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COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE
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THE COMPETITION TRIBUNAL

IN THE MATTER OF an Application by the Director of Investigation and Research under sections 77 and 79 of the Competition Act R.S.C. 1985 c. C-34, as amended

B E T W E E N:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant

\- and -

TELE-DIRECT (PUBLICATIONS) INC.,
TELE-DIRECT (SERVICES) INC.

Respondents

\- and -

ANGLO-CANADIAN TELEPHONE COMPANY,
NDAP-TMP WORLDWIDE LTD.,
DIRECTORY ADVERTISING CONSULTANTS LIMITED
AND THUNDER BAY TELEPHONE

Intervenors

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE
File No. / No. du dossier CT-94/3
Dir v Tele-Direct
Exhibit No / No. de la pièce R-174(B)
Filed on / Déposée le Dec 6/95; 1:40
Registrar / Greffier Shayare

AFFIDAVIT OF MICHAEL TREBILCOCK

I, Michael Trebilcock, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I have been a Professor of Law at the University of Toronto since 1972 and Director of the Law and Economics Programme since 1976. I was a Visiting Fellow in Law and Economics at the University of Chicago Law School in 1976 and a Visiting Professor in

Law and Economics, at Yale Law School in 1986. I was elected a member of the Royal Society of Canada in 1987 and appointed a University Professor in 1990. I teach and research in the areas of contract law and theory, competition policy, international trade law and government regulation. I have published numerous books and articles in these areas as set out in my curriculum vitae (attached hereto as Exhibit "A"). I have consulted extensively to private sector clients and the Competition Policy Bureau in a wide range of competition policy matters. I have given expert evidence before courts, the Competition Tribunal and various federal and provincial regulatory bodies on competition and regulatory issues. I have been retained by the Respondents to provide an expert opinion and expert evidence specifically with respect to the Director's allegation of tied selling in his Statement of Grounds and Material Facts (amended) in this matter and filed with the Tribunal (hereinafter The Director's Factum).

2. Tele-Direct (Publications) Inc. and Tele-Direct (Services) Inc. (hereinafter collectively referred to as "TD") are Canadian corporations with head offices in Montreal. TD is the authorized publisher of telephone directories which are distributed to telephone subscribers in Ontario, Quebec, New Brunswick, Newfoundland and Labrador, the Yukon Territory and the Northwest Territories. TD is wholly owned by the Bell Canada group.

3. Telephone companies are required by the CRTC to distribute telephone directories at no additional charge to telephone subscribers. These directories include both alphabetical listings of all subscribers in an area (the "White Pages"), as well as a listing of

all businesses in a region according to their field of business (the "Yellow Pages™"). While all businesses are listed in the basic listings in the Yellow Pages™ free of charge, these directories have also become an effective paid advertising medium. TD pays the telcos, for the right to publish and provide the directories free of charge to subscribers in order to sell the advertising space.

4. The Director alleges that TD ties the provision of various "advertising services" to the purchase of space in the Yellow Pages™. The Director submits:

> The "advertising services" or "selling" business refers to the provision of services relating to the sale of advertising space in a telephone directory, including establishing new customers, calling on customers, and providing advice, information and other services relating to the design, cost, content, location, creation and placing of the advertisements. [Director's Factum, para. 9].

Only if a customer's account is "commissionable" and the advertising agent in question is approved by TD (a specialized Certified Marketing Representative, or CMR, and certain general advertising agencies) will TD pay a commission to an independent advertising agent for selling advertising to an advertiser. Approximately 90% of accounts do not meet the commissionability criteria set by TD. The commissionability criteria for the most part refer to large national or regional advertisers who advertise in many yellow pages directories published by different publishers. For the remaining accounts, the only commissioned sales people from whom an advertiser may purchase TD directory ads are internal TD employees although TD will accept ads placed and paid on behalf of an advertiser by a CMR, but without payment of a commission. The Director alleges that this amounts to a tie of advertising services (the "tied good") to advertising space (the "tying good") that substantially lessens competition in violation of Section 77(1) of the *Competition Act*. The Director alleges in the instant case that the customer is induced to purchase advertising

services from TD along with advertising space because there is no additional cost to doing so. This, it is contended, has impeded entry or expansion of advertising agencies or others in the market for the provision of telephone directory advertising services. The Director claims:

> Advertising agencies or others would provide such services or expand if a reasonable commission were available or if space and service were offered at unbundled prices which reasonably reflected relative costs. [Director's Factum, para. 55].

5. By way of relief, the Director seeks an order from the Tribunal requiring TD, in the alternative, either to offer and supply advertising services and advertising space at separate prices and in a fashion such that (a) the price of advertising services and advertising space when offered together equals the sum of the separately quoted prices for such products and that such separate prices reflect the relative costs of providing each component or (b) that TD expand its commission criteria so that all or further advertisements placed by independent advertising agencies certified by TD qualify for a specified commission, where certification is available on a non-discriminatory basis to all independent advertising agencies who can satisfy reasonable requirements of solvency. (Factum, para. 69a).

6. In conceptualizing the nature of the tying allegations in this case, I first adopt the perspective of the firm (TD) against whom the allegations are directed and seek to explain why, from its private perspective, it has organized its selling functions in the way that it has. Later in my opinion, I adopt a broader social welfare perspective in whether the arrangements adopted, even if in the interest of the firm, are nevertheless inconsistent with social welfare. Finally, I relate my analysis to the tying provisions (s.77) of the *Competition Act*.

7. From the perspective of TD, in considering how to organize its selling functions with respect to Yellow Pages™ advertising, the central challenge facing it is how to motivate a sales force (internal or external) to sell an optimal quantity and quality of

advertising when the revenues from advertising sales do not all accrue to the sales force but to an important extent to TD as the directory publisher. This is a classic principal-agent problem and requires an analysis of the incentive properties of various contractual or organizational arrangements designed to align as fully as possible the interests of the agent (i.e. the sales force) with those of the principal (TD). This in turn implicates the theory of the firm and theories of vertical integration, because what the Director is essentially alleging in this case is that Tele-Direct has vertically integrated within TD the various aspects of the advertising production function, with the consequence that independent advertising sales agencies play a less significant role in this sector than if all or more of the selling functions were "contracted out".

8. The literature on the theory of the firm and vertical integration addresses the question of when firms will integrate productive functions internally and when it will contract them out i.e. the "make or buy" decision. For example, if General Motors requires tires for its cars, it may purchase them from an independent tire-manufacturing company or it may create its own internal tire-manufacturing division. Why do we sometimes observe firms producing their own inputs and at other times observe firms contracting out the provision of inputs? The pioneering analysis by Ronald Coase (the 1991 Nobel Laureate in Economics) of this question focuses on the transaction costs inherent in organizing an activity through either the market or the firm.[1] Where a transaction is organized through the market, information on available prices and quality must be obtained. As well, contracts must be negotiated, monitored, and enforced for each desired purchase. Each of these steps is costly. On the other hand, internalizing production is also costly because information on the value and scarcity of inputs - which would otherwise be provided by the market - is replaced by less accurate internal proxies.[2] Subsequent theorists have stressed the relative costs of

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1 Ronald Coase, "The Nature of the Firm", (1937) 4 *Economica* 397.

