CANADIAN COMPETITION LAW DEVELOPMENTS

The articles in this section were written by Lawson A.W. Hunter and Paul K. Lepsoe of Fraser & Beatty, Ottawa.

IN MEMORIAM

Canada has lost one of its most experienced and successful competition law practitioners in a tragic car accident. Bruce McDonald of Lang Michener Lawrence & Shaw was killed instantly in an accident while travelling to his cottage near Kingston in August. His wife, Eleanor, passed away the following week.

Bruce's death is a great loss to the Canadian legal community and to the competition law bar. Bruce had a long and distinguished career in the competition law field, starting with his thesis at the University of Michigan where he analyzed the constitutionality of competition law in Canada. This study, which appeared as an article in the *Canadian Bar Review*, was often cited by the courts in constitutional cases involving the *Combines Investigation Act* as well as the *Competition Act*.

Bruce was also the co-author, with Lawrence Skeoch, of the *Dynamic Change Report* in 1976. This report was commissioned by the federal government to assist it in revising the legislation. It had a significant influence on the government's subsequent legislation, passed a decade later, and is widely regarded as one of the most thoughtful and useful documents on competition policy changes produced during that twenty-year saga of reform.

Bruce was also a very successful practitioner in the competition law field. He represented not only many of Canada's largest corporations, but also the Director of Investigation and Research and the Restrictive Trade Practices Commission. He was counsel to the Commission in the Petroleum Inquiry and he acted as counsel to the Commission in the research inquiry into the ophthalmic goods industry in Canada.

Two of Bruce's great strengths, perhaps stemming from his academic career, were his ability to listen and his ever-questioning mind. He took nothing for granted. He analyzed problems from all angles. Perhaps more than in many other fields this was an extremely useful and successful approach to competition law and policy.

Bruce was a pleasure to work with as a colleague. He was thorough and hard working, but always pleasant. He was practical, yet innovative. He inspired great confidence among his clients.

Canada has lost a fine legal mind and a warm and generous human being. Everyone who specializes in the competition law field will greatly miss Bruce's counsel and support.

L.A.W.H.

DIRECTOR UNVEILS IMMUNITY PROCESS

In a speech delivered August 19, 1991, to a Canadian Corporate Counsel Association meeting in Calgary, Mr. Howard Wetston, the Director of Investigation and Research, unveiled new Bureau guidelines with respect to recommending and granting immunity in criminal cases. Although for some time the Bureau has, with the Department of Justice, considered grants of immunity in return for cooperation with the Crown, this is the first time that the Director has set down guidelines where immunity would be seriously considered. The Director does not indicate that the criteria he sets out in his speech are firm policy, but only "our most recent thoughts with respect to the factors that could be relevant in determining whether to recommend immunity from

prosecution to the Attorney General in a 'first-in' situation."

The following are the nine factors set out in Mr. Wetston's speech.

1. The firm must be the first to approach the Bureau with evidence of the offence in question. It does not seem as appropriate to recommend immunity from prosecution if there is an existing complaint or investigation, or if an advisory opinion has already been issued by the Bureau regarding the conduct in question.
2. The firm must provide full and frank disclosure of the facts at its disposal. There must be no misrepresentation of the material facts, which shall be confirmed by the Bureau's investigation. In particular, the Bureau's investigation should not reveal offences beyond those which have been identified by the firm.
3. The firm must co-operate fully with the Bureau's investigation and with any ensuing prosecution or other legal proceedings.
4. The evidence provided by the firm must be important and valuable in terms of any prosecution or other legal proceedings.
5. The firm must be prepared to make restitution commensurate with the facts and with its responsibility in the matter.
6. The evidence must confirm that the firm took immediate steps to terminate the activity and report it to the Director as soon as it was discovered by its senior executives.
7. A prior record of anti-trust violations by the firm will be a significant factor in deciding whether to recommend immunity to the Attorney-General.
8. The firm should usually be prepared to consent to the issuance of an order of prohibition of fixed duration under section 34(2) of the *Competition Act* pursuant to which the commission of an offence is admitted.
9. The role of the firm in the conduct in question will also be considered. For example, it may not be consistent with responsible enforcement of the *Act* or the administration of justice to recommend immunity for the instigator of criminal conduct.

