

Original

No. CT-90/1

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 interests in the businesses of publishing The Vancouver Courier, the North Shore News and the Real Estate Weekly

B E T W E E N

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED	MAR 4 1991 <i>JD</i>
REGISTRAR - REGISTREUR	
OTTAWA, ONT.	#32(a)

THE DIRECTOR OF INVESTIGATION AND RESEARCH

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 ANDRE BRANTZ
SWORN THE 4TH DAY OF MARCH, 1991

Stanley Wong
Mary L. Ruhl

Counsel for the Director
of Investigation and Research

Davis & Company
Barristers and Solicitors
2800 - 666 Burrard Street
Vancouver, British Columbia

Tel: 604-687-9444
Fax: 604-687-1612

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Respondents

AFFIDAVIT OF ANDRE BRANTZ

I, ANDRE BRANTZ, public servant, of the City of Ottawa in the Regional Municipality of Ottawa-Carleton, in the Province of Ontario MAKE OATH AND SAY AS FOLLOWS:

1. I am employed by the Government as a senior commerce officer on the staff of the Director of Investigation and Research

(the "Director") under the Competition Act. I have been engaged since June of 1990 in the review by the Director of the transactions completed on January 27, 1989 and May 8, 1990 whereby the Respondent Southam Inc. ("Southam") acquired direct and indirect control of, or a significant interest in, inter alia, 13 community newspapers, a real estate advertising publication, three flyer distribution businesses and two printing businesses operating in the Lower Mainland area of the Province of British Columbia. During the course of this review, I have received information in writing and orally from representatives of the Respondents and their counsel, as well as from others. Accordingly, I have knowledge of the matters hereinafter deposed to.

2. This Affidavit is sworn and filed in support of the application by the Director by an Interim Order pursuant to section 104 of the Competition Act pending the disposition of the Notice of Application filed by the Director on November 29, 1990 (the "Application") wherein the Director is seeking remedial orders pursuant to section 92 of the Competition Act in respect of the direct and indirect acquisition by Southam of the businesses of publishing The Vancouver Courier, the North Shore News and the Real Estate Weekly (the "Businesses").

3. Pursuant to transactions completed on January 27, 1989 and May 8, 1990 Southam acquired direct and indirect equity interests in 13 community newspapers, a real estate advertising

publication, three flyer distribution businesses and two printing businesses operating in the Lower Mainland area of British Columbia. The transactions included the acquisition the Businesses. Particulars of the transactions are described at paragraphs 8 to 30 of the Application and confirmed with minor revisions by the Response at paragraphs 10 and 11.

4. The transactions completed on January 27, 1989 relate only to the acquisition by Southam of 49% of the issued and outstanding shares of the Respondent North Shore Free Press Ltd. ("NSFP") which publishes the North Shore News and the option to purchase the remaining shares of NSFP. On May 8, 1990, these shares were transferred by Southam to the Respondent Lower Mainland Publishing Ltd.

5. A graphic summary of the businesses and companies acquired and their corporate affiliations are described in the document "Corporate Structure as May 8, 1990", a true copy of which is attached as Exhibit "A" to this Affidavit. I am advised by Stanley Wong, counsel for the Director, and verily believe that on or about January 24, 1991 he and Glenn F. Leslie, counsel for the Respondents, agreed that Exhibit "A" will be filed as a replacement to Appendix A to the Application.

6. The Director did not become aware of the transactions completed on May 8, 1990 until after their completion. At the

request of the Director, Southam agreed to enter into an arrangement whereby the companies and businesses acquired would be held separate pending a review of the merger transactions by the Director. Attached hereto and marked as Exhibit "B" to this Affidavit is a true copy of a letter dated May 11, 1990 from George Addy to John J. Quinn confirming the agreement. Attached hereto and marked as Exhibit "C" to this Affidavit is a true copy of a letter dated May 11, 1990 and received May 17, 1990 from John J. Quinn to Gilles Menard outlining the framework for the proposed hold separate undertakings.

7. On June 7, 1990, Southam and others gave undertakings to the Director to operate the companies and businesses acquired independently of each other and of the other companies and businesses owned, directly or indirectly, by Southam (the "Undertakings"). Pursuant to the Undertakings, David W. Perks, publisher of The Gazette of Montreal, a newspaper owned by Southam was appointed by Southam to monitor compliance by the companies and businesses acquired with the terms of the Undertakings. Mr. Perks was the Southam employee with the major responsibility for the design and implementation of the merger transactions. He also undertook on behalf of Southam supervisory responsibilities of the operations of the Respondent Lower Mainland Publishing Ltd. ("LMPL") and the LMPL group of companies of which the challenged companies and businesses belong. Attached hereto and marked as Exhibit "D" to this Affidavit is a true copy of the Undertakings.

8. In connection with the review of the merger transactions, the Director had extensive discussions with representatives of the Respondents and their counsel. Also, the Director requested and received from Southam and from, or on behalf of, some of the other Respondents, information, primarily in writing, about the companies and businesses acquired and the markets in which the businesses operate. In addition, the Director obtained information, in writing and orally, from other persons including persons who participate in the markets in which the companies and businesses acquired operate.

9. The Undertakings were extended from time to time as necessary in order to allow the Director to continue his review of the merger transactions.

10. In late August 1990, counsel for Southam and the Director entered into negotiations to revise the Undertakings, primarily for the purpose of releasing from the Undertakings those companies and businesses with which the Director no longer had any concerns.

11. On September 14, 1990, the Undertakings were replaced with the Amended Undertakings, a true copy of which is attached hereto and marked as Exhibit "E" to this Affidavit.

12. By a letter dated October 4, 1990, a true copy of which

is attached hereto and marked as Exhibit "F" to this Affidavit, George Addy advised John J. Quinn, inter alia, that:

- a. he did not believe that the Director had, at that time, sufficient grounds to file an application under section 92 of the Act in respect of 14 companies and businesses;
- b. the Director had instructed counsel to prepare an application to the Competition Tribunal under section 92 in respect of the other companies and businesses acquired.

Accordingly, the Director released from the Amended Undertakings the companies and businesses with which he no longer had any concerns. Thereafter, discussions continued between Southam and the Director. The Amended Undertakings were extended from time to time and expired on November 23, 1990.

13. The Undertakings and the Amended Undertakings were in effect from June 7, 1990 to November 23, 1990.

14. On November 29, 1990, the Director filed the Application challenging the acquisition of the Businesses.

15. On December 3, 1990 the Respondents commenced an action by statement of claim in the Federal Court of Canada, Trial Division, T-3180-90 seeking declarations that the merger provisions of the Competition Act, the Competition Tribunal Act and the

Competition Tribunal were contrary to Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights. Also on December 3, 1990, the Respondents filed a Notice of Motion seeking an order staying the proceedings in the Competition Tribunal in respect of the Application. The Respondents agreed to abide by the Amended Undertakings with respect to the Businesses pending the disposition on the merits of the stay application. Attached hereto and marked as Exhibit "G" to this Affidavit are true copies of the Statement of Claim, Statement of Defence and Notice of Motion. Attached hereto and marked as Exhibit "H" to this Affidavit are true copies of two letters dated December 4, 1990 exchanged between counsel for the parties relating to the agreement to abide by the Amended Undertakings.

16. Now produced and shown to me and marked as Exhibit "I" to this Affidavit is the Affidavit of Paul Renaud by the Respondents filed in support of the stay application.

17. On January 24, 1991, the motion for a stay of proceedings was heard before the Honourable Mr. Justice MacKay. Judgment was reserved. On February 13, 1991, Mr. Justice MacKay delivered his Judgment dismissing the stay application. As of February 13, 1991, the Respondents are not obliged to abide by the Amended Undertakings.

18. On February 22, 1991, the Respondents filed a Notice of

Appeal in the Federal Court of Appeal in respect of the judgment of Mr. Justice MacKay dismissing the motion for a stay of proceedings. Attached here to and marked as Exhibit "J" to this Affidavit is true copy of the Notice of Appeal.

Sworn before me this 4th
day of March, 1991 in
the City of Hull in the
Province of Quebec

Madeline Dumont, avocat.
A Commissioner for Oaths
in and for the Province of
Quebec

A handwritten signature in black ink, appearing to read 'Andre Brantz', written over a horizontal line.

