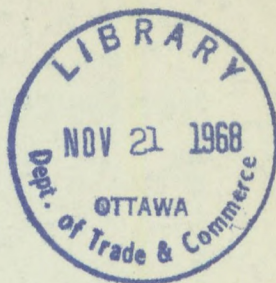


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Dairy Products Montreal

RESTRICTIVE TRADE PRACTICES COMMISSION
DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS
CANADA

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DAIRY PRODUCTS

MONTREAL

Report in the Matter of an Inquiry Relating to the
Production, Distribution and Sale of Skim Milk,
Cream and Related Products

Ottawa
1968

RTPC No. 46
(Series begins 1959)

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1968

RESTRICTIVE TRADE PRACTICES COMMISSION

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RESTRICTIVE TRADE PRACTICES COMMISSION

Ottawa

May 9, 1968.

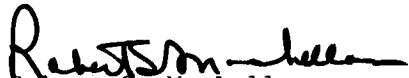
The Honourable John N. Turner, P.C.,
Minister of Consumer and Corporate Affairs,
Ottawa, Ontario.

Sir:

I have the honour to transmit to you the French and English texts of a report by the Restrictive Trade Practices Commission entitled: "Dairy Products, Montreal".

This report follows from an inquiry carried out under the Combines Investigation Act relating to the production, distribution and sale of skim milk, cream and related products.

Yours very truly,


Robert S. MacLellan
Chairman

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CHAPTER I

THE MONTREAL MILK DISTRIBUTORS ASSOCIATION

Provincial letters patent granted in 1934 established The Province of Quebec Milk Distributors Association Incorporated - L'Association des distributeurs de lait de la province de Québec Incorporée. Through supplementary letters patent issued in 1954, the name was changed to that of The Province of Quebec Milk Dealers' Association Inc. - L'Association des industriels laitiers de la province de Québec Inc. The purposes of the Association are as follows:

- "a) to group all the Province of Quebec industrialists interested in the distribution of milk in view of expanding professional ethics, promoting fair business practices and co-ordinating individual initiatives and efforts;
- b) to co-operate with organized milk producers in view of obtaining the best quality milk, produced in the most sanitary conditions;
- c) to work up an economic situation for the dairies so as to ensure the distribution of the most wholesome milk;
- d) to organize educational campaigns in view of increasing milk consumption;
- e) to co-operate with the Department of Agriculture in view of improving the production, sale and distribution of milk within the Dairy Industry;
- f) to co-operate with the Department of Health and health organizations in view of improving public health."

Conditions of eligibility for admission to membership in the Association are:

"Owners, duly authorized managers or officers of industrial plants situated within the limits of the Quebec Province and engaged in the pasteurization, handling or distribution of fluid milk may become member of the Association and represent such establishments officially, conditionally to their adherence to the following requisites:

- a) to comply with the Association constitution and by-laws;
- b) to pay their contribution regularly to the Association;
- c) to maintain, by their behavior and business practices, the prestige of the Association."

The General By-Laws of the Association, adopted in 1948 and amended subsequently, also provide that "The Association membership is divided in eleven (11) regional sections", including the Regional Section of Metropolitan Montreal.

The Regional Section of Montreal disassociated itself from the provincial Association to establish The Montreal Dairies' Association Inc. - L'Association des laiteries de Montréal Inc. On November 24, 1961, letters patent were granted to the new Association. The aims and purposes of The Montreal Dairies' Association Inc. are:

- "a) To group all the companies, partnerships, associations and persons in the economic region of Montreal interested in the pasteurization, the distribution of fluid milk and dairy products in the region, to promote their common interests, to set common standards of professional ethics and of fair business practices, to coordinate individual initiatives and efforts, and to insure within its powers of representation the economic and commercial stability of the plants operating in the region;

- b) To cooperate with milk producers' organizations and associations to maintain and improve the quality of milk and to encourage better methods of milk production;
- c) To act when required as the representative of the dairy owners of Montreal in all matters relating to commercial, industrial or labour relations and in consequence, to obtain, when needed and in accordance with the Law, any official recognition which may be required for these purposes;
- d) To organize and promote campaigns to increase milk and dairy products consumption and to give the public a better understanding of the dairy industry and of the services it renders to the community;
- e) To cooperate with any association of milk dealers, processors, producers or consumers, as well as with all government authorities in view of improving the production, the sale and distribution and the quality of milk and of dairy products within the dairy industry, particularly in the economic region of Montreal;
- f) To cooperate with all health authorities and all health organizations in view of improving public health."

"Any firm, partnership, association (Cooperative or otherwise but excluding enterprises affiliated to, or controlled or owned by Producers-Suppliers) or persons operating a plant for the pasteurization and processing of fluid milk. . ." can become a member of the Association. Mr. W.D. Lowe is the Secretary of the Association.

The allegation of the Director of Investigation and Research in this inquiry is as follows:

"It is alleged, therefore, that commencing on or about April 28, 1961, and continuing until November 30, 1963, the Montreal Section of the Province of Quebec Milk Dealers' Association Inc. and its successor, the Montreal Dairies' Association Inc., and the members thereof named hereunder

conspired, combined, agreed and arranged to prevent or lessen, unduly, competition in the sale of skim milk and cream to the Department of Veterans Affairs contrary to Section 32(1)(c) of the Combines Investigation Act.

The Province of Quebec Milk Dealers'
Association Inc. (Montreal Section),
Place Crémazie,
50 Crémazie Blvd. East,
Montreal, P.Q.

The Montreal Dairies' Association Inc.,
Room 7,
660 Crémazie Blvd. East,
Montreal, P.Q.

Hervé Côté and Paul-Henri Côté,
carrying on business as
Laiterie Bastien,
6145 Jarry Street East,
St. Léonard-de-Port-Maurice, P.Q.

The Borden Company, Limited (La
Compagnie Borden, Limitée),
1275 Lawrence Avenue,
Don Mills, Ont.
through the Farm Products Division,
3115 Côte de Liesse Road,
St. Laurent, P.Q.

Elmhurst Dairy, Limited,
7470 Upper Lachine Road,
Montreal, P.Q.

Guaranteed Pure Milk Co., Limited,
1025 Aqueduc Street,
Montreal, P.Q.

L. Hope Dairy, Limited,
924 Gouin Blvd. West,
Montreal, P.Q.

J.J. Joubert, Limitée,
4141 St. André Street,
Montreal, P.Q.

Laurel Industries Limited,
Suite 2200,
630 Dorchester Blvd. West,
Montreal, P.Q.

Mile-End Dairy, Limited (Laiterie
Mile-End, Limitée),
6636 St. Dominique Street,
Montreal, P.Q.

The Mount Royal Dairies & Company
Limited (Les Laiteries Mont Royal &
Compagnie Limitée),
1200 Papineau Avenue,
Montreal, P.Q.

Perfection Dairy Limited (Laiterie
Perfection Limitée),
2564 Chambly Street,
Montreal, P.Q.

A. Poupart & Cie, Ltée,
1715 Wolfe Street,
Montreal, P.Q.

Laiterie Saint-Alexandre, Limitée
(Saint Alexander Dairy, Limited),
263 St. Alexandre Street,
Longueuil, P.Q.

La Ferme St-Laurent, Limitée,
6720 Garnier Street,
Montreal, P.Q."

The sales of dairy products to the Department of Veterans Affairs were intended for Queen Mary Hospital in Montreal and Ste. Anne's Hospital in Ste. Anne de Bellevue. The period covered by the allegation is from April 1961 to November 1963.

The following is a list of the members of the Montreal Section of The Province of Quebec Milk Dealers' Association Inc. for the years 1960 and 1961 (bearing in mind that the fiscal year of the Association ended September 30), as well as a list of the members of The Montreal Dairies' Association Inc. for the years 1962 and 1963:

	<u>Montreal Section</u>	<u>Montreal Dairies' Association</u>		
	<u>1960</u>	<u>1961</u>	<u>1962</u>	<u>1963</u>
*Laurel		x	x	x(5)
St-Laurent		x	x	x
Jasmin		(1)		
Victoria		x	(4)	
Bastien		x	x	x
Borden		x	x	x
Saint-Alexandre		(2)	(2)	
Cousins		(3)		
Elmhurst		x	x	x(5)
Guaranteed		x	x	x
Idéale		x	x	x
Hope		x	x	x
Joubert		x	x	x
Mont Royal		x(2)	x(2)	
Perfection		x	x	x
Poupart		x	x	x
Rosemont		x	x	x
Cassidy		x	x	(6)

* Names are shown in the order they appeared on the Association list.