2 See, for example, Oliver Williamson, "Hierarchical Control and Optimal Firm Size," (1967) 75 *Journal of Political Economy* 123.

different forms of opportunism under contracting out and internal production regimes.[3] In the case of contracting out, there are incentives for the outside contractor to engage in pecuniary forms of opportunism by chiselling on features of the contract that are difficult to specify, monitor or enforce. On the other hand, where production is moved in-house using contracted employees, there are incentives to engage in non-pecuniary forms of opportunism, such as consumption or slacking on the job, given that employee remuneration is often not closely tied to output.

9. The literature on the theory of the firm and vertical integration suggests that market provision of needed inputs may well be more efficient when needs can be easily specified and are relatively constant; when compliance with contractual terms is easily monitored; when negotiation of contracts is relatively inexpensive; and when there are highly differentiated inputs with few economies of scale and scope but large returns to specialization. On the other hand, production within the firm is preferred when needs are difficult to specify or are in a state of continuous evolution; when compliance with contractual terms becomes more difficult to monitor, and hence there is an increased risk of chiselling by contractors; and when contract negotiations become more complicated and expensive.[4]

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[3] See, for example, Armen Alchian and Harold Demsetz, "Production, Information, Costs, and Economic Organization", (1972) 62 *American Economic Review* 777; John McManus, "The Costs of Alternative Economic Organization", (1975) 8 *Canadian Journal of Economics* 334; Oliver Williamson, *Markets and Hierarchies* (New York: Free Press, 1975); idem, "Transaction Cost Economics: The Governance of Contractual Relations", (1979) 22 *Journal of Law and Economics* 3; Oliver Hart, "An Economist's Perspective on the Theory of the Firm", (1989) 89 Columbia L.Rev. 1757; Paul Milgrom and John Roberts, *Economic Organization and Management* (New Jersey: Prentice-Hall, 1992) at 552-569.

[4] See Michael J. Trebilcock and J.R.S. Prichard, "Crown Corporations in Canada: The Calculus of Instrument Choice", in J.R.S. Prichard, ed., *Crown Corporations in Canada* (Toronto: Butterworths, 1983).

10. It must be emphasized that whether or not a firm has market power in its output market is unlikely to affect its calculus with respect to the "make or buy" decision regarding the provision of inputs. For example, suppose a coat manufacturer has (for whatever reason) a monopoly in the coat (output) market and chooses to sell coats with buttons rather than coats and buttons separately. Its calculus on the integration or "bundling" decisions in its output and input markets reflect quite different considerations. A decision to integrate or bundle in its output market will reflect customer preferences and the relative transaction costs entailed for firms and customers in providing coats with buttons or coats and buttons separately. However, on the input side, the coat manufacturer may choose to contract out the supply of material and the manufacture of buttons. Whether it chooses to do so, or alternatively to produce all inputs internally, will be governed by efficiency i.e. cost minimizing, considerations. Similarly, a firm which has a natural monopoly in its output market or holds a product patent that confers market power on it may or may not choose to contract out the provision of various productive inputs e.g. payroll services, accounting and computer services, janitorial services, etc. etc. Firms will approach these decisions in precisely the same way whatever their degree of market power (from zero to full monopoly) in their output markets. In such cases, it would normally not be regarded as a compelling competition law claim for an external contractor to argue that it should be entitled to bid on the provision of some of these inputs or to render a firm's decisions on how to organize its production functions subject to external vetting by a third party agency, precisely because there is no reason to suppose that firms generally will be motivated by considerations other than cost minimizing considerations (subject to well-recognized exceptions such as foreclosure to competitors of access to essential facilities - discussed further below under "Barriers to Entry"). Moreover, this will be so even though the effect of decisions by firms to internally integrate production functions by definition will reduce the role and number of external providers who may wish to perform some of these functions. As was stated by the U.S. District Court for the Central District of California in *The Selten Agency Inc. v. The Pacific Telephone and Telegraph Co. et. al* (1981), on similar facts to the present case: "It is not a violation of the anti-trust laws for a publisher to refuse to buy a service that is not

worth buying" (at p. 17). Or as stated by ITT World Directories Ltd., in the investigation by the U.K. Office of Fair Trading of British Telecommunications' pricing policies for yellow pages directory advertising (October 11, 1984) (henceforth the OFT Report), "Having tendered competitively and been awarded the position of sales contractor, we do not see any reason why a company should claim to do part of our work at a cost which exceeds ours and expect us to pay them for it" (at p. 24). Or as stated by the Seventh Circuit Court of Appeals in *Jack Walters & Sons Corp. v. Morton Building Inc.* (1994) 737 F. 2d. 698 at 710:

> Vertical integration is not unlawful or even a suspect category under the antitrust laws: "Firms constantly face make-or-by decisions - that is, decisions whether to purchase a good or service in the market or to produce it internally - and ordinarily the decision, whichever way it goes, raises no antitrust question."...
>
> Vertical integration is a universal feature of economic life and it would be absurd to make it a suspect category under the antitrust laws just because it may hurt suppliers of the service that has been brought within the firm ...
>
> We just said that vertical integration is not an improper objective. But this puts the matter too tepidly. Vertical integration usually is procompetitive. If there are cost savings from bringing into the firm a function formerly performed outside it, the firm will be made a more effective competitor. Moreover, the option of vertical integration places competitive pressure on the firm's suppliers and buyers, who know if they charge too much for their services the firm may decide to perform them itself. It thus increases competition in the markets for those services.

11. Within the analytical framework provided by the theory of the firm and theories of vertical integration, I now attempt to explain prevailing selling policies and practices in Tele-Direct's directory territories. In my opinion, any theory of the tying allegations in this case needs to explain the following central facts:

(A) CMRs are not paid commissions by TD in the smaller advertiser sector. CMRs do not, for the most part, wish to enter the smaller advertiser sector. TD services the smaller advertiser market. In interviews by the Director's staff with CMRs (as reported in notes made available to me on a confidential basis), CMRs provided various estimates of this cut-off ranging from $10,000 per account per year to $50,000 per year (depending on the commission rate payable).

(B) CMRs are not paid commissions on larger local advertising accounts. CMRs wish to expand their presence in the larger local advertising sector by receiving commissions from TD for selling advertising and related services. TD prefers to provide selling and related functions in the larger local advertising sector through its own internal sales force.

(C) CMRs sell Yellow Pages™ advertising and related services to larger national or regional advertisers on a commission basis. CMRs service the vast majority of these larger national or regional advertisers.

(D) A closely similar pattern in the organization of advertising selling functions obtains with respect to most, if not all, telco-affiliated yellow page directories in North America, both where the directory publisher is responsible for the selling function and where these functions have been contracted out on an exclusive basis to a single independent sales agent, and with respect to almost all independent or proprietary consumer directories.