Mr. Wetston has obviously set a rather high standard. He also has indicated that he believes there can be penalties for not using the program. He states:

> However, you should bear in mind that the carrot afforded by this extension of our program of compliance has a flip side consistent with our policy of seeking greater fines and laying charges against individuals where appropriate. In effect, while the benefits of being the first to report a violation of the *Act* in a conspiracy or bid-rigging situation may be considerable relative to the potential sanctions, the failure to do so will generally raise the stakes in any subsequent settlement negotiations.

Mr. Wetston appears to be saying that not coming forward and revealing violations of the *Act* is a relevant factor in determining the appropriate fine level in any subsequent settlement or negotiations related to a possible violation. Although in practice this may be the case, it may not rest on sound legal principles, since there never has been a positive obligation on citizens to report their wrongdoings to the government, or a rule that failure to do so would be used against them. The obligation to prove offences rests on the Crown, not on the private citizen.

The second theme of Mr. Wetston's speech was the criteria the Bureau uses in selecting and priorizing cases for enforcement. Mr. Wetston indicated that there are three categories as part of the screening process: economic impact factors, enforcement policy factors, and management factors.

Of these three general criteria, the first two are sensible and probably not new. Perhaps the most significant addition is the criterion of management considerations. Here, Mr. Wetston states:

> This last category of factors relates to the internal administrative considerations, which are fundamental to our ability to simultaneously conduct a large number of inquiries efficiently. One important aspect, which I hardly need remind this audience in particular, is the cost of pursuing a case.

What Mr. Wetston is clearly signalling is that the Bureau has limited resources. It is clear in this time of federal budgetary restraint that the Bureau is also suffering. With the addition of merger enforcement but no additional resources to deal with that new law, resources available for the traditional areas of enforcement have declined. It is reaching the point where the Bureau cannot

mount a significant number of enforcement matters at the same time. The answer Mr. Wetston provides, however, is not clear. His conclusion with respect to management considerations is that "All things being equal, those matters which are closer to completion will be given more weight." What does this mean? Is he saying that he will rely on the private sector to do the investigation work for him, and that if they do most of the work and bring the matter closer to completion he will more likely pursue a complaint than otherwise? Or is he saying that he will pursue matters that are further along in the Bureau at the present time without opening new matters? In any event, it is clear that complainants need be aware of the severe financial constraints under which the Bureau is operating. This raises the question of whether private enforcement of the *Act* should be liberalized, now that the new *Act* has five years of enforcement in place. *L.A.W.H.*

UPDATE ON SOUTHAM AND HILLSDOWN MERGER CASES

On September 4, 1991, the Competition Tribunal commenced its hearing in Vancouver of the Director's application relating to the acquisitions by Southam Inc. of equity interests in the businesses publishing the *Vancouver Courier*, the *North Shore News* and the *Real Estate Weekly*. The Tribunal's hearing of the Director's application in respect of the merger of the Ontario rendering operations of Maple Leaf Mills Limited and Canada Packers Inc. is scheduled to commence on November 25, 1991, in Ottawa. The latter merger occurred as part of the acquisition by Hillsdown Holdings (Canada) Limited of a controlling interest in Canada Packers Inc.

There have been a number of pre-hearing proceedings and motions in both merger cases which have resulted in orders being made by the Tribunal. Several of these orders are now on appeal to the Federal Court of Appeal.

Confidentiality

In both cases, the Tribunal issued orders regarding confidentiality, dated April 29, 1991 in the *Southam* case and May 23, 1991 in the *Hillsdown* case. These required, essentially, that any person other than counsel to the parties, including the Director and his staff, who obtains access to confidential documents and information, must execute a confidentiality agreement in a prescribed form. The form of the confidentiality agreement precludes the Director from using the confidential information for any purpose other than in connection with the merger proceeding. Tribunal orders in both the *Southam* and *Hillsdown* cases also required experts retained by the parties to execute and deliver to the party whose documents are at issue a confidentiality agreement in the prescribed form. The Director has appealed the confidentiality orders in both cases to the Federal Court of Appeal. In *Southam*, the Director brought a motion for an order that he may use non-confidential documents obtained on discovery for purposes other than the present litigation. The Tribunal denied the Director's motion and that order is also under appeal.

