



CHAPTER C-34

An Act to provide for the investigation of combines, monopolies, trusts and mergers

SHORT TITLE

Short title 1. This Act may be cited as the *Combines Investigation Act*. R.S., c. C-23, s. 1.

INTERPRETATION

Definitions 2. In this Act,

"article"
«article» "article" means real and personal property of every description including

- (a) money,
- (b) deeds and instruments relating to or evidencing the title or right to property or an interest, immediate, contingent or otherwise, in a corporation or in any assets of a corporation,
- (c) deeds and instruments giving a right to recover or receive property,
- (d) tickets or like evidence of right to be in attendance at a particular place at a particular time or times or of a right to transportation, and
- (e) energy, however generated;

"business"
«entreprise» "business" includes the business of

- (a) manufacturing, producing, transporting, acquiring, supplying, storing and otherwise dealing in articles, and
- (b) acquiring, supplying and otherwise dealing in services;

"Commission"
«Commission» "Commission" means the Restrictive Trade Practices Commission appointed under subsection 18(1);

"Director"
«directeur» "Director" means the Director of Investigation and Research appointed under subsection 7(1);

- “merger”
«fusion»
- “merger” means the acquisition by one or more persons, whether by purchase or lease of shares or assets or otherwise, of any control over or interest in the whole or part of the business of a competitor, supplier, customer or any other person, whereby competition
- (a) in a trade, industry or profession,
 - (b) among the sources of supply of a trade, industry or profession,
 - (c) among the outlets for sales of a trade, industry or profession, or
 - (d) otherwise than in paragraphs (a) to (c),
- is or is likely to be lessened to the detriment or against the interest of the public, whether consumers, producers or others;
- “Minister”
«ministre»
- “Minister” means the Minister of Consumer and Corporate Affairs;
- “monopoly”
«monopole»
- “monopoly” means a situation where one or more persons either substantially or completely control throughout Canada or any area thereof the class or species of business in which they are engaged and have operated that business or are likely to operate it to the detriment or against the interest of the public, whether consumers, producers or others, but a situation shall not be deemed a monopoly within the meaning of this definition by reason only of the exercise of any right or enjoyment of any interest derived under the *Patent Act* or any other Act of Parliament;
- “product”
«produit»
- “product” includes an article and a service;
- “service”
«service»
- “service” means a service of any description whether industrial, trade, professional or otherwise;
- “supply”
«fournir...»
- “supply” means,
- (a) in relation to an article, sell, rent, lease or otherwise dispose of an article or an interest therein or a right thereto, or offer so to dispose of an article or interest therein or a right thereto, and
 - (b) in relation to a service, sell, rent or otherwise provide a service or offer so to provide a service;
- “trade, industry or profession”
«commerce...»
- “trade, industry or profession” includes any class, division or branch of a trade, industry or profession. R.S., c. C-23, s. 2; 1974-75-76, c. 76, s. 1.

Defects of form

3. No proceedings under this Act shall be deemed invalid by reason of any defect of form or any technical irregularity. R.S., c. C-23, s. 3.

APPLICATION

Collective bargaining activities

4. (1) Nothing in this Act applies in respect of

(a) combinations or activities of workmen or employees for their own reasonable protection as such workmen or employees;

(b) contracts, agreements or arrangements between or among fishermen or associations of fishermen and persons or associations of persons engaged in the buying or processing of fish relating to the prices, remuneration or other like conditions under which fish will be caught and supplied to those persons by fishermen; or

(c) contracts, agreements or arrangements between or among two or more employers in a trade, industry or profession, whether effected directly between or among the employers or through the instrumentality of a corporation or association of which the employers are members, pertaining to collective bargaining with their employees in respect of salary or wages and terms or conditions of employment.

Limitation

(2) Nothing in this section exempts from the application of any provision of this Act a contract, agreement or arrangement entered into by an employer to withhold any product from any person, or to refrain from acquiring from any person any product other than the services of workmen or employees. R.S., c. C-23, s. 4; 1974-75-76, c. 76, s. 2.

Underwriters

5. (1) Sections 45 and 61 do not apply in respect of an agreement or arrangement between or among persons who are members of a class of persons who ordinarily engage in the business of dealing in securities or between or

among such persons and the issuer of a specific security, in the case of a primary distribution, or the vendor of a specific security, in the case of a secondary distribution, where the agreement or arrangement has a reasonable relationship to the underwriting of a specific security.

Definition of
"underwriting"

(2) For the purposes of this section, "underwriting" of a security means the primary or secondary distribution of the security, in respect of which distribution

(a) a prospectus is required to be filed, accepted or otherwise approved under or pursuant to a law enacted in Canada for the supervision or regulation of trade in securities; or

(b) a prospectus would be required to be filed, accepted or otherwise approved but for an express exemption contained in or given pursuant to a law mentioned in paragraph (a). 1974-75-76, c. 76, s. 2.

Amateur sport

6. (1) This Act does not apply in respect of agreements or arrangements between or among teams, clubs and leagues pertaining to participation in amateur sport.

Definition of
"amateur
sport"

(2) For the purposes of this section, "amateur sport" means sport in which the participants receive no remuneration for their services as participants. 1974-75-76, c. 76, s. 2.

PART I

INVESTIGATION AND RESEARCH

Director

7. (1) The Governor in Council may appoint an officer to be known as the Director of Investigation and Research.

Oath of office

(2) The Director shall, before entering on his duties, take and subscribe, before the Clerk of the Privy Council, an oath or solemn affirmation, which shall be filed in the office of the Clerk, in the following form:

I do solemnly swear (*or affirm*) that I will faithfully, truly and impartially, and to the best of my judgment, skill and ability, execute the powers and trusts reposed in me as Director of Investigation and Research. (*In the case where an oath is taken add "So help me God"*).

Salary

(3) The Director shall be paid such salary as may be from time to time fixed and allowed by

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the Governor in Council. R.S., c. C-23, s. 5; 1976-77, c. 28, s. 9.

Deputy
Directors

8. (1) One or more persons may be appointed Deputy Directors of Investigation and Research, in the manner authorized by law.

Powers of
Deputy

(2) The Governor in Council may authorize a Deputy Director to exercise the powers and perform the duties of the Director whenever the Director is absent or unable to act or whenever there is a vacancy in the office of Director.

Powers of other
persons

(3) The Governor in Council may authorize any person to exercise the powers and perform the duties of the Director whenever the Director and the Deputy Directors are absent or unable to act or, if one or more of those offices are vacant, whenever the holders of the other of those offices are absent or unable to act.

Inquiry by
Deputy
Director

(4) The Director may authorize a Deputy Director to make inquiry regarding any matter into which the Director has power to inquire, and when so authorized a Deputy Director shall perform the duties and may exercise the powers of the Director in respect of that matter.

Powers of
Director
unaffected

(5) The exercise, pursuant to this Act, of any of the powers or the performance of any of the duties of the Director by a Deputy Director or other person does not in any way limit, restrict or qualify the powers or duties of the Director, either generally or with respect to any particular matter. R.S., c. C-23, s. 6.

Application for
inquiry

9. (1) Any six persons resident in Canada who are not less than eighteen years of age and who are of the opinion that

(a) a person has contravened or failed to comply with an order made pursuant to section 32, 33 or 34,

(b) grounds exist for the making of an order by the Commission under Part V, or

(c) an offence under Part VI or section 74 has been or is about to be committed,

may apply to the Director for an inquiry into the matter.

Material to be
submitted

(2) An application made under subsection (1) shall be accompanied by a statement in the form of a solemn or statutory declaration showing

(a) the names and addresses of the applicants, and at their election the name and

address of any one of their number, or of any attorney, solicitor or counsel, whom they may, for the purpose of receiving any communication to be made pursuant to this Act, have authorized to represent them;

(b) the nature of

(i) the alleged contravention or failure to comply,

(ii) the grounds alleged to exist for the making of an order, or

(iii) the alleged offence

and the names of the persons believed to be concerned therein and privy thereto; and

(c) a concise statement of the evidence supporting their opinion. R.S., c. C-23, s. 7; 1974-75-76, c. 76, s. 3.

Inquiry by
Director

10. The Director shall

(a) on application made under section 9,

(b) whenever he believes on reasonable grounds that

(i) a person has contravened or failed to comply with an order made pursuant to section 32, 33 or 34,

(ii) grounds exist for the making of an order by the Commission under Part V, or

(iii) an offence under Part VI or section 74 has been or is about to be committed, or

(c) whenever he is directed by the Minister to inquire whether any of the circumstances described in subparagraphs (b)(i) to (iii) exists,

cause an inquiry to be made into all such matters as he considers necessary to inquire into with the view of determining the facts. R.S., c. C-23, s. 8; 1974-75-76, c. 76, s. 4.

Notice for
written returns

11. (1) Subject to subsection (2), the Director may at any time in the course of an inquiry, by notice in writing, require any person, and in the case of a corporation any officer of the corporation, to make and deliver to the Director, within a time stated in the notice, or from time to time, a written return under oath or solemn affirmation showing in detail such information with respect to the business of the person named in the notice as is by the notice required, and, without restricting the generality of the foregoing, the Director may require a full disclosure and production of all contracts

Partic l

or agreements that the person named in the notice may have at any time entered into with any other person touching or concerning the business of the person named in the notice.

Authority for notice

(2) The Director shall not issue a notice under subsection (1) unless, on the *ex parte* application of the Director, a member of the Commission certifies, as that member may, that the notice may be issued to the person or officer of a corporation disclosed in the application. R.S., c. C-23, s. 9.

Entry of premises

12. (1) Subject to subsection (3), in any inquiry under this Act, the Director or any representative authorized by him may enter any premises on which the Director believes there may be evidence relevant to the matters being inquired into and may examine any thing on the premises and may copy or take away for further examination or copying any book, paper, record or other document that in the opinion of the Director or his authorized representative, as the case may be, may afford that evidence.

Duty of persons in control of premises, etc.

(2) Every person who is in possession or control of any premises or things mentioned in subsection (1) shall permit the Director or his authorized representative to enter the premises, to examine any thing on the premises and to copy or take away any document on the premises.

Authority for entry

(3) Before exercising the power conferred by subsection (1), the Director or his authorized representative shall produce a certificate from a member of the Commission, which may be granted on the *ex parte* application of the Director, authorizing the exercise of that power.