- (1) Laiterie A.O. Jasmin Enrg. ceased to be a member of the Association in 1961 and is not referred to further during this inquiry.
- (2) Laiterie Saint-Alexandre, Limitée, as a subsidiary of the Mount Royal Dairies & Company Limited, was a member of the Association through the latter's intermediary until June 1962 only, at which time Mount Royal withdrew from the Association. Mile-End Dairy, Limited, another subsidiary of Mount Royal participated in the Association in the same manner.
- (3) Ernest Cousins, Limited was purchased by The Borden Company, Limited in June 1961.
- (4) Laiterie Victoria Inc. withdrew from the Montreal Association but remained a member of the provincial Association.
- (5) Laurel Dairy Products Co. Ltd. was purchased by Dominion Dairies Limited in June 1963 and is represented by Elmhurst Dairy, Limited, another subsidiary of Dominion Dairies Limited.
- (6) A.A. Cassidy Reg'd. withdrew in July 1963.

The officers for the year 1960-61 were:

President	Earle Hope	(Hope)
Vice-President	J.P. Brissette (resigned during year and replaced by)	(Saint-Alexandre)
	Laurent Poupart	(Poupart)
Secretary	W.D. Lowe	

For the year 1961-62, the officers of the Montreal Regional Section were:

President	Laurent Poupart	(Poupart)
Vice-President	C.T. Lingard	(Guaranteed)
Secretary	W.D. Lowe	

For the year 1962-63, the officers were the following:

President	Laurent Poupart (resigned July 1, 1962)	(Poupart)
Vice-President	A. Harrison (resigned November 13, 1962)	(Borden)
President	H.A.J. Cumming (October 11, 1962)	(Laurel)
Vice-President	Pierre Charest (November 13, 1962)	(Joubert)
Directors	Conrad Giguère	(St-Laurent)
	Earle Hope	(Hope)
	Adrien Patenaude	(Rosemont)
Secretary- Treasurer	W.D. Lowe	

In 1963-64, the officers of the Association were:

President	H.A.J. Cumming (resigned July 23, 1963)	(Laurel)
President	Pierre Charest (named July 23, 1963)	(Joubert)
Vice-President	Pierre Charest (resigned as Vice- President July 23, 1963)	(Joubert)
Vice-President	C.T. Lingard (named July 23, 1963)	(Guaranteed)
Directors	Adrien Patenaude	(Rosemont)
	Laurent Poupart	(Poupart)
	H.J. Robson	(Elmhurst)
Secretary- Treasurer	W.D. Lowe	

CHAPTER II

THE REGULATION OF MILK IN THE PROVINCE OF QUEBEC

The Dairy Products Act, Chapter 126 of the Revised Statutes of Quebec, 1941, entrusts the regulating of dairy products to the Dairy Industry Commission of the Province of Quebec. This Commission was replaced by the Quebec Agricultural Marketing Board on May 1, 1963. However, the amending Act provided that the orders or other decisions of the Dairy Industry Commission remain in force but may be amended or rescinded by the Agricultural Marketing Board. The Commission had the following powers:

"13. 3. To supervise, control and regulate in the province the manner of purchasing, the purchase, transportation, handling, conversion, preparation, delivery, method of sale, sale, distribution or manner of distribution of milk, modified milk or cream, and the causes which may alter or terminate the contract mentioned in the section 26;

. . .

7. To fix, within the limits of any territory in the province which it may designate, the price of milk, modified milk or cream, taking into account the value of the products, the conditions of production, handling and delivery thereof and the conditions of the various local markets, so as to safeguard the interests of the producer-suppliers, the milk dealers, the distributors of dairy products and the consumers;

. . ."

Section 28 of the Dairy Products Act states:

"28. No milk dealer or distributor of dairy products shall allow to any person to whom he sells milk or cream any privilege, premium, benefit or advantage, in consideration of such sale, when such privilege, premium, benefit or advantage

has, in an immediate or remote, direct or indirect way or in any way whatsoever, the effect of making the price of the milk or cream so sold lower than the price fixed by the Board."

This provision ties in with Order No. 10 of the Dairy Industry Commission published in the Quebec Official Gazette on October 6, 1934, and which has remained in force. This order reads in part as follows:

"Considering the powers given the Dairy Industry Commission by paragraph 8 of article 13 of the Dairy Products Act (R.S.Q., 1925, chapter 63, replaced by 23 George V, chapter 24, and amended by 24 George V, chapter 27);

It is enacted as follows:

Any sale or delivery of milk or cream, or of milk and cream, alone or in combination with any other article of trade, at a price inferior to the current price of milk or cream, of the combination of milk or cream with any other article, is prohibited in the Province."

The Commission had fixed the retail price of some dairy products in Order No. 1-57C, in force on September 16, 1957. This order applied "to any person who, directly or indirectly, sells or delivers milk within the limits of the region of Montreal." This order was amended on various occasions and more specifically by Order No. 1-57D, in force on June 1, 1959 and by Order No. 1-57-L, of September 29, 1962. The provisions relating to prices are as follows:

"4. Save the provisions of Article 5 of the present Order, no person shall, within the limits of said region of Montreal, offer, sell or deliver:

a) milk at prices inferior to 13 1/2 cents a pint, 22 1/2 cents a quart, 44 1/2 cents the measure of a half gallon, 64 cents the measure of three quarts that no one shall sell, offer or deliver at a price superior to 68 cents.

However, if the consumer himself goes and fetches the milk at the counter of a commercial establishment, the merchant shall not sell him this milk at a price inferior to 59 cents nor at

a price superior to 64 cents the measure of three quarts.

b) chocolate milk at prices inferior to 8 cents the 7 ounce container, 10 cents a half-pint, 14 cents a pint and 24 cents a quart;

c) buttermilk at prices inferior to 9 cents a half-pint, 13 cents a pint and 21 cents a quart.

5. No person shall offer, sell or deliver to a grocery, a restaurant, a hotel, a military canteen, a dealer or to any other business establishment:

a) milk at prices inferior to 7 cents a half-pint, 12 1/2 cents a pint, 21 1/2 cents a quart, 42 cents the measure of a half gallon, 80 cents per gallon, and 54 cents the measure of three quarts that no one shall sell, offer or deliver at a price superior to 59 cents;

b) chocolate milk at prices inferior to 7 1/2 cents the 7 ounce container, 8 1/2 cents a half-pint, 13 cents a pint and 22 cents a quart;

c) buttermilk at prices inferior to 8 cents a half-pint, 12 cents a pint and 20 cents a quart.

6. No person shall offer, sell or deliver milk in bulk to charitable institutions or to hospitals at a price inferior to 78 cents a gallon. Those institutions will have the privilege of buying bottled milk at wholesale prices, that is 12 1/2 cents a pint and 21 1/2 cents a quart."

The order also stipulates the amounts that must be paid by milk distributors to their producers-suppliers. The basis of these payments is a fixed sum, f.o.b. the place of business of the distributor, for each hundred pounds of milk. The payment to producers-suppliers was then on a basis of 3.5 per cent butterfat. The order sets out prices for milk, chocolate milk and buttermilk. By "milk" is meant milk for consumption in its natural state which must, according to the Dairy Products Act, "contain at least 3.25% of milk fat and not less than 8% of solids not fat."

The Act defines "modified milk" as meaning "milk wholly or partially skimmed, or evaporated, with or without

the addition of vitamins or solid milk matter". On March 17, 1962, the Commission adopted Order No. 62-Sp-1, "Re: Partially Skimmed Milk". In this order:

" . . . Partially skimmed milk shall belong to one of the two following classes:

First Class: Skimmed milk containing 2% milk fat;

Second Class: Skimmed milk containing 1 1/2% milk fat."

The following preamble to the order concerning partially skimmed milk indicates the scope of the Board's regulations:

"Whereas it is advisable to bring under regulation the preparation, the sale and the distribution of partially skimmed milk, to bring under regulation the inscriptions describing the nature and the composition of the product, and also to fix the sale price of this product; . . ."

The prices were fixed in the following manner:

"5. No one shall offer, sell or deliver partially skimmed milk:

a) In the case of the first class affected by Section 2, at a price inferior to 2 cents per quart less than the price fixed by Order for milk offered, sold or delivered in identical conditions;

b) In the case of the second class affected by Section 2, at a price inferior to 3 cents per quart less than the price fixed by Order for milk offered, sold or delivered in identical conditions."

