

OUTSIDE THE COURTSCOMPETITION DIRECTOR'S GREEN BOOK
ON PETROLEUM INDUSTRY RELEASED

Results of the eight-year investigation of the Petroleum Industry by the Director of Investigation and Research under the Combines Investigation Act were released on March 4, 1981, shortly before this issue of the Record was completed. The full text of the official "Backgrounder" summarizing the Green Book is attached as a supplement to this issue of the Record.

The Director's Green Book, entitled The State of Competition in the Petroleum Industry, is in seven volumes and contains over 2,000 pages. It constitutes a Statement of Evidence and Material Collected submitted to the Restrictive Trade Practices Commission on February 27, 1981 in connection with an inquiry under s. 47 of the Act. The Commission has decided that its inquiry shall be conducted in public and it authorized publication of the Green Book. S. 47 provides for general inquiries into monopolistic situations or restraint of trade, and such an inquiry can be initiated by the Director without him having reason to believe an offence is involved or that grounds exist for the making of an order by the Commission.

The origin of the Director's Green Book was an application by the Consumers Association of Canada early in 1973 under s. 7 of the Act for an inquiry whether gasoline and fuel oil price increases at the time were the result of a conspiracy, and more generally whether prices were maintained at an unduly high level because of the extent of vertical integration within the petroleum industry. S. 7 as it was at that time provided essentially for the commencement of an inquiry at the request of six citizens who are of the opinion that an offence under the Act is involved. S. 8 requires the Director to conduct such inquiries. In initiating a s. 47 inquiry the Director has chosen very broad terms of reference, i.e. "The Exploration for, and the Importation, Production, Purchase, Manufacture, Storage, Transportation, Distribution, Barter, Supply and Sale of Crude Oil, Petroleum, Refined Petroleum Products and Related Products".

The Green Book, in addition to relying upon much of the information obtained during the 1973 inquiry, makes use of other smaller inquiries involving the industry, of which there have been nearly fifty since 1952. Many of them involved investigations of suspected price maintenance or conspiracy in connection with local price wars at the retail level.

The fact that the Director opted for a s. 47 inquiry at this time certainly carries the suggestion that prosecution was deemed not to be warranted by the evidence in the light of the Act as it now stands. At the least it must have been concluded that the scope for prosecution was small in relation to the wide ranging allegations which have been made. Moreover, the seizure of certain documents from Petrofina in 1978 during the 1973 inquiry is under appeal to the Supreme Court of Canada and some of those documents have not yet been turned over to the Commission.

It has obviously been impossible as yet for the industry to deal publicly in any detail with the specifics in the Green Book. However, by press time, a number of petroleum firms had issued statements denying all allegations of misconduct.

ANDRE OUELLET REITERATES HOPE
OF INTRODUCING COMPETITION
LAW REFORMS SOON

Consumer and Corporate Affairs Minister Andre Ouellet told a joint meeting of the Ontario and Quebec Business Law Sections of the Canadian Bar Association on February 5 that he hoped "by this spring to be in a position to bring forward a new bill designed to deal with the most urgent and pressing reforms of competition policy that remain to be undertaken, those involving mergers, monopolistic practices and conspiracies." He added:

"In particular, it is necessary to put in place a process that provides for a civil review to determine whether mergers involving major Canadian companies and certain monopolistic practices serve to promote or damage the interests of the Canadian economy generally. It is equally necessary to strengthen the criminal sections of the law against certain conspiracies which clearly and unequivocally are contrary to the public interest."

The Minister referred with concern to "a renewed wave of mergers and related corporate dealings by huge Canadian companies which raise serious questions about the public interest". He stated:

"I need only recall, for example, the takeover of Zellers and later Simpsons by Hudson Bay and the additional acquisition of Simpsons' interest in Simpson-Sears, which quite obviously gives the Bay a dominant position in the marketplace.