Return of documents

(4) Where any document is taken away under this section for examination or copying, the original or a copy thereof shall be delivered to the custody from which the original came within forty days after it is taken away or within such later time as may be directed by the Commission for cause or agreed to by the person from whom it was obtained.

Application to court

(5) When the Director or his authorized representative acting under this section is refused admission or access to premises or any thing thereon or when the Director believes on reasonable grounds that that admission or

access will be refused, a judge of a superior or county court on the *ex parte* application of the Director may by order direct a police officer or constable to take such steps as to the judge seem necessary to give the Director or his authorized representative that admission or access. R.S., c. C-23, s. 10.

Inspection of documents

13. (1) All books, papers, records or other documents obtained or received by the Director may be inspected by him and also by such persons as he directs.

Copies

(2) The Director may have copies made, including copies by any process of photographic reproduction, of any books, papers, records or other documents referred to in subsection (1), and those copies, on proof orally or by affidavit that they are true copies, in any proceedings under this Act are admissible in evidence and have the same probative force as the originals, and where that evidence is offered by affidavit, it is not necessary to prove the signature or official character of the deponent if that information is set out in the affidavit or to prove the signature or official character of the person before whom the affidavit was sworn. R.S., c. C-23, s. 11.

Affidavits

14. (1) The Director may, by notice in writing, require evidence on affidavit or written solemn affirmation in every case in which it seems to him proper to do so, but the Director shall not so require unless, on the *ex parte* application of the Director, a member of the Commission certifies, as such member may, that the Director may make such a requirement of the person disclosed in the application.

Administration of oaths

(2) The following persons, namely,
 (a) each member of the Commission,
 (b) the Director,
 (c) a Deputy Director or other person exercising the powers of the Director under this Act,
 (d) any person employed under this Act when so authorized by the Chairman of the Commission, and
 (e) all persons authorized to administer oaths in or concerning any proceedings had or to be had in the Supreme Court of

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Canada, the Federal Court or any of the superior courts of any province, may administer oaths and take and receive solemn affirmations for the purposes of this Act. R.S., c. C-23, s. 12; R.S., c. 10(2nd Supp.), s. 64; 1976-77, c. 28, s. 9.

Counsel

15. Whenever in the opinion of the Commission or the Director the public interest so requires, the Commission or the Director may apply to the Attorney General of Canada to appoint and instruct counsel to assist in an inquiry. R.S., c. C-23, s. 13.

Discontinuance of inquiry

16. (1) At any stage of an inquiry, if the Director is of the opinion that the matter being inquired into does not justify further inquiry, the Director may discontinue the inquiry, but an inquiry shall not be discontinued without the written concurrence of the Commission in any case in which evidence has been brought before the Commission.

Report

(2) The Director shall, on discontinuing an inquiry, make a report in writing to the Minister showing the information obtained and the reason for discontinuing the inquiry.

Notice to applicant

(3) In any case where an inquiry made on application under section 9 is discontinued, the Director shall inform the applicant of the decision giving the grounds therefor.

Review of decision

(4) On written request of the applicants or on his own motion, the Minister may review the decision to discontinue the inquiry, and may, if in his opinion the circumstances warrant, instruct the Director to make further inquiry. R.S., c. C-23, s. 14.

Reference to Attorney General of Canada

17. (1) The Director may, at any stage of an inquiry, and in addition to or in lieu of continuing the inquiry, remit any records, returns or evidence to the Attorney General of Canada for consideration as to whether an offence has been or is about to be committed against this Act, and for such action as the Attorney General of Canada may be pleased to take.

Prosecution by Attorney General of Canada

(2) The Attorney General of Canada may institute and conduct any prosecution or other proceedings under this Act, and for those purposes he may exercise all the powers and perform all the functions conferred by the *Crimi-*

nal Code on the attorney general of a province.
R.S., c. C-23, s. 15.

PART II

CONSIDERATION AND REPORT

- Commission** 18. (1) There shall be a Commission to be known as the Restrictive Trade Practices Commission consisting of not more than four members appointed by the Governor in Council.
- Membership** (2) One of the members shall be appointed by the Governor in Council to be Chairman of the Commission.
- Chief executive officer** (3) The Chairman is the chief executive officer of the Commission and has supervision over and direction of the work of the Commission.
- Vice-Chairman** (4) One of the members may be appointed by the Governor in Council to be Vice-Chairman of the Commission and any member so appointed shall, whenever the Chairman is absent or unable to act or whenever there is a vacancy in the office of Chairman, exercise the powers and perform the duties of the Chairman.
- Absence, etc., of Chairman and Vice-Chairman** (5) The Governor in Council may designate a member to exercise the powers and perform the duties of the Chairman of the Commission whenever the Chairman and any Vice-Chairman are absent or unable to act or whenever the offices of Chairman and Vice-Chairman are vacant.
- Tenure of office** (6) Each member holds office during good behaviour for a period of ten years from the date of his appointment.
- Re-appointment** (7) A member on the expiration of his term of office is eligible for re-appointment.
- Salaries** (8) Each member shall be paid such salary as may be from time to time fixed and allowed by the Governor in Council.
- Temporary substitute members** (9) When any member by reason of any temporary incapacity is unable to perform the duties of his office, the Governor in Council may appoint a temporary substitute member on such terms and conditions as the Governor in Council may prescribe.
- Vacancy** (10) A vacancy in the Commission does not impair the right of the remaining members to act.

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Quorum

(11) Two members constitute a quorum.

Rules

(12) The Commission may make rules for the regulation of its proceedings and the performance of its duties and functions under this Act.

Oath of office

(13) Each member shall, before entering on his duties, take and subscribe, before the Clerk of the Privy Council, an oath or solemn affirmation, which shall be filed in the office of the Clerk, in the following form:

I do solemnly swear (*or affirm*) that I will faithfully, truly and impartially, and to the best of my judgment, skill and ability, execute the powers and trusts reposed in me as a member of the Restrictive Trade Practices Commission. (*In the case where an oath is taken add "So help me God"*).

Headquarters

(14) The office of the Commission shall be in the city of Ottawa in the Province of Ontario, but sittings of the Commission may be held at such other places as the Commission may decide. R.S., c. C-23, s. 16; R.S., c. 10(1st Supp.), s. 34; 1974-75-76, c. 76, s. 5; 1976-77, c. 28, s. 9.

Oral examination

19. (1) On *ex parte* application of the Director, or on his own motion, a member of the Commission may order that any person resident or present in Canada be examined on oath before, or make production of books, papers, records or other documents to, that member or before or to any other person named for the purpose by the order of that member and may make such orders as seem to him to be proper for securing the attendance of that witness and his examination, and the production by him of books, papers, records or other documents and may otherwise exercise, for the enforcement of those orders or punishment for disobedience thereof, all powers that are exercised by any superior court in Canada for the enforcement of subpoenas to witnesses or punishment for disobedience thereof.

Witness competent

(2) Any person summoned under subsection (1) is competent and may be compelled to give evidence as a witness.

Application to court

(3) A member of the Commission shall not exercise power to penalize any person pursuant to this Act, whether for contempt or otherwise, unless, on the application of the member, a

judge of the Federal Court or of a superior or county court has certified, as such judge may, that the power may be exercised in the matter disclosed in the application, and the member has given to that person twenty-four hours notice of the hearing of the application or such shorter notice as the judge deems reasonable.

Documents

(4) Any books, papers, records or other documents produced voluntarily or in pursuance of an order under subsection (1) shall within thirty days thereafter be delivered to the Director, who is thereafter responsible for their custody, and within sixty days after the receipt of the books, papers, records or other documents by him the Director shall deliver the original or a copy thereof to the person from whom the books, papers, records or other documents were received.

Delivery to Director of seized material

(5) A justice before whom any thing seized pursuant to a search warrant issued with reference to an offence against this Act is brought may, on the application of the Director, order that the thing be delivered to the Director, and the Director shall deal with any thing so delivered to him as if delivery of it had been made to him pursuant to subsection (4).

Fees

(6) Every person summoned to attend pursuant to this section is entitled to the like fees and allowances for so doing as if summoned to attend before a superior court of the province in which he is summoned to attend.

Commissions to take evidence

(7) The Minister may issue commissions to take evidence in another country and may make all proper orders for the purpose and for the return and use of evidence so obtained.

Orders to be signed by a member

(8) Orders to witnesses issued pursuant to this section shall be signed by a member of the Commission. R.S., c. C-23, s. 17; R.S., c. 10(2nd Supp.), s. 64.

Director may submit statement of evidence

20. (1) At any stage of an inquiry,
 (a) the Director may, if he is of the opinion that the evidence obtained discloses a situation contrary to any provision in Part VI, and
 (b) the Director shall, if the inquiry relates to an alleged or suspected offence under any provision of Part VI and he is so required by the Minister,

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prepare a statement of the evidence obtained in the inquiry, which shall be submitted to the Commission and to each person against whom an allegation is made therein.

Time and place of hearing

(2) On receipt of the statement referred to in subsection (1), the Commission shall fix a place, time and date at which argument in support of the statement may be submitted by or on behalf of the Director, and at which those persons against whom an allegation has been made in the statement shall be allowed full opportunity to be heard in person or by counsel.

Consideration and report

(3) The Commission shall, in accordance with this Act, consider the statement submitted by the Director under subsection (1) together with such further or other evidence or material as the Commission considers advisable.

Full opportunity to be heard

(4) No report shall be made by the Commission under section 21 or 24 against any person unless that person has been allowed full opportunity to be heard as provided in subsection (2). R.S., c. C-23, s. 18; 1974-75-76, c. 76, s. 6.

Report by Commission

21. (1) The Commission shall, as soon as possible after the conclusion of proceedings taken under section 20, make a report in writing and without delay transmit it to the Minister.

Contents

(2) The report under subsection (1) shall review the evidence and material, appraise the effect on the public interest of arrangements and practices disclosed in the evidence and contain recommendations as to the application of remedies provided in this Act or other remedies.