ANDRE BRANTZ

APPENDIX A

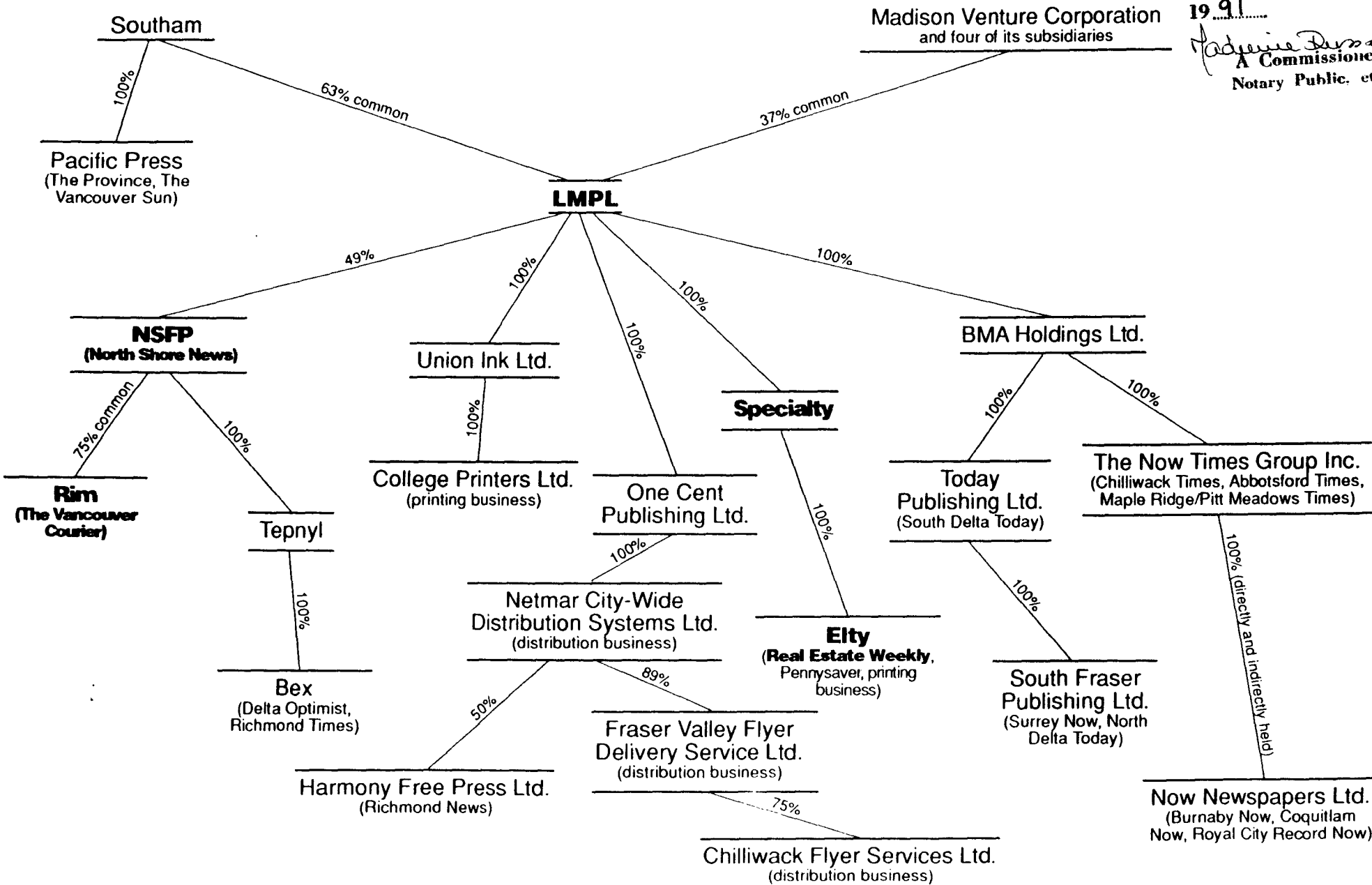
Corporate Structure - As of May 8, 1990

This is Exhibit "A" to the affidavit of **ANDRE BRANTZ**

sworn before me this 4th day of March

1991

Madeline Dessaut,
A Commissioner
Notary Public, etc





Consommation
et Corporations Canada

Consumer and
Corporate Affairs Canada

Directeur des
enquêtes et recherches

Director of
Investigation and Research

Bureau de la
politique de concurrence

Bureau of
Competition Policy

Place du Portage 1
50 Victoria
Hull, Québec
K1A 0C9

Fac-similé - Facsimile
(819) 953-5013
Fusionnements - Mergers
(819) 953-6169

Votre référence Your file

Notre référence Our file

Tél - Tel

This is Exhibit " B "

to the affidavit of

ANDRÉ BEANTZ

sworn before me this

4th day of March

19 91

Madeline Desautels, avocat
A Commissioner *Que*
Notary Public, etc

May 11, 1990

Mr. J.J. Quinn
Blake, Cassels & Graydon
P.O. Box 25
Commerce Court West
Toronto, Ontario
M5L 1A9

Dear Mr. Quinn:

With reference to our recent telephone conversations, held in the week of May 7th, 1990, this is to confirm that you have undertaken on behalf of your client, Southam Inc., to enter into a Hold Separate arrangement with the Director of Investigation and Research regarding Southam's recent acquisition of fourteen community newspapers in the lower mainland of British Columbia. The details of the Hold Separate are to be finalized to our mutual satisfaction in the speediest fashion. Furthermore, please be advised that the Director of Investigation and Research will require your consent that the Hold Separate be made public.

I also wish to advise that given the lack of information currently available to us, we are considering the alternatives available to us under the Act to compel production of relevant information.

Yours very truly,

George N. Addy
Deputy Director of
Investigation and Research
(Mergers)

Canada

MAY 17 1990

BLAKE, CASSELS & GRAYDON

Barristers & Solicitors
Patent & Trade Mark Agents

May 11, 1990

Consumer and Corporate Affairs CANADA Consumption of Corporations CANADA		Box 25, Commerce Court West Toronto, Canada M5L 1A9 Telephone 416-863-2400 Facsimile 416-863-2653 Telex 06-219687
TO A	MAY 17 1990	Our Reference:
File		JOHN J. QUINN
Drawn		Direct Dial: (416) 863-2048
Charge to		Direct Fax: (416) 863-4251
Remit to		Reference: 00266/00261

VIA FACSIMILE

Mr. Gilles Menard
Acting Chief
Merger Branch
Consumer & Corporate Affairs
Bureau of Competition Policy
Competition Act
Place du Portage, Phase 1
Ottawa, Hull
K1A 0C9

ATTENTION: Mr. Simon Wapniarski
Senior Commerce Officer

This is Exhibit "C"
to the affidavit of

ANDRE BRANTZ

sworn before me this

4th day of March

1991

Madeleine Desautels, avocat
A Commissioner
Notary Public, etc.

Re: Southam Inc.
Recent Acquisitions in Lower Mainland

1. Corporate Structure of Lower Mainland Publishing Inc.
("LMPL")

See chart attached. Please note that the subsidiaries of the Madison Group corporations are not listed; their lines of business are discussed in the narrative below.

2. Publication Businesses of LMPL

RIM Publishing Inc. ("RIM") publishes the Vancouver Courier. The Courier comes out twice weekly and is delivered free of charge direct to residences in an area which comprises most of the City of Vancouver. The Sunday edition has a circulation of 120,000; the Wednesday issue has a distribution of 65,000. Recently, the Courier has added a "Neighbourhood News" supplement to the Wednesday edition. Four such supplements, aimed at distinct but slightly overlapping neighbourhoods, are disseminated on consecutive weeks. Each supplement has a circulation of 20,000. RIM also operates a

Northumbrian House, 14 Devonshire Square, London, England EC2M 4TB Telephone 01-377-6800
Facsimile 01-377-2917 Telex 94-13236

York Corporate Centre, 100 York Boulevard, Richmond Hill, Canada L4B 1J8 Telephone 416-733-4040
Facsimile 416-764-3127 Telex 06-219687

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small preprinting operation (it prepares newspaper layouts for printing by others), but we understand this business is not significant. RIM has provided to us substantial data on its operations, circulation and advertising base. A summary of that data is annexed to this letter as Appendix 1.

Bex Publishing Ltd. ("Bex") publishes and distributes three weekly newspapers in Delta and Richmond, B.C. namely, the Delta Optimist and The Richmond Times (the "Bex Papers"). Four editions of the Delta Optimist are produced during a week. The Wednesday issue is circulated in North Delta, Tsawwassen and Ladner to about 14,600 homes; the Thursday version, called the Delta Optimist Week End, is conveyed to 34,000 residences, in North Delta and West Surrey. The Friday and Sunday editions, called the Week End and Sunday News respectively, are disseminated to 14,600 households in South Delta. The Richmond Times, a recent start-up paper, is published twice weekly on Tuesdays and Fridays; the Friday issue is called The Richmond Times Week End. Both editions have a distribution of about 40,000.

Union Inc. Ltd., Specialty Publishers Ltd., Once Cent Publishing Ltd., Today Publishing Ltd. and their subsidiaries make up the Madison Group corporations. The Madison Group publishes and distributes free of charge the following controlled circulation community newspapers in the Lower Mainland of British Columbia: Burnaby Now, Royal City Record, Now (Coquitlam, Port Coquitlam and Port Moody), Maple Ridge-Pitt Meadows Times, Surrey Now, North Delta Today, South Delta Today, Abbotsford-Clearbrook Times, Chilliwack Times and Richmond News (collectively referred to as the "Madison Papers"). The Chilliwack Times is 75% owned by the Madison Group; the group has a half interest in the Richmond News. All other Madison Papers are wholly owned by the Madison Group. Burnaby Now, Now, Royal City Now and the Maple Ridge-Pitt Meadow Times are circulated twice weekly. The remainder of the Madison Papers are published once a week.

