

THE COMPETITION TRIBUNAL

CT-90/1

IN THE MATTER OF an Application by Southam Inc., *et al.*
under Sections 105 and 106 of the *Competition Act*, R.S.C. 1985,
c. C-34, as amended (the "Act");

AND IN THE MATTER OF the direct and indirect acquisitions by
Southam Inc. of equity interests in the business of publishing *The
Vancouver Courier*, the *North Shore News* and the *Real Estate
Weekly*.

B E T W E E N:

**SOUTHAM INC.
LOWER MAINLAND PUBLISHING LTD.
RIM PUBLISHING INC.
YELLOW CEDAR PROPERTIES LTD.
NORTH SHORE FREE PRESS LTD.
SPECIALTY PUBLISHERS INC.
ELTY PUBLICATIONS LTD.**

Applicants

- and -

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Respondent

NOTICE OF APPLICATION FOR AN ORDER TO VARY DIVESTITURE ORDER

1. TAKE NOTICE that the Applicants hereby apply for an Order varying the Order of the Tribunal dated March 8, 1993 and varied on January 13, 1998, as more particularly set out in the attached Draft Consent Order.

2. AND FURTHER TAKE NOTICE that this application is brought by consent pursuant to sections 105 and 106(b) of the *Competition Act*, R.S.C. 1985, c.19 (2nd Supp) as amended, and the *Competition Tribunal Rules*.

3. AND FURTHER TAKE NOTICE that the Respondent and Applicants request, in accordance with Rule 72 of the Competition Tribunal Rules and the Federal Court Rules that the service requirement of the Competition Tribunal Rules be disposed with.

4. AND FURTHER TAKE NOTICE that the grounds upon which the Application is brought is that the Director of Investigation and Research and the Applicants have, through their counsel, consented to the granting of the within Order.

5. AND FURTHER TAKE NOTICE that the parties are available for a conference call, at the Tribunal's convenience, to establish a schedule for the disposition of this application.

6. AND FURTHER TAKE NOTICE that the parties propose that the hearing of this application be held in Vancouver or such other place as the Tribunal directs.

7. AND FURTHER TAKE NOTICE that reference may be made to the Statement of Grounds and Material Facts, the Consent Order Impact Statement, the Affidavit of John Collison, the Draft Consent Order, the Consent and the Consent and Attornment, filed herewith, and to such further and additional material as counsel deem appropriate and as this Tribunal may allow.

DATED at Toronto, Ontario this 10th day of September, 1998.

Mark J. Nicholson

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Investigation and Research

EXPURGATED

SCHEDULE "A"

THE COMPETITION TRIBUNAL

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STATEMENT OF GROUNDS AND MATERIAL FACTS

I. STATEMENT OF GROUNDS

1. In its Reasons and Order Regarding Application to Vary, dated January 8, 1998 (the "Variation Decision") the Tribunal noted that the original Divestiture Order, dated March 8, 1993 and varied on January 13, 1998 (the "Divestiture Order"), went farther than strictly necessary to restore competition in the relevant product and geographic market. It further stated that a more focused effective remedy would be preferable to one that "overshoots the mark".

2. The Parties have developed a more focused remedy that they believe will be effective in restoring competition in the real estate market in the North Shore.

3. Both the Director and the Parties against whom the Divestiture Order was made have consented to the draft alternative order attached as Schedule "B" to this Application (the "Amended Order").

II. MATERIAL FACTS

4. The Applicants allege the following material facts as the basis for this Application. The Director does not contest these facts for the purposes of this Application and for any proceeding relating to the Divestiture Order, as varied by this Application.