Findings to be included in report

(3) Where it appears from proceedings taken under section 20 that a conspiracy, combination, agreement or arrangement has existed, the report under subsection (1) shall include a finding whether or not the conspiracy, combination, agreement or arrangement relates only to one or more of the matters specified in subsection 45(3) and, if so, shall include a finding whether or not the conspiracy, combination, agreement or arrangement has lessened or is likely to lessen competition unduly in respect of one of the matters specified in paragraphs 45(4)(a) to (d), or has restricted or is likely to restrict any person from entering into or expanding a business in a trade, industry or profession.

Return of documents

(4) Within thirty days following the transmission of the report to the Minister under subsection (1), the Director shall cause to be delivered into the custody from which they came, if not already so delivered, all books, papers, records and other documents in his possession as evidence relating to the inquiry, unless the Attorney General of Canada certifies that all or any of those documents shall be retained by the Director for purposes of prosecution.

Publication of report

(5) Any report of the Commission shall within thirty days after its receipt by the Minister be made public, unless the Commission states in writing to the Minister it believes the public interest would be better served by withholding publication, in which case the Minister may decide whether the report, either in whole or in part, shall be made public.

Copies of report

(6) The Minister may publish and supply copies of a report referred to in subsection (5) in such manner and on such terms as he deems proper. R.S., c. C-23, s. 19; 1974-75-76, c. 76, s. 7.

Representation by counsel

22. (1) A member of the Commission may allow any person whose conduct is being inquired into and shall permit any person who is being himself examined under oath to be represented by counsel.

No person excused from testifying

(2) No person shall be excused from attending and giving evidence and producing books, papers, records or other documents, in obedience to the order of a member of the Commission, on the ground that the oral evidence or documents required of him may tend to criminate him or subject him to any proceeding or penalty, but no oral evidence so required shall be used or admissible against that person in any criminal proceedings thereafter instituted against him, other than a prosecution for perjury in giving that evidence or a prosecution under section 133 or 136 of the *Criminal Code* in respect of that evidence. R.S., c. C-23, s. 20; 1974-75-76, c. 76, s. 8.

Powers of Commission

23. The Commission or any member thereof has all the powers of a commissioner appointed under Part I of the *Inquiries Act*. R.S., c. C-23, s. 21.

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Interim report

24. (1) Notwithstanding subsections 21(1) and (2), when, in any inquiry relating to alleged situations contrary to section 45 or 49, the Commission, after reviewing the statement submitted by the Director and receiving argument in support thereof and in reply thereto, is then unable effectively to appraise the effect on the public interest of the arrangements and practices disclosed in the evidence, it shall make an interim report in writing, which shall contain a review of the evidence and a statement of the reasons why the Commission is unable to appraise effectively the effect of the arrangements and practices on the public interest, and without delay, the report shall be transmitted to the Minister.

Further inquiry

(2) In any case where an interim report is made pursuant to subsection (1), the Commission has authority at any time thereafter until a final report is made pursuant to subsection (3)

(a) to exercise the powers conferred on a member by section 19;

(b) to require the Director to make further inquiry, and for that purpose the Director may exercise all the powers conferred on him by this Act with respect to an inquiry under section 10;

(c) to require the Director to submit to the Commission copies of any books, papers, records or other documents obtained in the further inquiry; and

(d) to require by notice in writing any person and in the case of a corporation, any officer of the corporation, to make and deliver to the Commission, within a time stated in the notice, or from time to time, a written return under oath or solemn affirmation showing in detail such information with respect to the business of the person named in the notice as is by the notice required, and, without restricting the generality of the foregoing, the Commission may require a full disclosure and production of all contracts or agreements that the person named in the notice may have at any time entered into with any other person touching or concerning the business of the person so named in the notice.

Final report

(3) When the Commission has obtained such further information as it deems necessary to appraise effectively the effect on the public interest of the arrangements and practices referred to in subsection (1), it shall make a

final report in writing and without delay transmit it to the Minister, and section 21 applies to that report and to all books, papers, records or other documents obtained in the investigation and subsequent inquiry on which the report is based.

Annual report

(4) Until the final report is made, the Commission shall, after making an interim report as provided in subsection (1), as soon as possible after March 31 in each year and in any event within three months thereof submit to the Minister an annual report setting out any further action taken and evidence obtained since the interim report was submitted.

Subsections
21(5) and (6)
applicable

(5) Subsections 21(5) and (6) apply to an interim report and an annual report made pursuant to this section. R.S., c. C-23, s. 22.

PART III

GENERAL

Staff

25. All officers, clerks and employees required for carrying out this Act shall be appointed in accordance with the *Public Service Employment Act*, except that the Director or the Commission may, with the approval of the Governor in Council, employ such temporary, technical and special assistants as may be required to meet the special conditions that may arise in carrying out this Act. R.S., c. C-23, s. 23.

Remuneration
of temporary
staff

26. (1) Any temporary, technical and special assistants employed by the Director or the Commission shall be paid for their services and expenses as may be determined by the Governor in Council.

Remuneration
and expenses
payable out of
appropriations

(2) The remuneration and expenses of the Director and of each member of the Commission and of the temporary, technical and special assistants employed by the Director or the Commission, and of any counsel instructed under this Act, shall be paid out of money appropriated by Parliament to defray the cost of administering this Act.

*Public Service
Employment
Act* applies

(3) Subject to this section and sections 7 and 18, the *Public Service Employment Act* and other Acts relating to the Public Service, in so far as applicable, apply to each member of the Commission, to the Director and to all other

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persons employed under this Act. R.S., c. C-23, s. 24.

Authority of technical or special assistants

27. Any technical or special assistant or other person employed under this Act, when so authorized or deputed by the Director, has power and authority to exercise any of the powers and perform any of the duties of the Director under this Act with respect to any particular inquiry, as may be directed by the Director. R.S., c. C-23, s. 25.

Minister may require interim report

28. The Minister may at any time require the Director to submit an interim report with respect to any inquiry by him under this Act, and it is the duty of the Director whenever thereunto required by the Minister to render an interim report setting out the action taken, the evidence obtained and the Director's opinion as to the effect of the evidence. R.S., c. C-23, s. 26.

Inquiries to be in private

29. (1) All inquiries under this Act shall be conducted in private, except that the Chairman of the Commission may order that all or any portion of such an inquiry that is held before the Commission or any member thereof be conducted in public.

Proceedings under Part V

(2) All proceedings before the Commission, other than proceedings in relation to an inquiry, shall be conducted in public, except that the Chairman of the Commission may order that all or any portion of such proceedings be conducted in private. R.S., c. C-23, s. 27; 1974-75-76, c. 76, s. 9.

Representations to federal boards, etc.

30. (1) The Director, at the request of any federal board, commission or other tribunal or on his own initiative, may, and on direction from the Minister shall, make representations to and call evidence before any such board, commission or other tribunal in respect of the maintenance of competition, whenever the representations or evidence are or is relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining the matter.

Definition of "federal board, commission or other tribunal"

(2) For the purposes of this section, "federal board, commission or other tribunal" means any board, commission, tribunal or person who is expressly charged by or pursuant to an enactment of Parliament with the responsibility of making decisions or recommendations related

directly or indirectly to the production, supply, acquisition or distribution of a product and includes an *ad hoc* commission of inquiry charged with any such responsibility but does not include a court. 1974-75-76, c. 76, s. 9.

PART IV

SPECIAL REMEDIES

Reduction or removal of customs duties

31. Whenever, from or as a result of an inquiry under this Act, or from or as a result of a judgment of the Supreme Court of Canada or the Federal Court or of any superior, district or county court in Canada, it appears to the satisfaction of the Governor in Council that with regard to any article there has existed any conspiracy, combination, agreement, arrangement, merger or monopoly to promote unduly the advantage of manufacturers or dealers at the expense of the public, and if it appears to the Governor in Council that the disadvantage to the public is presently being facilitated by the duties of customs imposed on the article, or on any like article, the Governor in Council may direct either that the article be admitted into Canada free of duty or that the duty thereon be reduced to such amount or rate as will, in the opinion of the Governor in Council, give the public the benefit of reasonable competition. R.S., c. C-23, s. 28; R.S., c. 10(2nd Supp.), s. 64.

Powers of Federal Court where patents used to restrain trade

32. In any case where use has been made of the exclusive rights and privileges conferred by one or more patents for invention or by one or more trade-marks so as to

(a) limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity that may be a subject of trade or commerce,

(b) restrain or injure, unduly, trade or commerce in relation to any such article or commodity,

(c) prevent, limit or lessen, unduly, the manufacture or production of any such article or commodity or to enhance unreasonably the price thereof, or

(d) prevent or lessen, unduly, competition in the production, manufacture, purchase,

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barter, sale, transportation or supply of any such article or commodity,

the Federal Court, on an information exhibited by the Attorney General of Canada, may for the purpose of preventing any use in the manner defined above of the exclusive rights and privileges conferred by any patents for invention or trade-marks relating to or affecting the manufacture, use or sale of the article or commodity, make one or more of the following orders:

(e) declaring void, in whole or in part, any agreement, arrangement or licence relating to that use,

(f) restraining any person from carrying out or exercising any or all of the terms or provisions of the agreement, arrangement or licence,

(g) directing the grant of licences under any such patent to such persons and on such terms and conditions as the court may deem proper or, if the grant and other remedies under this section would appear insufficient to prevent that use, revoking the patent,

(h) directing that the registration of a trade-mark in the register of trade-marks be expunged or amended, and

(i) directing that such other acts be done or omitted as the Court may deem necessary to prevent any such use,

but no order shall be made under this section that is at variance with any treaty, convention, arrangement or engagement with any other country respecting patents for invention or trade-marks to which Canada is a party. R.S., c. C-23, s. 29; R.S., c. 10(2nd Supp.), s. 64.

Interim
injunction

33. (1) Where it appears to a court, on an application by or on behalf of the Attorney General of Canada or the attorney general of a province,

(a) that a person named in the application has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under Part VI or section 74, and

(b) that if the offence is committed or continued

(i) injury to competition that cannot adequately be remedied under any other provision of this Act will result, or

(ii) a person is likely to suffer, from the commission of the offence, damage for which he cannot adequately be compensated under any other provision of this Act and that will be substantially greater than any damage that a person named in the application is likely to suffer from an injunction issued under this subsection in the event that it is subsequently found that an offence under Part VI or section 74 has not been committed, was not about to be committed and was not likely to be committed.

the court may, by order, issue an interim injunction forbidding any person named in the application from doing any act or thing that it appears to the court may constitute or be directed toward the commission of an offence, pending the commencement or completion of proceedings under subsection 34(2) against the person.

