

COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Director of Investigation and Research for orders pursuant to Section 92 of the Competition Act, R.S.C. 1985, C.C-34, as amended;

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

BETWEEN:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

|  |                       |
|--|-----------------------|
| COMPETITION TRIBUNAL<br>TRIBUNAL DE LA CONCURRENCE |                       |
| FILED  | OCT 23 1992 <i>rs</i> |
| REGISTRAR - REGISTRARE                             |                       |
| OTTAWA, ONT. <i>#260</i>                           |                       |
| PRODUIT  |                       |

Applicant

AND

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

Respondents

AFFIDAVIT OF D. JEFFREY HARDER

(23 OCTOBER 1992)

COMPETITION TRIBUNAL  
TRIBUNAL DE LA CONCURRENCE

File No.  
No. du dossier CT-90/01

Sci V  
et Southam

Exhibit No.  
No. de la pièce A-119

Filed on  
Déposée le 10:10 Nov. 9, 1992

Registrar  
Greffier Y. Sellheimer

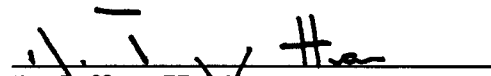
AFFIDAVIT


I, D. JEFFREY HARDER, of the City of Vancouver, and the Province of British Columbia, make oath and say as follows:

1. I am a Chartered Accountant, a Chartered Business Valuator, a Certified Management Consultant and an Accredited Senior Appraiser. My curriculum vitae is attached as Exhibit A. Since 1989 I have been a partner in the Firm of BDO Dunwoody Ward Mallette, Chartered Accountants and Consultants. From 1980 to 1989 I was employed by BDO Dunwoody Ward Mallette, Chartered Accountants and Consultants. My professional practice is in the areas of business and securities valuation, mergers and acquisitions, litigation support and financial consulting.
2. I have been retained by the Director of Investigation and Research in connection with this proceeding to carry out business valuation and financial analyses in regard to Southam Inc.'s direct and indirect acquisitions of equity interests in the business of publishing The Vancouver Courier, the North Shore News and the Real Estate Weekly; and to consider the business and strategic implications to a potential purchaser of the divestiture by Lower Mainland Publishing Ltd. of either the North Shore News Real Estate Homes Supplement or the Real Estate Weekly North Shore Edition.

SWORN before me at the  
City of Vancouver, in the  
Province of British Columbia  
on the 23rd day of October 1992

)  
)  
)  
)

  
D. Jeffrey Harder

  
Commissioner for Taking Affidavits

**SUSAN L. JULMI**  
*Barrister & Solicitor*  
2800 PARK PLACE  
666 BARRARD STREET  
VANCOUVER, B.C.  
V6C 2Z7

**D. JEFFREY HARDER  
CURRICULUM VITAE**

**PROFESSIONAL STATUS**

Partner, BDO Dunwoody Ward Mallette, Chartered Accountants and Consultants, Vancouver, British Columbia

**EDUCATION AND PROFESSIONAL DESIGNATIONS**

BA, Political Science (Brandon University) 1979  
CA, Institutes of Chartered Accountants of Manitoba and British Columbia (University of Manitoba, Faculty of Administrative Studies) 1983  
CBV, Canadian Institute of Chartered Business Valuators (University of Toronto, Program of Studies in Business and Securities Valuation) 1987  
CMC, Institute of Certified Management Consultants of Canada 1989  
ASA, Senior Member of The American Society of Appraisers 1990

**AREAS OF PRACTICE**

Business and securities valuations  
Mergers and acquisitions  
Litigation support  
Financial consulting

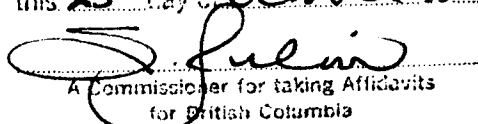
**PROFESSIONAL EXPERIENCE**

Four years in BDO Dunwoody Ward Mallette's general practice areas of accounting, auditing and taxation.

