

which is the word used in the Act, and an alternative being 'probable', I am not prepared to accept that submission. I think it equally likely that having gone this way once, Southam may very well be persuaded that it does not wish to come this way a second time. So that there is, at best, a balancing of possibilities and, in my view, no likelihood or probability at all."

He dismissed the Winnipeg monopoly charge for the same reasons while noting that, unlike in Montreal, there was evidence that its formation had been a result of an agreement.

Finally, in dismissing the Vancouver merger charge, Mr. Justice Anderson noted that, unlike in Winnipeg, the merger had not led to the closing of either of the two dailies. Nevertheless, with Southam now in control of both dailies as a result of the merger, His Lordship could not say there was no evidence that a lessening of competition was likely. However, he could find no evidence that "a lessening of competition, not now evident, but likely in the future would be to the detriment or against the interest of the public." After citing Regina v. K.C. Irving Limited, 15 N.B.R. (2d) at page 467, he said:

"In other words, the evidence of detriment must be found in addition to the finding of a lessening, apart from the evidence which exists. Indeed it might be said, as a matter of law, that evidence of a likely lessening of competition in the future, unless coupled with evidence as to the specific manner in which the lessening will be to the detriment or against the interest of the public, is not properly admissible in proof of an offence of merger."

FEDERAL COURT OF APPEAL CONFIRMS VALIDITY OF COMBINES ACT POWER TO CALL FOR PERSONS AND PAPERS

The Federal Court of Appeal, in a judgment handed down on November 29, dismissed an appeal by the National Hockey League against a decision of the Federal Court on August 9 that s. 17 of the Combines Investigation Act does not offend the Canadian Charter of Rights and Freedoms or the Canadian Bill of Rights. (John A. Ziegler et al v. Lawson A.W. Hunter, Director of Investigation and Research et al). The judgment of the Trial Court is described in the September issue of Canadian Competition Policy Record. The decision of the Appeal Court was unanimous, although each of the three justices on the panel wrote separate reasons.

S. 17 empowers a member of the Restrictive Trade Practices Commission, on an ex parte application of the Director, to order that any person in Canada be examined under oath or make production of documents. The case arose from an investigation by the Director of Investigation and Research into a suspected monopoly offence by the NHL in its refusal to permit the transfer of the St. Louis Blues hockey franchise to Saskatoon. The Director had obtained orders by a Member of the RTPC for hockey officials to appear for oral examination and to produce certain documents.