Notice of application

(2) Subject to subsection (3), at least forty-eight hours notice of an application for an injunction under subsection (1) shall be given by or on behalf of the Attorney General of Canada or the attorney general of a province, as the case may be, to each person against whom the injunction is sought.

Ex parte application

(3) Where a court to which an application is made under subsection (1) is satisfied that

(a) subsection (2) cannot reasonably be complied with, or

(b) the urgency of the situation is such that service of notice in accordance with subsection (2) would not be in the public interest,

it may proceed with the application *ex parte* but any injunction issued under subsection (1) by the court on *ex parte* application shall have effect only for such period, not exceeding ten days, as is specified in the order.

Terms of injunction

(4) An injunction issued under subsection (1)

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(a) shall be in such terms as the court that issues it considers necessary and sufficient to meet the circumstances of the case; and

(b) subject to subsection (3), shall have effect for such period of time as is specified therein.

Extension or
cancellation of
injunction

(5) A court that issues an injunction under subsection (1), at any time and from time to time on application by or on behalf of the Attorney General of Canada or the attorney general of a province, as the case may be, or by or on behalf of any person to whom the injunction is directed, notice of which application has been given to all other parties thereto, may by order,

(a) notwithstanding subsections (3) and (4), continue the injunction, with or without modification, for such definite period as is stated in the order; or

(b) revoke the injunction.

Duty of
applicant

(6) Where an injunction is issued under subsection (1), the Attorney General of Canada or the attorney general of a province, as the case may be, shall proceed as expeditiously as possible to institute and conclude any prosecution or proceedings arising out of the actions on the basis of which the injunction was issued.

Punishment for
disobedience

(7) A court may punish any person who contravenes or fails to comply with an injunction issued by it under subsection (1) by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

Definition of
"court"

(8) In this section, "court" means the Federal Court or a superior court of criminal jurisdiction as defined in the *Criminal Code*, 1974-75-76, c. 76, s. 10.

Prohibitions

34. (1) Where a person has been convicted of an offence under Part VI,

(a) the court may at the time of the conviction, on the application of the Attorney General of Canada or the attorney general of the province, or

(b) a superior court of criminal jurisdiction in the province may at any time within three years thereafter, on proceedings commenced by information of the Attorney General of Canada or the attorney general of the province for the purposes of this section,

and in addition to any other punishment imposed on the person convicted, prohibit the continuation or repetition of the offence or the

doing of any act or thing by the person convicted or any other person directed toward the continuation or repetition of the offence and where the conviction is with respect to a merger or monopoly, direct the person convicted or any other person to do such acts or things as may be necessary to dissolve the merger or monopoly in such manner as the court directs.

Idem

(2) Where it appears to a superior court of criminal jurisdiction in proceedings commenced by information of the Attorney General of Canada or the attorney general of the province for the purposes of this section that a person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under Part VI, the court may prohibit the commission of the offence or the doing or continuation of any act or thing by that person or any other person constituting or directed toward the commission of such an offence, and, where the offence is with respect to a merger or monopoly, direct that person or any other person to do such acts or things as may be necessary to dissolve the merger or monopoly in such manner as the court directs.

Appeals

(3) The Attorney General of Canada or the attorney general of the province or any person against whom an order of prohibition or dissolution is made may appeal against the order or a refusal to make an order or the quashing of an order

(a) from a superior court of criminal jurisdiction in the province to the court of appeal of the province,

(b) from the Federal Court—Trial Division to the Federal Court of Appeal, and

(c) from the court of appeal of the province or the Federal Court of Appeal to the Supreme Court of Canada

as the case may be, on any ground that involves a question of law or, if leave to appeal is granted by the court appealed to within twenty-one days after the judgment appealed from is pronounced or within such extended time as the court appealed to or a judge thereof for special reasons allows, on any ground that appears to that court to be a sufficient ground of appeal.

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Disposition of appeal

(4) Where the court of appeal or the Supreme Court of Canada allows an appeal, it may quash any order made by the court appealed from, and may make any order that in its opinion the court appealed from could and should have made.

Procedure

(5) Subject to subsections (3) and (4), Part XXI of the *Criminal Code* applies with such modifications as the circumstances require to appeals under this section.

Punishment for disobedience

(6) A court may punish any person who contravenes or fails to comply with a prohibition or direction made or given by it under this section by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

Procedure

(7) Any proceedings pursuant to an information of the Attorney General of Canada or the attorney general of a province under this section shall be tried by the court without a jury, and the procedure applicable in injunction proceedings in the superior courts of the province shall, in so far as possible, apply.

Definition of "superior court of criminal jurisdiction"

(8) In this section, "superior court of criminal jurisdiction" means a superior court of criminal jurisdiction as defined in the *Criminal Code*. R.S., c. C-23, s. 30; R.S., c. 10(2nd Supp.), s. 64; 1974-75-76, c. 76, s. 11.

Court may require returns

35. (1) Notwithstanding anything contained in Part VI, where any person is convicted of an offence under that Part, the court before whom the person was convicted and sentenced may, from time to time within three years thereafter, require the convicted person to submit such information with respect to the business of that person as the court deems advisable, and without restricting the generality of the foregoing, the court may require a full disclosure of all transactions, operations or activities since the date of the offence under or with respect to any contracts, agreements or arrangements, actual or tacit, that the convicted person may at any time have entered into with any other person touching or concerning the business of the person convicted.

Punishment

(2) The court may punish any failure to comply with an order under this section by a fine in the discretion of the court or by imprisonment for a term not exceeding two years. R.S., c. C-23, s. 31.

Recovery of damages

36. (1) Any person who has suffered loss or damage as a result of

(a) conduct that is contrary to any provision of Part VI, or

(b) the failure of any person to comply with an order of the Commission or a court under this Act,

may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

Evidence of prior proceedings

(2) In any action under subsection (1) against a person, the record of proceedings in any court in which that person was convicted of an offence under Part VI or convicted of or punished for failure to comply with an order of the Commission or a court under this Act is, in the absence of any evidence to the contrary, proof that the person against whom the action is brought engaged in conduct that was contrary to a provision of Part VI or failed to comply with an order of the Commission or a court under this Act, as the case may be, and any evidence given in those proceedings as to the effect of those acts or omissions on the person bringing the action is evidence thereof in the action.

Jurisdiction of Federal Court

(3) For the purposes of any action under subsection (1), the Federal Court is a court of competent jurisdiction.

Limitation

(4) No action may be brought under subsection (1),

(a) in the case of an action based on conduct that is contrary to any provision of Part VI, after two years from

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(i) a day on which the conduct was engaged in, or

(ii) the day on which any criminal proceedings relating thereto were finally disposed of,

whichever is the later; and

(b) in the case of an action based on the failure of any person to comply with an order of the Commission or a court, after two years from

(i) a day on which the order of the Commission or court was contravened, or

(ii) the day on which any criminal proceedings relating thereto were finally disposed of,

whichever is the later. 1974-75-76, c. 76, s. 12.

PART V

MATTERS REVIEWABLE BY COMMISSION

Jurisdiction of
Commission
where refusal to
deal

37. (1) Where, on application by the Director, and after affording every supplier against whom an order is sought a reasonable opportunity to be heard, the Commission finds that

(a) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,

(b) the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,

(c) the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of the product, and

(d) the product is in ample supply,

the Commission may

(e) where the product is an article, recommend to the Minister of Finance that any duties of customs on the article be removed, reduced or remitted with respect to the person to the extent necessary to place him on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada, and

(f) order that one or more suppliers of the product in the market, who have been afforded a reasonable opportunity to be heard, accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any duties of customs on the article are removed, reduced or remitted and the effect of that removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

When article is a separate product

(2) For the purposes of this section, an article is not a separate product in a market only because it is differentiated from other articles in its class by a trade-mark, proprietary name or the like, unless the article so differentiated occupies such a dominant position in that market as to substantially affect the ability of a person to carry on business in that class of articles unless he has access to the article so differentiated.

Definition of "trade terms"

(3) For the purposes of this section, the expression "trade terms" means terms in respect of payment, units of purchase and reasonable technical and servicing requirements. 1974-75-76, c. 76, s. 12.

Consignment selling

38. Where, on application by the Director, and after affording the supplier against whom an order is sought a reasonable opportunity to be heard, the Commission finds that the practice of consignment selling has been introduced by a supplier of a product who ordinarily sells the product for resale, for the purpose of

(a) controlling the price at which a dealer in the product supplies the product, or

(b) discriminating between consignees or between dealers to whom he sells the product for resale and consignees,

the Commission may order the supplier to cease to carry on the practice of consignment selling of the product. 1974-75-76, c. 76, s. 12.

Definitions

"exclusive dealing"
•*exclusivité*•

39. (1) For the purposes of this section, "exclusive dealing" means

(a) any practice whereby a supplier of a product, as a condition of supplying the

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product to a customer, requires that customer to

- (i) deal only or primarily in products supplied by or designated by the supplier or his nominee, or
 - (ii) refrain from dealing in a specified class or kind of product except as supplied by the supplier or his nominee, and
- (b) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the product to him on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs;

“market restriction”
«limitation...»

“market restriction” means any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to supply any product only in a defined market, or exacts a penalty of any kind from the customer if he supplies any product outside a defined market;

“tied selling”
«ventes...»

“tied selling” means

- (a) any practice whereby a supplier of a product, as a condition of supplying the product (the “tying” product) to a customer, requires that customer to
 - (i) acquire any other product from the supplier or his nominee, or
 - (ii) refrain from using or distributing, in conjunction with the tying product, another product that is not of a brand or manufacture designated by the supplier or his nominee, and
- (b) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the tying product to him on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs.

Exclusive dealing and tied selling

(2) Where, on application by the Director, and after affording every supplier against whom an order is sought a reasonable opportunity to be heard, the Commission finds that

exclusive dealing or tied selling, because it is engaged in by a major supplier of a product in a market or because it is widespread in a market, is likely to

(a) impede entry into or expansion of a firm in the market.