Eight years in BDO Dunwoody Ward Mallette's special practice areas involved exclusively in business and securities valuations, mergers and acquisitions, litigation support and financial consulting.

Business and securities valuations of private and public companies for:

Income tax matters  
Corporate reorganizations  
Loan guarantees  
Matrimonial settlements  
Employee share purchases  
Purchase and sale of business interests  
Securities regulations  
Estate and retirement matters  
Insolvency related assignments  
Shareholder/partner disputes

This is Exhibit "A" referred to in  
the Affidavit of D. Jeffrey Harder  
Sworn before me at Vancouver, B.C.  
this 23<sup>rd</sup> day of October 1992  
  
A Commissioner for taking Affidavits  
for British Columbia

**D. JEFFREY HARDER  
CURRICULUM VITAE**

**PROFESSIONAL EXPERIENCE (Continued)**

Litigation support assignments includes:

- Economic loss calculations
- Loss of profit claims
- Insurance claims
- Accounting investigations
- Insolvency related assignments
- Income tax matters
- Matrimonial settlements
- Shareholder/partner disputes
- Product liability claims
- Guarantor actions
- Anti-competition matters

Financial consulting assignments includes:

- Mergers, acquisitions and divestitures
- Feasibility and investment analysis
- Financial proposals
- Workouts and investment monitoring
- Business and strategic planning

Industry experience includes:

- A broad range of manufacturing industries
- Service and retail/wholesale trading
- Communications
- Professional practices
- Hotels, restaurants and tourism and recreation facilities
- Consumer products
- Property ownership, construction and management
- Transportation
- Forest products, including logging, sawmilling and pulp mills
- Mining and oil and gas
- Food processing

**D. JEFFREY HARDER  
CURRICULUM VITAE**

**GENERAL**

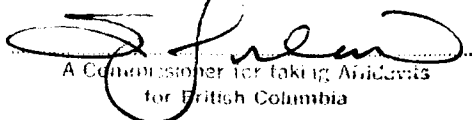
Mr. Harder is past Secretary and President of the British Columbia Chapter of the Canadian Institute of Chartered Business Valuators. He is currently a member of the Canadian Institute of Chartered Business Valuators' national Board of Directors. He has lectured on financing for the Canadian Institute of Chartered Accountants and on valuation issues for law firms, financial institutions and the Canadian Institute of Chartered Business Valuators. Mr. Harder has written articles on valuation subjects for several professional publications, including CA Magazine. Mr. Harder has qualified as an expert witness and given testimony in the British Columbia Courts, the Tax Court of Canada and before the Competition Tribunal of Canada.

EXHIBIT B

REPORT TO: THE DIRECTOR OF INVESTIGATION AND RESEARCH

BY: D. JEFFREY HARDER

RE: THE DIVESTITURE BY LOWER MAINLAND PUBLISHING LTD.  
OF EITHER THE NORTH SHORE NEWS REAL ESTATE HOMES  
SUPPLEMENT OR THE REAL ESTATE WEEKLY NORTH SHORE  
EDITION.

This is Exhibit "B" referred to in  
the Affidavit of D. Jeffrey Harder  
Sworn before me at Vancouver, B.C.  
this 23<sup>rd</sup> day of October 1992  
  
A Commissioner for taking Affidavits  
for British Columbia

## CONTENTS

|   | PAGE |
|---|------|
| INTRODUCTION .....  | 1    |
| SCOPE OF REVIEW .....   | 2    |
| THE VALUATION AND PRICING OF COMMUNITY NEWSPAPERS<br>AND RELATED BUSINESSES ..... | 2    |
| THE PUBLICATIONS .....  | 3    |
| POTENTIAL PURCHASERS .....  | 4    |
| PURCHASE CONSIDERATIONS .....   | 5    |
| CONCLUSIONS .....   | 7    |

