Pacific Press and closed down the Herald. The Province then became a morning paper. Arrangements were made for separate editorial control of each of the two surviving papers by their former owners.

Those transactions led to a combines inquiry, and a report by the Restrictive Trade Practices Commission was published in 1960. The Commission recommended, inter alia, that steps be taken to ensure that no changes be made in the arrangements for editorial independence of the two papers. Undertakings were then made by the principals on their own initiative to the Director of Investigation and Research, basically that he would be advised of any material changes in the merger conditions. Other principals who emerged in subsequent years assumed those undertakings.

In 1963, FP Publications acquired Sun Publishing's half-interest in Pacific Press. In January, 1980 Thomson acquired FP Publications, thereby obtaining joint ownership with Southam of the Sun and the Province. Under both those arrangements, separate editorial control of the two papers was maintained. Finally, in August, 1980, in one of a number of newspaper ownership changes and closures, Thomson sold its interest in Pacific to Southam, thus bringing the latter a monopoly of dailies in Vancouver.