

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.

Dealing with the federal power over criminal law, Judge Rousseau found that the substance of s. 37.1 did not meet the essential tests of a criminal statute. In addition, he pointed out that in Quebec a sale is a contract and is regulated by the Civil Code of Quebec.

There have been other related developments as well. On October 21, 1980 the Provincial Court (Criminal Division) of the County of Stormont found s. 7 of the Packaging and Labelling Act to be ultra vires insofar as it applies to prepackaged products within the Province of Ontario (Regina v. Steinberg Limited). Steinberg had been accused of selling a prepackaged shoulder of lamb under a false and misleading label as a lamb leg contrary to s. 7(1) of that Act.

Counsel for the accused argued that the legislation did not come within the federal jurisdiction under S. 91(2) of the B.N.A. Act, trade and commerce, S. 91(27), criminal law, or the power relating to peace, order and good government. Crown Counsel submitted that the statute came within the criminal law power in that, inter alia, legislation with respect to deceptive commercial practices was a proper exercise of that power. The Court held that the sale in question was local trade and did not fall within any of the sections cited conferring jurisdiction on the federal Parliament.

On January 8, 1981 the Supreme Court of British Columbia declared S. 2(2) of the Criminal Code to be ultra vires to the extent it purports to authorize the Attorney General of Canada to prefer an indictment under the Food and Drugs Act (The Queen and Kripps Pharmacy Ltd., and Stephen Kripps). S. 2(2) provides that "Attorney General" in the Code means the Attorney General of Canada in respect of:

- (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...other than this Act"

Referring to the fact that in R. v. Hauser (1979) 46 C.C.C. (2d) 481 the Supreme Court of Canada found that the Attorney General of Canada could prefer an indictment under the Narcotic Control Act on the basis that the federal power was derived from the peace, order and good government clause, Mr. Justice Berger said that if the Food and Drugs Act is founded on that power then Hauser would apply. If, on the other hand, it is founded on the criminal law power, Hauser would not apply and the question of whether the Attorney General of Canada could prefer an indictment must be considered. In this respect he considered himself bound by the decision of the British Columbia Court of Appeal in

Standard Sausage Co. v. Lee (1933) 4 D.L.R. 501 and (1934) 1 D.L.R. 706 which held the Food and Drugs Act to be intra vires as being a valid exercise of the criminal law power under S. 91(27) of the B.N.A. Act.

Then, following a review of the jurisprudence, Mr. Justice Berger was of the opinion that the Province has the exclusive jurisdiction to say when and where sanctions of the criminal law should be applied and to the extent S. 2(2) of the Code purports to confer such authority on the Attorney General of Canada it is ultra vires. He stated:

"It comes to this: has Parliament the power not only to prescribe the rules for the enforcement of the law, but also to decide who should enforce the law, and against whom? The argument on behalf of the Attorney General of Canada, if acceded to, would mean that the federal Government has the power to determine whether a prosecution shall be brought or an appeal taken in proceedings brought under any statute enacted by Parliament pursuant to the criminal law power, for the argument advanced in the case at bar to justify the preferring of the indictment are based entirely on S. 91(27). That would include the Criminal Code as well as the Food and Drugs Act. It would mean that Parliament could pass legislation authorizing the Attorney General of Canada to decide whether a prosecution should be brought in a shoplifting case at Burns Lake, or an appeal should be taken from an acquittal by a Provincial Court Judge in Pouce Coupe in a breaking and entering case. But these are matters for the Attorney General of the Province, not the Attorney General of Canada. So also is the preferring of an indictment under the Food and Drugs Act."

FEDERAL COURT OF APPEAL UPHOLDS CRTC
APPROVAL OF B.C. TELEPHONE ACQUISITION

The Federal Court of Appeal, in an unanimous decision by Pratte, Heald and Urie, J J. on December 23, 1980, upheld the approval by the Canadian Radio-Television and Telecommunications Commission (CRTC) of the acquisition by the British Columbia Telephone Company of GTE Automatic Electric (Canada) Limited.

At the time relevant to the appeal Automatic Electric, a manufacturer of telephone equipment, was a wholly owned subsidiary of General Telephone and Electronics Corporation