## INTRODUCTION

1. I have been retained by the Director of Investigation and Research (the "Director") in connection with this proceeding to carry out business valuation and financial analyses in regard to Southam Inc.'s direct and indirect acquisitions of equity interests in the business of publishing The Vancouver Courier, the North Shore News and the Real Estate Weekly; and to consider the business and strategic implications to a potential purchaser of the divestiture by Lower Mainland Publishing Ltd. of either the North Shore News Real Estate Homes Supplement or the Real Estate Weekly North Shore Edition.
2. My comments include a discussion of the business implications to a purchaser of purchasing either the North Shore News Real Estate Homes Supplement or the Real Estate Weekly North Shore Edition from Lower Mainland Publishing Ltd.
3. In the context of this report, the following is a summary of certain defined terms used throughout:
  - (a) North Shore News ("NSN");
  - (b) North Shore News Real Estate Homes Supplement ("NSN Homes Supplement");
  - (c) Real Estate Weekly ("REW");
  - (d) Real Estate Weekly North Shore Edition ("REW North Shore");
  - (e) collectively NSN Homes Supplement and REW North Shore (the "publications");
  - (f) Lower Mainland Publishing Ltd. ("LMPL"); and
  - (g) Southam Inc. ("SNG").
4. On 15 August 1991 I completed my first Affidavit ("1991 Affidavit") in connection with these proceedings. For purposes of this Affidavit I have assumed that since the completion of my 1991 Affidavit, there has been no material change in the operations of either LMPL, NSN, NSN Home Supplement, REW or REW North Shore.



## SCOPE OF REVIEW

5. My 1991 Affidavit sets out the documents made available to me by the Director. In addition to the materials I reviewed in the preparation of my 1991 Affidavit, I reviewed the following.
  - (a) Reasons and Order of the Competition Tribunal dated 2 June 1992.
  - (b) Written submissions and financial documents prepared by Sam Grippo in the context of giving evidence before the Tribunal during 1991 in these proceedings.
6. I have not reviewed detailed financial information (operating revenues and costs) for the NSN Homes Supplement and the REW North Shore. From Mr. Grippo's 1991 evidence I have been able to ascertain that for the year ended 31 August 1991 NSN Homes Supplement operating revenues were \$1.284 million and REW North Shore operating revenues were \$1.164 million. Since neither the NSN or REW specifically allocate costs to the publications, I do not know what the historic operating costs or operating earnings of either of these papers have been. Because of this limitation in the scope of my review, I am able only to comment in a general way on the likely or prospective financial performance for either the NSN Homes Supplement or the REW North Shore on a stand alone basis.

## THE VALUATION AND PRICING OF COMMUNITY NEWSPAPERS AND RELATED BUSINESSES

7. On pages 11 to 15 of my 1991 Affidavit I set out the basic valuation principles and business issues that I believe a purchaser of either the NSN Homes Supplement or REW North Shore would consider. In addition, a potential purchaser would consider the specifics of the assets acquired in conjunction with either publication and the impact of the acquisition on its business and investment objectives. The remainder of this Affidavit sets out these specific considerations.

## THE PUBLICATIONS

8. Since both publications are only a component of two larger publications (NSN and all of the REW editions) the first aspect of the divestiture to be considered is what assets would be included in a sale of either publication. Presumably both NSN and REW require existing computer and printing equipment to continue the production of the remaining papers (NSN and the remaining REW publications). Consequently, a sale of either of the publications would likely not include any tangible assets.
  
9. A prospective purchaser buying only the intangible assets of the publications would consider its purchase decision based on the intangible assets included in the transaction. The attractiveness of the acquisition, and the financial viability of either publication, would be a function of the legal rights of ownership and related agreements that NSN or REW conveyed to a purchaser. The following is a summary of certain important intangible assets that I would expect to be considered as components of a potential transaction.
  - (a) Would the purchaser be allowed to use the masthead of either publication.
  - (b) Would the rights or obligations with any advertising contracts with realty companies be transferred to the purchaser.
  - (c) Would the purchaser be restricted in any way from expanding the publication. For instance, as a print vehicle for expanding into a community paper competing with the NSN or as a basis for opening real estate papers in other Lower Mainland markets competing with REW.
  - (d) Would LMPL commit to provide financially attractive long-term supply contracts for printing and/or publication distribution.
  - (e) Would LMPL and/or SNG be prepared to enter into a typical commercial non-compete contract with the purchaser. That is, would LMPL and/or SNG agree to shut-down the remaining real estate paper on the North Shore, and would either LMPL or SNG agree not to commence another competing real estate publication on the North Shore in the future.