(b) impede introduction of a product into or expansion of sales of a product in the market, or

(c) have any other exclusionary effect in the market,

with the result that competition is or is likely to be lessened substantially, the Commission may make an order directed to all or any of those suppliers prohibiting them from continuing to engage in such exclusive dealing or tied selling and containing any other requirement that, in its opinion, is necessary to overcome the effects thereof in the market or to restore or stimulate competition in the market.

Market restriction

(3) Where, on application by the Director, and after affording every supplier against whom an order is sought a reasonable opportunity to be heard, the Commission finds that market restriction, because it is engaged in by a major supplier of a product or because it is widespread in relation to a product, is likely to substantially lessen competition in relation to the product, the Commission may make an order directed to all or any of those suppliers prohibiting them from continuing to engage in market restriction and containing any other requirement that, in its opinion, is necessary to restore or stimulate competition in relation to the product.

Where no order to be made and limitation on application of order

(4) The Commission shall not make an order under this section where, in its opinion,

(a) exclusive dealing or market restriction is or will be engaged in only for a reasonable period of time to facilitate entry of a new supplier of a product into a market or of a new product into a market,

(b) tied selling that is engaged in is reasonable having regard to the technological relationship between or among the products to which it applies, or

(c) tied selling that is engaged in by a person in the business of lending money is for the purpose of better securing loans made by him and is reasonably necessary for that purpose,

and no order made under this section applies in respect of exclusive dealing, market restriction

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or tied selling between or among corporations, partnerships and sole proprietorships that are affiliated.

Where corporation, partnership or sole proprietorship affiliated

(5) For the purposes of subsection (4),

(a) a corporation is affiliated with another corporation if

(i) one is a subsidiary of the other,

(ii) both are subsidiaries of the same corporation,

(iii) both are controlled by the same person, or

(iv) each is affiliated with the same corporation;

(b) a partnership or sole proprietorship is affiliated with another partnership, sole proprietorship or a corporation if both are controlled by the same person; and

(c) a corporation, partnership or sole proprietorship is affiliated with another corporation, partnership or sole proprietorship in respect of any agreement between them whereby one party grants to the other party the right to use a trade-mark or trade-name to identify the business of the grantee, provided

(i) the business is related to the sale or distribution, pursuant to a marketing plan or system prescribed substantially by the grantor, of a multiplicity of products obtained from competing sources of supply and a multiplicity of suppliers, and

(ii) no one product dominates the business.

When corporation deemed to be controlled

(6) For the purposes of this section, a corporation is deemed to be controlled by a person if shares of the corporation carrying voting rights sufficient to elect a majority of the directors of the corporation are held, other than by way of security only, by or on behalf of that person.

When persons
deemed to be
affiliated

(7) For the purposes of subsection (4) in its application to market restriction, where there is an agreement whereby one person (the "first" person) supplies or causes to be supplied to another person (the "second" person) an ingredient or ingredients that the second person processes by the addition of labour and material into an article of food or drink that he then sells in association with a trade-mark that the first person owns or in respect of which the first person is a registered user, the first person and the second person are deemed, in respect of the agreement, to be affiliated. 1974-75-76, c. 76, s. 12.

Foreign
judgments, etc.

40. Where, on application by the Director, and after affording a reasonable opportunity to be heard to all persons and corporations to whom an order hereinafter referred to would apply, the Commission finds that

(a) a judgment, decree, order or other process given, made or issued by or out of a court or other body in a country other than Canada can be implemented in whole or in part by persons in Canada, by corporations incorporated by or pursuant to an Act of Parliament or of the legislature of a province, or by measures taken in Canada, and

(b) the implementation in whole or in part of the judgment, decree, order or other process in Canada would

(i) adversely affect competition in Canada,

(ii) adversely affect the efficiency of trade or industry in Canada without bringing about or increasing in Canada competition that would restore and improve that efficiency,

(iii) adversely affect the foreign trade of Canada without compensating advantages, or

(iv) otherwise restrain or injure trade or commerce in Canada without compensating advantages,

the Commission may, by order, direct that

(c) no measures be taken in Canada to implement the judgment, decree, order or process, or

(d) no measures be taken in Canada to implement the judgment, decree, order or process except in such manner as the Commission prescribes for the purpose of avoid-

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ing an effect referred to in subparagraphs (b)(i) to (iv). 1974-75-76, c. 76, s. 12.

Foreign laws
and directives

41. (1) Where, on application by the Director, and after affording to the person or corporation, hereinafter referred to, a reasonable opportunity to be heard, the Commission finds that a decision has been or is about to be made by a person in Canada or a corporation incorporated by or pursuant to an Act of Parliament or of the legislature of a province

(a) as a result of

(i) a law in force in a country other than Canada, or

(ii) a directive, instruction, intimation of policy or other communication to that person or corporation or to any other person from

(A) the government of a country other than Canada or of any political subdivision thereof that is in a position to direct or influence the policies of that person or corporation, or

(B) a person in a country other than Canada who is in a position to direct or influence the policies of that person or corporation,

where the communication is for the purpose of giving effect to a law in force in a country other than Canada,

and that the decision, if implemented, would have or would be likely to have any of the effects mentioned in subparagraphs 40(b)(i) to (iv), or

(b) as a result of a directive, instruction, intimation of policy or other communication to that person or corporation or to any other person, from a person in a country other than Canada who is in a position to direct or influence the policies of that person or corporation, where the communication is for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in contravention of section 45,

the Commission may, by order, direct that

(c) in a case described in paragraph (a) or (b), no measures be taken by the person or corporation in Canada to implement the law,

directive, instruction, intimation of policy or other communication, or

(*d*) in a case described in paragraph (*a*), no measures be taken by the person or corporation in Canada to implement the law, directive, instruction, intimation of policy or other communication except in such manner as the Commission prescribes for the purpose of avoiding an effect referred to in subparagraphs 40(*b*)(*i*) to (*iv*).

Limitation

(2) No application may be made by the Director for an order under this section against a particular corporation where proceedings have been commenced under section 46 against that corporation based on the same or substantially the same facts as would be alleged in the application. 1974-75-76, c. 76, s. 12.

Refusal to supply by foreign supplier

42. Where, on application by the Director, and after affording every person against whom an order is sought a reasonable opportunity to be heard, the Commission finds that a supplier outside Canada has refused to supply a product or otherwise discriminated in the supply of a product to a person in Canada (the "first" person) at the instance of and by reason of the exertion of buying power outside Canada by another person, the Commission may order any person in Canada (the "second" person) by whom or on whose behalf or for whose benefit the buying power was exerted

(*a*) to sell any such product of the supplier that the second person has obtained or obtains to the first person at the laid-down cost in Canada to the second person of the product and on the same terms and conditions as the second person obtained or obtains from the supplier; or

(*b*) not to deal or to cease to deal, in Canada, in such product of the supplier. 1974-75-76, c. 76, s. 12.

Court of record

43. (1) For the purposes of this Part, the Commission is a court of record.

Burden of proof

(2) In all applications to the Commission under this Part, the burden of proof is on the person making the application.

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Evidence

(3) In all applications to the Commission under this Part for an order, any person against whom the order is sought is entitled to cross-examine witnesses called by the Director and to call and examine witnesses and produce documents on his own behalf. 1974-75-76, c. 76, s. 12.

Rescission or variation of order

44. Where, on application by the Director, or a person against whom an order has been made under this Part and after affording the Director and that person a reasonable opportunity to be heard, the Commission finds that at the time of the application the circumstances that led to the making of the order have changed and in the circumstances that exist at that time the order would not have been made or is ineffective to achieve its intended purpose, the Commission may rescind or vary the order accordingly. 1974-75-76, c. 76, s. 12.

PART VI

OFFENCES IN RELATION TO COMPETITION

Conspiracy

45. (1) Every one who conspires, combines, agrees or arranges with another person

(a) to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,

(b) to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,

(c) to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property, or

(d) to otherwise restrain or injure competition unduly,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million dollars or to both.

Idem

(2) For greater certainty, in establishing that a conspiracy, combination, agreement or arrangement is in contravention of subsection (1), it shall not be necessary to prove that the

conspiracy, combination, agreement or arrangement, if carried into effect, would or would be likely to eliminate, completely or virtually, competition in the market to which it relates or that it was the object of any or all of the parties thereto to eliminate, completely or virtually, competition in that market.

Defence

(3) Subject to subsection (4), in a prosecution under subsection (1), the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to one or more of the following:

- (a) the exchange of statistics;
- (b) the defining of product standards;
- (c) the exchange of credit information;
- (d) the definition of terminology used in a trade, industry or profession;
- (e) cooperation in research and development;
- (f) the restriction of advertising or promotion, other than a discriminatory restriction directed against a member of the mass media;
- (g) the sizes or shapes of the containers in which an article is packaged;
- (h) the adoption of the metric system of weights and measures; or
- (i) measures to protect the environment.

Exception

(4) Subsection (3) does not apply if the conspiracy, combination, agreement or arrangement has lessened or is likely to lessen competition unduly in respect of one of the following:

- (a) prices,
- (b) quantity or quality of production,
- (c) markets or customers, or
- (d) channels or methods of distribution,

or if the conspiracy, combination, agreement or arrangement has restricted or is likely to restrict any person from entering into or expanding a business in a trade, industry or profession.

Defence

(5) Subject to subsection (6), in a prosecution under subsection (1) the court shall not convict the accused if the conspiracy, combina-

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tion, agreement or arrangement relates only to the export of products from Canada.

Exception

(6) Subsection (5) does not apply if the conspiracy, combination, agreement or arrangement

(a) has resulted or is likely to result in a reduction or limitation of the volume of exports of a product;

(b) has restrained or injured or is likely to restrain or injure the export business of any domestic competitor who is not a party to the conspiracy, combination, agreement or arrangement;

(c) has restricted or is likely to restrict any person from entering into the business of exporting products from Canada; or

(d) has lessened or is likely to lessen competition unduly in relation to a product in the domestic market.

Defences

(7) In a prosecution under subsection (1), the court shall not convict the accused if it finds that the conspiracy, combination, agreement or arrangement relates only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public

(a) in the practice of a trade or profession relating to the service; or

(b) in the collection and dissemination of information relating to the service.

Exception

(8) Subsection (1) does not apply in respect of a conspiracy, combination, agreement or arrangement that is entered into only by corporations each of which is, in respect of every one of the others, an affiliate as that relationship is defined in subsections 61(7) and (8). R.S., c. C-23, s. 32; 1974-75-76, c. 76, s. 14.