12. Before commenting on each of these four central facts directly, in my opinion it is useful to set the context by developing a clear appreciation of what is involved in the provision of yellow pages advertising. As a generalization, there are three distinct elements in the provision of yellow pages advertising: efforts devoted to selling the space, consulting

advice regarding the advertisement (artwork, placement etc.), and the space itself. Each of these elements are inputs into the provision of advertising. The Director is, in effect, alleging that these three elements have been tied together by Tele-Direct, with the effect that independent advertising agents are being foreclosed from undertaking a broader range of advertising functions. The question I address here is the extent to which one can properly regard the internal integration of the production of complementary inputs as tying, or whether on the other hand there is simply a single output, i.e. advertising.

13. I examine first the possibility of viewing each of the three functions identified above as unbundled products that TD might price separately and with respect to which advertisers might be given a choice as to supplier (as the Director has proposed). It becomes immediately apparent that the selling function is not a separable function that could be priced separately. Potential advertisers who are recipients of sales pitches but decide not to advertise will obviously not be willing to pay for the sales pitch either *ex ante* or *ex post*. Potential advertisers who receive the sales pitch and are persuaded by it face strong incentives to behave opportunistically by not placing their advertising business through the selling agent but directing it through either the seller of the space or the seller of the advertising services, implying that there will be strongly attenuated incentives to engage in the selling function. This illustrates what Arrow refers to as "the paradox in determination of the demand for information"[5] - information cannot be accurately valued in many cases by recipients without disclosing to them the information before a contract to pay for the information is concluded, which renders the contract pointless. Thus, it quickly becomes clear that the selling function must be bundled with one or both of the other two functions, i.e. space or consulting services. If the selling function is bundled with the provision of consulting services, similar problems quickly become manifest. For example, a selling agent approaches a potential advertiser and offers a joint price for selling and consulting services.

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5 Kenneth Arrow, *Essays in the Theory of Risk Bearing* (North Holland Publishing Company: Amsterdam, 1974) Chap. 6 at 151 and 152.

The advertiser is persuaded of the advantages of advertising but does not place his advertising with the initial selling agent and instead approaches another agent and simply purchases desired but discrete consulting services from it, implying again that resources invested in the selling function will be unrecouped.

14. This leads then to the option of bundling the selling function with the provision of space. Here, because a potential advertiser who has been persuaded to advertise, always needs the space, he cannot behave opportunistically and will be required to pay for the selling effort as part of the price for the space (in much the way that new car dealers recoup their selling costs in the costs of their cars). This suggests that the only possible way of separating advertising into its three component elements would be to bundle space and selling effort on the one hand and sell advertising consulting services separately on the other. However, even here problems can readily be anticipated. First, it is often difficult to disentangle selling effort from consulting services. In selling a potential advertiser on the advantages of advertising, a sales agent will often propose various advertising strategies that entail advising on issues such as potential ad design and placement. Thus, it may be next to impossible for TD to place a separate and non-contestable price on advertising consulting services relative to the prices it charges for the bundle of space and selling effort. Moreover, according to the OFT Report, even for large national advertising these discrete consulting services amount to no more than 4 1/2 percent of gross revenues from advertising, implying a very small market for these services on a stand-alone basis.

15. These difficulties of pricing separately the various inputs into the provision of advertising raise serious questions as to whether it is appropriate to conceive of TD's present pricing policies as tying of one product to another product at all, rather than simply conceiving of advertising as a single product. These difficulties persuaded the OFT and most of the witnesses that appeared before it that unbundling was simply not a viable option. At this point, the Director may choose to emphasize the alternative remedy that he has proposed, i.e. that all or most Yellow Pages™ accounts be commissionable, on the premise

percent in this example). In this case, there are mutual gains from trade to be realized by commissioning external sales agents. On the other hand, if TD's internal sales costs are 8

that a bundle of services can then be contracted out for a single commission. However, it is easy to show that this is equivalent to bundling selling effort and advertising consulting services and separating them from space, with much the same implications as under the unbundling remedy proposed by the Director. Suppose now that there are a number of independent advertising agencies competing for Yellow Pages™ advertisers' business on the basis of stipulated commissions payable by TD. Agent A approaches a potential advertiser and persuades him of the advantages of advertising, but the advertiser declines to place the ad through Agent A and instead contacts Agent B and asks Agent B to prepare the artwork and design layout, etc. (perhaps free-riding on suggestions made by Agent A) in return for a discount on Agent B's commission so that the residual commission received by Agent B reflects only the costs incurred by Agent B in providing the discrete advertising consulting services (perhaps 4 1/2 percent of the cost of the ad, if the OFT's estimates are approximately accurate in a Canadian context). Only if TD was able effectively to contract with all agents not to rebate commissions to advertisers would this problem be addressed, but such a contract would be extremely difficult to monitor and enforce. As in the unbundling scenario, the commission scenario creates serious underincentives to provide optimal selling effort, given that it will often be uncompensated. In order to avoid this, one will often be driven again to bundling the selling effort with the sale of the space, through an internal sales force leaving only a small stand-alone market for the sale of discrete advertising consulting services.

16. As to when a directory publisher will undertake the selling function in-house or contract out, the economic calculus is clear. For example, if CMRs face lower costs of selling advertising than TD (for example, suppose CMRs, average cost of selling constitutes 6 percent of gross advertising revenues and TD has an internal cost of selling of 8 percent), and assuming CMRs offer the same quality of service, TD would benefit by offering a commission to CMRs below TD's costs but higher than the costs facing CMRs (perhaps 7 percent in this example). In this case, there are mutual gains from trade to be realized by commissioning external sales agents. On the other hand, if TD's internal sales costs are 8

percent on average and CMR's are 10 percent, any commission less than 10 percent would not induce CMRs to enter this market and any commission in excess of 10 percent would lead to inefficient substitution effects and higher costs of providing Yellow Pages™ advertising to advertisers. In the light of these general analytical considerations, I now move on to consider the four central facts in this case that I identified above.

17. Fact A: TD sells all Yellow Pages™ advertising to small advertisers and CMR's do not wish to do so

There are several reasons that explain these facts. First and foremost, it seems highly likely that TD faces a lower marginal cost of servicing smaller advertisers than independent advertising agencies. The most effective method of selling advertising to smaller advertisers appears to entail "blanketing" directory territories in concentrated time blocks on a sequential basis as TD currently does with its in-house sales force of almost 500 people. This ensures the currency of the advertising information as of the time of the publication of each directory, given a high "churn" factor with small businesses. According to data provided to me by TD, advertisers with accounts worth ____ or less in monthly revenue account for almost [illegible] of TD's advertisers, and over [illegible] in terms of revenue. Moreover, for smaller advertisers, the cost of providing advertising overwhelmingly comprises space and selling effort rather than advisory services. The OFT concluded in its report that for smaller advertisers, "planning and creation of the advertisement is minimal and therefore agency services have little relevance and cannot be effectively separated from the selling function." (at p. 45). That is to say, space, selling effort, and advertising consulting services are effectively one product or alternatively an integrated set of inputs that yield one product: advertising. The OFT also found that direct sales costs on smaller accounts are "up to four times greater than direct sales costs on national accounts as a proportion of relevant revenue" (at p.27) and that "small businesses or others with small and straightforward accounts are very unlikely to wish to use the services of either general or specialist agencies and it is equally unlikely that agencies would be willing to service small accounts." (at p. 11). As

noted above, evidence from the Director's notes of interviews with CMRs in the present proceedings reveals a similar reluctance on their part to service small accounts. These facts imply significant economies of scale for TD in selling Yellow Pages™ advertising through its large in-house sales force to smaller advertisers that cannot be realized by CMRs.