The Madison Group also publishes and distributes free of charge once a week the Real Estate Weekly, a specialty paper with a focus on real estate advertising. A separate edition is produced for each of 14 communities in the Lower Mainland area, which communities include every major population centre except White Rock. Some editions have been published since 1984, while others are relatively new. For example, the version circulated in Delta, B.C. has only been in existence for 11 months.

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NSFP produces and distributes the North Shore News, a tri-weekly, controlled circulation community newspaper in North and West Vancouver (collectively the "North Shore"). Recently, NSFP has started publishing three other small community papers in the North Shore: the Capilano Chronicle, the Lynn Valley Echo, and the West Van Villager. However, the North Shore News is by far the most important of NSFP's publications and it has the widest distribution.

Lower Mainland Publishing Ltd. and Tepnyl Holding Ltd. are holding companies with no operating businesses.

3. Other Businesses of LMPL

The Madison Group is involved in related businesses as well. Through two subsidiaries, College Printers Ltd. and ELTY Publications Ltd, it provides printing services to a number of customers, the largest being The Globe and Mail. Another group of subsidiaries headed by Netmar City-Wide Distributions Ltd. is active in distribution and delivery of printed publications and flyers throughout the Lower Mainland. The Madison Group has provided to us information on its publishing activities, but has yet to give us information on these printing and flyer businesses. A summary of the data we have collected on the Madison Group can be found in Appendix 3.

4. Southam Newspaper Group

Southam Newspaper Group ("SNG"), a division of Southam Inc., through its subsidiary Pacific Press Limited, publishes and distributes two daily newspapers: The Vancouver Sun and The Province (collectively the "Southam Papers"), both of which circulate throughout the Vancouver metropolitan area and the remainder of the Lower Mainland. SNG also has a division which does flyer distribution. SNG does not publish or circulate any community papers in the Lower Mainland, but it does own 49% of the issued and outstanding shares of NSFP. We have been informed that it is highly likely SNG will acquire the remaining 51% of the shares of NSFP in January, 1991.

5. Reason for the Transactions

We understand that the creation of LMPL through these transactions represents an attractive investment to SNG which puts it in partnership with several of the most successful community weekly paper entrepreneurs in the Lower Mainland. Moreover, SNG believes it can increase the value of these publications as businesses by making available to their

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publishers the financial resources of SNG and such of its expertise as may be applicable to weekly as opposed to daily papers.

Further, we understand SNG plans to maintain the weekly papers acquired and the Real Estate Weekly in essentially their present form. The managements of SNG's Lower Mainland community papers will be autonomous from the management of the Southam Papers and thereby retain their community roots and their 'small business' cost structures. The publications will keep their current formats; the Weekly Papers will still be focused on reporting local news and attracting local advertising and the Real Estate Weekly will still have real estate advertising as its focus.

6. Proposed Hold Separate Arrangement

The objective of hold separate undertakings is to maintain the firms involved in a merger as competitive, viable entities which can be divested, if necessary, during the period of time the Bureau of Competition Policy is reviewing the merger. We have provided above information on the businesses at issue in order to assist the Bureau in determining what undertakings are required to meet this object in this instance. Below we will review how these businesses operate and how this should be reflected in any hold separate undertakings.

The key elements of a successful weekly newspaper business are good management and the goodwill in the newspaper's name. Few tangible assets, other than office equipment, are needed to run a paper. In this case, LMPL, its subsidiaries and affiliates have tangible assets of less than \$7 million after depreciation. Most weekly publishers contract for printing and distribution services. There are no significant trade secrets. The only possible "confidential" information of interest for a weekly paper which is distributed free of charge is the paper's advertisers list - yet a paper publishes its advertiser list by way of advertisements in the ordinary course of business.

Consequently, we believe any hold separate undertakings given by Southam Inc. ("SNG") in regard to the recent LMPL acquisitions should be focused on the management of the firms involved and on preserving the goodwill in the publications of these firms. On the first issue, SNG is not only willing, but also desirous, for the management of its Vancouver daily papers to be separate and distinct from the

BLAKE, CASSELS & GRAYDON

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management of LMPL. SNG does not want see the LMPL operations in any way tied to its other operations. SNG believes that papers published by LMPL and its subsidiaries must remain community-based organizations. This is consistent with SNG's understanding of both the economics and politics of community newspapers. Economically, these weekly publications cannot stand either the cost structures or overheads of SNG's dailies. Politically, they cannot survive if the communities they serve feel that the publications have lost their local roots.

Consequently, SNG has actively sought shareholder participation by employees at the operation level of the LMPL publishing subsidiaries. SNG has also arranged by contract that the management of the firms acquired by LMPL will remain largely independent. North Shore Free Press, which is still 51% owned by Peter Speck, will be managed by him. RIN will be managed by its former owners, who retain a 25% interest in the company. Sex will be managed by one of its former owners. Finally, the Madison management will continue to be involved in the management of LMPL and the Now Papers. SNG is willing to agree to keep these contracts in place during a hold separate period. Beyond that, SNG is constrained by those same contracts from giving undertakings altering the management of LMPL and its subsidiaries.

As to maintaining the goodwill in the publications acquired, SNG is willing to agree to continue to operate the publications in the ordinary course of business. This undertaking should be flexible to allow the firms to respond to competitive pressures. The only changes SNG currently envisages in these operations in the next couple of months is:

- (i) the development of multi-market (i.e. group) selling thereby improving the selling function at many of the papers; and
- (ii) the reduction of costs, primarily by negotiating new printing, newsprint and distribution contracts to take advantage of volume discounts.

These two actions will help the firms to remain competitive in a highly competitive environment; indeed, an environment which will become more competitive as the market reacts to all the changes in ownership, frequency of publication, etc. which have taken place in the recent past. (One key change in the market has been the emergence of the Liverpool Echo group of weekly papers.)

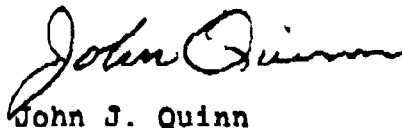
BLAKE, CASSELS & GRAYDON

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In order to maintain the integrity of the original firms now associated with LMPL, SNG will undertake to have any contracts involving group marketing, printing and distribution assignable by each firm in the event of divestiture. The benefit of contracts involving access to group advertising and lower costs should enhance the value of all of these firms to potential buyers. These contracts will not make divestiture of any of the firms less possible.

In order to give the Bureau further assurance of SNG's intention to maintain the separate nature of the businesses involved in the recent acquisitions, SNG is willing to undertake to notify the Bureau of any material changes in the operations and contracts of LMPL, RIM, Bax, NSFP and the Madison Group.

Yours very truly,



John J. Quinn

2610B(1-5)

This is Exhibit " D "

to the affidavit of

ANARE BRANTZ

sworn before me this

4th day of March

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Federic Desautel, avocat
A Commissioner
Notary Public, etc. *Que.*

Re:

**Southam Inc.'s Recent Newspaper
Acquisitions in the Lower
Mainland of British Columbia**

1. The Southam Newspaper Group, a division of Southam Inc. ("Southam"), North Shore Free Press Ltd. ("NSFP"), and David Perks, Publisher of The Gazette, Montreal, hereby provide the Director of Investigation and Research (the "DIR") the following undertakings in connection with Southam and NSFP's recent newspaper acquisitions relating to the creation of Lower Mainland Publishing Ltd. ("LMPL") in British Columbia.
2. In these undertakings, the following definitions shall apply:
 - (a) "Acquired Companies" means RIM, Bex, NSFP and the Madison Group and "Acquired Company" means one of the four (identified by the context of use).
 - (b) "Bex" means Tepnyl Holding Inc. and Bex Publishing Ltd.
 - (c) "Confidential Information" means competitively sensitive or proprietary information of the Acquired Companies not independently known to Southam, NSFP or David Perks from sources other than LMPL and the Acquired Companies and includes, but is not limited to, price lists, marketing methods, strategic plans or other trade secrets.
 - (d) "Interim Period" means the period of time commencing on the date of these undertakings and ending on August 17, 1990.
 - (e) "Madison Group" means Union Ink, Ltd., Specialty Publishers Ltd., BMA Holdings Ltd. and One Cent Publishing Ltd. and their subsidiaries and affiliates.
 - (f) "Managers" means the managers of the Acquired Companies set forth in Schedule "C".

(g) "RIM" means RIM Publishing Inc. and Vancouver Courier (1979) Ltd.