CHAPTER III

ESTABLISHMENT OF A ROTATION SYSTEM FOR THE SUPPLY OF DAIRY PRODUCTS TO QUEEN MARY HOSPITAL

The purchases of dairy products for Queen Mary and Ste. Anne's Hospitals are made by the head office, in Ottawa, of the Department of Veterans Affairs. Invitations to tender are forwarded to tenderers whose names appear on a list that has been compiled over a period of years of dealers who have manifested an interest in tendering. According to Mr. J.W.R. Shaw, Chief Purchasing Agent for the Department, in Ottawa, every milk dealer whose firm can "meet the requirements of the Department satisfactorily" would be included in the list. A firm could not, however, tender unless it were invited to do so and only listed firms are so invited.

Mr. Shaw explained how the tender system of the Department operated after the invitations to tender had been mailed to the milk dealers whose names appeared on the list:

"Q. How do the incoming bids, the bids received from the companies, come through your office?

A. When tenders are sent out, they are sent out in duplicate, with a return addressed envelope, marked with the tender number and the commodity for which the tender has been called, and the date on which that tender closes.

Q. Yes.

A. Tenders must be included in the envelope which is provided by the Department, and must be received by the time that is mentioned in the tender as being the closing time. When these tenders are received in the mail they are date-stamped - the date and the time of receipt at the mail desk, which is a receipt by the Department - and they are then brought to my office and put in a locked box, a locked steel box. This is opened daily at approximately 12 o'clock, and those tenders indicated to be opened on that date are opened by myself and another member of the purchasing staff."

Contracts for the supply of dairy products are given twice a year for a six-month period. The first period runs from June 1 to November 30 and the second one, from December 1 to May 31.

Tenders for Queen Mary and Ste. Anne's Hospitals were different with respect to quantities but concerned the same products: homogenized milk, buttermilk, skim milk, chocolate milk, 15 per cent and 32 per cent cream. Except for cream, and until March 1962, for skim milk, the Dairy Industry Commission, or later, the Agricultural Marketing Board, had fixed minimum prices for these dairy products. The prices fixed by the Commission were respected generally by tendering dealers in the course of the years 1959 to 1963. But the prices quoted on skim milk and cream varied from a regular price of 17 cents for skim milk and \$1.05 for 32 per cent cream to a fraction of a cent and even down to 1/100,000th of a cent. As the tables reproduced hereunder show, in certain instances, dairies, including Laiterie Côte and Laurel Dairy Products Co. Ltd., offered to give skim milk and cream free during the full period of the contract so as to secure the contract for the supply of milk, buttermilk and chocolate milk at the minimum prices fixed by the Commission or by the Board.

The Regional Section of Montreal of The Province of Quebec Milk Dealers' Association Inc. held a regular meeting on April 6, 1961 at which were present:

L. Poupart (Poupart)	J.E. Peloquin (Joubert)
E. Hope (Hope)	H.J. Robson (Elmhurst)
A. Patenaude (Rosemont)	F.E. Cousins (Cousins)
R. Hébert (Perfection)	C.T. Lingard (Guaranteed)
C. Giguère (St-Laurent)	J.A. Raymond (Idéale)
R. Daly (Borden)	

The minutes of this meeting, as drafted by Mr. W.D. Lowe, show that "Government Contracts" were under study:

"The possibility of arranging with the Government to allocate the milk and cream contracts for supplying the Ste-Anne de Bellevue and Queen Mary Military hospitals on a rotating basis was discussed. The suggestion was made that the Secretary write to the appropriate authorities requesting that the Montreal Dairies be permitted to submit tenders for supplying these institutions and that the contracts that are awarded be given

on a rotation basis and on a term limit of every 3 months. The members discussed the subject to some length but it was finally decided that the matter should be left over for a meeting to be held during the week of April 10th to 14th at which time the Permanent Committee could further discuss the matter with the Montreal members. This meeting is to be called as soon as possible."

This other meeting was held on April 18, 1961. There were present:

L. Poupart (Poupart)	A. Poupart (Poupart)
K. Hope (Hope)	H.A.J. Cumming (Laurel)
A. Patenaude (Rosemont)	F.E. Cousins (Cousins)
H. Côté (Bastien)	C.T. Lingard (Guaranteed)
C. Giguère (St-Laurent)	J.A. Raymond (Idéale)
R. Daly (Borden)	

The minutes of this last meeting disclose that Mr. F.E. Cousins, then General Manager of Ernest Cousins, Limited, expressed the view that government contracts relating to the supply of milk and cream to Queen Mary and Ste. Anne's Hospitals should be granted in turn to each Montreal dairy. He suggested also that a committee made up of members of the Montreal Regional Section should be set up so as to study the situation. He believed that "the Government of Canada should be approached" to request that a separate contract should be given for each hospital and that each contract be for a three-month period and, finally, that the system should be such that the two hospitals not be supplied by the same dairy. It was also suggested, at this meeting, that all tenders of the Montreal dairies to supply the two hospitals should be sent to the Secretary of the Montreal Regional Section for checking and that they be mailed by him. The meeting decided that Mr. Cousins should submit his suggestions to the competent authorities in Ottawa and that this question should be studied again when Mr. Cousins returned from Ottawa and ". . . in the meantime, if new tenders for these accounts are mailed by the Government in the near future, the completion of the tender should be held over till this matter has been finalised and a definite policy agreed upon."

On April 25, 1961, the Secretary notified the Montreal Regional Section of the Milk Dealers' Association of a meeting to be held on Friday, April 28, 1961 at the Association's office. The proposed agenda listed only one

item, "Government Contracts". The notice also stated:

"May we count on your cooperation to not mail out the tenders relating to the current government contract until this matter has been discussed at the meeting on Friday."

The following attended the April 28, 1961 meeting:

L. Poupart (Poupart)	J.E. Peloquin (Joubert)
C.E. Cousins (Cousins)	H.A.J. Cumming (Laurel)
A. Patenaude (Rosemont)	F.E. Cousins (Cousins)
R. Hébert (Perfection)	C.T. Lingard (Guaranteed)
C. Giguère (St-Laurent)	J. Bourgault (Victoria)
R. Daly (Borden)	C.E. McMonagle (Elmhurst)

The minutes of this meeting describe the system adopted by the members of the Association:

"The meeting was called for the purpose of discussing the policy to be adopted regarding government contracts for milk and cream supplies. At this time, the particular contract in question concerns the Queen Mary and Ste. Anne de Bellevue Veterans Hospital.

The members decided that quotation tenders should be submitted at prices in accordance with those established by Order No. 1-57-C, and amendments, of the Quebec Dairy Commission and that all quotations in this instance be submitted to the Montreal Section Secretary for verification. Tenders will then be mailed by the aforesaid Secretary to the Government."

The members of the Montreal Section then decided to establish a rotation system on the basis of a draw. The name of each of the following thirteen Montreal dairies was placed in a hat: Borden, Cousins, Elmhurst, St-Laurent, Guaranteed, Hope, Joubert, Laurel, Mount Royal, Perfection, Poupart, Producers', Saint-Alexandre. These dairies taking part in the draw were those which had been invited by the Department of Veterans Affairs to submit tenders for the supply of dairy products to Queen Mary Hospital. Each of these dairies was a member of the Montreal Section of the Milk Dealers' Association. Mr. A. Patenaude, representing Laiterie Rosemont Inc., and Mr. J. Bourgault of Laiterie Victoria Inc., attended the April 28, 1961 meeting, but were not interested in having their dairies participate in the draw.

Joubert was the first dairy favoured by the draw and obtained the contract for the supply of dairy products to Queen Mary Hospital for the period from June 1, 1961 to November 30, 1961. The second dairy to be winner of the draw was Elmhurst, which obtained the contract for the period from December 1, 1961 to May 31, 1962; then Perfection, for the period from June 1, 1962 to November 30, 1962, Hope, for the period from December 1, 1962 to May 31, 1963 and Poupart, for the period from June 1, 1963 to November 30, 1963. The rotation system was still in operation in 1964 when evidence was being taken in the course of this inquiry.

In each case, the dairy whose name was drawn obtained the supply contract for Queen Mary Hospital. As soon as a dairy was designated by the luck of the draw and had obtained the contract, its name was withdrawn from the list. Mr. W.D. Lowe, Secretary of the Association, ensured the proper working out of the rotation system. He checked the prices shown on tenders and on occasion put them in himself so as to make sure that all the dairies, except the tenderer whose name had been drawn, quoted the prices fixed by the Dairy Industry Commission and, for skim milk and cream, the current wholesale prices on the Montreal market. The "lucky tenderer" would quote a price five to ten cents lower for cream, a product whose price was not fixed by the Commission. Table 1 constitutes a very clear illustration of the operation of the rotation system.