18. Apart from these cost differentials, Fact A is further explained by a second factor: a divergence of interest between TD and CMRs leading to incentive compatibility problems. As Professor Robert Willig and other witnesses will point out in their evidence in the current proceedings, an important competitive characteristic of yellow pages advertising relative to other advertising for both users of yellow pages directories and advertisers seeking their patronage is the relative completeness of yellow pages directories both in terms of coverage of advertisers by product or service category and in the information provided about basic product and service offerings. If the directory (it is, after all, a directory) is not relatively complete or representative in its coverage of advertisers and information about their offerings (a kind of paper bazaar), consumers will find it less useful as an informational reference, and the value of the directory falls. There is therefore a positive externality to all advertisers from the placement of an advertisement by an individual advertiser. Since advertisers themselves only minimally benefit from their own contribution to completeness they will be unwilling to pay for this effect. However, since TD, as owner of the Yellow Pages™ directories, realizes the benefit of this externality in the form of increased demand for advertising space (reflecting the benefit that consumers realize from this externality), TD is willing to incur a cost of selling space that may be greater than the price that an individual advertiser is initially willing to pay for the advertising, justifying long-term increases in advertising rates to all advertisers as completeness increases and the value of Yellow Pages™ directories to both advertisers and users correspondingly appreciates. Thus, TD realizes over the longer term a benefit from servicing smaller advertisers that CMRs would not. In other words, TD, as the owner of Yellow Pages™ directories, is able to internalize more fully the completeness externality than CMRs. This second factor further explains why TD finds it profitable to sell advertising to smaller customers, but CMRs do not. This concept of a

network externality is analyzed in detail in a recent paper by S.J. Liebowitz and Stephen Margolis,[6] where they adopt the following definition of such an externality: "The utility that a given user derives from a good depends upon the number of other users who are in the same network." The most straightforward example is the telephone network where the value of an individual becoming a subscriber is contingent upon how many other individuals decide to become subscribers. The authors point out in their paper that network externalities are much less likely to result in market failures where the network is fully owned, i.e. property rights in the network are well defined in contrast to unowned networks (e.g. Internet), where sub-optimal provision in terms of quantity or quality may occur. Or as Katz and Shapiro state in another recent paper[7]: "Property rights may help solve externality and investment problems. Specifically, when there is a single owner of the network, that firm may be willing to sponsor the network by making investments in its growth that competitive [hardware] suppliers would not."

19. In addition to these two factors, a third factor is likely to lead to attenuated incentives for CMRs to engage in selling efforts to small advertisers: opportunistic or free-riding behaviour by advertisers who receive and are persuaded by the sales representations by one CMR but then place their ad through another CMR, the latter bring compensated only for discrete advertising consulting services (through rebates on commissions), leaving the first CMR uncompensated for investments in selling efforts (as noted earlier in this opinion). TD is able to prevent this form of advertiser opportunism by bundling the selling effort with the sale of space.

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6 S.J. Liebowitz and Stephen Margolis, "Network Externality: An Uncommon Tragedy" (1994) 8 J. of Economic Perspectives 133.

7 Michael Katz and Carl Shapiro, "Systems Competition and Network Effects" (1994) J of Economic Perspectives 93 at 101.

20. Fact B: CMRs wish to be paid commissions to sell advertising to larger local advertisers but TD prefers to perform the selling function in-house

A simple cost divergence standing alone, i.e. that TD has lower costs in servicing larger local advertisers, cannot explain Fact B. If TD had lower costs, CMRs would not wish to enter this segment of the market (as in the case of small advertisers) and TD would not resist it, given that CMRs would fail in this market segment, given their cost disadvantage. As with the smaller advertiser market segment, the completeness externality partly explains TD's resistance to contracting out. First, consider the scenario entailed in the Director's "unbundling" proposal. TD charges for its space independently of selling effort and advertising services, and CMRs bill the client directly for their efforts. With respect to soliciting new accounts, presumably the marginal costs of recruiting non-advertisers are likely to rise with the additional selling effort and advisory services required to persuade more reluctant non-advertisers to become advertisers. At the point where these marginal costs exceed the marginal revenue generated from the individual advertiser, CMRs will expand no further selling effort. In contrast, TD (as in the case of smaller advertisers) may find it rational to continue to incur these costs given the longer term benefits it derives from maximizing the value of the Yellow Pages™ directories generally to all advertisers and users. Thus, CMRs in this market segment are likely to focus most of their efforts on attracting accounts of existing advertisers from TD or other CMRs rather than recruiting new advertisers[8]. While CMRs partially benefit from completeness (perhaps through the preservation of Yellow Pages™ directories as a viable advertising tool), to the extent that one CMR benefits, all CMRs benefit, CMRs thus fail to realize the full benefit of providing optimal selling and advisory services: there is an incentive to "shirk" on advice-giving, since the completeness benefit of retaining the customer in the future is only fractionally felt by the CMR. Advertisers themselves also fail to realize the full benefit of their effect on completeness; the value added from the placement of their advertisement is realized by all

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[8] *O'Connor Agency v. General Telephone Co. et al.* (1994) at 215, U.S. District Court Central District of California

advertisers, not just the advertiser itself. TD, on the other hand, realizes much of the completeness benefit, since advertising space in Yellow Pages™ directories rises in value over time as directory completeness increases. As in the case of smaller advertisers, this effect will be compounded by advertiser opportunism in free-riding on sales representations by one CMR by placing their ads with another CMR and then demanding a rebate on the latter's commission, leaving the first CMR uncompensated for its selling efforts.

21. These observations lead to the following results. TD will have a much stronger incentive than CMRs to incur costs on selling and advisory services to recruit new accounts than CMRs. CMRs will focus most of their efforts on attempting to attract existing advertisers from TD or other CMRs. While TD will be interested in retaining existing customers over time in order to enhance the completeness of the directory, CMRs will be more concerned with immediate returns. Consequently, if TD suggests the optimal package to the advertiser (that is, the package which gives the greatest value for the price of advertising), CMRs face an incentive to convince the advertiser that a less expensive package (e.g. smaller size, less colour, fewer directories, etc.) is equally useful as an advertising tool in order to attract customers away from TD or other CMRs. This increases the likelihood of the customer becoming dissatisfied with its Yellow Pages advertising™ and therefore increases the likelihood that the customer will stop using Yellow Pages™ advertising since it will often be difficult for a customer to distinguish whether a poor response to advertising is the result of bad advice or of an inherent weakness in Yellow Pages™ advertising as a medium. The selling effort required to recruit Yellow Pages™ advertisers suggests significant informational imperfections and uncertainties in the advertising services market, or advertising media would rely solely on client-initiated contacts. Since TD faces an incentive to maintain completeness, it will be harmed by the advertiser discontinuing its advertising in a more significant way than the CMR which simply loses a client. This problem could perhaps be overcome if the client were either better informed or more concerned about its advertisement's effectiveness. However, since it too fails to benefit privately from its own effect on completeness to any significant degree, it will be less concerned about the

advertisement's effectiveness than is socially optimal. Thus CMRs will convince advertisers to purchase sub-optimal amounts or quality of advertising, which leads to greater incompleteness in the future due to the poorer quality of advertising.

