

Caught black, white and red handed



Canadians can seem like such pushovers, until you push us too far. Then you could be in for a big surprise.

So it may be with our Competition Bureau, which has endured years of scorn for allowing stratospheric levels of press ownership concentration in Canada. Media bosses have no doubt come to expect that they could concoct the most outrageous of monopolies and get a pass from the antitrust regulator.

No more.

In November, the country's two largest newspaper chains, Torstar Corp. and Postmedia Network, traded 41 Ontario titles then closed almost all of them, laying off nearly 300 workers and creating dozens of local monopolies. Executives at both companies insisted they were as surprised as everyone else.

Postmedia president Andrew MacLeod claimed they had been "extraordinarily careful" not to share any knowledge about their plans for the properties. CEO Paul Godfrey went him one better, telling CBC News: "We did not have any idea what they were going to do and they didn't have any idea. We understand the...legal rules involving collusion and you can ask anybody from Torstar, you can ask anybody from Postmedia."

Thus when the Competition Bureau raided Postmedia's and Torstar's offices this March, nobody expected to find a shred (or unshredded bit) of evidence to the contrary. Surely, any conspiracy would have been conducted orally, making it much harder to prove. Not so, apparently.

The *Globe and Mail* soon revealed that documents submitted to the Ontario Superior Court to obtain the search warrants detailed a written agreement dubbed "Project LeBron" after the basketball star LeBron James. In it, according to the *Globe*, Postmedia and Torstar agreed not to compete for years in the markets they vacated.

The *Globe's* coverage of the story seemed to revel in the fix the paper's rivals had found themselves in. A day after the news broke, columnist David Milstead quipped that Postmedia had a "Pecker problem." He was referring to David Pecker, the chairman and CEO of *National Enquirer* parent company AMI who was named to Postmedia's board of directors in 2016 at the behest of Chatham Asset Management, a New Jersey hedge fund with a major ownership stake in the company.

WORTH REPEATING

"If machines produce everything we need, the outcome will depend on how things are distributed. Everyone can enjoy a life of luxurious leisure if the machine-produced wealth is shared, or most people can end up miserably poor if the machine-owners successfully lobby against wealth redistribution. So far, the trend seems to be toward the second option, with technology driving ever-increasing inequality."

The late Stephen Hawking (1942–2018) in an October 2015 Reddit "Ask Me Anything" conversation.

"And a guy walked up on me and said to me, 'Leave Trump alone. Forget the story.' And then he leaned around and looked at my daughter and said, 'That's a beautiful little girl. It'd be a shame if something happened to her mom.' And then he was gone."

Stormy Daniels on *60 Minutes* this March, describing threats she says she received while attempting to go public with an alleged affair with the president.

"When we're down by \$20 billion, \$40 billion, \$60 billion, \$100 billion, the trade war hurts them, it doesn't hurt us. So we'll see what happens.... We're going to straighten it out. And we'll do it in a very loving way. It'll be a loving, loving way."

U.S. President Donald Trump speaking to the press in early March. On April 3, the U.S. applied a 25% tariff on US\$50 billion worth of Chinese imports.

"As the Chinese saying goes, it is only polite to reciprocate. The Chinese side will resort to the [World Trade Organization] dispute settlement mechanism and take corresponding measures of equal scale and strength against U.S. products in accordance with Chinese law."

From an April 4 Chinese government statement announcing retaliatory tariffs on U.S. imports.

"I have a dream that enough is enough. That this should be a gun-free world. Period."

Yolanda Renee King, Martin Luther King Jr.'s 9-year-old granddaughter, addressing a massive student and youth rally in Washington, D.C. on March 24—one of hundreds of similar demonstrations to demand stricter gun controls following a Florida school shooting this year that killed 17 people.

"Instead of creating space for this man who took a life, whose actions took a life, why not create more space for Indigenous people to share our side of the story about colonialism and the implications within our society."

Jade Tootoosis, cousin of the slain Colten Boushie, speaking to the press at the end of March about news Gerald Stanley's lawyers were seeking a publishing contract for the man acquitted in Boushie's death.

"We're all going to die."

Colin Kahl, a senior national security official under Barack Obama, commenting on the appointment of John Bolton as Trump's senior policy advisor. Bolton has argued for a nuclear pre-emptive strike on North Korea and is widely expected to encourage Trump to provoke war with Iran.

Pecker has been in the news a lot this spring following accusations in a lawsuit filed by former *Playboy* model Karen McDougal that AMI paid her \$150,000 for an exclusive about her affair with U.S. President Donald Trump, a close Pecker associate, and then spiked the story. The supermarket tabloid mogul, mused Milstead, was now “perhaps the moral centre of Postmedia’s board of directors.”

As for the publisher of Canada’s largest daily, Milstead noted a corporate abandonment of the company’s founding ideals favoring social justice. “As Torstar has become a diversified media company, the Atkinson Principles have remained confined to the operations of the *Toronto Star* newspaper,” he wrote. “Had they governed the entire company, Torstar might have avoided this whole mess.”

Again, timing aggravated perceptions, as the website *Canadaland* had revealed just days earlier that Torstar is invested in a company that operates dozens of online gun forums in the U.S.

It remains to be seen whether the Competition Bureau investigation will result in charges. The governing

Competition Act provides for penalties of up to \$25 million in fines and 14 years in prison for conspiracy to reduce competition. However, even with a smoking gun in writing, we should remember the courts have been reluctant in the past to sanction press monopolies. Seized company memos showed clear corporate co-operation in the decision by the Southam and Thomson chains to close competing dailies in Ottawa and Winnipeg in 1980, yet a judge concluded the companies demonstrated “good business sense, not an illegal conspiracy.”

The Competition Bureau’s predecessor, the Restrictive Trade Practices Commission, actually obtained a conviction in 1972 on charges of monopoly against the Irving Oil family after it acquired all five dailies in New Brunswick. It was overturned on appeal to the Supreme Court of Canada, however, which broke new ground in ruling the Crown must prove not only a lessening of competition, but also a detriment to the public.

Though the Competition Act consists mostly of civil sanctions—the Combines Investigation Act, which it

replaced in 1986, was shut out in 76 years of pressing criminal charges in merger cases—it retains criminal penalties for anyone who conspires with a competitor to fix prices for a product or “to allocate sales, territories, customers or markets for the production or supply of the product; or...to fix, maintain, control, prevent, lessen or eliminate the production or supply of the product.” However, the Competition Bureau’s case against Postmedia and Torstar could well be weakened by the fact it ignored similar trades and closures in B.C. by dominant news chains Black Press and Glacier Media.

The next move in this game of Monopoly will prove interesting. It may be a long shot, given the bureau’s history, but it be highly satisfying if that card lying face down on top of the pile read “Go directly to Jail. Do not pass Go. Do not collect \$200 million.”

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