Discovery

Examinations for discovery of the Director and the respondents were conducted in both the *Southam* and *Hillsdown* cases. These examinations again resulted in litigation and orders by the Tribunal, particularly regarding the scope of discovery to be provided by the Director in such cases. On a motion by the respondents in the *Southam* case, Madam Justice Reed was required to consider a number of questions which the Director's representative refused to answer dealing with the nature and conduct of the Director's investigations, internal memoranda prepared for the Director, the relevance or preparation of the Director's pleadings, opinions of the Director's representative, the internal procedures of the Director's office, the identification of particular documents and facts relied upon by the Director to support allegations in the proceeding, details of the Director's interviews with industry participants and experts

and the production of interview notes. Mr. Justice Strayer considered similar questions on a motion by the respondents in the *Hillsdown* case. On both the *Southam* and *Hillsdown* motions, representative samples of the documents which the Director refused to produce were provided to the Tribunal for review.

Orders were issued by Madam Justice Reed on June 27, 1991 and by Mr. Justice Strayer on July 11, 1991. Both orders required that the Director answer certain additional questions and, in the *Hillsdown* case, produce certain additional documents. The Director was required to provide summaries of information collected by his staff, without disclosing details of the interviews or the identities of individuals interviewed. In the *Hillsdown* case, the Director was also ordered to provide subsequently obtained information in response to certain questions as soon as that information became available. Several questions in the *Southam* case which related to the internal procedures of the Director's office (filing procedures) were held to be relevant to the admissibility of evidence before the Tribunal and were therefore ordered to be answered.

Notably, however, the majority of refused questions were not ordered to be answered and most additional documents in the Director's files were not ordered to be produced. Questions relating to the nature and conduct of the Director's investigation were held by the Tribunal to be irrelevant to the issues in the merger applications. Many of these questions were found to encompass internal memoranda prepared for the Director which similarly were held not to be relevant to the merger proceedings. Questions which asked for opinions or conclusions of law from the Director's representatives were not ordered to be answered. Other questions which were not ordered to be answered included those seeking information in the knowledge of the respondents or questions that would put a burden on the Director out of all proportion to the benefit to be gained from the answer. These included questions seeking reference to all facts and documents on which the Director relies for particular allegations. In her reasons in the *Southam* order, Madam Justice Reed stated:

> the purpose of discovery is to reveal facts on which the other party relies (an outline of the case); it is not intended to require disclosure of minute details of the evidence by which those facts will be proved.

With respect to questions relating to interviews which the Director conducted and the information collected, the Tribunal considered whether the information was protected from disclosure by litigation privilege or public interest privilege. In her reasons in the *Southam* order, Madam Justice Reed relied primarily on public interest privilege. Her Ladyship held that it was in the public interest to allow the Director to keep the identities of individuals interviewed and the details of the interviews confidential in order to protect the effectiveness of the Director's investigations. Further, it was held to be in the public interest to keep the interview notes confidential except when the interviewees are called as witnesses or otherwise identified by the party claiming privilege. Madam Justice Reed also stated that "the Director is not required to prepare the respondents' case by identifying potential witnesses for them." She viewed the Director's agreement to provide summaries of the relevant information as a reasonable position. Her Ladyship held, however, that these summaries should be provided at that time, to the extent the information was known, and that the information provided should include that which favoured the respondents' case as well as that which supported the case of the Director. In both the *Southam* and *Hillsdown* cases, the Director and respondents used a "blanket clause" in claiming privilege in their respective Affidavits of Documents. In her reasons in the *Southam* order, Madam Justice Reed commented on this type of clause with reference to subsection 14(1) of the *Competition Tribunal Rules* which requires the filing and serving of an Affidavit of Documents containing "a brief description of each of the documents." She noted that, within that context, subsection 14(2) provides that a claim "that a document is privileged...shall be made in the Affidavit of Documents." Accordingly, Madam Justice Reed stated that "it is contemplated that claims for privilege will be made within the context of an Affidavit of Documents in which *each document has been described*" (emphasis added). However, in the circumstances of both the *Southam* and *Hillsdown* cases, no further description of the documents for which claims for privilege were

made was required because the Tribunal actually reviewed a sample of the documents which the Director objected to producing.