Mr. Cecil E. Cousins has confirmed the working of the system:

"A. Well, it was suggested that owing to the low prices that they were receiving for all their product, it was better to have the contract out once every five years than have it for six months at any time at the present prices. So, I don't know who made the suggestion, but the suggestion was made that they put the names in a hat and they would draw out the one who was to submit the tender to get the contract, and that for the following contract that name would be deleted. So, in other words, each one would have a turn at supplying the Government."

TABLE I

PRICE QUOTATIONS ON UNCONTROLLED PRODUCTS
BEGINNING JUNE 1, 1961
ON TENDERS FOR QUEEN MARY HOSPITAL

DAIRIES	June 1, 1961-Nov. 30, 1961			Dec. 1, 1961-May 31, 1962			June 1, 1962-Nov. 30, 1962			Dec. 1, 1962-May 31, 1963			June 1, 1963-Nov. 30, 1963		
	Skim	Cream	Cream	Skim	Cream	Cream	Skim	Cream	Cream	Skim	Cream	Cream	Skim	Cream	Cream
	Milk	15%	32%	Milk	15%	32%	Milk	15%	32%	Milk	15%	32%	Milk	15%	32%
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Laiterie Bastien	-	-	-	0.17	0.60	1.05	0.16	0.60	1.05	0.16	0.59	1.05	0.16	0.59	1.05
The Borden Company, Limited	0.17	0.59	1.05	0.17	0.59	1.05	0.16	0.59	1.05	0.16	0.59	1.05	0.16	0.59	1.05
Ernest Cousins, Limited	0.17	0.59	1.05	0.17	0.59	1.05	0.16	0.59	1.05	0.16	0.59	1.05	0.16	0.59	1.05
Elmhurst Dairy, Limited	0.17	0.59	1.05	0.14	0.55	0.95*	0.16	0.59	1.05	0.15 1/2	0.59	1.00	0.15 1/2	0.59	1.00
Guaranteed Pure Milk Co., Limited	0.17	0.59	1.05	0.17	0.59	1.05	0.17	0.59	1.05	0.17	0.59	1.00	0.17	0.59	1.00
L. Hope Dairy, Limited	0.17	0.59	1.05	0.17	0.60	1.05	0.16	0.60	1.05	0.15	0.54	0.95*	0.15 1/2	0.59	1.00
J.J. Joubert, Limitée	0.17	0.55	0.95*	0.17	0.59	1.05	0.16	0.59	1.05	0.16	0.59	1.05	0.16	0.59	1.05
Laurel Dairy Products Co. Ltd.	0.17	0.59	1.05	0.16 1/2	0.59	1.05	0.16	0.59	1.05	0.16	0.59	1.05	-	-	-
Mile-End Dairy, Limited	0.17	0.59	1.05	-	-	-	-	-	-	-	-	-	-	-	-
The Mount Royal Dairies & Company Limited	0.17	0.59	1.05	0.16 1/2	0.59	1.05	0.16	0.59	1.05	0.15	0.59	1.00	0.15	0.59	1.00
Perfection Dairy Limited	0.17	0.59	1.05	0.17	0.59	1.03	0.15	0.55	0.95*	0.15	0.58	1.05	0.15	0.58	1.05
A. Poupart & Cie, Ltée Incorporated	0.17	0.59	1.05	0.17	0.59	1.05	0.16	0.59	1.05	0.15	0.58	1.05	0.15	0.54	0.95*
Producers Dairy, /	0.17	0.59	1.05	0.16 1/2	0.59	1.05	0.16	0.60	1.05	0.16	0.60	1.05	0.16	0.59	1.00
Laiterie Saint-Alexandre, Limitée	0.17	0.59	1.05	0.14	0.59	1.05	0.16	0.59	1.05	0.16	0.59	1.05	0.16	0.59	1.05
La Ferme St - Laurent, Limitée	-	-	-	-	-	-	0.16	0.60	1.05	0.16	0.59	1.00	0.16	0.59	1.00

* Obtained the contract

Tabulation based on tenders

And Mr. C.T. Lingard, of Guaranteed, completed the description, thus:

- "Q. But, Mr. Lingard, what use would there have been in having this rotation if other dairies which had not been successful in the draw quoted lower prices than the dairies who had been the successful bidder?
- A. No, if you were not the successful bidder you would bid your normal price, but if you were the successful bidder you probably -- it was up to you then to drop maybe five cents or two cents, whatever you pleased, it was up to you on the cream. In our case it was cream. To my knowledge I think we dropped it four or five cents a quart on the cream and probably two cents on the skim milk."

The table shows that Laiterie Bastien took part in the draw from December 1, 1961 but not with respect to the period from June 1, 1961 to November 30, 1961 because it had not been invited to tender. Mile-End Dairy took part, however, in the first draw only and did not submit tenders afterwards. It should be noted that Mile-End as well as Saint-Alexandre were subsidiaries of The Mount Royal Dairies & Company Limited. Laurel submitted tenders for four six-month periods but not for that which covered from June 1, 1963 to November 30, 1963; at that time Laurel became a subsidiary of Dominion Dairies Limited. Elmhurst is also a subsidiary of Dominion Dairies Limited. La Ferme St-Laurent was invited to submit tenders as from June 1, 1962 only.

The situation which existed in Montreal prior to the adoption of the rotation system, with respect to tenders submitted for Queen Mary Hospital, is illustrated by Table 2.

TABLE 2

PRICE QUOTATIONS ON UNCONTROLLED PRODUCTS
PRIOR TO JUNE 1, 1961
ON TENDERS FOR QUEEN MARY HOSPITAL

DAIRIES	Dec. 1, 1959 - May 31, 1960			June 1, 1960 - Nov. 30, 1960			January 1, 1961 - May 31, 1961		
	Skim Milk \$	Cream 15% \$	Cream 32% \$	Skim Milk \$	Cream 15% \$	Cream 32% \$	Skim Milk \$	Cream 15% \$	Cream 32% \$
The Borden Company, Limited	0.10	0.10	0.30	0.12	0.10	0.65	0.12	0.10	0.50
Ernest Cousins, Limited	0.0 1/2	0.0 1/2	0.0 1/2	0.1/100	0.1/100	0.1/100	1/7638d	1/12576d	1/1032d
Elmhurst Dairy, Limited	0.09	0.31	0.54 1/2	0.05	0.05	0.10	-	-	-
L. Hope Dairy, Limited	0.11	0.43	0.88	0.11	0.43	0.88	0.11	0.43	0.88
J.J. Joubert, Limitée	0.17	0.59	1.05	-	-	-	0.17	0.59	1.05
Laurel Dairy Products Co. Ltd.	-	-	-	0.02	0.25	0.40	1/1273d	1/2096d	1/172d
Mile-End Dairy, Limited	0.17	0.01 1/2	0.02	-	-	-	-	-	-
The Mount Royal Dairies & Company Limited	0.17	0.0 1/2	0.01 1/2	0.17	0.3/8	0.1/4	0.17	0.59	1.05
Perfection Dairy Limited	0.0 1/2	0.01	0.01	0.1/8	0.1/8	0.1/8	1/100,000d	1/100,000d	1/100,000d
A. Poupart & Cie, Ltée	0.12	0.42	0.90	0.12	0.42	0.90	0.12	0.42	0.90
Producers' Dairy, / Laiterie Saint-Alexandre, Limitée	0.17	0.59	1.05	0.17	0.59	1.05	0.17	0.59	1.05
	0.17	0.59	1.05	0.17	0.59	1.05	0.14	0.59	1.05

(Pointe Claire Ferme, Pointe Claire, P.Q., also tendered for the period December 1, 1959 - May 31, 1960, but not subsequently, and has therefore not been taken into consideration.)

Tabulation based on tenders

Mr. Cecil E. Cousins reported back on the "reaction" of competent authorities within the Department of Veterans Affairs in Ottawa. He told the members present that the senior civil servant in Ottawa whom he had consulted, had pointed out to him that it was up to the Association to settle its own problems. Mr. W.D. Lowe, Secretary of the Montreal Regional Section, understood thereby that "it was clear that we could try to work out some method of rotating of the contracts, but that the Department would not sanction it officially". Mr. Cecil E. Cousins' visit to Ottawa had actually taken place many months before, in the summer of 1960. It seems that Mr. Cousins' comments were wrongly interpreted by Mr. Lowe. Mr. Cousins' testimony as to his meeting with Mr. Stanley Clifford Pryde, then Executive Assistant to the Minister of Veterans Affairs, was as follows:

"Q. And what was the purpose of holding this meeting [of April 28, 1961] before the tenders were mailed?