A. THE PARTIES

5. The Applicant Southam Inc. ("Southam") is a diversified Canadian communication company whose principal business is newspaper publishing. Through its Pacific Press subsidiary, Southam currently owns two Vancouver-area daily newspapers: the *Vancouver Sun* and the *Province* which circulate in the Lower Mainland of British Columbia and throughout the rest of the Province. In a series of transactions carried out in 1989 and 1990, Southam and the other Applicants acquired a direct or indirect controlling interest in thirteen community newspapers in the Lower Mainland, including the *North Shore News* (the "NSN"). As well, they acquired three

distribution businesses, two printing businesses and the *Real Estate Weekly* (the "REW"), a zoned real estate advertising publication circulating throughout the Lower Mainland. Prior to the acquisitions, there were two independent competitors in the North Shore market for print real estate advertising: the "*Homes*" supplement of the NSN and the North Shore edition of the REW (the "REW-NS"). After the acquisition, the Applicant Lower Mainland Publishing Limited ("LMPL") owned and managed both of these publications. Southam owns an approximate 62% of LMPL. For ease of reference, the Applicants, collectively, will be referred to as "Southam".

6. The Director is the officer appointed under section 7 of the Act and is charged with the administration of the Act.

B. MADISON VENTURE CORPORATION

7. Madison Venture Corporation ("Madison") is a corporation incorporated under the laws of British Columbia. Madison currently owns an approximate 37% minority interest in LMPL and has provided senior management and direction for LMPL on its own and Southam's behalf since the inception of LMPL in 1990.

C. HISTORY OF THE PROCEEDINGS

8. In its decision of June 2, 1992, (the "Tribunal Decision"), the Tribunal held that the common ownership by LMPL, of the NSN and REW, resulted in a likely substantial lessening of competition in the market for print real estate advertising services in the North Shore area of Vancouver. The Tribunal also concluded that the NSN and the REW were the only effective competitors in that market.

9. The Divestiture Order permits Southam 180 days to divest, at its option, either the NSN or the REW as a going concern to an arm's length purchaser. The Divestiture Order was stayed

pending appeals by the Director and Southam until the decision of the Supreme Court of Canada was released on March 20, 1997.

10. On July 28, 1997, Southam applied to the Tribunal under Section 106 of the Act for a variation of the Divestiture Order and for a suspension or stay of the divestiture period pending resolution of the Section 106 Application. On August 22, 1997, the suspension application was dismissed without prejudice.

11. In the Variation Decision, the Tribunal rejected Southam's Section 106 Application requesting a variation of the Divestiture Order to permit Southam to divest only the REW-NS. The Tribunal noted that a more focused and effective remedy would be preferable to the Divestiture Order. In closing, the Tribunal stated that it would have had a strong inclination to grant the Application if it had been satisfied that the proposed remedy would have been effective.

12. On January 13, 1998, Justice Rothstein granted a 50 day extension of the Divestiture Order and ordered that a Trustee under that order be appointed on the 51st day from that date unless Southam had entered into a binding purchase agreement subject only to approval under the Divestiture Order.

13. Southam entered into such a binding purchase agreement within the 50 day extension. However, the Director was dissatisfied with a number of terms of that agreement. Consequently, Southam and Madison began discussing alternative remedies which would address the substantial lessening of competition in the print real estate advertising market on the North Shore, yet be more focused than the Divestiture Order. These discussions resulted in Southam and Madison agreeing to pursue the proposed divestitures and ancillary agreements described in the Affidavit of John Collison, dated September 10, 1998 (the "Proposed Divestitures"). No Trustee has been appointed.

D. THE PROPOSED DIVESTITURES

14. The Proposed Divestitures consist of the sale of Madison's interest in LMPL to Southam and the simultaneous divestiture by LMPL of the REW-NS, various community newspapers and specialty publications to Madison. Of the divested publications, only the REW-NS is related to the relevant product and geographic market.

Collison Affidavit, paras 2,3

15. Madison will operate these properties as a consolidated publishing operation. This will enable Madison to reduce general and administrative costs of operating the REW-NS by consolidating these functions with other publications and realize scale economies in the operation of the publications.