In his order in the *Hillsdown* case, Mr. Justice Strayer excluded from production all of the Director's internal assessment documents and memoranda. Some of these documents were held to be privileged because they were communications with counsel or identified informers. Notably, however, the remainder were found by Mr. Justice Strayer to be made in contemplation of litigation and therefore subject to a litigation privilege. Although these documents were noted to commence some months prior to the decision to proceed with an application to the Tribunal, Mr. Justice Strayer held that they were prepared to aid the Director and his counsel in determining whether such an application should be made. His Lordship viewed the possibility of such an application as underlying the Director's role in the review process, even though such applications are made in respect of only a minority of the mergers reviewed:

> [F]rank statements of fact and opinion by the Director's staff and experts, reduced to writing, are necessary to enable the Director and his counsel to determine whether litigation is warranted, and it appears to me that the rationale of a litigation privilege applies to them.

Mr. Justice Strayer based the remainder of his decision as to the scope of discovery essentially on the rationale of the decision of Madam Justice Reed in the *Southam* case. The respondents in the *Hillsdown* case have appealed Mr. Justice Strayer's order and that appeal is scheduled to be heard in the Federal Court of Appeal on October 10, 1991. The *Southam* respondents did not appeal the order of Madam Justice Reed.

On a motion by the Director in the *Southam* case and at a pre-hearing conference in the *Hillsdown* case, the Tribunal ordered the respondents in each case to answer certain questions which had been refused and to re-attend for further examination for discovery.

Amendment to Southam Application

After a two-day motion on June 28 and July 4, 1991 before Mr. Justice Teitelbaum, the Director was granted leave to amend his Notice of Application originally filed on November 29, 1990. In the Tribunal's order dated July 4, 1991, Mr. Justice Teitelbaum also set dates for the serving and filing of the Amended Notice of Application and any Response and Reply, as well as for the completion of any additional examination for discovery resulting from the amendment. The dates for serving and filing expert affidavits were amended accordingly.

Summaries

Following a pre-hearing conference call in the *Southam* case, Madam Justice Reed issued an order dated July 16, 1991, clarifying an earlier order requiring the Director to provide the respondents with summaries of the information he had collected. The Director had provided such summaries up to the date of his decision to commence an application (October 3, 1990) but not with respect to information collected after that date on the basis of litigation privilege. Madam Justice Reed decided that, in the circumstances of the *Southam* case, the Director was required to disclose information collected up to the date of filing the application to the Tribunal (November 29, 1990) but not after. In her reasons, Madam Justice Reed stated that this was not:

> a rule which will automatically apply in all cases, or in all merger cases. It will be important to examine each case on its own merits. Indeed, in future cases before the Tribunal, it would be preferable to try to establish some guidelines in this regard at the outset of the pre-hearing proceedings.

Further, Her Ladyship commented on the implications of the Director's investigative powers, noting that:

> the Director has the authority to use a number of highly intrusive investigative powers and thus can easily be characterized as wielding 'the power of the State'. With such authority goes a responsibility to ensure that the opposing side is not prejudiced by a failure to disclose all pertinent information.

Request to Intervene

In the *Southam* case, a request for leave to intervene in the proceedings was made by Douglas Broome, a freelance journalist working in

Vancouver. Mr. Broome alleged that the Southam acquisitions created a monopoly on the dissemination of information, restricting "the right of all citizens to seek, receive and impart information." The Director took no position with respect to the request for leave to intervene while the respondents opposed it. In its order dated August 9, 1991, the Tribunal denied Mr. Broome's request for intervener status on the basis that the *Competition Act* and the *Competition Tribunal Act* "do not give the public any right of direct access to the Tribunal." The Tribunal did express some displeasure that the Director chose not to take any position on the request for leave to intervene noting:

> ...the Director has a direct and continuing interest in the development of jurisprudentially sound procedures and practices before the Tribunal. Decisions are always more solidly based when the decision-maker has had the advantage of considered arguments presented by parties having an interest in the matter in issue.