10. LMPL's willingness to provide these rights or intangible assets would have a major impact on a purchaser's outlook as to the attractiveness of either of the publications and as to whether the publications would be financially viable. If LMPL did not provide virtually all of these rights to a purchaser, there would be little difference between purchasing either the NSN Homes Supplement or the REW North Shore and commencing a new publication on the North Shore. If LMPL did not provide virtually all of these rights, the only significant difference between a new entry or a purchase would be the customer contacts (with realty companies) the employees (who were transferred to the purchaser) of either publication had.
11. Without the ability to use the credibility of either the NSN or REW, including the masthead, a purchaser would not have much advantage over a new paper. The realty companies are quite sensitive to advertising price changes. A start-up publication, competing on price, may be attractive to advertisers in one sense, but if home buyers do not read the publication it is of little benefit to the advertisers. A buyer would want to ensure that it in effect was buying an established paper which the realtor would advertise in.

#### POTENTIAL PURCHASERS

12. Assuming LMPL could effectively sell the publications as stand alone papers, there are, in my view two basic classes of purchasers for either publication. The first is a corporate industry buyer and the second is an individual industry buyer. This conclusion does not preclude the notion of a non-industry buyer as a purchaser. However, as is the case with most business acquisitions, someone unfamiliar with the business or at least the communications industry is an unlikely buyer.
13. Both these classes of buyers would have different motivations with respect to a purchase of the publications. A corporate industry buyer (for instance, a Lower Mainland, British Columbian or Canadian newspaper or communications company) would likely acquire the publications with a larger strategic motivation in mind. NSN Homes Supplement has operating revenues of about \$1.3 million and REW North Shore has operating revenues of about \$1.2 million. Either of these potential stand alone businesses are not large enough in their own right to be attractive to a corporate acquiror. A corporate acquiror would be attracted to the publications as an add-on

to an existing Lower Mainland or British Columbian newspaper business or as a basis for further expansion.

14. For the potential of further expansion to exist means that a corporate acquiror would have to be able to acquire either publication without restriction. With reference to my previous comments on what rights would be sold to a purchaser, the corporate acquiror would want the unrestricted ability to purchase a discernable paper and expand it, or change it as it saw fit to suit its corporate objectives.
15. In contrast, I would expect that an individual purchaser would have different investment objectives. For purposes of this analysis, an individual is probably someone already involved in the industry (for instance, employees of the NSN or REW). This category of purchaser is more likely to view the purchase of either publication from a straight investment perspective. Can I purchase a publication with revenues of either \$1.2 million or \$1.3 million and earn a reasonable return on investment? Will I be able to acquire publication rights such that I can reasonably anticipate maintaining the revenue base? While an individual may have expansion objectives, he is probably more concerned with the continuing economic survival of the publication in its current form. The continuing economic survival of either publication will be to a large degree impacted by the ownership rights conveyed to it by LMPL.

#### PURCHASE CONSIDERATIONS

16. The valuation that a potential purchaser would place on either publication would be a function of traditional valuation parameters and the assets acquired in association with either publication. Since it is unclear what assets would be included in a purchase (ie. what legal rights to intangible assets a purchaser would be given) I cannot comment on the valuation of the publications with any certainty.
17. A purchaser would consider whether it would be financially better off to either start a new North Shore real estate publication or buy either NSN Homes Supplement or REW North Shore. In buying either publications, it appears that a purchaser would not be purchasing any production or distribution capabilities. Consequently, its costs of operation would not be substantially different between a start-up or a purchase.

There may be some differences in the cost of operation for another communications company in the Lower Mainland through excess printing capacity or an existing distribution infrastructure.