Collison Affidavit, para 7

16. Madison will move the printing of the REW-NS to a printer unaffiliated with LMPL.

Collison Affidavit, para 12

17. **[Expurgated]**

18. After the Proposed Divestitures, the REW will continue to distribute the REW-NS to real estate offices throughout the Lower Mainland. Madison will pay 1/14 of the REW's related cost for this service. Further, the REW-NS will be able to place its listings on the REW website. Madison will pay 1/14 of the ongoing cost of the REW website. As well, Madison will retain the right to purchase its newsprint with Southam and thus take advantage of Southam's bulk discounts.

Collison Affidavit, paras 30, 31, 33

19. Southam will be required to provide any updates to the customized software which Madison purchases for 1 year after the divestiture. Madison will reimburse Southam for 1/14 of the cost of such updates, if any.

Collison Affidavit, para 28

20. Additionally, Madison's acquired community newspapers will remain part of VanNet Sales, a joint advertising service currently comprised of community newspapers affiliated with LMPL. This arrangement will be terminable by either party on short notice. Finally, the REW and REW-NS will continue to cross-sell multi-market advertisements in each other's publications.

Collison Affidavit, paras 29, 35

21. Madison has developed the Business Plan attached as Exhibit C to the Collison Affidavit based on its considerable experience in the relevant market. This plan anticipates competition on the North Shore from a variety of sources. Madison believes that it can operate the REW-NS as a viable business and an effective competitor in the market for print real estate advertising on the North Shore.

Collison Affidavit, para 37

22. The Director, after reviewing the information supplied by Southam and Madison, has consented to the Proposed Divestitures as an effective remedy to alleviate the substantial lessening of competition in the market for print real estate advertising on the North Shore.

III. RELIEF SOUGHT

23. The Applicants request that the Divestiture Order be varied in accordance with the terms of the Draft Amended Order, attached to the Notice of Application as Schedule "B".

Dated at Toronto, Ontario this 10th day of September, 1998.

SCHEDULE "B"

THE COMPETITION TRIBUNAL

CT-90/1

IN THE MATTER OF an Application by Southam Inc., *et al.*
under Sections 105 and 106 of the *Competition Act*, R.S.C. 1985,
c. C-34, as amended (the "Act");

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Applicants

- and -

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Respondent

REVISED DIVESTITURE ORDER

FURTHER TO the application of the Director of Investigation and Research (the "Director") pursuant to section 92 of the *Competition Act* (the "Act") requesting that the Tribunal order certain divestitures, and further to the Order of the Tribunal dated March 8, 1993 and

varied on January 13, 1998 (the "Order") requiring the respondents to divest either the North Shore News business or the Real Estate Weekly business (as defined in paragraph 1 of the Order);

AND FURTHER TO the application of Southam Inc. ("Southam") pursuant to sections 105 and 106(b) of the Act for an order varying the Order;

AND ON READING the notice of application, the statement of grounds and material facts, the affidavits of John Collison, the consent order impact statement, the material filed by the Director and the consent of the parties filed herein;

AND WITH the consent of all parties;

THE TRIBUNAL ORDERS THAT the Order shall be varied and be replaced with the following:

Definitions

1. For the purposes of this order the following definitions shall apply:
 - (1) "Continuing Obligations Agreement" means the agreement between Southam and Madison, in the form attached as Exhibit VIII to the Divestiture Agreement, whereby the parties agree, among other items, that Madison will purchase newsprint under Southam's newsprint quota;
 - (2) "Director" means the Director of Investigation and Research;
 - (3) "Divestiture Agreement" means the Agreement dated August 6, 1998 between Southam and Madison whereby Southam agrees, *inter alia*, to

purchase Madison's interests in LMPL and Madison agrees to purchase, *inter alia*, the REW-NS;