Documents to be Covered by a Confidentiality (Protective) Order

In the *Southam* case, the Director brought a motion challenging the respondents' contention that a number of documents should be given protected status and kept off the public record. That motion was heard by Madam Justice Reed and lay member Dr. Frank Roseman. In its order dated August 29, 1991, the Tribunal reiterated the relevant considerations set out in its earlier decision in the *Southam* case dated June 20, 1991:

> [T]he applicable test was to ask, first, whether disclosure of the information could reasonably be expected to result in harm to the party seeking the Order or to a third party not before the Tribunal (a 'reasonable expectation of probable harm' test) and then to ask whether, despite the probability of harm, the disclosure of the information was necessary for the conduct of comprehensible public proceedings.

After considering the documents at issue, the Tribunal ordered that a number of documents be filed as confidential documents, that edited versions of a number of documents be prepared for the public record, that certain information contained in confidential documents be filed for the purposes of the public record in an aggregate form, that a number of documents be filed on the public record with certain information removed and that selected portions from three expert affidavits be deleted from the versions of those affidavits filed on the public record.

As part of its general considerations, the Tribunal observed that protective orders are always open to review during the course of the proceeding and, further, that according a document protected status does not mean that all references to it will automatically result in a hearing *in camera* .

Miscellaneous Orders

In the *Hillsdown* case, the Tribunal permitted the Director to file supplemental expert affidavits to deal with information provided by the respondents relating to efficiencies in response to undertakings given on their examination for discovery. The respondents were permitted to file and serve expert affidavits in response, the deadline for which was subsequently extended by a further Tribunal order.

In the *Southam* case, the Tribunal issued orders extending filing dates for the joint book of documents, agreed statement of facts and memoranda of law and authorities.

Pre-hearing proceedings in the *Southam* and *Hillsdown* merger cases have resulted in considerable litigation, both in terms of numerous and sometimes lengthy motions before the Tribunal and appeals to the Federal Court of Appeal. Hopefully, the Tribunal's orders in these cases and the Court's review of certain of them will provide guidance for pre-hearing proceedings in future cases so that fewer issues will have to be litigated. *L.A.W.H.*

BUREAU CHECKS CHIP COMPLAINT

The Bureau of Competition Policy is examining allegations of anti-competitive practices made against potato chip maker Hostess Frito-Lay Co. A new competitor of Hostess in the Toronto market, Winnipeg-based Old Dutch Foods Ltd., has complained publicly that Hostess is buying out entire stocks of Old Dutch potato chips from Toronto-area stores. There have also been press

reports of Hostess exerting pressure on small retailers not to stock the chips of its competitor.

Hostess Frito-Lay Co. is owned by Kraft Foods and Pepsi-Cola. Old Dutch is a major supplier of potato chips in western Canada. *P. K. L.*

THE INDEPENDENCE OF JUSTICE LAWYERS ACTING FOR THE DIRECTOR

When lawyers from the Department of Justice represent the Director of Investigation and Research under the *Competition Act* in other administrative proceedings, should they have the same access as other counsel to commercially sensitive information, access which clients and the public are not allowed to have?

The independence of Justice lawyers representing the Director was recently challenged in the Federal Court by several Canadian beer companies. The companies, including Molson and Labatt, are involved in a trade action concerning the dumping of American beer into British Columbia (see p. 21 of this issue). The matter came before the Canadian International Trade Tribunal (CITT).

Section 125 of the Competit*ion Act* provides that the Director may make representations before a federal board or tribunal:

> ...that carries on regulatory activities and is expressly charged by...Parliament with the responsibility of making decisions or recommendations related directly or indirectly to the production, supply, acquisition or distribution of a product.

Acting on this authority, the Director has participated in several Canadian Radio-telecommunications Commission (CRTC), CITT and other federal administrative tribunal proceedings in the past, including the recently-completed CRTC hearing on the application of Unitel to compete in the long-distance market.

In July 1991, the Director filed a notice of his intention to appear at the CITT beer hearing, which starts in September. Two Justice lawyers were named to represent him, and they signed the standard undertaking not to disclose any confidential information used in the proceeding.