A. For the reason that the prices had got out of hand; there was no money being made, the hospitals were taking advantage of any company that had the contract by buying an enormous amount of cream and skim milk and making their own milk and the companies were depending on the whole milk to pull them through the contract. I went to Ottawa with regards to that matter and I saw Mr. Pride [sic]. I said, 'What can the Government do about this?' He says, 'We can't do anything; it is up to the Quebec Government.'

. . .

Q. What was Mr. Pride's opinion?

A. Mr. Pride's opinion was that we should get Quebec to set up a minimum price on cream and skim milk. He says, 'You've got to look after -- in other words, you have got to wash your own linen in Quebec, as we have nothing to do with it. We are the Federal Government.' And that is the whole thing."

Mr. Pryde's testimony confirmed that of Mr. Cousins:

"A. Well, I still say that, first of all, I did not give him any advice. I merely intimated that if they were having trouble with their association, dealing with the regulated [sic] body of the province of Quebec, that was entirely up to the association. . . ."

Mr. Pryde said that when he met Mr. Cousins in his office in Ottawa, he suggested to him that the matter was one to be dealt with not by the Milk Dealers' Association but by the Dairy Industry Commission of the Province of Quebec, that is, as he testified afterwards: "a body set up by the provincial government to control prices. . . . More or less to control the price of milk. . . much the same as they have in Ontario - but I think in Ontario and the other provinces they go further. . . . If I remember correctly, I think the big problem down there was that there was no control on cream. The result was that these people are practically giving cream away in order to get milk contracts. This was no concern of ours. If they wanted to give cream to us, all right, so long as they tendered on the total amount. That was their business."

All these events and the reasons which prompted them were well narrated by Mr. Lowe in the course of his testimony during the inquiry:

"Well, it is a long story. First and foremost, as I recall, tenders had been submitted to the government in past years. As far as I was aware only one or two dairies ever got such -- were ever awarded the contract. Under date of December 4 in 1960 there appeared in the Montreal Dimanche Matin the story relating to a question asked by a Member of Parliament regarding these contracts, and it developed from there that prices were like one one-hundredth of a cent for cream or about 4 cents per quart for milk, and were prices which the . . . Department apparently had accepted in quoted bids in the past. . . . The bids at these prices which, according to the newspaper report, where they compared outside the province prices, would indicate a very discriminatory practice towards our Montreal dairies or Quebec dairies, with the result that while the Montreal

market is ruled and regulated by orders at that time of the Quebec Dairy Industry Commission, of the Quebec Dairy Products Act, which of recent years has been superseded by the Quebec Agricultural Marketing [Board], where there are provisions that milk prices should not be lowered by offering milk -- cream prices at lower -- at lower prices to tend to create a lower milk price less than the legal minimum, with the result that. . . I was directly approached. I understand that the Commission didn't quite approve of that newspaper release and instituted some inquiries around the market and passed out the word, well, you boys had better clean up. . . there are items on which there are no fixed prices, . . . it went down to the extremely ridiculous stage of . . . one one-hundreds of a cent for cream, and was accepted by the Department. . . . So, in an effort to clear this up, such a meeting was called to discuss among the members what can be done so that on the whole all members would have a fair chance of having that contract. . . ."

Mr. Hervé Côté, of Laiterie Bastien, explains what took place at the meetings of April 1961, as follows:

[Translation]

"To begin with, there was question of the fact that the prices had been cut on the tenders. Consequently, this was a matter which was difficult to control. We had been advised at that time by the Dairy Industry Commission to discontinue the price cutting in order to stop the unfair competition and to maintain the minimum price, to maintain the prices fixed by the Dairy Industry Commission. Accordingly, we had heard it said that, on these tenders, the cream was being practically given away; and automatically, by averaging things out, that resulted in lowering the price of the milk, - which was not in accordance with the order of the Dairy Industry Commission aimed at the maintenance of those very prices. So, it had been agreed that we should find a solution to prevent the cutting of those prices and to remove the unfair competition among all the members."

In 1961, Mr. Alphonse Savoie was the Secretary of the Dairy Industry Commission. He had been acting in this capacity since 1942. He was questioned in the course of the inquiry as to the relations between the Commission and the Milk Dealers' Association as well as the Montreal Dairies' Association. The examination was directed primarily at determining what implementation had been made of section 28 of the Dairy Products Act. He did not recall that there had been any interpretation of this provision by the courts. The Dairy Industry Commission, however, was called upon to make rulings in particular cases, submitted by Montreal dairies; one case concerned a publicity campaign where an advertising agency wanted to distribute milk and other dairy products of a particular dairy so as to promote the name of that dairy and increase the number of its customers. Although the advertising agency would have purchased the milk and the other dairy products and have shown these purchases as campaign costs, the Commission decided that the project would be contrary to the requirements of section 28. However, the Dairy Industry Commission deemed that a chain store could allow its clients to pay for part of the price of milk with trading stamps. The Queen Mary and Ste. Anne's Hospitals case was dealt with by the Dairy Industry Commission in the following way, according to Mr. Savoie:

[Translation]

"THE CHAIRMAN:

Mr. Savoie, let us suppose that an important customer asks for tenders for the supply of milk and cream and he asks for prices in one sole tender for both milk and cream; then, in accordance with a proper interpretation of the provincial law, the tendering dairy must abide by the minimum prices established under the provincial law?

A. That is right.

Q. But let us suppose that in one tender a dairy provides: 'Milk, I am ready to supply it at "such" price, -- and that would be a legal price!' --; now, the tender also requests a price for a small quantity of cream and in this respect the dairy says: 'Cream, I am going to sell it to you at one-hundredth of a cent per quart'; the

question now arises as to whether the relevant provision of the law has been abided by or not; I am not asking you to state what the law is; but in relation to such a type of problem, has the Commission taken a stand or made a ruling?

A. No; not officially in a case of this sort, no; when cases of this sort have been brought to our attention, - now precisely following that, a group of representatives of this association of distributors had to agree amongst themselves to abide not only by prices for fluid milk but also by the current market price for the other products; as I have said, the Commission did not intervene and has not adopted any attitude in such a case because in that instance, having regard to the manner in which the matter was submitted to us, it was primarily the milk dealers' interest that was at stake.

Q. Of the dealers'? --

A. -- which was at stake, yes; and always in relation to the same buyer, if I may so state -- I believe we are talking about the same thing! -- that case came to our knowledge, where milk was being offered at prices specified in our orders, but on the other hand, when by-products were involved as in the case of the price of cream, there was quite a reduction!

Q. The buyer, -- was it not Queen Mary and Ste. Anne's Hospitals?

A. Yes.

Q. Then, the facts were brought to your attention but the Commission did not adopt any stand?

A. No; it did not adopt any stand; this, too, is vague; I am sorry I did not have perhaps twenty minutes more, I could have found something much more precise; but the plants, following their meeting with the Commission,

had to undertake to abide by the current market prices. Now, I am not talking about fluid milk but about the other products such as cream, for example, because in that case the current market price would apply!

Q. Had the dairies undertaken amongst themselves to abide by market prices, or was the undertaking given to the Commission?

A. Amongst themselves; that is the information they gave to us, and this was something that they had to settle within their own association.

Q. Had the Commission reproached them with having quoted ridiculous prices for cream and the unregulated products?

A. Now -- in this manner! -- indirectly, yes, because these dairy plants came before the Commission to ask increases to the marginal price, and we seized this occasion to state that 'As long as you are capable --' or that they would find the means of selling or offering milk or even other dairy products at prices lower than current market prices, the Commission felt it would not be justified in giving consideration to any marginal increase."

It would seem that the Dairy Industry Commission was aware of the intention of the Regional Section of the Association to establish a rotation system. The Commission abstained from interfering either in favour of or against the system because, from its standpoint, this was a matter of "internal administration. . . between the dairies".

