

Chouinard, J. concluded the judgment by noting that the view he had expressed was in agreement with the jurisprudence of the United States Supreme Court and he referred to six judgments of that Court. In essence those decisions concluded that the privilege against self-incrimination is personal and cannot be used by corporations.

ALBERTA COURT FINDS COMBINES LAW
CONSPIRACY SECTION VALID EXERCISE
OF FEDERAL TRADE AND COMMERCE POWER

The Alberta Court of Queen's Bench, in a judgment delivered by The Honourable Mr. Justice Medhurst on December 16, 1980, found that s. 32(1)(c) of the Combines Investigation Act can be supported as valid federal legislation under the regulation of trade and commerce as well as under the criminal law head of the British North America Act. As such, the Court ruled that the Attorney General of Canada has jurisdiction to conduct proceedings in Alberta relating to an offence under s. 32(1)(c).

An Information was laid on November 5, 1979 on behalf of the Attorney General of Canada charging twenty highway transport companies and eleven individuals under s. 32(1)(c) with conspiring to prevent or lessen unduly competition in interprovincial transportation (Regina v. Alltrans Express Ltd. et al). On June 18, 1980 those charged appeared in the Provincial Court of Alberta in Calgary. Submissions were made on behalf of a number of them including Canadian Pacific Transport Limited that the proceedings in question related to a criminal offence and that only the Attorney General of Alberta had jurisdiction to conduct proceedings in Alberta relating to such an offence. The Provincial Judge ruled that the Attorney General of Canada was lawfully authorized to so act. Application was then made to the Court of Queen's Bench for an order in the nature of prohibition against the continuation of proceedings while being conducted on behalf of the Attorney General of Canada. Medhurst, J. defined the issue as:

"...whether the Attorney General of Canada has the constitutional authority to prefer an indictment and to prosecute an offence under the Combines Investigation Act in Alberta or is he precluded from so doing because this falls within the exclusive jurisdiction granted to the provinces to deal with matters of administration of justice."

S. 15(2) of the Combines Investigation Act specifically authorizes the Attorney General of Canada to conduct prosecutions or other proceedings under that Act. S. 2(b) of the Criminal Code has the effect of authorizing the Attorney General of Canada to conduct:

"(b) proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that Government in respect of a violation of or conspiracy to violate any Act of the Parliament of Canada or a regulation made thereunder other than this Act."

The Appellants argued that both statutes were ultra vires in that they were in conflict with s. 92(14) of the B.N.A. Act which assigns to the Provinces:

"(14) The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts."

Counsel for the Attorney General of Canada argued that the power was intra vires, falling within the specific powers given under the B.N.A. Act to the Parliament of Canada. S. 91 of the B.N.A. Act assigns to Ottawa the making of laws for peace, order and good government and:

"(2) The regulation of Trade and Commerce.

...

(27) The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters."

Medhurst, J. cited Regina v. Hauser et al (1979) 46 C.C.C. (2d) 481 in which the Court of Appeal of Alberta ruled that an offence under the Narcotic Control Act was criminal in nature and that the power to prosecute came under the provincial power over administration of justice and not under the federal power over procedure in criminal matters. On appeal, a majority of the Supreme Court of Canada ruled that the Narcotic Control Act was based upon the federal peace, order and good government power and, on that basis, held that the Attorney General of Canada was authorized to institute and prosecute offences under that Act. The majority also held that the Attorney General of Canada could prosecute in respect of a violation or conspiracy to violate under an act of Parliament the constitutional validity of which does not depend upon Head 91(27). The Decision expressed no opinion as to whether the Attorney General of Canada could act in respect of offences which, while not part of the Criminal Code, are criminal in nature. In these circumstances, Medhurst, J. considered himself bound by the decision of the Court of

Appeal of Alberta to the effect that the Attorney General of Canada could not institute proceedings or prosecute offences which are in substance criminal.

He then dealt with the constitutional basis of the Combines Investigation Act. He found that "the cases generally support the proposition that the Combines Investigation Act in its present form can be supported under the Federal trade and commerce power. He stated:

"In my opinion the legislation in question, namely section 32(1)(c) of the Combines Investigation Act, can be supported as valid federal legislation under the authority given to regulate with respect to trade and commerce. As stated by Linden, J. (R. v. Hoffman-LaRoche Ltd. (1980) 14 C.R. (3d) 289), it is:

'...part of a legislative scheme aimed at deterring a wide range of unfair competitive practices that affect trade and commerce generally across Canada and is not limited to a single industry, commodity or area.'

"The primary objective of the statute is essentially related to or concerned with maintaining the free and open channels of trade and commerce generally even though it may incidentally affect property and civil rights within a province. This is true even though the conduct considered relates to services rather than the manufacture and distribution of goods."

Accordingly, he found the power of the Attorney General of Canada to prosecute for a violation of s. 32(1)(c) to be valid.

PART OF COMBINES LAW CONSUMER PACKAGE
ENCOUNTERS CONSTITUTIONAL PROBLEMS

The Court of Sessions of the Peace, District of Montreal, in a judgment on a preliminary motion delivered by Judge M. Rousseau on January 30, 1981, has ruled that s. 37.1 of the Combines Investigation Act is ultra vires (The Queen v. Miracle Mart Inc.). The Crown is appealing.

S. 37.1 prohibits the sale or rental of an article for more than the advertised price. Dealing first with the federal powers under s. 91(2) of the B.N.A. Act, trade and commerce, and the peace order and good government clause, Judge Rousseau emphasized the purely local nature of the transactions involved and the exclusive jurisdiction of the Provinces over property and civil rights and over matters of a merely local or private nature in a Province. He also noted that the Province of Quebec had enacted legislation similar in effect to s. 37.1.