Sections 44 and 45 of the *Canadian International Trade Tribunal Act* provide for parties to file confidential information which, under section 45(3), "may be disclosed by the Tribunal to counsel for any party," but not to the parties themselves. Section 45(4) of the *Act* defines "counsel" as "a person, other than a director, servant or employee of the party, who acts in the proceeding on behalf of the party." The purpose of the provisions is to allow all counsel to have full access to the material to ensure a fair hearing, while at the same time preventing commercially sensitive material from being disseminated through the hearing process. A similar procedure is used for Competition Tribunal hearings, although there is no comparable legislative framework.

The CITT Decision

In the CITT proceeding, the beer companies objected to counsel for the Director being granted access to confidential information filed by them. The CITT agreed to deny access (NQ-91-002, August 19, 1991). In reasons concurred with by his colleague Charles Gracey, Tribunal member Robert Bertrand accepted that the Director had the right to participate in the proceeding by virtue of section 125 of the *Competition Act*. However, in his view, section 45 of the *Canadian International Trade Tribunal Act* provided the Tribunal with discretion over the disclosure of confidential information to counsel, and in this case the discretion should be exercised to refuse disclosure. He noted that the Director had carefully examined the beer industry in 1989 during the Molson and Carling O'Keefe merger, and that the three-year limitation period for the review of a merger under section 97 of the *Competition Act* had not yet expired. Under these circumstances, Bertrand wrote that he was:

> ...not surprised that some parties to the present beer inquiry strenuously object to the granting of access to confidential information to and the participation in the *in camera* session of counsel who have been and/or will be closely associated with the Director and the officers of the Bureau of Competition Policy.

Noting that the CITT "has to protect the candour and completeness with which business competitors bring information and evidence before

the Tribunal," and that in previous matters at the CITT "the Director did not hesitate to retain independent outside counsel," Bertrand concluded that confidential access should be denied to the Justice lawyers.

The lawyers in question were John Tyhurst, a career Justice department lawyer, and Donald Houston, with the Department on exchange from Stikeman Elliott. Bertrand noted that Tyhurst has "in the last five years, worked closely with officers of the Bureau of Competition Policy and the Director," while Houston "in the next two years will be concentrated on acting on behalf of the Attorney General for the Director in litigation under the *Competition Act*."

CITT member Sidney A. Fraleigh came to a similar result for different reasons. In his view, the CITT in this case was engaged only in "adjudicative activities," which he did not define. Therefore, in his view, the Director had no standing under section 125 of the *Competition Act* even to appear, let alone have counsel with access to confidential material.

The Federal Court Decision

The Director applied to the Federal Court to quash the CITT decision, and to order access for his counsel to the confidential material. Mr. Justice Marcel Joyal quashed the decision, but remitted the question of access to the CITT for reconsideration (T-2108-91, August 26, 1991). Joyal J. upheld Bertrand's finding that the Director did have standing to appear, by virtue of section 125 of the *Competition Act*. However, he rejected Bertrand's reliance on the importance of the perception of independence of counsel for the Director. He ruled that "the sole issue to be addressed by the Tribunal is whether these counsel are directors, servants or employees of the Director," which he remitted to the CITT for determination. Without stating it, Joyal J. turned the question of access to confidential information from something in the discretion of the Tribunal into a rule of law: if a party has standing, then counsel to that party have access under the *CITT Act* unless that counsel is a "director, servant or employee" of the party. Without analysis or reasons, the seemingly discretionary "may" of section 45(3) was turned into an imperative "shall".

CITT Reconsideration

In its reconsideration (NQ-91-002, August 28, 1991), the CITT engaged in a formalistic analysis of the meaning of "servant" as mandated by Joyal J. The Tribunal found that the two lawyers reported on a day-to-day basis to the senior counsel at Consumer and Corporate Affairs, not to the Director (who is part of the same department). Therefore, they were not "servants" of the Director, and should be granted access to the material.

Comment

It is open to question whether the reasons of either Bertrand or Joyal J. treat adequately the implications of representatives of the Director having access to potentially sensitive commercial information about the operation of companies which he is otherwise examining. The former would apparently accept outside counsel as a matter of course, while for the latter, all that is required is merely an analysis of the employment relationship of the lawyers involved.