22. The question then arises whether TD could strike an optimal contract with CMRs to offset this effect. Given that the value to TD of good advice to clients is greater than the value to CMRs of good advice, an optimal incentive structure effected through the commissions paid to CMRs by TD must compensate for this. This would entail TD compensating CMRs in order to induce the CMR to attempt to sell socially optimal quantities and quality of advertising. For example, in order to induce CMRs to sell to and consult with current non-advertisers, TD could pay a higher commission rate to cover the higher marginal costs of sales to non-advertisers than the rate paid for sales to current advertisers. However, further contractual terms would be necessary to ensure that the CMRs sell optimally despite the completeness externality and not, in competition with each other, cut quality corners to attract clients. A contract of this sort would likely generate significant transactions costs. Some definition of "optimal advertising" must be contractually established, which would be very difficult to stipulate and would be costly to monitor and enforce. TD, on the other hand, motivates its internal sales force to sell and advise clients to purchase optimal packages by offering training, encouragement, screening of advertising sales by managers, internal promotions, awards, a team ethic, etc. The transactions costs entailed in ensuring that CMRs sell and consult optimally renders contracting out inefficient. It is more efficient for TD and for its advertisers that TD undertake these tasks internally.

23. This conclusion is strengthened in the present context. The above discussion presumed that TD and CMRs would themselves negotiate commission rates and other contract terms and that TD would only find it rational to pay a commission rate that is less than its own avoidable costs of undertaking the selling functions in-house. However, it is conceivable that the Director may seek to expand his proposed remedy by requesting an order from the Tribunal that commissions be paid but be paid at a prescribed or "reasonable"

rate (by way of analogy with the Tribunal's previous Consent Order against TD). This would put the Tribunal in the position of not only controlling TD's vertical integration decisions, but also regulating the prices TD must pay for its inputs. As noted above, if the commission is set below the CMR's costs they will not enter. If it is set above TD's avoidable costs there will be inefficient entry by CMRs that will raise the cost of Yellow Pages™ advertising to advertisers, reducing the number of advertisers who will choose to advertise and reducing the value of directories to users because of less completeness. This commission would require constant adjustment to reflect changes in the relative selling and related costs of TD and CMRs and the Tribunal would thus be cast in the role of a permanent price regulator - a role it has eschewed in similar contexts in the past (see, for example, *Palm Dairies* (1986) 12 C.P.R. (3d) 540).

24. Even in the absence of the two remedial scenarios proposed by the Director (unbundling and commissioning), certain advertising agents currently operating in this market segment often negotiate remuneration arrangements with existing advertisers through a sharing of cost savings from smaller or less sophisticated advertisements (so-called "cut agents"), over short contractual time frames of from one to five years. Again, there will be perverse incentives to undersell the quantity and quality of advertising by exploiting information imperfections on the part of advertisers and by ignoring the completeness externality. Thus, in all three scenarios a sub-optimal equilibrium may emerge, but the Director's two remedial scenarios will in fact exacerbate existing market imperfections.

25. <u>Fact C: TD pays CMRs commission on larger national or regional accounts involving multiple directory publishers, and CMRs dominate this market segment</u>

In this market segment, advertisers who wish to advertise in many directories published by different publishers face significant transaction costs if they must negotiate with each directory publisher themselves. These costs can be reduced through the use of a single agent. Either one yellow pages publisher could be designated the single agent for dealing

with all other publishers (e.g. the publisher located closest to the advertiser's headquarters, as under previous rules that prevailed in Canada and the U.S.), or independent CMRs can act as the single agent (or both). As between CMRs and yellow pages publishers playing this agency role in multiple directory publisher advertising, the failure of CMRs to account for the completeness externality from advertising will also be present to some degree in the market for larger advertisers. However, various factors suggest that it may nonetheless be offset by efficiencies that CMRS can realize in servicing this market. First, because of the idiosyncratic needs of larger advertisers, the economies of scale associated with servicing smaller advertisers which gives TD a cost advantage in this market are unlikely to be present in the larger advertiser market. This suggests that more specialized agents may be better equipped to handle these larger, more unique clients. This in turn suggests that CMRs may have a lower cost of providing appropriate service to larger clients than TD. This is supported by the fact that CMRs have a 90% share of this larger advertiser market, and by TD's recent decision to begin marketing its services to larger clients with a wholly-owned, stand-alone agency. If this cost differential is great enough, this alone may explain why TD permits CMRs to service larger clients. While completeness externalities imply the under-provision of optimal service, cost advantages imply greater service provision than TD would otherwise provide itself. Similar considerations apply to the advertiser opportunism/free-riding concern noted above (para. 13). If CMR's costs are low enough these will more than outweigh the effects of this form of opportunism.

26. Other factors strengthen this conclusion. In the large advertiser market, advertisers may be better at monitoring the quality of CMRs' service than smaller advertisers. For example, a larger advertiser may be more sophisticated and aware of the revenue generating potential of yellow pages advertising. This may be explained by economies of scale through investments in information regarding the effectiveness of advertising more generally. For larger advertisers, it may be necessary to assess advertising media generally; the marginal cost of investigating yellow pages advertising itself may be minimal given the fixed cost of developing a marketing strategy. Smaller advertisers, on the

other hand, are more likely to take an ad hoc approach to marketing strategies, given that they are less able to spread the cost of investigation over all marketing expenditures. The ratcheting down of service quality may be prevented by sophisticated purchasers who are aware of the potential in yellow pages advertising and will attribute marketing failures to the CMR who is servicing their account, not to the advertising medium itself. The risk to CMRs of loss of a large yellow pages account and in some cases other advertising services in other media being provided to the same client is likely to operate as a more effective form of quality assurance than with smaller accounts. The effect on completeness from poor service may thus be mitigated; large advertisers may not necessarily assign the blame of poor performance to yellow pages advertising, but rather seek out high quality CMRs. Thus, the completeness externality problem is mitigated, since poor service, is less likely to result in a large advertiser discontinuing its yellow pages advertisements altogether, although the completeness externality may still result in sub-optimal efforts to recruit current large non-advertisers. Similarly, the advertiser opportunism problem may be mitigated by advertisers reputation effects in the small numbers - large account market, rendering CMRs reluctant to service known opportunists. On a netting out of these factors, it appears to be efficient for TD to pay commissions to CMRs to service large national or regional advertisers who wish to advertise in many directories published by multiple publishers.