The rotation system applied only in the case of Queen Mary Hospital. An attempt was made at implementing the system for Ste. Anne's Hospital, but without any success, according to Mr. Lowe. The Côté brothers who operated Laiterie Côté (called Laiterie Dorion by Mr. Lowe), a dairy that was not a member of the Montreal Regional Section, were invited to take part in the rotation system. Laiterie Côté did not serve the Montreal market but rather a peripheric market which included Ste. Anne de Bellevue. Laiterie Côté hence enjoyed a geographic advantage in this

respect. All the dairies involved, members of the Montreal Regional Section - which became The Montreal Dairies' Association Inc. - received invitations to tender for the two hospitals. Laiterie Côté never submitted tenders for Queen Mary Hospital. The Montreal dairies considered it would be futile to adopt the rotation system for Ste. Anne's Hospital because, obviously, only one "recalcitrant" was needed to wreck the system. Now, Laiterie Côté (Dorion Dairy) "were prepared to play ball", according to Mr. Lowe, "provided they got the contract first." The situation with respect to sales of milk to Ste. Anne's Hospital in the course of the years 1960 to 1963 is eloquently described in Tables 3 and 4.

TABLE 3

PRICE QUOTATIONS ON UNCONTROLLED PRODUCTS
PRIOR TO JUNE 1, 1961
ON TENDERS FOR STE-ANNE'S HOSPITAL

DAIRIES	Dec. 1, 1959 - May 31, 1960			June 1, 1960 - Nov. 30, 1960			January 1, 1961 - May 31, 1961		
	Skim Milk \$	Cream 15% \$	Cream 32% \$	Skim Milk \$	Cream 15% \$	Cream 32% \$	Skim Milk \$	Cream 15% \$	Cream 32% \$
The Borden Company, Limited	0.10	0.10	0.30	0.12	0.10	0.65	0.12	0.10	0.50
Laiterie Côté	0.005	0.004	0.004	-	-	-	-	-	-
Ernest Cousins, Limited	0.0 1/2	0.0 1/2	0.0 1/2	1/100¢	1/100¢	1/100¢	1/2148¢	1/18462¢	1/1566¢
Elmhurst Dairy, Limited	0.08 1/2	0.29	0.51 1/2	0.05	0.05	0.10	-	-	-
L. Hope Dairy, Limited	0.11	0.43	0.88	0.11	0.43	0.88	0.11	0.43	0.88
J.J. Joubert, Limitée	0.17	0.59	1.05	-	-	-	0.17	0.59	1.05
Laurel Dairy Products Co. Ltd.	-	-	-	1/10¢	1/10¢	1/10¢	1/358¢	1/3077¢	1/261¢
Mile-End Dairy, Limited	0.17	0.25	0.35	-	-	-	-	-	-
The Mount Royal Dairies & Company Limited	0.17	0.35	0.50	-	0.3/8	0.1/4	0.17	0.59	1.05
Perfection Dairy Limited	0.0 1/2	0.01	0.01	0.1/8	0.1/8	0.1/8	1/100,000¢	1/100,000¢	1/100,000¢
A. Poupart & Cie, Ltée Incorporated	0.12	0.42	0.90	0.12	0.42	0.90	0.12	0.42	0.90
Producers Dairy, / Laiterie Saint-Alexandre, Limitée	0.17	0.59	1.05	0.17	0.59	1.05	0.17	0.59	1.05
	0.17	0.59	1.05	0.17	0.59	1.05	0.14	0.59	1.05

(Pointe Claire Ferme, Pointe Claire, P.Q., also tendered for the period December 1, 1959 - May 31, 1960, but not subsequently, and has therefore not been taken into consideration.)

Tabulation based on tenders

TABLE 4
PRICE QUOTATIONS ON UNCONTROLLED PRODUCTS
BEGINNING JUNE 1, 1961
ON TENDERS FOR STE-ANNE'S HOSPITAL

DAIRIES	June 1, 1961-Nov. 30, 1961			Dec. 1, 1961-May 31, 1962			June 1, 1962-Nov. 30, 1962			Dec. 1, 1962-May 31, 1963			June 1, 1963-Nov. 30, 1963		
	Skim Milk \$	Cream 15% \$	Cream 32% \$	Skim Milk \$	Cream 15% \$	Cream 32% \$	Skim Milk \$	Cream 15% \$	Cream 32% \$	Skim Milk \$	Cream 15% \$	Cream 32% \$	Skim Milk \$	Cream 15% \$	Cream 32% \$
Laiterie Bastien	-	-	-	0.000	0.20	0.60	0.17	0.20	0.60	0.17	0.10	0.40	0.17	0.10	0.35
The Borden Company, Limited	0.17	0.59	1.05	0.17	0.59	1.05	0.16	0.59	1.05	-	-	-	0.16	0.59	0.95
Laiterie Côté Ernest Cousins, Limited	0.002	0.002	0.002	0.000	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Elmhurst Dairy, Limited	1/2808¢	1/1263¢	1/1446¢	1/2688¢	1/1383¢	1/1650¢	-	-	-	-	-	-	0.16	0.59	0.95
Guaranteed Pure Milk Co., Limited	-	-	-	-	-	-	0.16	0.59	1.05	0.13 1/2	0.10	0.15	-	-	-
L. Hope Dairy, Limited	0.17	0.59	1.05	0.17	0.59	1.05	0.17	0.59	1.05	0.17	0.59	1.00	0.17	0.59	1.00
J.J. Joubert, Limitée	0.17	0.43	0.88	0.17	-	-	-	-	-	0.15	0.54	0.95	0.15 1/2	0.59	1.00
Laurel Dairy Products Co. Ltd.	0.17	0.55	0.95	0.17	0.55	0.95	-	-	-	0.16	0.59	0.95	0.16	0.59	0.95
Mile-End Dairy, Limited	0.17	0.59	1.05	1/806¢	1/4150¢	1/4950¢	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
The Mount Royal Dairies & Company Limited	0.17	0.59	1.05	-	-	-	-	-	-	-	-	-	-	-	-
Perfection Dairy Limited	0.17	0.39	0.60	0.15	0.59	1.05	0.16	0.59	1.05	0.15	0.59	1.00	0.15	0.59	1.00
A. Poupart & Cie, Ltée Incorporated	0.10	0.35	0.75	0.10	0.35	0.75	0.15	0.55	0.95	0.15	0.55	0.95	0.15	0.55	0.95
Producers' Dairy, / Laiterie Saint-Alexandre, Limitée	0.12	0.45	0.90	0.15	0.52	1.05	0.16	0.59	1.05	0.15	0.58	1.05	-	-	-
La Ferme St- Laurent, Limitée	-	-	-	-	-	-	0.16	0.60	1.05	0.16	0.60	1.05	0.16	0.59	1.00
	0.17	0.59	1.05	0.14	0.59	1.05	0.16	0.59	1.05	0.16	0.59	1.05	0.16	0.59	1.05
	-	-	-	-	-	-	0.16	0.60	1.05	0.16	0.59	1.00	0.16	0.59	1.00

Tabulation based on tenders

CHAPTER IV

CONCLUSIONS

The Director's allegation is to the effect that on or about April 28, 1961, when some Montreal dairies decided to adopt a rotation system for the sales of milk to Queen Mary Hospital, until November 30, 1963, the date at which ended a six-month period for the contract at the hospital, the Regional Section of Montreal of The Province of Quebec Milk Dealers' Association Inc., and the successor to this Regional Section, The Montreal Dairies' Association Inc., as well as some of their members, conspired, combined, agreed or arranged to prevent or lessen, unduly, competition in the sale of skim milk and cream to the Department of Veterans Affairs, contrary to the provisions of paragraph (c) of subsection (1) of section 32 of the Combines Investigation Act. This provision of the Act reads as follows:

"32. (1) Every one who conspires, combines, agrees or arranges with another person

. . . .

(c) to prevent, or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of an article, or in the price of insurance upon persons or property, or

. . . .

is guilty of an indictable offence and is liable to imprisonment for two years."

In many countries, over the years, inquiries have been made into the question of agricultural markets and more especially where dairy products are concerned. In the United Kingdom, the Lucas Committee was appointed, in 1946, to study the various agricultural marketing acts. The "Report of the Committee Appointed to Review the Working of the Agricultural Marketing Acts", published in 1947, concluded that it was indispensable that prices be controlled at the producer level to ensure him an adequate revenue. The consumer also had to be protected but it was considered that to achieve this, with the disappearance of wartime restrictions, there was no need

to have a strict control over prices at the distribution level. The following year, in 1948, the Ministry of Food, set up pursuant to the recommendations of the Lucas Committee to implement its views concerning both producers and consumers, appointed a committee to particularly study milk distribution. The "Report of the Committee on Milk Distribution", of 1948 (Cmd. 7414), recommended at page 6:

"IX. We propose detailed control by an independent Central Authority of the flow of milk from the farm until it reaches the processing dairy. The Central Authority should determine the volume of milk passing through each country depot, the quantities to be forwarded to consuming centres and the amount to be manufactured. Town processors should operate subject to maximum charges when they resell the milk to retailers. Our main weapon for securing efficiency in retailing is to create conditions more favourable to real competition than have existed since 1933; a subsidiary, but important, weapon is the continued imposition of maximum retail prices."