18. The key distinction between a purchase of either publication and a start-up of a new publication relates to the revenue base that could be acquired if title rights were acquired. This revenue base reflects the credibility that the publications have attained with realty companies. While it is clear that realtors are sensitive to advertising rate changes, they advertise in the publications because home buyers use the publications. From a purchaser's perspective this revenue base justifies an acquisition in that it would not have to build up an advertising base and incur losses until a new real estate paper establishes credibility.
19. In order to ensure that it would secure the revenue base sufficient to justify the acquisition of either paper, a purchaser would require ownership of the masthead and other title rights such that it could operate the paper on a stand alone basis. From NSN's or REW's perspective this would be almost impossible to achieve. NSN and REW would effectively have to allow another owner to operate with its masthead on a competing publication. Obviously, LMPL would be adverse to this.
20. Without the security of a revenue base, most potential purchasers would be deterred from acquiring either publication. Assuming the revenue base could be reasonably secured through commercial agreements, an individual purchaser would probably operate the paper as a stand alone publication. The size of the paper would likely not justify investment in printing capacity unless sizable growth was anticipated. The distribution system would at least initially be contracted out. Based on the relative size of the publications, I would anticipate that an individual purchaser would be unable to secure financially attractive rates for both printing and distribution contracts. A purchaser would not be able to realize the cost savings from the economies of scale which the publications enjoyed as part of NSN or REW. This fact would limit the profitability of the papers.
21. Whether or not an individual purchaser is able to earn a reasonable return from the investment in the publications is a function of several key factors. The first is what is the price for the investment, which in turn is a function of the strength of the

ownership rights that LMPL would be prepared to sell to a potential purchaser. Next is the level of profitability that one can anticipate from the publication. Assuming a revenue base of in excess of \$1 million per annum, some level of profitability should be achievable with time. With restrictions on the ability to expand or enhance the publication, an individual purchaser would have to be satisfied that he would be able to operate the publication in such a way as to justify the purchase price for \$1.2 million to \$1.3 million in advertising volume. The only opportunity for growth would be the expansion of real estate advertising on the North Shore.

22. Financial viability and return on investment considerations are similar for a corporate buyer. A corporate buyer would be concerned about the ability to use the publication as a vehicle for growth or expansion. The purchase of a business generating \$1.2 million to \$1.3 million in revenues is not in itself particularly attractive unless the publication has good growth prospects in its existing market or expansion into new markets was possible. Moreover, without either existing publications or printing capacity in the Lower Mainland, a corporate acquiror would find it difficult to reach a size of business that would produce economies of scale through printing, paper and distribution savings. For these reasons, I do not believe that the purchase of either publication to operate as a stand alone would be particularly attractive to a corporate acquiror.

## CONCLUSIONS

23. There are two key considerations in assessing the financial viability and attractiveness of a purchase of either the NSN Homes Supplement or the REW North Shore.
  - (a) What assets and rights would a purchaser be acquiring.
  - (b) What restrictions and constraints would be placed on a purchaser of either publication.
24. Practically, it would be very difficult to separate the publications from either NSN or REW and operate them on a stand alone business under the same masthead. Unless a purchaser could in effect acquire the right to operate either publication as a stand alone, there is little difference between an acquisition or the start-up of a new

publication. The financial opportunity is to provide the realty community with a competitively priced publication that meets its advertising needs. The ability to purchase an established and credible publication would be acceptable to a start-up. However, if the purchaser could not purchase the legal rights to buy the publications as stand alone businesses, there would be little difference with a start-up. Even if the publications could be acquired as stand alone, most purchasers would not be able to achieve the economies of scale which they benefited from as part of larger publications.

25. If either publication were purchased, the long-term success of the paper would depend on the acquiror's rights to expand or adopt the publication to changing circumstances. Without restrictions, the purchase is attractive in that a purchaser would be in a position to expand into new markets and achieve growth or adapt to new business developments. With restrictions, a purchaser is faced with the prospect of serving a defined geographic market with one specialized product. There is little opportunity for adding new revenue producing activities or building the business to a size where costs savings could be achieved through the purchasing power of a larger organization.