27. Fact D: Almost all yellow pages directory publishers organize their selling functions in a similar way to TD i.e. by heavy reliance on an internal sales force.

In a telephone conversation I had on Friday, July 28, 1995, with Mr. Larry Small, Vice-President of Marketing Services for the Yellow Pages Publishers' Association (YPPA), head-quartered in Michigan, he informed me that YPPA has 191 directory publisher members. These include both telco-affiliated yellow page directory publishers and independent yellow page directory publishers ("Yellow Pages" is not trade-marked in the U.S.). He told me that to the best of his knowledge no directory in the U.S. organizes its selling functions any differently from TD. That is to say, whether telco-affiliated or not, they all rely heavily on an internal sales force. The only apparent exception to this pattern

noted by Mr. Small is that a small number of U.S. directory publishers contract out the advertising selling function to exclusive selling agents. However, they in turn rely almost entirely on their own internal sales forces. This view is confirmed by a recent report by SIMBA Communications Trends entitled "Lessons of Yellow Pages Competition: A Study of Independent and Competitive Directory Strategies", (1993). which reports inter alia on the size of the internal work forces of independent publishers by range of revenues. The relevant tables are attached hereto as Exhibit "B". The same report notes in the text (at p. 95) that "among the nation's largest independent publishers, sales staffs are mostly premise, but in some cases do include telemarketing reps." With respect to medium-size independent directory publishers, the report states that "a medium-size independent might have up to 30 or so sales reps, a sales manager or two, or even a Vice-President of Sales that directly oversees the sales force", implying that this is also an internal sales force (at p. 105) (see also Table 1.3 appended hereto). With respect to small independent directory publishers, the report states that "smaller independents might have up to 10 sales reps, almost entirely premise, and one sales manager or Vice-President of Sales overseeing the entire sales force" (at p. 109). It will be obvious that many of these directories do not remotely possess any market power (however measured) in many of the directory markets in which they operate. The stark and enormously significant implication of this fact is that the decision to vertically integrate advertising selling functions clearly has nothing to do with market power. It must be explained entirely by the kind of efficiency considerations that I have outlined earlier in this opinion.

28. In the light of my analysis above of TD's incentives in the organization of advertising selling functions for its directories, I now turn to an analysis of the social welfare implications of these arrangements and the Director's allegations of tying, i.e. that TD has tied the provision of advertising services to the provision of space and has thus impeded the entry or expansion of advertising agencies in the market for the provision of telephone directory advertising services, presumably in his view reducing competition and social welfare.

29. Even assuming that tied selling of products (as opposed to inputs) exists in this case (which I do not accept), for tying to have any relevance to competition policy, it is widely accepted under all theories of tying that the firm in question must have market power in the alleged tying good (here advertising space). If the alleged tying good is sold in a competitive market, tying another product will not have any anti-competitive effect. If the consumer does not wish to purchase the tied good, he will simply purchase from a different supplier of the tying good. Competition will also ensure that firms will supply the package consumers prefer (i.e. either selling the products separately or bundling them). Professor Robert Willig will be testifying in these proceedings on the question of whether Tele-Direct has market power with respect to yellow pages advertising space, and has concluded that it lacks market power. I have reviewed his evidence and find it compelling.

30. However, assuming, for the sake of argument, that TD is found to possess market power in the yellow pages advertising space market, does the insistence by TD in most segments of its market on joint provision of space, sales effort, and other advertising services imply a substantial lessening of competition under s.77 of the *Competition Act*? Various sinister explanations have been offered for tying in previous case-law and academic literature. I review each of these explanations briefly below and relate them to the facts in issue in this case.

The Leverage Theory

31. The leverage theory states that a firm with monopoly power in one market will use a tie to gain monopoly power in a second market. As Hovenkamp states, however, "Such 'leveraging' is not a plausible way to increase monopoly profits,[9]" for the following reasons. It is impossible to purchase advertising space without purchasing advertising

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[9] Herbert Hovenkamp, Federal Antitrust Policy (St. Paul: West publishing, 1994) at 371.

services. The advertiser therefore views the services and space as a bundle in deciding whether to purchase. If advertising space is being sold at its profit-maximizing monopoly price, any increase in the price of advertising services will reduce profits by raising the price of the bundle above the profit-maximizing price. For a monopolist, it is preferable that the second good be sold at a competitive price. Consider the following example offered by Hovenkamp. Seller X has a monopoly in glass jars and sells them at the monopoly price of $1.50. The competitive price of lids is 30 cents. X decides to sell lids and jars together as a package. Since X's monopoly price of $1.50 for jars was predicated on the competitive price for lids, the profit maximizing price for the bundle is $1.80. That is,

> As long as the proportion of jars to lids is constant the purchaser will attribute a price change in either [the lid or the jar] to the price of the entire package. A monopolist cannot make any more monopoly profits from the sale of jars with lids. The jar monopolist cannot make any more monopoly profit by monopolizing the lid market as well [Hovenkamp, p.371].

The profit maximizing price for the bundle is $1.80, so raising the price above 30 cents for lids will reduce profits (unless the price of jars is lowered to compensate). The jar manufacturer has maximized its own profits by selling jars alone for $1.50 and letting lids remain competitive.

32. In the instant case, if it is found that TD has market power in the telephone directories space market, there is a profit maximizing price for the package of advertising services and space. If the price of advertising services rises as a result of increased barriers to entry from the tie, then to maintain the profit maximizing price for the package, the price of advertising space must fall. Thus, the assertion of the Director that the objective of the tie is to raise barriers to entry in the advertising services market raises the question of the motivation for this objective: the above analysis indicates that this strategy by TD would not be profitable.

33. Some commentators have suggested, however, that the leverage theory may have some validity if differently conceived. Kaplow, for example, suggests that tied selling may operate as a form of predatory pricing.[10] By offering the tied good at a low price (close to or below its competitive price), a firm with market power in the tying good may establish market power in the tied good market in the long run, by way of analogy to predatory pricing. However, this argument runs into the same difficulty as the more conventional leverage theory in the case at hand. Where the tied good will only be purchased if the tying good is also purchased, as in this case (purchasing telephone directory advertising services is pointless unless advertising space in a telephone directory is also purchased), independent market power in the tied good market is of little or no value. As discussed above, the bundle of services and space has a set profit maximizing price, and any price increase in advertising services will lower overall profit unless the price for the space drops to compensate. Thus, establishing independent market power in the telephone directory advertising service market will not raise profits for TD[11].

Price Discrimination

34. A more convincing explanation of tied sales than the leverage theory in some contexts is that they permit price discrimination by a monopolist. For example, by tying the sale of punch cards to the supply of computers (as was the case in *IBM v. U.S.* 298 U.S. 131 (1936)), a monopolist in the latter market may be able to meter intensity of use and hence intensity of demand for the primary product and charge different consumers different prices that reflect their different reservation values but not differences in the costs of supplying them, thus appropriating more of the consumer surplus than can be achieved through a single price for the tying product. In other words, by charging a supra-competitive price for the

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10 Louis Kaplow, "Extension of Monopoly Power Through Leverage" (1985) 85 Col.L.Rev. 515.