3. During the Interim Period, Southam will:

- (a) not sell, transfer, assign, grant any option for the purchase of, pledge or otherwise dispose of or encumber the shares it directly or indirectly owns in LMPL;
- (b) not alter the boards of directors or the officers of LMPL and the Acquired Companies as set forth in Schedule "A" except directors who voluntarily resign provided, however, that no replacement director shall be appointed or elected without the consent of the DIR;
- (c) not make any changes to the managerial employment of LMPL and the Acquired Companies as set forth in Schedule "B" except to replace managerial employees who voluntarily resign or who are discharged for cause provided, however, that no replacement managerial employee shall be appointed without the consent of the DIR;
- (d) direct the Managers to continue to operate the businesses of their respective Acquired Companies independently of each other and of the businesses of Southam;
- (e) direct the Managers to maintain, in accordance with generally accepted accounting principles, separate and complete financial ledger books and records of material financial information for their respective Acquired Companies;
- (f) not receive, have access to, or use any Confidential Information relating to the Acquired Companies except for such Confidential Information as would be available to Southam in the normal course of business if the Acquired Companies had not been acquired by LMPL;
- (g) instruct the Managers not to make any material changes to the financial arrangements of any of the Acquired Companies without the consent of the DIR;

- (h) not to seek any information in connection with or attempt to exert any influence, direction or control over the Managers, including without limiting the generality of the preceding, not attempt to influence any operational, sales, distribution, circulation, marketing or financial decisions of the Acquired Companies including decisions relating to:
 - (i) advertising rates;
 - (ii) persons who advertise in the newspapers owned by the Acquired Companies;
 - (iii) production, printing, materials procurement, marketing, distribution and other costs;
 - (iv) contracts with third parties;
 - (v) accounting procedures and other financial information;
 - (vi) editorial policy;
 - (vii) strategic planning; and
 - (viii) administration;
- (i) instruct the Managers to maintain the business and goodwill of the Acquired Companies and not to sell, lease or otherwise dispose of material assets thereof without the consent of the DIR;
- (j) without limiting the generality of the provisions of any of the preceding paragraphs, not take any action towards combining the businesses, assets or operations of the Acquired Companies with the businesses, assets or operations of Southam or any other person;
- (k) without limiting the generality of paragraph 3(j), not directly or indirectly move, relocate, destroy or dismantle any assets of the Acquired Companies, or take any steps to physically integrate those assets with the assets of any other business, without the consent of the DIR; unless, due to circumstances beyond the control of Southam or the Acquired Companies, an Acquired Company is forced to move, relocate or dismantle any of its assets to preserve such assets and Southam has notified the DIR;

- (l) continue to abide by the terms of any contracts that are in place with any of the Acquired Companies, provided, however, Southam shall notify the DIR if performance of any contractual obligation conflicts with these undertakings;
- (m) not agree to, make or suggest any changes to the contracts referred to in paragraph 3(1) without the consent of the DIR;
- (o) direct LMPL and NSFP not sell, lease or otherwise dispose of the shares of the Acquired Companies during the Interim Period without the consent of the DIR.

4. Notwithstanding the foregoing, Southam shall be entitled to appoint David Perks, full-time publisher of The Gazette in Montreal, to provide such direction to, and control of, the Managers as is necessary to assure compliance with these undertakings and provide direction to the Managers with respect to decisions on matters that are not of a day-to-day nature, including:

- (a) coordination of the efforts of the Managers as necessary to maintain the viability of LMPL and the Acquired Companies; and
- (b) entering into new, lower cost, contracts for newsprint procurement and publication distribution and printing services, provided, however, any such contracts shall be assignable by each Acquired Company in the event of divestiture;

5. During the Interim Period, NSFP will:

- (a) not sell, transfer, grant any option for the purchase of, pledge or otherwise dispose of or encumber the shares it directly or indirectly owns in RIM and Bex, and;
- (b) comply with paragraphs 3(b) through 3(o) as if they referred to NSFP instead of Southam to the extent they apply to Bex and RIM.

6. During the Interim Period, David Perks will not communicate Confidential Information and similar confidential information about the operations or assets of LMPL to Southam or NSFP without the consent of the DIR except for confidential financial information required by Southam and NSFP to prepare their standard financial reports.

7. Southam and NSFP will provide to the DIR and his staff such information, other than privileged information, as the DIR or his staff may require to complete their examination under the Competition Act of the acquisitions of the Acquired Companies.

8. Southam and NSFP will provide to the DIR, when requested to do so, access to the premises of LMPL and the Acquired Companies, upon reasonable notice, and any information relating to the operations and assets of the LMPL and the Acquired Companies as is required by the DIR to monitor compliance with these undertakings.

9. Except as provided otherwise herein, these undertakings will terminate on the earlier of the end of the Interim Period or the date the DIR notifies Southam and NSFP that he does not intend to challenge the acquisitions of the Acquired Companies under the provisions of the Competition Act.

10. These undertakings shall be binding upon David Perks and Southam, NSFP and their corporate successors, replacements or agents, and their affiliates, and on the directors, officers, servants and employees of Southam and NSFP.

11. Southam and NSFP confirm that the DIR may publicize the terms of the undertakings hereby given by Southam and NSFP. They also recognize that it is the DIR's intention to issue public statements or press materials at an appropriate time; and they consent to the DIR's use of this document in those statements.

12. Notwithstanding that any or all of these undertakings have been fulfilled, the DIR retains all his rights under the Competition Act, including, without limitation, the right to bring an application under section 92 of the Act, at any time within three years of the substantial completion of the mergers.

13. In the event the DIR gives written notice to Southam, NSFP and David Perks prior to the end of the Interim Period that he will challenge any of the acquisitions under the provisions of the Competition Act, Southam, NSFP and David Perks agree to the extension of these undertakings until the

earlier of the date the DIR files an application with the Competition Tribunal pursuant to s.92 of the Competition Act or two weeks have expired subsequent to the date of notification,

DATED this 7th day of June, 1990.

SOUTHAM INC.

Per: Russ Mills

NORTH SHORE FREE PRESS LTD.


Per: Peter Speck

DAVID PERKS

earlier of the date the DIR files an application with the Competition Tribunal pursuant to s.92 of the Competition Act or two weeks have expired subsequent to the date of notification.

DATED this 7th day of June, 1990.

SOUTHAM INC.

Per: Russ Mills

NORTH SHORE FREE PRESS LTD.

Per: Peter Speck

DAVID PERKS

David Perks

2649B(1-6)

earlier of the date the DIR files an application with the Competition Tribunal pursuant to s.92 of the Competition Act or two weeks have expired subsequent to the date of notification.

DATED this 6th day of June, 1990.

SOUTHAM INC.


Per: Russ Mills

NORTH SHORE FREE PRESS LTD.

Per: Peter Speck

DAVID PERKS

Schedule "A"

DIRECTORS AND OFFICERS

<u>COMPANY</u>	<u>DIRECTORS</u>	<u>NAME OF OFFICER</u>	<u>OFFICE HELD</u>
RIM PUBLISHING INC.	Perks Hager Ballard	Hager Ballard	President & Co-Publisher Secretary & Co-Publisher
VANCOUVER COURIER (1979) LTD.	Perks Hager Ballard	Hager Ballard	President Secretary
TEPNYL HOLDING CO. LTD.	Perks Peter Bexley	Peter Bexley	President & Secretary
BEX PUBLISHING LTD.	Perks Peter Bexley	Peter Bexley	Publisher, President & Secretary
LOWER MAINLAND PUBLISHING LTD.	Perks Grippo Collison	Perks Grippo Aunger	COB & CEO President Secretary/Treasurer
NORTH SHORE FREE PRESS LTD.	Perks Speck Foot	Speck Foot	President Vice-President & Secretary
(Four Subsidiaries of NSFP)	Speck	Speck Foot	President Vice-President & Secretary

2649B(7)

SCHEDULE "B"

Managerial Employees

RIM

Peter Ballard	Co-publisher
Phil Hager	Co-publisher
Jim Davis	General Manager
Dave Bell	Advertising Manager
Michael Maloney	Editor

MADISON GROUP

Sam Grippo	President
John Collison	Vice-President - REW
Bruce Auger	Vice-President, Finance
Sam Joe	Vice-President, College & NOW
Tim Siba	Publisher
Spencer Levan	Distribution
Derek Chamberlain	Publisher, NOW

NSFP

Peter Speck	Publisher
Doug Foot	Controller
Linda Stewart	Advertising Manager
Tim Renshaw	Editor
Chris Johnston	Operations Manager

BEX

Peter Bexley	Publisher
Lynn Cameron	Business Manager
Ernie Bexley	Operations Manager

Schedule "C"

RIM Managers: Philip Hager
Peter Ballard

Bex Manager: Peter Bexley

Madison Group Managers: Sam Grippo
Bruce Aunger
John Collison
Sam Joe

NSFP Managers: Peter Speck
Douglas Foot

2649B(9)

BLAKE, CASSELS & GRAYDON

This is Exhibit "E"

to the affidavit of

ANDRE BRANTZ

AMENDED UNDERTAKINGS TO DIRECTOR

sworn before me this

September 14, 1990

4th day of March

19 91

Re: Southam Inc.'s Recent Newspaper
Acquisitions in the Lower
Mainland of British Columbia

Federic Desautel
A Commissioner
Notary Public, etc *Desautel*

1. The Southam Newspaper Group, a division of Southam Inc. ("Southam"), North Shore Free Press Ltd. ("NSFP"), and David Perks, Publisher of The Gazette, Montreal, hereby provide the Director of Investigation and Research (the "DIR") the following amended undertakings (which incorporate amendments to the original undertakings dated June 7, 1990) in connection with Southam's and NSFP's recent newspaper and related acquisitions as part of the creation of Lower Mainland Publishing Ltd. ("LMPL") in British Columbia.