Foreign directives

46. (1) Any corporation, wherever incorporated, that carries on business in Canada and that implements, in whole or in part in Canada, a directive, instruction, intimation of policy or other communication to the corporation or any person from a person in a country other than Canada who is in a position to direct or influence the policies of the corporation, which communication is for the purpose of giving effect to a conspiracy, combination, agreement or

arrangement entered into outside Canada that, if entered into in Canada, would have been in contravention of section 45, is, whether or not any director or officer of the corporation in Canada has knowledge of the conspiracy, combination, agreement or arrangement, guilty of an indictable offence and liable on conviction to a fine in the discretion of the court.

Limitation

(2) No proceedings may be commenced under this section against a particular corporation where an application has been made by the Director under section 41 for an order against that corporation or any other person based on the same or substantially the same facts as would be alleged in proceedings under this section. 1974-75-76, c. 76, s. 15.

Definition of "bid-rigging"

47. (1) In this section, "bid-rigging" means
 (a) an agreement or arrangement between or among two or more persons whereby one or more of those persons agrees or undertakes not to submit a bid in response to a call or request for bids or tenders, or
 (b) the submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by agreement or arrangement between or among two or more bidders or tenderers,

where the agreement or arrangement is not made known to the person calling for or requesting the bids or tenders at or before the time when any bid or tender is made by any person who is a party to the agreement or arrangement.

Bid-rigging

(2) Every one who is a party to bid-rigging is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both.

Exception

(3) This section does not apply in respect of an agreement or arrangement that is entered into or a submission that is arrived at only by corporations each of which is, in respect of every one of the others, an affiliate as that relationship is defined in subsections 61(7) and (8). 1974-75-76, c. 76, s. 15.

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Conspiracy
relating to
professional
sport

48. (1) Every one who conspires, combines, agrees or arranges with another person

(a) to limit unreasonably the opportunities for any other person to participate, as a player or competitor, in professional sport or to impose unreasonable terms or conditions on those persons who so participate, or

(b) to limit unreasonably the opportunity for any other person to negotiate with and, if agreement is reached, to play for the team or club of his choice in a professional league

is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both.

Matters to be
considered

(2) In determining whether or not an agreement or arrangement contravenes subsection (1), the court before which the contravention is alleged shall have regard to

(a) whether the sport in relation to which the contravention is alleged is organized on an international basis and, if so, whether any limitations, terms or conditions alleged should, for that reason, be accepted in Canada; and

(b) the desirability of maintaining a reasonable balance among the teams or clubs participating in the same league.

Application

(3) This section applies, and section 45 does not apply, to agreements and arrangements and to provisions of agreements and arrangements between or among teams and clubs engaged in professional sport as members of the same league and between or among directors, officers or employees of those teams and clubs where the agreements, arrangements and provisions relate exclusively to matters described in subsection (1) or to the granting and operation of franchises in the league, and section 45 applies and this section does not apply to all other agreements, arrangements and provisions thereof between or among those teams, clubs and persons. 1974-75-76, c. 76, s. 15.

Mergers and
monopolies

49. Every person who is a party or privy to or knowingly assists in, or in the formation of, a merger or monopoly is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years. R.S., c. C-23, s. 33.

Illegal trade
practices

50. (1) Every one engaged in a business who
(a) is a party or privy to, or assists in, any sale that discriminates to his knowledge, directly or indirectly, against competitors of a purchaser of articles from him in that any discount, rebate, allowance, price concession or other advantage is granted to the purchaser over and above any discount, rebate, allowance, price concession or other advantage that, at the time the articles are sold to the purchaser, is available to the competitors in respect of a sale of articles of like quality and quantity,

(b) engages in a policy of selling products in any area of Canada at prices lower than those exacted by him elsewhere in Canada, having the effect or tendency of substantially lessening competition or eliminating a competitor in that part of Canada, or designed to have that effect, or

(c) engages in a policy of selling products at prices unreasonably low, having the effect or tendency of substantially lessening competition or eliminating a competitor, or designed to have that effect,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

Defence

(2) It is not an offence under paragraph (1)(a) to be a party or privy to, or assist in, any sale mentioned therein unless the discount, rebate, allowance, price concession or other advantage was granted as part of a practice of discriminating as described in that paragraph.

Cooperative
societies
excepted

(3) Paragraph (1)(a) shall not be construed to prohibit a cooperative association, credit union, caisse populaire or cooperative credit society from returning to its members, suppliers or customers the whole or any part of the net surplus made in its operations in proportion to the acquisition or supply of articles from or to its members, suppliers or customers. R.S., c. C-23, s. 34; 1974-75-76, c. 76, s. 16.

Definition of
"allowance"

51. (1) In this section, "allowance" means any discount, rebate, price concession or other

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advantage that is or purports to be offered or granted for advertising or display purposes and is collateral to a sale or sales of products but is not applied directly to the selling price.

Grant of allowance prohibited except on proportionate terms

(2) Every one engaged in a business who is a party or privy to the granting of an allowance to any purchaser that is not offered on proportionate terms to other purchasers in competition with the first-mentioned purchaser, which other purchasers are in this section called "competing purchasers", is guilty of an indictable offence and liable to imprisonment for a term not exceeding two-years.

Definition of proportionate terms

(3) For the purposes of this section, an allowance is offered on proportionate terms only if

(a) the allowance offered to a purchaser is in approximately the same proportion to the value of sales to him as the allowance offered to each competing purchaser is to the total value of sales to that competing purchaser;

(b) in any case where advertising or other expenditures or services are exacted in return therefor, the cost thereof required to be incurred by a purchaser is in approximately the same proportion to the value of sales to him as the cost of the advertising or other expenditures or services required to be incurred by each competing purchaser is to the total value of sales to that competing purchaser; and

(c) in any case where services are exacted in return therefor, the requirements thereof have regard to the kinds of services that competing purchasers at the same or different levels of distribution are ordinarily able to perform or cause to be performed. R.S., c. C-23, s. 35; 1974-75-76, c. 76, s. 17.

Misleading advertising

52. (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

(a) make a representation to the public that is false or misleading in a material respect;

(b) make a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof

of which lies on the person making the representation;

(c) make a representation to the public in a form that purports to be

(i) a warranty or guarantee of a product, or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result

if the form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out; or

(d) make a materially misleading representation to the public concerning the price at which a product or like products have been, are or will be ordinarily sold, and for the purposes of this paragraph a representation as to price is deemed to refer to the price at which the product has been sold by sellers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold by the person by whom or on whose behalf the representation is made.

Deemed
representation
to public

(2) For the purposes of this section and section 53, a representation that is

(a) expressed on an article offered or displayed for sale, its wrapper or container,

(b) expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale,

(c) expressed on an in-store or other point-of-purchase display,

(d) made in the course of in-store, door-to-door or telephone selling to a person as ultimate user, or

(e) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatever made available to a member of the public,

shall be deemed to be made to the public by and only by the person who caused the representation to be so expressed, made or contained and, where that person is outside Canada, by

(f) the person who imported the article into Canada, in a case described in paragraph (a), (b) or (e), and

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(g) the person who imported the display into Canada, in a case described in paragraph (c).

Idem

(3) Subject to subsection (2), every one who, for the purpose of promoting, directly or indirectly, the supply or use of a product or any business interest, supplies to a wholesaler, retailer or other distributor of a product any material or thing that contains a representation of a nature referred to in subsection (1) shall be deemed to have made that representation to the public.

General impression to be considered

(4) In any prosecution for a contravention of this section, the general impression conveyed by a representation as well as the literal meaning thereof shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

Offence and punishment

(5) Any person who contravenes subsection (1) is guilty of an offence and liable

(a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or

(b) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding one year or to both. R.S., c. C-23, s. 36; 1974-75-76, c. 76, s. 18.

Representation as to reasonable test and publication of testimonials

53. (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of any product, or for the purpose of promoting, directly or indirectly, any business interest,

(a) make a representation to the public that a test as to the performance, efficacy or length of life of the product has been made by any person, or

(b) publish a testimonial with respect to the product,

unless he can establish that

(c) the representation or testimonial was previously made or published by the person by whom the test was made or the testimonial was given, as the case may be, or

(d) the representation or testimonial was, before being made or published, approved and permission to make or publish it was given in writing by the person by whom the test was made or the testimonial was given, as the case may be,

and the representation or testimonial accords with the representation or testimonial previously made, published or approved.

Offence and punishment

(2) Any person who contravenes subsection (1) is guilty of an offence and liable

(a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or

(b) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding one year or to both. 1974-75-76, c. 76, s. 18.

Double ticketing

54. (1) No person shall supply a product at a price that exceeds the lowest of two or more prices clearly expressed by him or on his behalf, in respect of the product in the quantity in which it is so supplied and at the time at which it is so supplied,

(a) on the product, its wrapper or container;

(b) on anything attached to, inserted in or accompanying the product, its wrapper or container or anything on which the product is mounted for display or sale; or

(c) on an in-store or other point-of-purchase display or advertisement.

Offence and punishment

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both. 1974-75-76, c. 76, s. 18.

Definition of "scheme of pyramid selling"

55. (1) For the purposes of this section, "scheme of pyramid selling" means

(a) a scheme for the sale or lease of a product whereby one person (the "first" person) pays a fee to participate in the scheme and receives the right to receive a fee, commission or other benefit

(i) in respect of the recruitment into the scheme of other persons either by the first person or any other person, or

(ii) in respect of sales or leases made, other than by the first person, to other persons recruited into the scheme by the first person or any other person; and

(b) a scheme for the sale or lease of a product whereby one person sells or leases a product to another person (the "second" person) who receives the right to receive a

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rebate, commission or other benefit in respect of sales or leases of the same or another product that are not

- (i) sales or leases made to the second person,
- (ii) sales or leases made by the second person, or
- (iii) sales or leases, made to ultimate consumers or users of the same or other product, to which no right of further participation in the scheme, immediate or contingent, is attached.

Pyramid selling (2) No person shall induce or invite another person to participate in a scheme of pyramid selling.

Offence and punishment (3) Any person who contravenes subsection (2) is guilty of an offence and liable

- (a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or
- (b) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding one year or to both.