11 See J.B. Dunlop, D. McQueen, and M.J. Trebilcock, *Canadian Competition Policy: A Legal and Economic Analysis* (Toronto: Canada Law Book, 1987) at 253-257)).

punch cards, high intensity users/demanders will end up paying more in effect for the machine than low intensity users/demanders. The price discrimination theory of tied sales clearly seems plausible in a range of settings. Whether price discrimination is or is not socially desirable is a controversial issue, given its ambiguous but often positive effects on firm output (see Dunlop, McQueen and Trebilcock, op cit. at pp .255-256). However, resolving this controversy is not required on the facts of this case. Tying arrangements that have been alleged to facilitate price discrimination have been confined to requirement contracts where a purchaser of one good agrees to purchase a variable, amount of a future good from the seller of the first good, e.g. computers and punch cards, photocopiers and paper or service, salt-processing machines and salt, etc., not package ties whereby the tying and tied good are consumed in fixed proportions such as is alleged by the Director here. Where two goods are consumed in fixed proportions, the metering effect of future purchases of the tied good is eliminated, along with the potential for price discrimination. Thus, price discrimination cannot explain the alleged tie here.

Barriers to Entry

35. It is sometimes argued that tying may increase barriers to entry by forcing a market entrant to enter two markets, i.e. the tied and the tying good market, rather than one. Thus, barriers to both the directory market and the advertising services market are relevant in this respect. As I have argued above, raising barriers to entering the services market does not allow TD to realize any more profit from any market power it possesses with respect to the space market than it currently reaps in the directory market. Any monopoly profit for the bundle may be realized in the space market. With respect to barriers to entry to the directory market, a tie is unlikely to raise barriers to entering the directory market since barriers to entering the services market are so low a start-up directory could presumably induce entry by independent advertising agencies by itself. More importantly, the evidence cited above (para. 26) suggests that independent consumer directories organize their production function in much the same way as TD does and rely largely on an internal sales

force and not on external agents - the Director has not alleged that TD has attempted to foreclose access by independent directories to this labour market nor is it easy to imagine how TD could do this even if so minded.

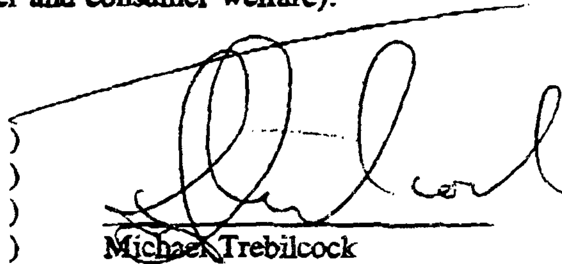
36. Thus, all potential sinister explanations for the alleged tie in this case are unconvincing, and the efficiency explanations for the "make or buy" decisions made by Tele-Direct offered earlier in this opinion are much more compelling. If any of these sinister explanations had salience in this case, it is difficult to explain why TD and other yellow page publishers have over the years expanded the scope for CMR participation in some segments of yellow pages advertising. This fact is inconsistent with allegations of attempts to monopolize the advertising services market as an end in itself or as a means of raising barriers to entry into the directory market. Moreover, the substantial growth in yellow pages advertising in recent years relative to other advertising media is inconsistent with claims of monopolization in either market which would normally entail higher prices and reduced output (see *Selten, op.cit.* at p.15; UK OFT Report, *op.cit.* at p.6).

37. If this conclusion is accepted, then the only issue remaining is how it can be accommodated within the criteria set out in s.77 of the Act, in particular the test of substantial lessening of competition that is applied to tying arrangements. My analysis leads me to conclude that TD contracts out the selling and advertising functions when it is efficient to do so (large national accounts) and undertakes them internally when it is not efficient to do so (other accounts). It is true that in the latter case independent advertising agents have a more limited domain in which they can operate than if TD were to contract out in all or a wider range of cases. Thus, it is true but trivial that there will be fewer independent advertising agencies functioning in the yellow pages advertising sector than might otherwise be the case. This is also true of all cases where firms vertically integrate production functions to maximize efficiency. This can surely not be an appropriate test of substantial lessening of competition. If so, in every case where potential alternative suppliers were driven out of, or excluded from, a market by more efficient producers or production

techniques, they would be entitled to launch a competition law complaint. In this event, the purposes of competition law would become that of protecting competitors rather than competition, i.e. maximizing the number of competitors and not maximizing efficiency. To cast in sharp relief the implications of the Director's proposed remedies in this case, it would equally seem to follow that an external sales agent should be entitled to demand a commission at least equal to its costs from Eatons, Simpsons, the Bay, Walmart, or any other retailer if customers for e.g. appliances, men's suits, or women's fur coats are referred to the store by the agent and make a purchase, despite the fact that the store has chosen to organize its selling functions internally by providing display space and sales staff. If TD were to decide to contract out all selling and advertising functions, it is much more likely to follow the practice adopted by British Telecom (when still in public ownership) and some other North American telcos of contracting out these functions through a competitive tendering process for long-term <u>exclusive</u> contracts on a regional basis, which would then internalize the completeness externality discussed earlier in my opinion to the franchisee in each region and minimize perverse incentives to undersell the quantity or quality of advertising to existing advertisers. However, given that TD already has a large installed sales force, it is hard to imagine why such a strategy would be efficient, and even if it were, how it would help the independent advertising agencies who have equally complained about exclusive franchise arrangements in other jurisdictions where the franchisee also typically uses almost exclusively its own internal sales force (see e.g. OFT Report).

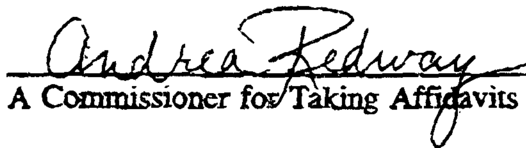
38. In my opinion, the alleged tie in this case does not substantially lessen competition in terms of s.77 of the *Competition Act* for either of two reasons. First, by internalizing the completeness externality and by addressing sub-optimal incentives to sell the optimal quantities and quality of advertising to advertisers, existing production arrangements maximize the long-term value of Yellow Pages™ directories as a total product to all advertisers and users and thus enhances its competitive efficacy vis-à-vis other advertising media, thus increasing competition in the advertising market generally. That is to say, while vertical integration may reduce intrabrand competition, it enhances inter-brand competition.

Alternatively, if one concludes that Yellow Pages™ advertising constitutes a distinct advertising market and that TD possesses market power in this market, it still follows that in choosing the appropriate form and degree of vertical integration, TD is maximizing the value of Yellow Pages™ advertising as a product for advertisers and users generally and thus is maximizing consumer welfare (defined as the welfare of advertisers and users) or total welfare more generally (defined as producer and consumer welfare).