- (4) "LMPL" means Lower Mainland Publishing Ltd.;
- (5) "Madison" means Madison Venture Corporation and any wholly-owned subsidiaries of Madison which own shares in LMPL;
- (6) "NSN" means the *North Shore News*, a community newspaper published by LMPL, including the *Homes* real estate supplement;
- (7) "REW" means the *Real Estate Weekly*, a real estate newspaper published by LMPL in numerous editions throughout the Lower Mainland of British Columbia;
- (8) "REW-NS" means the North Shore edition of the REW;
- (9) "Southam" means Southam Inc. and its affiliates;
- (10) "Vannet" means VanNet Sales, a division of LMPL which sells advertising for a group of community newspapers to advertisers seeking to purchase advertisements from multiple newspapers through one representative.
- (11) "Vannet Agreement" means the agreement between Southam and Madison, in the form attached as Exhibit VI to the Divestiture Agreement, whereby the parties agree that *Squamish Chief*, *Whistler Question*, *Lillooet News*, *Sunshine Coast Reporter* and *Power River Peak* shall remain affiliated with Vannet;

Divestiture

2. Southam shall forthwith acquire Madison's interest in LMPL and Madison shall divest its interest in LMPL to Southam. Southam shall forthwith divest the REW-NS and the other newspaper properties listed in the Divestiture Agreement to Madison pursuant to the Divestiture Agreement.

Post-Divestiture Obligations

3. Southam and Madison shall comply with the transition periods set out in the Divestiture Agreement, attached as Exhibit "A" to the Affidavit of John Collison dated September 10, 1998, with respect to the printing, production and distribution of the REW-NS.

4. Southam, or any of its affiliates, shall not acquire any direct or indirect interest in Madison or the REW-NS and Madison shall not acquire any direct or indirect interest in LMPL or the NSN.

5. Except as provided in this order, Southam and Madison shall maintain an arm's length business relationship. No officer, director or member of senior management of Southam shall concurrently hold any like positions with Madison without the Director's written consent. No officer, director or member of senior management of Madison shall hold any such position with Southam without the Director's written consent. Southam and Madison shall notify the Director of any new business relationships between them.

6. Southam shall not employ or retain, directly or indirectly, any of Sam Grippo, Bruce Aunger or John Collison without the Director's written consent. Southam shall not directly or indirectly dispose of an interest in LMPL or NSN to Sam Grippo, Bruce Aunger or John Collison.

7. Southam and Madison shall notify the Director of any amendments to the Continuing Obligations Agreement or the Vannet Agreement.
8. Madison shall notify the Director of any direct or indirect disposition of a controlling interest in the REW-NS.
9. The obligations set out in paragraphs 3 through 8 shall extend for a period of ten years following the divestiture outlined in paragraph 2.
10. Where notice is required, it shall be given on a timely basis.
11. Notice to the Director shall be considered given if delivered, sent by registered mail or by facsimile to the following address:

Bureau of Competition Policy
19th Floor, Place du Portage, Phase 1
50 Victoria Street
Hull, Quebec
K1A 0C9

Attention: Assistant Deputy Director
Mergers Branch Section "B"

Other

12. Upon substantial completion of the Divestiture Agreement, the Consent Interim Order dated March 18, 1991, and amended from time to time, shall be of no force and effect.

13 The Tribunal shall retain jurisdiction in this matter for purposes of variation of, or providing direction with respect to, this Order and for any other purposes provided for in the *Competition Act*, R.S.C. 1985, c. C-34.

DATED at _____, this _____ day of _____, 1998.

SIGNED on behalf of the Tribunal by the presiding judicial member.