The report underlines the fact, as it was also noted in France, that the dairy industry was burdened by economic and legal conditions resulting from the constant danger of the collapse of prices paid to producers before World War II, and from the scarcity of products during the war. The report looks into various methods of control and adds, at page 39:

"162. Having rejected the alternatives, we propose, therefore, to seek economy in the retail field by creating conditions as favourable as possible for free competition. (To this we would add the imposition of maximum margins.)"

And again, at page 39:

"166. It may not be enough to remove a centrally prescribed system of minimum retail prices. Distributors may agree among themselves on a minimum retail price, . . . We recommend the prohibition of agreements to charge not less than a specified retail price, . . ."

In 1947, the Ontario Royal Commission on Milk submitted its report prepared for the purpose of assessing the results of the controls on milk in the Province of Ontario, especially since the enactment of the Milk Control Act of 1934 which had provided for the setting up of the Ontario Milk Control Board. On the question of the fixing of prices, the report concluded at page iii:

"Under the administration of the Board the product has been standardized as to quality, competition as to price has been eliminated, and the only competition left between the various distributors is as to services. In my view this is a most wasteful and expensive form of competition."

This theme is elaborated at page 87 and in many other places in the report, and one of the special recommendations concerning distribution is that (page xiii):

". . . the retail consumer price should be made open and competitive without fixation by agreement or Milk Control Board order."

In January 1965, the "Report of the Ontario Milk Industry Committee" was submitted to the Government of Ontario. The report of the Committee, of which Professor S.G. Hennessey had been chairman, inspired the new Ontario Act on the control of prices, which also included the Committee's recommendation of the establishment of a new Board. The Hennessey Committee had made a study of all aspects of the competition in milk prices and strongly insisted on the necessity of allowing active competition between distributors so as to realize greater efficiency in the industry and to ensure reasonable prices to the consumer. The report concludes with the firm view that there does not appear to be any danger of the rise of monopolies by reason of active competition between milk distributors in Ontario (page 193):

"This Committee believes that wholesale and retail prices for fluid-milk products should be allowed to find their own level in response to changing market conditions.

We have no inclination to recommend control over retail prices. Such controls are incompatible with the free market economy which presently exists in this province. . . .

Destructive competition in its worst forms should be controlled by action taken under the Combines Investigation Act as at present."

In December 1963, the Quebec Agricultural Marketing Board adopted a new system of retail price determination for milk: a minimum price and a maximum price with an average spread of four cents. This new system, in force since January 1, 1964, hence provides leeway for some competition. The maximum price is intended to protect the consumer. The minimum price would play in a concrete fashion the role of minimum price acts as adopted in Manitoba, British Columbia and in some states of the United States: the fixing of minimum prices in the case of agricultural products is apparently aimed at the prevention of certain practices such as "loss-leadering" where the product is vilified at the expense, in many instances, of the agricultural producer.

However, the present report is concerned with the period April 1961 to December 1963.

In April 1961, minimum prices only were set by the Dairy Industry Commission. Invitations to tender of the Department of Veterans Affairs, clearly recognizing the necessity of honouring the regulations of the Commission, carried the following notice:

"NOTE: TENDERS WILL NOT BE CONSIDERED IF ANY PRICE QUOTED IS BELOW THE CURRENT MINIMUM PRICE ESTABLISHED BY THE DAIRY INDUSTRY COMMISSION OF THE PROVINCE OF QUEBEC"

In 1962, a further notice was added:

"N.B. Milk prices in gallons and quarts also buttermilk and Chocolate Milk in quarts are subject to adjustment upwards or downward in conformity with Prices established by the Dairy Industry Commission of the Province of Quebec, which may become enforced during the life of any contract awarded as a result of this tender."

The Department made a practice of inviting bids for the supply of two products for which minimum prices had

not been set by the Commission in the same tender call as that for regulated products. Thus the distributors who were clearly forbidden to bid below the prescribed minimum prices for most milk products competed indirectly in the price of those products in the prices bid for cream and skim milk. The result was to defeat in practice the regulation of the Quebec Dairy Industry Commission fixing minimum prices with respect to sales to the Department.

The dairies concerned had formed an organization for the protection and promotion of their interests, and turned to this organization to seek a solution to the problem of supplying dairy products to an important purchaser, the veterans' hospitals in the metropolitan region of Montreal. The Department of Veterans Affairs called for tenders for six-months' supplies. The tenderers, all expressly invited by the Department, had to put in separate quotes for each hospital. Unit prices had to be given and each item could be considered separately. The hospitals were entitled to wholesale prices. The quantities purchased for Queen Mary Hospital were such as to constitute the hospital a very important client. For the period from June 1 to November 30, 1960, the Department asked for tenders on 1,603 gallon cans of homogenized milk, 7,742 quarts of homogenized milk, 1,343 quarts of skim milk, 748 quarts of chocolate milk, 1,880 quarts of 15 per cent cream and 194 quarts of 32 per cent cream.

Counsel for the dairies and the associations mentioned in the allegation contended that the rotation system was intended not to limit competition "unduly" but to provide for compliance with the intent and spirit of the Quebec law. Their contention was to the effect that Order No. 10 of the Dairy Industry Commission of the Province of Quebec, enacted in 1934, which order is still in force, rendered illegal all "gifts" of cream and, for a certain time, of skim milk. Section 28 of the Dairy Products Act constituted a prohibition to the same effect. When the Association apprised Mr. Pryde, of the Department of Veterans Affairs, of this prohibition and of the illegal situation resulting from the gifts of cream to the Department, he apparently advised the representative of the Association, Mr. Cousins, that this was a problem to which the Association must itself find a solution and that, in any event, it was a problem which fell within provincial jurisdiction. Effectively, the prohibition of section 28 of the Dairy Products Act and of Order No. 10 is directed to the milk dealer or to the dairy products distributor and not to the purchaser. Order No. 10 prohibits any sale or delivery of

milk or cream, or of milk and cream, at a price inferior to the current price for milk or for cream. The spirit of the order is to condemn any transaction or, as in this case, the sale of cream in combination with other dairy products, the prices of which are fixed by the Dairy Industry Commission, at a price inferior to the current price. There is no doubt that in this case the prices quoted for Queen Mary and Ste. Anne's Hospitals were grossly under the current price.

The Department of Veterans Affairs had recognized its responsibility not to pay less than the minimum prices established by the provincial authority. Cream and skim milk, in the period to which the inquiry relates, did not have regulated minimum prices but were subject to a general requirement, under an order of the provincial authority, not to be sold at less than the "current price". The fact that the supply of milk and milk products subject to specific minimum prices and those subject to the "current price" were included in the same tender led to the latter products being used by those submitting bids on a competitive basis as an advantage or gift to secure the milk business. This resulted in sales which were contrary to the principles of the provincial milk control regulations and, since the dairies were averse to the regulation of the price of cream, Mr. Savoie of the Commission advised the dairies that they must settle the problem among themselves. He did not suggest how it should be done. In the case of one hospital, the Department continued to secure an advantage in costs of those products not having regulated, minimum prices. In the case of the other hospital, the actions of the distributors in rotating the business among themselves defeated the purpose of the tendering system by removing the selection of the supplier from the hands of the Department and placing it in the hands of the Association. This self-serving action was clearly improper.

Counsel for the dairies and the associations argued that:

[Translation]

"It goes without saying also that at no time did the agreement have as its purpose and even less, as a result, the undue lessening of competition. Quite to the contrary, within the context of the provincial law that applied in this case, the agreement had, both as to purpose and as to result, the effect of allowing the Government to benefit by all the discounts legally admis-

sible whilst the requirements of the provincial law were being observed, and thus to benefit by prices which general competition on the Montreal market had established.

It must be noted that this agreement never had either as a purpose or as a result to charge prices higher than the minimum market prices."

In Howard Smith Paper Mills, Limited et al. v. The Queen, [1957] S.C.R. 403 at 407, Taschereau, J. clearly states that "The public is entitled to the benefit of free competition, and the prohibitions of the Act cannot be evaded by good motives. Whether they be innocent and even commendable, they cannot alter the true character of the combine which the law forbids . . .".