With respect, it would have been legally sound and analytically clearer to hold simply that the CITT has discretion under the *Act* to deny access to confidential information, without the Tribunal having to adjudicate definitions of a "servant" relationship. If sensitive commercial information in a trade matter is obtained by lawyers who work in the competition area, does it really matter whether they are employees of Justice or private lawyers retained on what could be a regular basis by the Director? If there are circumstances where, for the better administration of a particular area of federal regulation, it is not appropriate for representatives of the Director or for particular individuals to have access to commercially sensitive information, arguably that access should not turn simply on the employment relationship of those involved. An alternative might be to allow access to counsel for interveners, such as the Director, subject if necessary to conditions or undertakings appropriate for the particular circumstances. *P. K. L.*

GASOLINE PRICING INVESTIGATION CONTINUES

The investigation by the Bureau of Competition Policy into retail gasoline pricing, which has been underway for several months, is continuing. It arose initially because of complaints of significantly higher prices for gasoline in the Ottawa area than in other markets in Ontario, including the North. Complaints about the retail pricing practices of the industry were subsequently received from many other cities across Canada. Apart from Ottawa, the Bureau is declining to say which local investigations are continuing and which have been terminated.

Canadian consumers are clearly very sensitive to any fluctuation, or lack of fluctuation, in the price of gasoline: the Bureau receives more complaints about gasoline pricing than any other economic activity. *P.K.L.*

EDITOR'S NOTE

In the March 1991 issue of the *Canadian Competition Policy Record*, the famous poem was reproduced which illustrates how competition law can get you coming or going. We indicated at that time that the author and source were unknown. Subsequent to publishing the poem we received a letter from Bruce McDonald. Bruce informed us that he believed the poem was by R. W. Grant from his piece entitled "Tom Smith and His Incredible Bread Machine". Bruce was not aware of the date of the poem or where it was originally published.

MERGER EXAMINATIONS UNDER THE COMPETITION ACT
STATISTICAL SUMMARY

	1986-87[1]	1987-88	1988-89	1989-90	1990-91[2]	1991-92
MERGER EXAMINATIONS COMMENCED[3]	40	146	191	219	194	95
EXAMINATIONS CONCLUDED						
Concluded as posing no issue under the Act[4]	17	120	166	204	193	75
Concluded with monitoring only[5]	5	7	10	13	9	4
Concluded with pre-closing restructuring[6]	–	2	1	–	–	–
Concluded with post-closing restructuring[7]	1	2	3	1	–	–
Concluded with Consent Order	–	–	–	3	–	–
Parties abandoned proposed merger in whole or in part as a result of Director's position	3	2	2	2	2	1
TOTAL EXAMINATIONS CONCLUDED	26	133	182	223	204	78
EXAMINATIONS ONGOING AT END OF PERIOD	14	25	32	31	39	36
INTENT TO FILE APPLICATION ANNOUNCED	–	–	2	–	–	–
APPLICATIONS BEFORE TRIBUNAL						
Concluded[8]	1	–	2	3	–	–
Ongoing	–	2	2	1	3	3

Notes

1 Statistics commenced on June 19, 1986.
2 Statistics to October 4, 1991.
3 Two or more days of review. Includes 380 prenotifications since July 15, 1987:
– in short form (s. 121); 1987/88 - 44; 1988/89 - 50; 1989/90 - 89; 1990/91 - 40; 1991/92-40.
– in long form (s. 122); 1987/88 - 21; 1988/89 - 42; 1889/90 - 20; 1990/91 - 25; 1991/92-10.
4 Includes:
264 Advance Ruling Certificates
1986/87 - 2; 1987/88 - 26; 1988/89 - 59; 1989/90 - 72; 1990/91 74; 1991/92 - 31.
38 Advisory Opinions
1986/87 3; 1987/88 10; 1988/89 6; 1989/90 - 3; 1990/91 - 2; 1991/92-4.
5 All advisory opinions.
6 All advisory opinions.
7 One Advance Ruling Certificate and six Advisory Opinions.
8 These matters are counted under examinations concluded.