2. In these undertakings, the following definitions shall apply:

- (a) "Acquired Businesses" means RIM, NSFP, the Madison Papers and the Distribution Companies and "Acquired Business" means one of the four (identified by the context of use).
- (b) "Confidential Information" means competitively sensitive or proprietary information of the Acquired Businesses not independently known to Southam, NSFP or David Perks from sources other than LMPL and the Acquired Businesses and includes, but is not limited to, price lists, marketing methods, strategic plans or other trade secrets.
- (c) "Distribution Companies" means the three operating companies of LMPL involved in the distribution of flyers, namely Netmar City-Wide Distribution Systems Ltd., Fraser Valley Flyer Service Ltd. and Chilliwack Flyer Service Ltd.
- (d) "Interim Period" means the period of time commencing on the date of these undertakings and ending on October 2, 1990.
- (e) "Madison Papers" means the Richmond News, the South Delta Today, the Surrey/North Delta Now, and the Real Estate Weekly.

- (f) "Managers" means the managers of the Acquired Businesses set forth in Schedule "B".
- (g) "RIM" means RIM Publishing Inc. and Vancouver Courier (1979) Ltd.

3. During the Interim Period, Southam will:

- (a) not sell, transfer, assign, grant any option for the purchase of, pledge or otherwise dispose of or encumber the shares it directly or indirectly owns in LMPL;
- (b) not alter the boards of directors or the officers of LMPL and the Acquired Businesses as set forth in Schedule "A" except to replace directors who voluntarily resign provided, however, that no replacement director shall be appointed or elected without the consent of the DIR;
- (c) not make any changes to the managerial employment of LMPL and the Acquired Businesses as set forth in Schedule "B" except to replace managerial employees who voluntarily resign or who are discharged for cause provided, however, that no replacement managerial employee shall be appointed without the consent of the DIR;
- (d) direct the Managers to continue to operate the businesses of their respective Acquired Businesses independently of each other and of the businesses of Southam;
- (e) direct the Managers to maintain, in accordance with generally accepted accounting principles, separate and complete financial ledger books and records of material financial information for their respective Acquired Businesses;
- (f) not receive, have access to, or use any Confidential Information relating to the Acquired Businesses except for such Confidential Information as would be available to Southam in the normal course of business if the Acquired Businesses had not been acquired by LMPL;
- (g) instruct the Managers not to make any material changes to the financial arrangements of any of the Acquired Businesses without the consent of the DIR;

- (h) not to seek any information in connection with or attempt to exert any influence, direction or control over the Managers, including without limiting the generality of the preceding, not attempt to influence any operational, sales, distribution, circulation, marketing or financial decisions of the Acquired Businesses including decisions relating to:
- (i) advertising rates;
 - (ii) persons who advertise in the newspapers owned by the Acquired Businesses;
 - (iii) production, printing, materials procurement, marketing, distribution and other costs;
 - (iv) contracts with third parties;
 - (v) accounting procedures and other financial information;
 - (vi) editorial policy;
 - (vii) strategic planning; and
 - (viii) administration;
- (i) instruct the Managers to maintain the business and goodwill of the Acquired Businesses and not to sell, lease or otherwise dispose of material assets thereof without the consent of the DIR;
- (j) without limiting the generality of the provisions of any of the preceding paragraphs, not take any action towards combining any of the businesses, assets or operations of the Acquired Businesses with the businesses, assets or operations of Southam or any other person;
- (k) without limiting the generality of paragraph 3(j), not directly or indirectly move, relocate, destroy or dismantle any assets of the Acquired Businesses, or take any steps to physically integrate those assets with the assets of any other business, without the consent of the DIR; unless, due to circumstances beyond the control of Southam or the Acquired Businesses, an Acquired Business is forced to move, relocate or dismantle any of its assets to preserve such assets and Southam has notified the DIR;

- (l) continue to abide by the terms of any contracts that are in place with any of the Acquired Businesses, provided, however, Southam shall notify the DIR if performance of any contractual obligation conflicts with these undertakings;
- (m) not agree to, make or suggest any changes to the contracts referred to in paragraph 3(1) without the consent of the DIR;
- (o) direct LMPL and NSFP not sell, lease or otherwise dispose of the shares or material of the Acquired Businesses during the Interim Period without the consent of the DIR.

4. Notwithstanding the foregoing, Southam shall be entitled to appoint David Perks, full-time publisher of The Gazette in Montreal, to provide such direction to, and control of, the Managers as is necessary to assure compliance with these undertakings and provide direction to the Managers with respect to decisions on matters that are not of a day-to-day nature, including:

- (a) coordination of the efforts of the Managers as necessary to maintain the viability of LMPL and the Acquired Businesses;
- (b) entering into new, lower cost, contracts for newsprint procurement and publication distribution and printing services, provided, however, any such contracts shall be assignable by each Acquired Business in the event of divestiture; and
- (c) entering into contractual arrangements with Van-Network for the joint placement of advertising, provided, however, any such contracts shall be assignable by each Acquired Business in the event of divestiture, and the assignment provisions in such contracts shall be reviewed with the DIR in advance of their execution.

5. During the Interim Period, NSFP will:

- (a) not sell, transfer, grant any option for the purchase of, pledge or otherwise dispose of or encumber the shares it directly or indirectly owns in RIM; and
- (b) comply with paragraphs 3(b) through 3(o) as if they referred to NSFP instead of Southam to the extent they apply to RIM.

6. During the Interim Period, David Perks will not communicate Confidential Information and similar confidential information about the operations or assets of LMPL to Southam or NSFP without the consent of the DIR except for confidential financial information required by Southam and NSFP to prepare their standard financial reports.

7. Southam and NSFP will provide to the DIR and his staff such information, other than privileged information, as the DIR may require to complete their examination under the Competition Act of the acquisitions of the Acquired Businesses.

8. Southam and NSFP will provide to the DIR, when requested to do so, access to the premises of LMPL and the Acquired Businesses, upon reasonable notice, and any information relating to the operations and assets of the LMPL and the Acquired Businesses as is required by the DIR to monitor compliance with these undertakings.

9. Except as provided otherwise herein, these undertakings will terminate on the earlier of the end of the Interim Period or the date the DIR notifies Southam and NSFP that he does not intend to challenge the acquisitions of the Acquired Businesses under the provisions of the Competition Act.

10. These undertakings shall be binding upon David Perks and Southam, NSFP and their corporate successors, replacements or agents, and their affiliates, and on the directors, officers, servants and employees of Southam and NSFP.

11. Southam and NSFP confirm that the DIR may publicize the terms of the undertakings hereby given by Southam and NSFP. They also recognize that it is the DIR's intention to issue public statements or press materials at an appropriate time; and they consent to the DIR's use of this document in those statements.

12. Notwithstanding that any or all of these undertakings have been fulfilled, the DIR retains all his rights under the Competition Act, including, without limitation, the right to bring an application under section 92 of the Act, at any time within three years of the substantial completion of the mergers.

13. In the event the DIR gives written notice to Southam, NSFP and David Perks prior to the end of the Interim Period that he will challenge any of the acquisitions under the provisions of the Competition Act, Southam, NSFP and David Perks agree to the extension of these undertakings until the

- 6 -

earlier of the date the DIR files an application with the Competition Tribunal pursuant to s.92 of the Competition Act or two weeks have expired subsequent to the date of notification.

DATED this 14th day of September, 1990.

SOUTHAM INC.



Per: Russ Mills

NORTH SHORE FREE PRESS LTD.

Per: Peter Speck

DAVID PERKS

2649B/1-6

earlier of the date the DIR files an application with the Competition Tribunal pursuant to s.92 of the Competition Act or two weeks have expired subsequent to the date of notification.

DATED this 14th day of September, 1990.

SOUTHAM INC.

Per: Russ Mills

NORTH SHORE FREE PRESS LTD.


Per: Peter Speck

DAVID PERKS

26498/1-6

Schedule "B"

RIM Managers:

Philip Hager

Peter Ballard

Madison Papers Managers:

Sam Grippio

Bruce Auger

John Collison

Distribution Companies Manager:

John Collison

NSFP Managers:

Peter Speck

Douglas Foot



Consommation
et Corporations Canada

Consumer and
Corporate Affairs Canada

Directeur des
enquêtes et recherches

Director of
Investigation and Research

Bureau de la
politique de concurrence

Bureau of
Competition Policy

Place du Portage 1
50 Victoria
Hull, Québec
K1A 0C9

Fac-similé - Facsimile
(819) 953-5013
Fusions - Mergers
(819) 953-6169

This is Exhibit "F"
to the affidavit of
ANARE BRANTZ

Votre référence Your file

Notre référence Our file

sworn before me this

4th day of March

Tel - Tel

19 91

Madeline Desautels
A Commissioner

Notary Public, October 4, 1990

DELIVERED

Mr. John J. Quinn
Blake, Cassels & Graydon
Box 25, Commerce Court West
Toronto, Ontario
M5L 1A9

Dear Mr. Quinn:

**RE: Southam Newspaper Group - Investments in Lower
Mainland Newspapers**

You have requested by letter of August 14, 1990 that the Director of Investigation and Research provide with respect to the indirect acquisition of equity investments in a number of publishing, printing and advertising distribution businesses in the Lower Mainland of British Columbia by Southam Newspaper Group, a division of Southam Inc.:

- a) an advance ruling certificate under section 102 of the Competition Act (the "Act"); or,
- b) in the alternative, confirmation that in his opinion, he does not have grounds to initiate an inquiry under section 10 of the Act or to file an application under section 92 of the Act.