Where pyramid selling permitted by province (4) This section does not apply in respect of a scheme of pyramid selling that is licensed or otherwise permitted by or pursuant to an Act of the legislature of a province. 1974-75-76, c. 76, s. 18.

Definition of "scheme of referral selling" **56.** (1) For the purposes of this section, "scheme of referral selling" means a scheme for the sale or lease of a product whereby one person induces another person (the "second" person) to purchase or lease a product and represents that the second person will or may receive a rebate, commission or other benefit based in whole or in part on sales or leases of the same or another product made, other than by the second person, to other persons whose names are supplied by the second person.

- Referral selling (2) No person shall induce or invite another person to participate in a scheme of referral selling.
- Offence and punishment (3) Any person who contravenes subsection (2) is guilty of an offence and liable
 (a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or
 (b) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding one year or to both.
- Where referral selling permitted by a province (4) This section does not apply in respect of a scheme of referral selling that is licensed or otherwise permitted by or pursuant to an Act of the legislature of a province. 1974-75-76, c. 76, s. 18.
- Definition of "bargain price" **57.** (1) For the purposes of this section, "bargain price" means
 (a) a price that is represented in an advertisement to be a bargain price by reference to an ordinary price or otherwise; or
 (b) a price that a person who reads, hears or sees the advertisement would reasonably understand to be a bargain price by reason of the prices at which the product advertised or like products are ordinarily sold.
- Bait and switch selling (2) No person shall advertise at a bargain price a product that he does not supply in reasonable quantities having regard to the nature of the market in which he carries on business, the nature and size of the business carried on by him and the nature of the advertisement.
- Defence (3) Subsection (2) does not apply to a person who establishes that
 (a) he took reasonable steps to obtain in adequate time a quantity of the product that would have been reasonable having regard to the nature of the advertisement, but was unable to obtain such a quantity by reason of events beyond his control that he could not reasonably have anticipated;
 (b) he obtained a quantity of the product that was reasonable having regard to the nature of the advertisement, but was unable to meet the demand therefor because that demand surpassed his reasonable expectations; or

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(c) after he became unable to supply the product in accordance with the advertisement, he undertook to supply the same product or an equivalent product of equal or better quality at the bargain price and within a reasonable time to all persons who requested the product and who were not supplied therewith during the time when the bargain price applied and that he fulfilled the undertaking.

Offence and punishment

(4) Any person who contravenes subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding one year or to both. R.S., c. C-23, s. 37; 1974-75-76, c. 76, s. 18.

Sale above advertised price

58. (1) No person who advertises a product for sale or rent in a market shall, during the period and in the market to which the advertisement relates, supply the product at a price that is higher than the price advertised.

Offence and punishment

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding one year or to both.

Saving

(3) This section does not apply
(a) in respect of an advertisement that appears in a catalogue in which it is prominently stated that the prices contained therein are subject to error if the person establishes that the price advertised is in error;
(b) in respect of an advertisement that is immediately followed by another advertisement correcting the price mentioned in the first advertisement; or
(c) in respect of the sale of a security obtained on the open market during a period when the prospectus relating to that security is still current.

Application

(4) For the purpose of this section, the market to which an advertisement relates shall be deemed to be the market to which the advertisement could reasonably be expected to reach, unless the advertisement defines the market more narrowly by reference to a geographical area, store, department of a store, sale by catalogue or otherwise. 1974-75-76, c. 76, s. 18.

Promotional
Contests

59. (1) No person shall, for the purpose of promoting, directly or indirectly, the sale of a product, or for the purpose of promoting, directly or indirectly, any business interest, conduct any contest, lottery, game of chance or skill, or mixed chance and skill, or otherwise dispose of any product or other benefit by any mode of chance, skill or mixed chance and skill whatever unless the contest, lottery, game or disposal would be lawful except for this section and unless

(a) there is adequate and fair disclosure of the number and approximate value of the prizes, of the area or areas to which they relate and of any fact within the knowledge of the advertiser that affects materially the chances of winning;

(b) distribution of the prizes is not unduly delayed; and

(c) selection of participants or distribution of prizes is made on the basis of skill or on a random basis in any area to which prizes have been allocated.

Offence and
punishment

(2) Any person who contravenes subsection (1) is guilty of an offence and liable

(a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or

(b) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding one year or to both. 1974-75-76, c. 76, s. 18.

Defence

60. (1) Sections 52 to 59 do not apply to a person who prints or publishes or otherwise distributes a representation or an advertisement on behalf of another person in Canada, where he establishes that he obtained and recorded the name and address of that other person and that he accepted the representation or advertisement in good faith for printing, publishing or other distribution in the ordinary course of his business.

Limitation

(2) No person shall be convicted of an offence under section 52 or 53, if he establishes that

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(a) the act or omission giving rise to the offence with which he is charged was the result of error;

(b) he took reasonable precautions and exercised due diligence to prevent the occurrence of the error;

(c) he, or another person, took reasonable measures to bring the error to the attention of the class of persons likely to have been reached by the representation or testimonial; and

(d) the measures referred to in paragraph (c), except where the representation or testimonial related to a security, were taken forthwith after the representation was made or the testimonial was published.

Exception

(3) Subsection (2) does not apply in respect of a person who, in Canada, on behalf of a person outside Canada, makes a representation to the public or publishes a testimonial. 1974-75-76, c. 76, s. 18.

Price maintenance

61. (1) No person who is engaged in the business of producing or supplying a product, or who extends credit by way of credit cards or is otherwise engaged in a business that relates to credit cards, or who has the exclusive rights and privileges conferred by a patent, trademark, copyright or registered industrial design shall, directly or indirectly,

(a) by agreement, threat, promise or any like means, attempt to influence upward, or to discourage the reduction of, the price at which any other person engaged in business in Canada supplies or offers to supply or advertises a product within Canada; or

(b) refuse to supply a product to or otherwise discriminate against any other person engaged in business in Canada because of the low pricing policy of that other person.

Exception

(2) Subsection (1) does not apply where the person attempting to influence the conduct of another person and that other person are affiliated corporations or directors, agents, officers or employees of

(a) the same corporation, partnership or sole proprietorship, or

(b) corporations, partnerships or sole proprietorships that are affiliated,

or where the person attempting to influence the conduct of another person and that other person are principal and agent.

Suggested retail price

(3) For the purposes of this section, a suggestion by a producer or supplier of a product of a resale price or minimum resale price in respect thereof, however arrived at, is, in the absence of proof that the person making the suggestion, in so doing, also made it clear to the person to whom the suggestion was made that he was under no obligation to accept the suggestion and would in no way suffer in his business relations with the person making the suggestion or with any other person if he failed to accept the suggestion, proof of an attempt to influence the person to whom the suggestion is made in accordance with the suggestion.

Idem

(4) For the purposes of this section, the publication by a supplier of a product, other than a retailer, of an advertisement that mentions a resale price for the product is an attempt to influence upward the selling price of any person into whose hands the product comes for resale unless the price is so expressed as to make it clear to any person to whose attention the advertisement comes that the product may be sold at a lower price.

Exception

(5) Subsections (3) and (4) do not apply to a price that is affixed or applied to a product or its package or container.

Refusal to supply

(6) No person shall, by threat, promise or any like means, attempt to induce a supplier, whether within or outside Canada, as a condition of his doing business with the supplier, to refuse to supply a product to a particular person or class of persons because of the low pricing policy of that person or class of persons.

Where corporation, partnership or sole proprietorship affiliated

(7) For the purposes of subsection (2),

(a) a corporation is affiliated with another corporation if

- (i) one is a subsidiary of the other,
- (ii) both are subsidiaries of the same corporation,
- (iii) both are controlled by the same person, or
- (iv) each is affiliated with the same corporation; and

(b) a partnership or sole proprietorship is affiliated with another partnership, sole prop-

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prietorship or a corporation if both are controlled by the same person.

Where corporation is deemed to be controlled

(8) For the purposes of this section, a corporation is deemed to be controlled by a person if shares of the corporation carrying voting rights sufficient to elect a majority of the directors of the corporation are held, other than by way of security only, by or on behalf of that person.

Offence and punishment

(9) Every person who contravenes subsection (1) or (6) is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both.

Where no unfavourable inference to be drawn

(10) Where, in a prosecution under paragraph (1)(b), it is proved that the person charged refused or counselled the refusal to supply a product to any other person, no inference unfavourable to the person charged shall be drawn from that evidence if he satisfies the court that he and any one on whose report he depended believed on reasonable grounds

(a) that the other person was making a practice of using products supplied by the person charged as loss-leaders, that is to say, not for the purpose of making a profit thereon but for purposes of advertising;

(b) that the other person was making a practice of using products supplied by the person charged not for the purpose of selling the products at a profit but for the purpose of attracting customers to his store in the hope of selling them other products;

(c) that the other person was making a practice of engaging in misleading advertising in respect of products supplied by the person charged; or

(d) that the other person made a practice of not providing the level of servicing that purchasers of the products might reasonably expect from the other person. R.S., c. C-23, s. 38; 1974-75-76, c. 76, s. 18.

Civil rights not affected

62. Except as otherwise provided in this Part, nothing in this Part shall be construed as depriving any person of any civil right of action. R.S. c. C-23, s. 39; 1974-75-76, c. 76, s. 18.

PART VII

OTHER OFFENCES

Offences

Punishment for failure to attend, etc.

63. If any person, who has been duly served with an order issued by the Commission or any member thereof requiring him to attend or to produce any books, papers, records or other documents, and to whom, at the time of service, payment or tender has been made of his reasonable travel expenses according to the scale in force with respect to witnesses in civil suits in the superior court of the province in which the person is summoned to attend, fails to attend and give evidence, or to produce any book, paper, record or other document as required by the order, he is, unless he shows that there was good and sufficient cause for that failure, guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both. R.S., c. C-23, s. 40.

Obstruction

64. (1) No person shall in any manner impede or prevent or attempt to impede or prevent any inquiry or examination under this Act.

Offence and punishment

(2) Every person who contravenes subsection (1) is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both. R.S., c. C-23, s. 41.

Punishment for contravention of subsection 12(2)

65. (1) Every person who contravenes subsection 12(2) is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both.