The Restrictive Trade Practices Commission studied rotation systems for the allocation of contracts between tenderers, in its "Report of an Alleged Combine in the Matter of a Call for Tenders by the Town of Duvernay for the Construction of Sewers and Water Mains", (1963 - RTPC No. 25). Relying on Rex v. McGavin Bakeries Ltd. et al., [1952] 1 D.L.R. 225, the Commission considered that the restriction resulting from an agreement to establish a rotation system in connection with calls for tenders was undue in manner. In the matter of "Street Paving Tenders in the City of Hull", (1965 - RTPC No. 35), the Commission concluded that an arrangement by which tenderers arrogated to themselves the right to select constituted "an undue restriction of competition having regard to the manner in which the arrangement was carried out."

It appears to the Commission that the Regional Section of Montreal of The Province of Quebec Milk Dealers' Association Inc. enjoyed sufficient autonomy to act independently of the Association and that moreover, the actions of this regional group were unknown to the Association. The rotation system was organized by the Regional Section of Montreal but at a time when this regional group had already decided to establish its own association, The Montreal Dairies' Association Inc. The Province of Quebec Milk Dealers' Association Inc. was therefore not a party to the conspiracy or to the agreement.

The Commission concludes that the allegation is well founded and that accordingly, as of April 28, 1961 or on or about such date and until November 30, 1963, The Montreal

Dairies' Association Inc. and Laiterie Bastien, The Borden Company, Limited, Elmhurst Dairy, Limited, Guaranteed Pure Milk Co., Limited, L. Hope Dairy, Limited, J.J. Joubert, Limitée, Laurel Industries Limited, Mile-End Dairy, Limited, The Mount Royal Dairies & Company Limited, Perfection Dairy Limited, A. Poupart & Cie, Ltée, Laiterie Saint-Alexandre, Limitée, and La Ferme St-Laurent, Limitée, conspired, combined, agreed or arranged among themselves to prevent, or lessen, unduly, competition in the sale of skim milk and cream to the Department of Veterans Affairs, and more particularly to Queen Mary Hospital, contrary to the provisions of paragraph (c) of subsection (1) of section 32 of the Combines Investigation Act. Manifestly, the arrangement did not relate in any manner to the matters set out in subsection (2) of section 32.

Price competition for products for which minimum prices were set by the Dairy Industry Commission of the Province of Quebec was impossible. Competition was possible within only a narrow range with regard to cream and skim milk for which no minimum sale prices had been set, but which were to be sold at "current" prices. It is also true that the nature of the Department of Veterans Affairs' invitations to tender which combined commodities with regulated minimum prices and those not subject to fixed minimum prices led to efforts among possible suppliers to seek a method of reconciling the tendering system and the provincial milk controls.

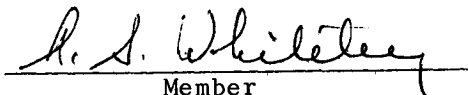
However, neither of these facts justified the establishment of the rotation system. The Department as a consumer was entitled to the benefit of such competition as was possible in the price of products not specifically regulated. Moreover the Department was entitled to select its supplier whether price competition was possible or not. The arrogation of this power of selection was clearly to the detriment of the public.



Chairman



Vice-Chairman



Member

Ottawa,
May 9, 1968.

APPENDIX

WITNESSES EXAMINED IN THIS INQUIRY

Pursuant to section 17 of the Combines Investigation Act, the following witnesses were examined upon oath:

October 21, 1963, at Ottawa, Ont. -

Mr. James William Robert Shaw,
Departmental Purchasing Agent,
Purchasing Division,
Department of Veterans Affairs,
Ottawa, Ont.

November 4, 5 and 6, 1963, at Montreal, P.Q. -

Mr. Martial Charpentier,
Vice-President and Sales Manager,
Milk Division,
J.J. Joubert, Limitée,
4141 St-André Street,
Montreal, P.Q.

Mr. Pierre Charest,
President,
J.J. Joubert, Limitée,
4141 St-André Street,
Montreal, P.Q.

Mr. Laurent Poupart,
Vice-President and Sales Manager,
A. Poupart & Cie, Ltée,
1715 Wolfe Street,
Montreal, P.Q.

Mr. Conrad Giguère (retired),
Formerly General Manager,
La Ferme St-Laurent, Limitée,
6720 Garnier Street,
Montreal, P.Q.

Mr. Rolland Hébert,
Sales Manager,
Perfection Dairy Limited,
2564 Chambly Street,
Montreal, P.Q.

Mr. Hervé Côté,
Manager and Co-owner,
Laiterie Bastien,
6145 Jarry Street East,
St-Léonard-de-Port-Maurice, P.Q.

Mr. Ernest Amesse,
Sales Manager,
The Mount Royal Dairies & Company Limited,
1200 Papineau Avenue,
Montreal, P.Q.

Mr. Alphonse Savoie,
Technical Adviser,
Quebec Agricultural Marketing Board,
201 Crémazie Boulevard East,
Montreal, P.Q.

Mr. Henry John Robson,
Vice-President and General Manager,
Elmhurst Dairy, Limited,
7470 Upper Lachine Road,
Montreal, P.Q.

September 15, 16 and 17, 1964, at Montreal, P.Q. -

Mr. Matthew Ralph Gilmour,
Assistant General Manager,
Elmhurst Dairy, Limited,
7470 Upper Lachine Road,
Montreal, P.Q.

Mr. Aubrey Harrison,
Vice-President and General Manager,
The Borden Company, Limited,
Farm Products Division,
3115 Côte de Liesse Road,
St. Laurent, P.Q.

Mr. Robert Daly,
Wholesale Sales Manager,
The Borden Company, Limited,
Farm Products Division,
3115 Côte de Liesse Road,
St. Laurent, P.Q.

Mr. Charles Thomas Lingard,
Dairy Manager,
Guaranteed Pure Milk Co., Limited,
1025 Aqueduc Street,
Montreal, P.Q.

Mr. Walter Donald Lowe,
Secretary-Treasurer,
The Montreal Dairies' Association Inc.,
660 Crémazie Blvd. East,
Suite 7,
Montreal, P.Q.

November 6, 1964, at Montreal, P.Q. -

Mr. Cecil E. Cousins (retired),
Formerly Manager of Public Relations
on Sales,
Ernest Cousins, Limited,
Montreal, P.Q.

Mr. Earle A. Hope,
Vice-President,
L. Hope Dairy, Limited,
924 Gouin Boulevard West,
Montreal, P.Q.

February 3, 1965, at Ottawa, Ont. -

Mr. Francis Ernest Cousins (retired),
Formerly General Manager,
Ernest Cousins, Limited,
Montreal, P.Q.

Mr. Stanley Clifford Pryde,
Executive Assistant to the Director
of ARDA,
Formerly Executive Assistant to the
Minister of Veterans Affairs,
Ottawa, Ont.

Mr. James William Robert Shaw,
Departmental Purchasing Agent,
Purchasing Division,
Department of Veterans Affairs,
Ottawa, Ont.

September 1, 1965, at Ottawa, Ont. -

Mr. Henry John Robson,
Executive Vice-President,
Palm Dairies Limited,
1104-8th Street S.W.,
Calgary, Alta.

APPEARANCES

October 17, 1967, at Ottawa, Ont. -

Mr. Louis-Philippe Landry	)	for the Director of
Mr. Michel Lecours	)	Investigation and
	)	Research
Mr. Guy Gagnon	)	for The Montreal Dairies'
	)	Association Inc.,
	)	La Ferme St-Laurent,
	)	Limitée and A. Poupart
	)	& Cie, Ltée
Mr. Roger Cordeau, Q.C.	)	for The Borden Company,
	)	Limited and J.J. Joubert,
	)	Limitée
Mr. Gabriel Lapointe	)	for The Province of
	)	Quebec Milk Dealers'
	)	Association Inc.
Mr. Paul Trudeau	)	for L. Hope Dairy,
	)	Limited
Mr. Jean-Y. de Brabant	)	for Perfection Dairy
	)	Limited
Mr. Julian C.C. Chipman	)	for Elmhurst Dairy,
	)	Limited and Guaranteed
	)	Pure Milk Co., Limited
Mr. Frank F. Hubscher	)	for The Mount Royal
)	Dairies & Company Limited,
)	Laiterie Saint-Alexandre,
)	Limitée and Mile-End
)	Dairy, Limited

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Date

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Emprunteur

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See 17/10/79 79 / 10 / 1979 (10/10/79)

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