EXPURGATED

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Applicants

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THE DIRECTOR OF INVESTIGATION AND RESEARCH

Respondent

CONSENT ORDER IMPACT STATEMENT

1. In its Reasons and Order Regarding Application to Vary, dated January 8, 1998 (the "Variation Decision") the Tribunal noted that the original Divestiture Order, dated March 8, 1993 and varied on January 13, 1998 (the "Divestiture Order"), went farther than strictly necessary to restore competition in the relevant product and geographic market. It further stated that a more focused effective remedy would be preferable to one that "overshoots the mark".
2. The Parties have developed a more focused remedy that they believe will be effective in restoring competition in the real estate market in the North Shore.
3. This Consent Order Impact Statement incorporates by reference the Statement of Grounds and Material Facts attached as Schedule "A" to the Notice of Application dated September 10, 1998 with respect to this consent application.
4. The Proposed Divestitures consist of the sale of Madison Venture Corporation's ("Madison") interest in Lower Mainland Publishing Limited ("LMPL") to Southam Inc. ("Southam") and the simultaneous divestiture by LMPL of the North Shore edition of the Real Estate Weekly (the "REW-NS"), various community newspapers and specialty publications to Madison. Of the divested publications, only the REW-NS is related to the relevant product and geographic market.
5. Madison will operate these properties as a consolidated publishing operation. This will enable Madison to reduce general and administrative costs of operating the REW-NS by consolidating these functions with other publications and realize scale economies in the operation of the publications.
6. Madison will move the printing of the REW-NS to a printer unaffiliated with LMPL.

7. **[Expurgated]**

8. After the Proposed Divestitures, the Real Estate Weekly ("REW") will continue to distribute the REW-NS to real estate offices throughout the Lower Mainland. Madison will pay 1/14 of the REW's related cost for this service. Further, the REW-NS will be able to place its listings on the REW website. Madison will pay 1/14 of the ongoing cost of the REW website. As well, Madison will retain the right to purchase its newsprint with Southam and thus take advantage of Southam's bulk discounts.

9. Southam will be required to provide any updates to the customized software which Madison purchases for 1 year after the divestiture. Madison will reimburse Southam for 1/14 of the cost of such updates, if any.

10. Additionally, Madison's acquired community newspapers will remain part of VanNet Sales, a joint advertising service currently comprised of community newspapers affiliated with LMPL. This arrangement will be terminable by either party on short notice. Finally, the REW and REW-NS will continue to cross-sell multi-market advertisements in each other's publications.

11. Madison has developed the Business Plan attached as Exhibit C to the Collison Affidavit based on its considerable experience in the relevant market. This plan anticipates competition on the North Shore from a variety of sources. Madison believes that it can operate the REW-NS as a viable business and an effective competitor in the market for print real estate advertising on the North Shore.

12. The Director, after reviewing the information supplied by Southam and Madison, has consented to the Proposed Divestitures as an effective remedy to alleviate the substantial lessening of competition in the market for print real estate advertising on the North Shore.

13. The Parties submit that the completion of the Proposed Divestitures pursuant to the Consent Order will restore competition in the real estate advertising services market in the North Shore. Moreover, the Parties submit that the Consent Order is a focused and effective means of effecting this result.

Dated at Toronto, Ontario this 10th day of September, 1998.

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- and -

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Respondent

CONSENT OF MADISON VENTURE CORPORATION

Madison Venture Corporation, by its solicitors, consents and attorns to the jurisdiction of the Competition Tribunal for purposes of binding Madison Venture Corporation to the terms of the draft Order attached as Schedule "B" to the Notice of Application, varying the Consent Order dated March 8, 1993 granted by the Competition Tribunal.

DATED at Toronto this 10th day of September, 1998.

Madison Venture Corporation

by its Counsel

BLAKE, CASSELS & GRAYDON

Per: Mark Nicholson

Mark Nicholson

THE COMPETITION TRIBUNAL

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Applicants

- and -

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Respondent

CONSENT OF THE PARTIES

The parties hereto, by their solicitors, consent to an order by the Competition Tribunal in accordance with the terms of the draft Order attached as Schedule "B" to the Notice of Application, varying the Consent Order dated March 8, 1993 granted by the Competition Tribunal.

DATED at this 10th day of September, 1998.

**DIRECTOR OF INVESTIGATION AND
RESEARCH**

Per: Stanley Wong

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by their Counsel
BLAKE, CASSELS & GRAYDON

Per: Mark Nicholson
Mark Nicholson