

## CORRESPONDENCE

### The Restrictive Trade Practices Commission

TO THE EDITOR:

In the interesting article by Mr. Robert Solo on the U.S. Attorney-General's Report on the Antitrust Laws in the June-July issue of the Canadian Bar Review, there are references to the Restrictive Trade Practices Commission that may be misleading to some readers.

When, on page 678, he states that "until very recently, the Canadian Restrictive Trade Practices Commission had confined anti-monopoly prosecutions essentially to price fixing agreements and ancillary practices", he is describing a situation which existed before the establishment of the Commission in 1952. The Restrictive Trade Practices Commission itself has never had the power to select the parts of the economy and the industries within it that should be subject to investigation. It is true that before 1952 the Commissioner under the Combines Investigation Act possessed this power, along with the duty of making an appraisal, but, following the MacQuarrie Report (Report of Committee to Study Combines Legislation, Queen's Printer, Ottawa, 1952, pages 14-15 and 29-30), the power to initiate investigations was granted solely to the Director of Investigation and Research by section 8 of the revised Combines Investigation Act. Thus, strictly speaking, it is not accurate to say that the Restrictive Trade Practices Commission "appears to have been discreet in its choice of targets" (page 678), for it has not and never had the power to initiate investigations.

In the same paragraph the author also states that "it [the Commission] has taken the position that combinations for price-fixing, where effective, are illegal; and that prosecution requires only that the fact of such price-fixing arrangements and their substantial coverage be established. The courts have upheld this position."

This statement implies that it is the function or practice of the Commission to interpret the law to the extent of expressing an opinion whether an offence has been committed. Again it must be said that such matters are beyond the jurisdiction of the Restrictive Trade Practices Commission. Up to 1952 the Commis-

sioner under the Combines Investigations Act did appear to treat the report as a preliminary stage in prosecution, but the MacQuarrie Report (at page 34) recommended in the strongest terms against the continuation of this practice. This recommendation appears to have been incorporated in the law by the present section 19(1) of the Combines Investigation Act (Stats. 1952, c. 39, s. 2), which was enacted at the time the Restrictive Trade Practices Commission was first set up. It has never been the function, and it does not appear to be the practice, of the Commission to express opinions whether any act or acts constitute an offence under the Combines Investigation Act or the Criminal Code.

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### Books Received

*The mention of a book in the following list does not preclude a detailed review in a later issue.*

- Charlesworth on Negligence.* The Common Law Library: Number 6. Third edition by J. CHARLESWORTH, LL.D. London: Sweet & Maxwell Limited. Toronto: The Carswell Company Ltd. 1956. Pp. lxxv, 672. (\$15.00)
- The English Legal System.* By A. K. R. KIRALFY, Ph.D., LL.M. Second edition. London: Sweet & Maxwell Limited. Toronto: The Carswell Company Ltd. 1956. Pp. xxv, 404. (\$5.75)
- From Evidence to Proof: A Searching Analysis of Methods to Establish Fact.* By MARSHALL HOUTS. Springfield, Ill.: Charles C. Thomas. Toronto: The Ryerson Press. 1956. Pp. xiv, 396. (\$8.25)
- Latin America in the United Nations.* By JOHN A. HOUSTON. With a foreword by RICARDO J. ALFARO. United Nations Studies: No. 8. Published by the Carnegie Endowment for International Peace. New York: Columbia University Press. 1956. Pp. xv, 345. (\$2.75 U.S.)
- Legal Problems in Engineering.* By MELVIN NORD, Dr. Eng. Sci., LL.B. New York: John Wiley & Sons, Inc. 1956. Pp. ix, 391. (\$7.50 U.S.)
- The Legislative Struggle for Church Union.* By GERSHOM W. MASON, Q.C., M.A., LL.D., D. Litt. S. With a foreword by THE VERY REV. GEORGE C. PIDGEON. Toronto: The Ryerson Press. 1956. Pp. vii, 162. (\$4.00)
- Monopolies and Restrictive Trade Practices.* By MICHAEL ALBERY, Q.C., and C. F. FLETCHER-COOKE, M.P. London: Stevens & Sons Limited. Toronto: The Carswell Company Ltd. 1956. Pp. xvi, 185. (\$5.25)

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- Pioneer Public Service: An Administrative History of the United Canadas, 1841-1867.* By J. E. HODGETTS. Seventh in the Canadian Government Series. Edited by R. MACG. DAWSON. Toronto: University of Toronto Press. 1955. Pp. xii, 292. (\$5.50)
- The Quantum of Damages.* By DAVID A. McI. KEMP, B.A. Cantab., and MARGARET SYLVIA KEMP, M.A. Cantab. Volume 2. Fatal Injury Claims. With a foreword by THE RIGHT HONOURABLE SIR NORMAN BIRKETT. London: Sweet & Maxwell Limited. Toronto: The Carswell Company Ltd. 1956. Pp. xx. 326. (\$6.25)
- Report Concerning the Manufacture, Distribution and Sale of Boxboard Grades of Paperboard.* By the Restrictive Trade Practices Commission. Department of Justice. Ottawa: Queen's Printer. 1956. Pp. xiii, 243. (No price given)
- Report of a Committee Appointed to Inquire Into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada.* Published by authority of THE HONORABLE STUART S. GARSON, Minister of Justice and Attorney-General of Canada. Ottawa: Queen's Printer. 1956. Pp. iii, 162. (No price given)
- La responsabilité civil du médecin et de l'établissement hospitalier: Étude comparée du droit français, du common law et du droit civil de la province de Québec.* Par Paul-A. Crépeau. Préface de RENÉ DAVID. Montréal: Wilson et Lafleur (limitée). 1956. Pp. 261. (\$6.75)
- State Intervention and Assistance in Collective Bargaining: The Canadian Experience 1943-1954.* By H. A. LOGAN. Canadian Studies in Economics: No. 6. Toronto: University of Toronto Press. 1956. Pp. vii, 176. (\$3.00)
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## For Whom the Bell Tolls . . .

I speak as if the lawyer were the contemplative philosopher of the present day. He is not at all, at any rate in this country. Law is not a reflective calling: it can hardly afford to be, since its essential function lies in the discovery and application of practical rules which have to be treated for the sake of appearances as if they were universals. But all the same there is something rather unusual, something which might be characterised as introverted, about a profession in which the range of learning is, in effect, closed and in which a principle is the more treated as valid the more it can be shown to be ancient and long-established. Such a background should favour a certain conservatism and a certain detachment of outlook. It should favour, too, an almost desperate humanism as the best justification of our, perhaps, dying art. On the whole I think that this is what our background does. But since the lawyer revolutionary is himself a recurrent figure in the historical process, I take it that there is something in the legal discipline which produces by reaction the extreme antithesis of the normal type. (Rt. Hon. Lord Radcliffe, *How a Lawyer Thinks*, The Royal Society of Medicine's Lloyd Roberts Lecture for 1955 (1956), 270 *The Lancet* 1, at p. 2)