SWORN BEFORE ME at the City of Toronto in the Municipality of Metropolitan Toronto this 18th day of August, 1995)

Michael Trebilcock



A Commissioner for Taking Affidavits

RED\35324\21\MICHTREB.STA

EXHIBIT "A"

CURRICULUM VITAE

NAME: Michael John Trebilcock

DATE OF BIRTH: 15 September, 1941

CITIZENSHIP: Canadian

MARITAL STATUS: Married: Five children

DEGREES: LL.B (University of Canterbury, New Zealand)
LL.M (University of Adelaide, South Australia)

EMPLOYMENT HISTORY:

1. Appointed full-time Tutor, Law School, University of Adelaide, January, 1963.
2. Appointed Lecturer in Law, Adelaide, January, 1964.
3. Appointed Senior Lecturer, Adelaide, January, 1967.
4. Barrister and Solicitor of the Supreme Court of New Zealand; 1964 -
5. Visiting Associate Professor of Law, McGill Law School 1969-1970.
6. Associate Professor of Law, McGill Law School 1970-1972.
7. Professor of Law, University of Toronto Law School, 1972-present.
8. Barrister and Solicitor of the High Court of Ontario, 1975-
9. National Vice-President, Consumers Association of Canada 1974-1975.
10. Chairman, Regulated Industries Program, Consumers Association of Canada, 1973-1975.
11. Member, Academic Advisory Panel, Department of Consumer and Corporate Affairs, 1973-1975.
12. Chairman, Consumer Research Council, 1975-1976.

13. Research Director, Professional Organizations Committee, Government of Ontario, 1976 to 1980.

14. Participant, Summer Institute, Economics for Law Professors University of Rochester, 1974.

15. Fellow in Law and Economics, University of Chicago Law School 1976.

16. Member of the Presidential Advisory Committee on Institutional Strategy (PACIS), University of Toronto 1982-1983.

17. Acting Research Director; Institute of National Affairs, Papua New Guinea, 1982.

18. Lay Member - Canadian Competition Tribunal 1987-89.

19. Visiting Professor, Yale Law School, January to June, 1985.

20. University Law School Committees (at various times): Admissions Committee, Curriculum Committee, Graduate Committee, Hiring Committee.

21. Director, Laidlaw Foundation, 1985 -

22. Member, Research Board, University of Toronto 1986 - 1988

23. Elected Fellow of Royal Society of Canada, 1987.

24. Recipient, University of Toronto Teaching Award, 1986

25. Winner of the Walter Owen Prize for Best English Legal Text in Canada, 1986-1988 for The Common Law of Restraint of Trade.

26. Appointed University of Toronto Professor, 1990.

27. Recipient of the 1990 Joint Award of the Canadian Law Teachers Association and Law Reform Commission of Canada for outstanding contributions to legal research and law reform.

28. Member of the Research Council of the Canadian Institute of Advanced Research (1982 - 1986).

29. Director, Law and Economics Programme, University of Toronto Law School, 1976 to present.

30. Chairman, International Business and Trade Law Programme, University of Toronto Law School, 1988 -

GRADUATE SUPERVISION

25 LL.M's since 1969
8 Ph.D's

GRADUATE COURSES TAUGHT

Alternative Approaches to Legal Scholarship (1985-)

The Public Policy-Making Process (Department of Economics, 1982-1985)

Social Regulation (Osgoode Hall Part-time LL.M., 1987)

International Trade Regulation (Osgoode Hall Part-Time LL.M., 1990).

LL.B. COURSES TAUGHT AT VARIOUS TIMES

Commercial Law; Corporate Law: Contract Law; Competition Law; Government Regulation; Social Security Law; Economic Analysis of Law; International Trade Regulation; The Limits of Freedom of Contract; Debtor - Creditor Law; Consumer Protection Law.

RESEARCH FUNDING

PROGRAMME GRANTS

Connaught Seed Grant to Law and Economics Programme, 1976-1980 . . . . $140,000

Donner Foundation Grant to Law and Economics Programme $150,000

Connaught Grant to Legal Theory and Public Policy Programme, 1985 - $800,000

Olin Grant to Law and Economics Programme, 1989 - $330,000

PROJECT GRANTS (WITH OTHERS)

Crown Corporations in Canada (Ontario Economics Council 1978)
$ 30,000

Federalism and the Canadian Economic Union (Ontario Economic Council and Canada - U.S. Law Institute 1980)
$ 80,000

The Choice of Governing Instrument (Economic Council of Canada 1980)
$ 80,000

The Political Economy of Business Bailouts (Ontario Economic Council 1984)
$ 80,000

The Political Economy of Economic Adjustment (Macdonald Royal Commission, 1985)
$ 15,000

Adjusting to Trade (Economic Council of Canada, 1988)
$ 15,000

Medical Malpractice (Federal-Provincial Health Care Task Force, 1988)
$ 55,000

American Law Institute, Tort Reform Project
$ 80,000

PUBLICATIONS:

BOOKS:

A Casebook on Company Law, (Sweet and Maxwell, U.K. 1977) with H.R. Hahlo

The Professions and Public Policy (University of Toronto Press, 1978) with Slayton (eds.).

Handbook on Consumer Rights in Canada (C.B.C., 1978; revised edition forthcoming)

Professional Regulation (Ontario Govt. Printer, 1979) with Tuohy and Wolfson.

Debtor and Creditor Casebook, (University of Toronto Press, 1982) with Reiter, Laskin, Springman and Gertner.

Lawyers and the Consumer Interest Evans and Trebilcock (eds.) (Butterworths, 1982).

Federalism and the Canadian Economic Union edited with Prichard, Whalley and Courchene, (University of Toronto Press, 1983).

The Political Economy of Business Bailouts with Chandler, Quinn, Halpern and Gunderson, (Ontario Economic Council, 1986).

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The Common Law of Restraint of Trade: A Legal and Economic Analysis (Carswell, Toronto, 1986) (winner of Walter Owen Prize).

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Trade and Transitions (with Chandler and Howse) (Routledge, 1990.

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The Limits of Freedom of Contract (Harvard University Press, 1993).

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International Trade Regulation (with Howse) (Routledge, 1995)

Unfinished Business: Reforming Trade Remedy Laws in North America (With Boddez) (C.D. Howe, 1993) .

CHAPTERS IN BOOKS

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"The Consumer Interest and Regulatory Reform", in Doern (ed.), The Regulatory Process in Canada (Macmillan, 1978).

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"Economic Analysis of Commercial Law", (with Prichard) (Annual Commercial Law Workshop Volume, 1978).

"Markets for Regulation", (with Waverman, Prichard), in Government Regulation (Ontario Economic Council, 1978).

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"The Consumer Interest and the Regulatory Process", (with Prichard and Waverman), in Duggan and Dorvall (eds.), Consumer Protection Law and Theory (Law Book Co., 1980).

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"An Approach to Framing Regulatory Policies for the Professions", (with Tuohy and Wolfson) in Rottenberg (ed.), Occupation Licensure, (American Enterprise Institute, 1980).

"Regulating the Quality of Psychotherapeutic Services", (with Shaul) in Dewees (ed.), Quality Regulation, (1983); also in Journal of Law and Human Behaviour, (1983).

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"When does a Settlement 'Take Effect'?" (Succession Duty) (1969) 42 Australian Law Journal 308.

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EXHIBIT "B"

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