With the exception of the option to purchase the remaining 51% of the shares in North Shore Free Press Ltd., the transactions were completed by May 8, 1990 before the Director became aware of them. Inasmuch as they are not proposed transactions, a certificate under section 102 cannot be provided.

Southam Newspaper Group, North Shore Free Press Ltd. and David Perks, publisher of The Gazette, Montreal have provided to the Director hold separate undertakings in order to allow him the opportunity to review these transactions. The Undertakings dated June 6, and 7, 1990 as amended from

Canada

time to time expire at the close of business on October 5, 1990.

A comprehensive review of these transactions, including interviews with industry participants and consultations with economic and industry experts, has now been completed. Based on the information made available to date, including the information you provided to the Requests for Information dated June 21, 1990, July 18, 1990, and August 31, 1990, I wish to advise as follows.

As I have previously advised I believe that the Director does not, at this time, have sufficient grounds to file an application under section 92 with respect to the acquisition of equity interests in the following businesses:

Chilliwack Times
Abbotsford-Clearbrook Times
Now (Coquitlam, Port Coquitlam, and Port Moody)
Maple Ridge-Pitt Meadows Times
Burnaby Now
Royal City Record
Richmond Times
Delta Optimist (with respect to the North Delta market)
College Printers Ltd.

In addition, I wish to advise that I believe that the Director does not, at this time, have sufficient grounds to file an application under section 92 with respect to the acquisition of equity interests in the following businesses:

Richmond News
Surrey/North Delta Now
Netmar City-Wide Distribution Systems Ltd.
Fraser Valley Flyer Service Ltd.
Chilliwack Flyer Service Ltd.

With respect to those acquisitions where I have indicated that there are no concerns at present, I wish to inform you that under section 97 the Director has up to three years after the date of the substantial completion of a merger to bring an application under section 92.

I wish to advise that the Director has concerns that certain aspects of the transactions prevent or lessen, or are likely to prevent or lessen, competition substantially in the following markets:

- a) the retail advertising market in the City of Vancouver;
- b) the retail advertising market in the North Shore;
- c) the print advertising market in South Delta; and

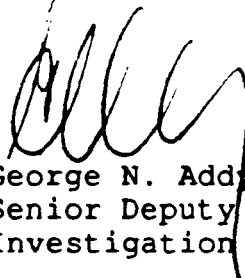
- d) the real estate advertising market in the Lower Mainland area of British Columbia.

In addition the Director has concerns that certain aspects of the transactions prevent or are likely to prevent competition substantially in the print advertising market in the Lower Mainland area of British Columbia.

In view of these concerns the Director has commenced an inquiry under section 10 and counsel has been instructed to prepare an application to the Competition Tribunal for a remedial order under section 92. Therefore, the Director is denying the request for an advance ruling certificate under section 102 of the Act with respect to the proposed acquisition of the remaining 51% of the shares in North Shore Free Press Ltd.

In order to allow counsel sufficient time to prepare and file the application to the Competition Tribunal, I request that the existing undertakings be extended for an additional 30 days with respect to the relevant acquisitions. Failing your advice by 5:00 p.m. E.S.T., Friday, October 5, 1990 that your clients have agreed to extend the undertakings as requested I will take the appropriate action.

Yours very truly,



George N. Addy
Senior Deputy Director of
Investigation and Research

This is Exhibit "G" to the affidavit of VARE BRANTZ sworn before me this 11th day of March 1991.

Madeline Desautel, a/c
A Commissioner
Notary Public, etc.



IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

BETWEEN:

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

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA, THE COMPETITION
TRIBUNAL and THE DIRECTOR OF INVESTIGATION
AND RESEARCH UNDER THE COMPETITION ACT

Defendants

STATEMENT OF CLAIM
(Filed the 5 day of December, 1990)

1. The plaintiff, Southam Inc. ("Southam"), is a corporation incorporated pursuant to the laws of Canada, with its head office in Toronto, Ontario. Southam is engaged in, inter alia, the business of publishing newspapers and related businesses in the Provinces of Ontario, British Columbia and elsewhere in Canada.
2. The plaintiff, Lower Mainland Publishing Ltd. ("LMPL"), is a company incorporated pursuant to the laws of British Columbia, with its head office in Vancouver, British Columbia. LMPL was incorporated on May 8, 1988 principally to facilitate the transactions more fully described in paragraph 10 herein. LMPL presently holds 49% of the issued and outstanding shares of North Shore Free Press Ltd. ("NSFP") and 100% of the issued and outstanding shares of the Madison Group of Companies which includes Union Ink Ltd., Specialty Publishers Inc., One Cent Publishing Ltd. and BMA Holding Ltd.
3. The plaintiff, RIM Publishing Inc. ("RIM") is a company incorporated pursuant to the laws of British Columbia, with its head office in Vancouver, British Columbia. RIM is engaged in the business of publishing the Vancouver Courier, a twice-weekly newspaper circulated in an area which comprises most of the City of Vancouver. NSFP owns 75% of the issued and outstanding shares of RIM.

4. The plaintiff, Yellow Cedar Properties Ltd. ("YCP"), is a company incorporated under the laws of British Columbia, with its head office in Vancouver, British Columbia. YCP owns 51% of the issued and outstanding common shares of NSFP.

5. The plaintiff, NSFP, is a company incorporated pursuant to the laws of British Columbia with its head office in Vancouver, British Columbia. NSFP is engaged in the business of publishing the North Shore News.

6. The plaintiff, Specialty Publishers Inc. ("Specialty") is a company incorporated pursuant to the laws of British Columbia with its head office in Vancouver, British Columbia. Specialty owns all of the issued and outstanding shares of the plaintiff Elty Publications Ltd. ("Elty").

7. The plaintiff, Elty, is a company incorporated pursuant to the laws of British Columbia, with its head office in Vancouver, British Columbia. Elty is engaged in the business of publishing the Real Estate Weekly.

8. The plaintiffs are all named as respondents in an Application (the "Application") pursuant to Section 92 of the Competition Act (the "Act") filed by the Director of Investigation and Research (the "Director") on November 29, 1990. The Application seeks orders which will effectively require Southam to dispose of its direct and indirect interests in The Vancouver Courier, the North Shore News and the Real Estate Weekly.

9. Pursuant to transactions which were completed on January 27, 1989 and May 8, 1990, between and among the plaintiffs and others, Southam acquired direct and/or indirect interests in 13 community newspapers (including The Vancouver Courier and the North Shore News, a real estate advertising

publication (the Real Estate Weekly), three flyer distribution businesses and two printing businesses, all operating in the Lower Mainland of British Columbia (the "Lower Mainland"). For the purposes of these proceedings, the Lower Mainland refers to that part of the Fraser River Valley south of Hope, including the Vancouver census Metropolitan Area, Abbotsford, Chilliwack, Clearbrook, Matsqui and Mission.

10. The transaction which was completed on January 27, 1989 involved the acquisition by Southam Newspaper Group ("SNG"), a division of Southam, of 49% of the issued and outstanding shares of NSFP. The transactions which took place on May 8, 1990, were substantially as follows:

- a) LMPL was incorporated as a wholly-owned subsidiary of SNG. Through a series of transactions, SNG acquired approximately 63% of the issued and outstanding common shares of LMPL, with the remaining 37% of the common shares of LMPL being held by Madison Venture Corporation;
- b) LMPL acquired SNG's 49% interest in NSFP;
- c) LMPL acquired Netmar Inc.'s 50% interest in the Madison Group of Companies. The Madison Group publishes and distributes free of charge the following controlled circulation community newspapers in the Lower Mainland: Burnaby Now, Royal City Record, Now (Coquitlam, Port Coquitlam, Port Moody), Maple Ridge--Pitt Meadows Times, Surrey Now, North Delta Today, South Delta Today, Abbotsford--Clearbrook Times, Chilliwack Times and Haney-Maple Ridge Pennysaver. Madison Group also publishes and distributes the Real Estate Weekly, and owns a one-half interest in the Richmond News;

- d) NSFP acquired all of the issued and outstanding shares of Tepnyl Holdings Co. Ltd., which through its wholly-owned subsidiary, Bex Publishing Ltd. carries on the businesses of publishing the Delta Optimist and the Richmond Times;
- e) NSFP also acquired 75% of the issued and outstanding common shares and 100% of the issued and outstanding preferred shares of RIM; and,
- f) put/call arrangements were also put in place, which, if exercised, would result in Southam acquiring 100% control of LMPL; LMPL acquiring 100% control of NSFP and NSFP acquiring 100% control of RIM.

As a result of these transactions Southam acquired the interests referred to in paragraphs 8 and 9 hereof.

11. Prior to the foregoing transactions, in December, 1988, Southam notified the Director in writing of its proposed acquisition of an interest in NSFP and requested the Director's confirmation that the proposed transaction would not result in an inquiry under the Competition Act (the "Act"), or cause the Director to make an application to the Competition Tribunal under Section 92 of the Act. Following discussions with the Director, in the course of which Southam provided additional information to respond to the Director's concerns, the Director provided Southam with the written confirmation requested.