Punishment for failure to comply with notice under section 11 or subsection 24(2)

(2) Every person who, without good and sufficient cause, the proof whereof lies on him, refuses, neglects or fails to comply with a notice in writing requiring a written return under oath or solemn affirmation, pursuant to section 11 or subsection 24(2), is guilty of an offence and liable on summary conviction or on conviction

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on indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both.

Liability of directors assenting to offences

(3) Where a corporation commits an offence under this section, any director or officer of the corporation who assents to or acquiesces in the commission of the offence is guilty of that offence personally and cumulatively with the corporation and with his co-directors or associate officers. R.S., c. C-23, s. 42.

Punishment for failure to comply with notice under subsection 14(1)

66. Every person who, without good and sufficient cause, the proof whereof lies on him, refuses, neglects or fails to comply with a notice in writing requiring evidence on affidavit or written solemn affirmation, pursuant to subsection 14(1), is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both. R.S., c. C-23, s. 43.

Procedure

Procedure for enforcing punishment

67. (1) Where an indictment is found against an accused, other than a corporation, for any offence against this Act, the accused may elect to be tried without a jury and where he so elects, he shall be tried by the judge presiding at the court at which the indictment is found, or the judge presiding at any subsequent sittings of that court, or at any court where the indictment comes on for trial.

Application of *Criminal Code*

(2) Where an election is made under subsection (1), the proceedings subsequent to the election shall be regulated in so far as may be applicable by the provisions of the *Criminal Code* relating to the trial of indictable offences by a judge without a jury.

Jurisdiction of courts

(3) No court other than a superior court of criminal jurisdiction, as defined in the *Criminal Code*, has power to try any offence under section 45, 46, 47, 48 or 49.

Corporations to be tried without jury

(4) Notwithstanding anything in the *Criminal Code* or in any other statute or law, a corporation charged with an offence under this Act shall be tried without a jury.

Option as to procedure under subsection 34(2)

(5) In any case where subsection 34(2) is applicable, the Attorney General of Canada or

the attorney general of the province may in his discretion institute proceedings either by way of an information under that subsection or by way of prosecution.

Limitation
period

(6) Proceedings in respect of an offence that is declared by this Act to be punishable on summary conviction may be instituted at any time within but not later than two years after the time when the subject-matter of the proceedings arose. R.S., c. C-23, s. 44; 1974-75-76, c. 76, s. 19.

Venue of
prosecutions

68. Notwithstanding any other Act, a prosecution for an offence under Part VI or section 74 may be brought, in addition to any place in which the prosecution may be brought by virtue of the *Criminal Code*,

(a) where the accused is a corporation, in any territorial division in which the corporation has its head office or a branch office, whether or not the branch office is provided for in any Act or instrument relating to the incorporation or organization of the corporation; and

(b) where the accused is not a corporation, in any territorial division in which the accused resides or has a place of business. 1974-75-76, c. 76, s. 20.

Definitions

"agent of a
participant"
«agent...»

69. (1) In this section,
"agent of a participant" means a person who by a document admitted in evidence under this section appears to be or is otherwise proven to be an officer, agent, servant, employee or representative of a participant;

"document"
«document»

"document" includes any document appearing to be a carbon, photographic or other copy of a document;

"participant"
«participant»

"participant" means any person against whom proceedings have been instituted under this Act and in the case of a prosecution means any accused and any person who, although not accused, is alleged in the charge or indictment to have been a co-conspirator or otherwise party or privy to the offence charged.

Evidence
against a
participant

(2) In any proceedings before the Commission or in any prosecution or proceedings before a court under or pursuant to this Act,

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(a) anything done, said or agreed on by an agent of a participant shall, in the absence of evidence to the contrary, be deemed to have been done, said or agreed on, as the case may be, with the authority of that participant;

(b) a document written or received by an agent of a participant shall, in the absence of evidence to the contrary, be deemed to have been written or received, as the case may be, with the authority of that participant; and

(c) a document proved to have been in the possession of a participant or on premises used or occupied by a participant or in the possession of an agent of a participant shall be admitted in evidence without further proof thereof and is *prima facie* proof

(i) that the participant had knowledge of the document and its contents,

(ii) that anything recorded in or by the document as having been done, said or agreed on by any participant or by an agent of a participant was done, said or agreed on as recorded and, where anything is recorded in or by the document as having been done, said or agreed on by an agent of a participant, that it was done, said or agreed on with the authority of that participant, and

(iii) that the document, where it appears to have been written by any participant or by an agent of a participant, was so written and, where it appears to have been written by an agent of a participant, that it was written with the authority of that participant. R.S., c. C-23, s. 45; 1974-75-76, c. 76, s. 21.

Admissibility of statistics

70. (1) A collection, compilation, analysis, abstract or other record or report of statistical information prepared or published under the authority of

(a) the *Statistics Act*, or

(b) any other enactment of Parliament or of the legislature of a province,

is admissible in evidence in any proceedings before the Commission or in any prosecution or proceedings before a court under or pursuant to this Act.

Idem

(2) On request from the Minister, the Commission or the Director,

(a) the Chief Statistician of Canada or an officer of any department or agency of the Government of Canada the functions of

which include the gathering of statistics shall, and

(b) an officer of any department or agency of the government of a province the functions of which include the gathering of statistics may,

compile from his or its records a statement of statistics relating to any industry or sector thereof, in accordance with the terms of the request, and any such statement is admissible in evidence in any proceedings before the Commission or in any prosecution or proceedings before a court under or pursuant to this Act.

Privileged information not affected

(3) Nothing in this section compels or authorizes the Chief Statistician of Canada or any officer of a department or agency of the Government of Canada to disclose any particulars relating to an individual or business in a manner that is prohibited by any provision of an enactment of Parliament or of a provincial legislature designed for the protection of those particulars.

Certificate

(4) In any proceedings before the Commission or in any prosecution or proceedings before a court under or pursuant to this Act, a certificate purporting to be signed by the Chief Statistician of Canada or the officer of the department or agency of the Government of Canada or of a province under whose supervision a record, report or statement of statistics referred to in this section was prepared, setting out that the record, report or statement of statistics attached thereto was prepared under his supervision, is evidence of the facts alleged therein without proof of the signature or official character of the person by whom it purports to be signed. 1974-75-76, c. 76, s. 22.

Statistics collected by sampling methods

71. A collection, compilation, analysis, abstract or other record or report of statistics collected by sampling methods by or on behalf of the Director or any other party to proceedings before the Commission, or to a prosecution or proceedings before a court under or pursuant to this Act, is admissible in evidence in the prosecution or proceedings. 1974-75-76, c. 76, s. 22.

Notice

72. (1) No record, report or statement of statistical information or statistics referred to

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in section 70 or 71 shall be admitted in evidence before the Commission or court unless the person intending to produce the record, report or statement in evidence has given to the person against whom it is intended to be produced reasonable notice together with a copy of the record, report or statement and, in the case of a record or report of statistics referred to in section 71, together with the names and qualifications of those persons who participated in the preparation thereof.

Attendance of
statistician

(2) Any person against whom a record or report of statistics referred to in section 70 is produced may require, for the purposes of cross-examination, the attendance of any person under whose supervision the record or report was prepared.

Idem

(3) Any person against whom a record or report of statistics referred to in section 71 is produced may require, for the purposes of cross-examination, the attendance of any person who participated in the preparation of the record or report. 1974-75-76, c. 76, s. 22.

Jurisdiction of
Federal Court

73. (1) Subject to this section, the Attorney General of Canada may institute and conduct any prosecution or other proceedings under section 34, any of sections 45 to 51 and section 61 or, where the proceedings are on indictment, under section 52, 53, 55, 56, 59 or 74, in the Federal Court—Trial Division, and for the purposes of the prosecution or other proceedings, the Federal Court—Trial Division has all the powers and jurisdiction of a superior court of criminal jurisdiction under the *Criminal Code* and under this Act.

No jury

(2) The trial of an offence under Part VI or section 74 in the Federal Court—Trial Division shall be without a jury.

Appeal

(3) An appeal lies from the Federal Court—Trial Division to the Federal Court of Appeal and from the Federal Court of Appeal to the Supreme Court of Canada in any prosecution or proceedings under Part VI or section 74 of this Act as provided in Part XXI of the *Criminal Code* for appeals from a trial court and from a court of appeal.

Proceedings
optional

(4) Proceedings under subsection 34(2) may in the discretion of the Attorney General be

instituted in either the Federal Court—Trial Division or a superior court of criminal jurisdiction in the province but no prosecution shall be instituted against an individual in the Federal Court—Trial Division in respect of an offence under Part VI or section 74 without the consent of the individual. R.S., c. C-23, s. 46; R.S., c. 10(2nd Supp.), s. 65; 1974-75-76, c. 76, s. 23.

Failure to
comply with
certain orders

74. Any person who contravenes or fails to comply with an order of the Commission is guilty of an offence and liable

(a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or

(b) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding one year or to both. 1974-75-76, c. 76, s. 24.

PART VIII

GENERAL

Investigation of Monopolistic Situations

General
inquiries

75. (1) The Director

(a) on his own initiative may, and on direction from the Minister or at the instance of the Commission shall, carry out an inquiry concerning the existence and effect of conditions or practices relating to any product that may be the subject of trade or commerce and which conditions or practices are related to monopolistic situations or restraint of trade, and

(b) on direction from the Minister shall carry out a general inquiry into any matter that the Minister certifies in the direction to be related to the policy and objectives of this Act,

and for the purposes of this Act, any such inquiry shall be deemed to be an inquiry under section 10.

Consideration
and report

(2) It is the duty of the Commission to consider any evidence or material brought before it under subsection (1) together with such further evidence or material as the Commission considers advisable and to report there-

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on in writing to the Minister, and for the purposes of this Act any such report shall be deemed to be a report under section 21. R.S., c. C-23, s. 47; 1974-75-76, c. 76, s. 25.

Regulations and Report to Parliament

Regulations

76. The Governor in Council may make such regulations as to him seem necessary for carrying out this Act and for the efficient administration thereof. R.S., c. C-23, s. 48.

Annual report

77. The Director shall report annually to the Minister the proceedings under this Act, and the Minister shall within thirty days after he receives it lay the report before Parliament, or, if Parliament is not then in session, within the first fifteen days after the commencement of the next ensuing session. R.S., c. C-23, s. 49.