12. In May, 1990, Southam entered into discussions with the Director with respect to the May 8, 1990 transactions, as described herein. Once again, Southam co-operated with the Director by providing information with respect to the various transactions as well as responding to specific questions posed by the Director and his staff.

13. On June 7, 1990 at the Director's request and to facilitate his on-going review of the subject transactions, Southam provided the Director with a written undertaking to "hold separate", the assets acquired until August 17, 1990.

14. The original hold separate undertaking of June 7, 1990, has been extended from time to time, subject to such modifications as agreed upon by the parties and, at present, Southam continues to hold separate those businesses in respect of which the Director has alleged competition law concerns. Southam is prepared to continue to hold those businesses separate pending the final determination of the within proceedings, including any appeals therefrom.

15. Pursuant to the transaction referred to in paragraphs 10 herein, the plaintiff and others formed an association within the meaning of Section 1(e) of the Canadian Bill of Rights (the "Bill of Rights") and Section 2(d) of the Canadian Charter of Rights and Freedoms (the "Charter"). The association so created enjoys constitutional protection, and is subject only to such reasonable limits imposed by law as can be reasonably justified in a free and democratic society, as provided in Section 1 of the Charter.

16. Sections 91-103 of the Act, which govern the review of mergers by the Competition Tribunal, constitute unjustifiable limits upon the right to freedom of association as guaranteed by s. 2(d) of the Charter, cannot be saved by Section 1, and are, to the extent of their inconsistency with the Charter guarantees, of no force and effect, pursuant to Section 52 of the Charter. These provisions are also contrary to s. 1(e) of the Bill of Rights.

17. The Competition Tribunal, as constituted pursuant to the Competition Tribunal Act, does not provide the guarantees

of independence and impartiality required by the Charter and the Bill of Rights, in that:

- i) the Tribunal includes lay members with connections to private and public institutions, and who, because of the quorum requirements of the Tribunal, could be in a position to make binding decisions affecting the rights of parties before the Tribunal;
- ii) the legislative provisions governing the remuneration; appointment and removal of lay members of the Tribunal do not adequately ensure the independence and impartiality of the Tribunal, as required by the Charter, the Bill of Rights and Sections 96 and 101 of the Constitution Act, 1867;
- iii) the legislative provisions respecting the appointment of judicial members to the Tribunal do not provide for a term certain (simply being stated "not [to exceed] seven years), and thereby so not ensure the appearance of independence and impartiality of the Tribunal as required by the Charter, the Bill of Rights, and sections 96 and 101 of the Constitution Act, 1867; and
- iv) Dr. Frank Roseman, a full-time lay member of the Tribunal, continues as a member of the Restrictive Trade Practices Commission under the Combines Investigation Act and therefore retains statutory responsibilities which are inconsistent with constitutional requirements of neutrality, impartiality and independence that are required if the Tribunal is to act judicially.

18. The plaintiffs therefore claim as follows:

- a) a declaration that Sections 91-103 of the Competition Act are inconsistent with the rights and freedoms guaranteed by Section 2(d) of the Canadian Charter of Rights and Freedoms, are inconsistent with Section 1(e) of the Bill of Rights, and therefore are of no force and effect;
- b) a declaration that the Competition Tribunal Act is inconsistent with the rights and freedoms and guaranteed by Sections 7 and 11 of the Canadian Charter of Rights and Freedoms and is inconsistent with Section 2(e) of the Bill of Rights, and therefore is of no force and effect and further that the Competition Tribunal, as constituted, violates the Rights and Freedoms guaranteed by Sections 7 and 11 of the Charter and is contrary to Sections 96 and 101 of the Constitution Act, 1867, and is therefore without jurisdiction to hear the Application;
- c) an order prohibiting the Competition Tribunal from hearing any proceedings in respect of the Application by the Director pursuant to Section 92 of the Act, with respect to the direct or indirect acquisition by Southam of equity interests in the businesses of publishing The Vancouver Courier, the North Shore News and the Real Estate Weekly.
- d) their costs of this action; and
- e) such further and other relief as to this Honourable Court may seem just.

Dated at Toronto this **3** day of December, 1990.

Glenn Leslie for 9/2/90

Blake, Cassels & Graydon
Barristers and Solicitors
Box 25, Commerce Court West
Toronto, Ontario
M5L 1A9

Glenn F. Leslie
(416) 863-2672

Robert Kwinter
(416) 863-3283

Solicitors for the plaintiffs

TO: The Attorney-General of Canada
c/o The Deputy Attorney-General of Canada
Department of Justice Canada
239 Wellington Street
Ottawa, Ontario K1A 0H8

AND TO: The Competition Tribunal
90 Sparks Street
Suite 600
Ottawa, Ontario
K1P 5B4

AND TO: Director of Investigation and Research
Bureau of Competition Policy
Consumer and Corporate Affairs Canada
Place du Portage I
50 Victoria Street
Hull, Quebec
K1A 0C9

IN THE FEDERAL COURT OF CANADA

TRIAL DIVISION

B E T W E E N:

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

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA, THE COMPETITION
TRIBUNAL and THE DIRECTOR OF INVESTIGATION
AND RESEARCH UNDER THE COMPETITION ACT

Defendants

STATEMENT OF DEFENCE

1. The Defendants, the Attorney General of Canada and the Director of Investigation and Research, in answer to the Statement of Claim, say as follows:

2. These Defendants admit the allegations made in paragraphs 1 through 10 and paragraphs 13 and 14 of the Statement of Claim.

3. These Defendants admit the allegations made in paragraph 11 of the Statement of Claim. The Director informed Southam that he did not intend, at the time, to commence an inquiry into the transaction of January 27, 1989, and that he had the right, pursuant to section 97 of the Competition Act, to apply to the Competition Tribunal for review of a merger up to three years after the merger has been substantially completed.

4. These Defendants admit the allegations made in paragraph 12 of the Statement of Claim. Southam did not advise the Director of the transactions of May 8, 1990 until

after the transactions had already closed.

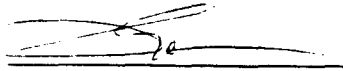
5. These Defendants deny the allegations made in paragraphs 15 and 16 of the Statement of Claim. Further, if article 2(d) of the Canadian Charter of Rights and Freedoms is infringed by sections 91 through 103 of the Competition Act (which infringement is denied), the said sections are reasonable limits on freedom of association, are prescribed by law, and are demonstrably justifiable in a free and democratic society.

6. With respect to paragraph 17 of the Statement of Claim, these Defendants say that the Chairman of the Competition Tribunal has not established a panel to hear the application which is the subject of this action. These Defendants admit that the Tribunal has lay members; that Dr. Roseman is a full-time lay member; and that Dr. Roseman is a member of the Restrictive Trade Practices Commission. These Defendants deny the remaining allegations made in paragraph 17. Further, these Defendants say that the Plaintiffs, being corporations, do not have standing to allege a violation of article 7 of the Canadian Charter of Rights and Freedoms. The Competition Tribunal, when considering an application under section 92 of the Competition Act, is not subject to article 11(d) of the Charter. If article 7 or 11(d) of the Charter is infringed by the provisions of the Competition Tribunal Act that govern the constitution of the Competition Tribunal (which infringement is denied), the said provisions are reasonable limits on the rights granted by article 7 or 11(d), are prescribed by law, and are demonstrably justifiable in a free and democratic society.

7. These Defendants therefore claim that the

Plaintiffs' action be dismissed with costs.

Dated at Ottawa, this 20th day of January, 1991.



John C. Tait, Q.C.
Per: Rory R. Edge
Department of Justice
Legal Services
Consumer and Corporate
Affairs
22nd Floor
50 Victoria Street
Ottawa, Ontario
K1A 0C9

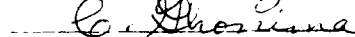
(819) 997-3325
(819) 953-9267
(telecopier)

Solicitor for the
Defendants, the Attorney
General of Canada and the
Director of Investigation
and Research

I HEREBY CERTIFY that the above document is a
true copy of the original filed of record in the Registry
of the Court of Queen's Bench of Canada the 21st day

of January A.D. 1991.

Witness my hand and seal this 21st day of January 1991.



C. GHOMINA (MRS.)
Registry Officer
Agent du greffe

IN THE FEDERAL COURT OF CANADA

TRIAL DIVISION

B E T W E E N:

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

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA, THE COMPETITION
TRIBUNAL and THE DIRECTOR OF INVESTIGATION
AND RESEARCH UNDER THE COMPETITION ACT

Defendants

NOTICE OF MOTION

TAKE NOTICE that a motion will be made on behalf of the plaintiffs before the presiding judge at 330 University Avenue, in the City of Toronto, Ontario on Wednesday, the 5th day of December, 1990 at the hour of 9:30 o'clock in the forenoon or so soon thereafter as the motion can be heard:

The motion is for:

- (i) an order restraining the hearing of any proceedings pending before the Competition Tribunal relating to an Application by the Director of Investigation and Research pursuant to S. 92 of the Competition Act (the "Application"), and filed with the Competition Tribunal November 29, 1990, which Application seeks orders with respect to the direct and indirect acquisition by Southam Inc. of equity interests in the businesses of publishing The Vancouver Courier, the North Shore News and the Real Estate Weekly, until,

- (a) the decisions and any appeals therefrom are rendered in the matter of Alex Couture Inc. et al. v. Attorney-General of Canada et al., now pending before the Quebec Court of Appeal and in the matter of Director of Investigation and Research v. NutraSweet et al., now pending before the Federal Court of Appeal; or
- (b) the final determination of the plaintiffs' action in this Court for a writ of prohibition against the Competition Tribunal to prevent it from proceeding with the Application and for declarations as to the unconstitutionality and inoperability of Sections 91-103 of the Competition Act, the Competition Tribunal Act, and any appeals therefrom.
- (ii) order abridging time for service of the notice of motion and supporting affidavit pursuant to Rule 3(1)(c) of the Federal Court Rules;
- (iii) the plaintiffs' cost of this motion;
- (iv) such further and other relief as this Honourable Court deems just in the circumstances.

The grounds for the motion are:

- (i) there are serious issues to be tried concerning the constitutionality of the provisions of the Competition Act upon which the Director of Investigation and Research's application is based;

- (ii) the plaintiffs will suffer irreparable harm, not compensable in damages in the event that the Tribunal proceedings are permitted to proceed;

- (iii) the balance of convenience favours the plaintiffs in that the Director's enforcement position will not be affected by the order sought, insofar as the plaintiffs have agreed to hold separate the assets which are the subject of the application, pending determination of the constitutional issues raised;

- (iv) because the hold separate arrangements are in place, there is no countervailing public interest which militates against the granting of a stay of proceedings in this case; and,

- (v) such further and other grounds as counsel may advise and this Honourable Court allows:

The following documentary evidence will be used at the hearing of this motion:

- (i) the pleadings and proceedings herein; and

- (ii) such further and other material as counsel may advise and this Honourable Court allows.

DATED at Toronto, this 4th day of December, 1990.

Blake, Cassels & Graydon
Barristers and Solicitors
Box 25, Commerce Court West
Toronto, Ontario
M5L 1A9

Glenn F. Leslie
(416) 863-2672

Robert Kwinter
(416) 863-3283

Solicitors for the plaintiffs

TO: THE REGISTRAR OF THIS HONOURABLE COURT

AND TO: The Attorney-General of Canada
c/o The Deputy Attorney-General of Canada
Department of Justice Canada
239 Wellington Street
Ottawa, Ontario K1A 0H8

AND TO: The Competition Tribunal
90 Sparks Street
Suite 600
Ottawa, Ontario
K1P 5B4

AND TO: Director of Investigation and Research
Bureau of Competition Policy
Consumer and Corporate Affairs Canada
Place du Portage I
50 Victoria Street
Hull, Quebec
K1A 0C9

Davis & Company

BARRISTERS AND SOLICITORS

File number 29140-63420/022
Direct dial (604) 643-2982
Repty to Stanley Wong
(also of the Ontario Bar)

December 4, 1990

By Telecopier: (416) 863-4257

Glenn F. Leslie
Blake, Cassels & Graydon
Barristers and Solicitors
Box 25, Commerce Court West
Toronto, Ontario
M5L 1A9

Dear Mr. Leslie:

Re: D.I.R. v. Southam et al

I am writing to you as counsel to the Attorney General of Canada and the Director of Investigation and Research on the Motion by your clients with respect to the action commenced by them in the Federal Court, Trial Division on December 3, 1990. You have advised that a judge will be available tomorrow in Toronto at 9:30 a.m. for the purpose of fixing a date for the hearing of the Motion.

I have advised you that because of the short notice, I will not be able to attend the hearing tomorrow. I have requested and you have kindly agreed to advise the presiding judge of the position of my clients as set out below. Please advise the judge that I can be reached at my home at (604) 732-7105 between 9:30 and 11:30 a.m. Toronto time if he wishes to conduct a conference call.

You told me that you will be asking the presiding judge for the earliest hearing date available, other than a date next week. As discussed, we will be seeking your agreement after the date has been fixed to set up a schedule for the service of affidavits and written arguments, the cross-examination on affidavits and any other ancillary matters relating to the Motion.

I am instructed to advise you that the Attorney General of Canada and the Director of Investigation and Research are consenting to the adjournment of the hearing of the Motion to

This is Exhibit "H"

to the affidavit of

ANDRE BRANTZ

sworn before me this

4th day of March

19 91

Madeline Desautels, avocat
A Commissioner
Notary Public, etc.

Vancouver
2800 Park Place
666 Burrard Street
Vancouver
Canada V6C 2C7

Telephone (604) 687-9444
Facsimile (604) 687-9444

New Westminster
604 687-9444

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Vancouver
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New Westminster
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Toronto
416 593-4100

Whitby
905 881-1111

Quebec
514 391-1111

OTT
613 566-1111

BR
313 466-1111

Davis & Company

-2-

a date to be fixed on the following conditions:

- a) your clients agree to extend the Existing Undertakings, except to the extent that they relate to the South Delta Today merger, until the Motion is disposed of on its merits or otherwise; and
- b) in the event, the parties agree to a different form of undertakings before the hearing of the Motion, these revised undertakings will be filed with the Court.

The "Existing Undertakings" refer to the Amended Undertakings dated September 14, 1990 as revised by the letter of October 11, 1990 from John J. Quinn to George Addy. Since the Existing Undertakings expire on Friday, December 7, 1990, would you please send a letter confirming that your clients are extending the Existing Undertakings except to the extent that they relate to the South Delta Today merger. I note that you have agreed to send a separate letter confirming that your clients have agreed to extend the Existing Undertakings with respect to the South Delta Today merger until the present negotiations relating to South Delta Today are completed.

Also, I am instructed to advise that the Director agrees not to take any proceedings with respect to the Notice of Application (CT-90/1) before the Competition Tribunal before the Motion is disposed of on its merits or otherwise and not to take proceedings for any default of filing of a response by your clients to the Notice of Application filed by the Director on November 29, 1990 in the Competition Tribunal (CT-90/1) until 7 days after the date the Motion is disposed of on its merits or otherwise. This is without prejudice to the rights of your clients to apply to the Competition Tribunal for an extension of time for filing.

Yours very truly,

DAVIS & COMPANY

per: 

Stanley Wong

c.c. George Addy,
Bureau of Competition Policy

Rory Edge
Legal Services
Consumer & Corporate Affairs Canada

Exhibit "I"

The Affidavit of Paul Renaud which is marked as Exhibit "I" to the Affidavit of Andre Brantz sworn the 4th day of March, 1991 is a separately bound document.

IN THE FEDERAL COURT OF APPEAL

B E T W E E N:

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

Appellants
(Plaintiffs)

- and -

THE ATTORNEY GENERAL OF CANADA, THE COMPETITION
TRIBUNAL and THE DIRECTOR OF INVESTIGATION
AND RESEARCH UNDER THE COMPETITION ACT

Respondents
(Defendants)

NOTICE OF APPEAL

Take notice that the appellants appeal against the
Judgment of the Trial Division of the Federal Court of Canada
delivered on the 13th day of February, 1991, in which the
Honourable Mr. Justice MacKay dismissed the appellants' motion
heard on the 24th day of January, 1991.

The appellants propose that this appeal be heard at
the City of Toronto in the Province of Ontario.

The appellant Southam Inc.'s address is 150 Bloor
Street West, Suite 910, Toronto, Ontario, M5S 2Y9 and the name
and business address of the appellants' solicitors is: This is Exhibit "J"

Blake, Cassels & Graydon
Barristers and Solicitors
Box 25, Commerce Court West
Toronto, Ontario
M5L 1A9

Glenn F. Leslie (416) 863-2672
Robert E. Kwinter (416) 863-3283

Solicitors for Appellants

Dated at Toronto the 22nd day of February, 1991.

to the affidavit of
ANDRE BRANTZ
sworn before me this
4th day of March
1991

Madeline Dumont
A Commissioner
Notary Public, etc. and

TO THE REGISTRY,
THE FEDERAL COURT OF CANADA,

AND TO
THE RESPONDENTS: The Attorney-General of Canada
c/o the Deputy Attorney-General of Canada
Department of Justice Canada
239 Wellington Street
Ottawa, Ontario K1A 0H8
Attention: Mr. Rory Edge

- 2 -

AND TO: The Registrar,
Competition Tribunal
90 Sparks Street
Suite 600
Ottawa, Ontario
K1P 5B4

AND TO: Director of Investigation and Research
c/o Stan Wong
Counsel to the Director
Davis & Company
Park Place
2800-666 Burrard Street
Vancouver, British Columbia
V6C 2Z7

IN THE FEDERAL COURT OF APPEAL

B E T W E E N:

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

Appellants
(Plaintiffs)

- and -

THE ATTORNEY-GENERAL OF
CANADA, THE COMPETITION TRIBUNAL
and THE DIRECTOR OF
INVESTIGATION AND RESEARCH UNDER
THE COMPETITION ACT

Respondents
(Defendants)

NOTICE OF APPEAL

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Toronto, Ontario
M5L 1A9

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Robert Kwinter
(416) 863-3283

Solicitors for the Appellants
(Plaintiffs)