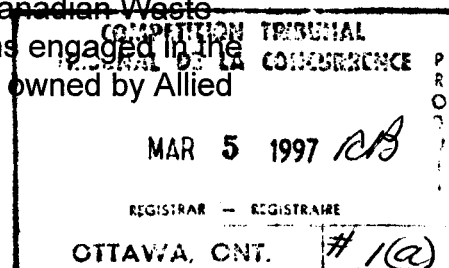


THE COMPETITION TRIBUNAL

IN THE MATTER OF an Application by the Director of Investigation and Research and Canadian Waste Services Inc. under Sections 92 and 105 of the *Competition Act*, R.S.C. 1985 c. C-34 as amended;

AND IN THE MATTER OF the proposed acquisition by Canadian Waste Services Inc. of the totality of shares of certain corporations engaged in the solid waste management and related businesses that are owned by Allied Waste Holdings (Canada) Ltd.



Between:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

APPLICANT

- and -

CANADIAN WASTE SERVICES INC.

RESPONDENT

NOTICE OF APPLICATION FOR A CONSENT ORDER

TAKE NOTICE THAT:

1. Pursuant to section 92 and 105 of the *Competition Act* (the "Act"), the Applicant, the Director of Investigation and Research (the "Director") will make an Application, on consent of the Respondent, for :

(a) An Order under sections 92 and 105 of the *Competition Act* in the form of the Draft Consent Order attached hereto as Schedule "A"; and,

(b) Such further or other Order as the Applicant and the Respondent, on consent, may advise and the Tribunal considers appropriate.

AND TAKE NOTICE THAT:

2. In support of this Application for a consent order, the Director will rely upon the Statement of Grounds and Agreed Material Facts herein, the Draft Consent Order attached hereto as Schedule "A", the affidavit of Lourdes DeCosta attached hereto as Schedule "B", the Consent Order Impact Statement, filed, the Consent of the Parties to this Application, filed, and such other material as may be filed or counsel may advise.

3. The name and address of the person against whom a consent order is sought is listed below.

4. The Applicant and Respondent request that this Application be heard in the English language.

5. The Applicant and Respondent request, in accordance with Rule 72 of the *Competition Tribunal Rules* and Rule 6 of the *Federal Court Rules*, that the service requirements of the *Competition Tribunal Rules* be dispensed with and the 48 hour time limit for service provided for in Rule 24(1) of the *Competition Tribunal Rules* be abridged.

6. The Applicant and Respondent agree, subject to further order, that no oral evidence will be given at the hearing of this Application and that the evidence will be limited to the testimony by affidavit attached hereto as Schedule "B".

STATEMENT OF GROUNDS AND AGREED MATERIAL FACTS

I. INTRODUCTION

1. The Director of Investigation and Research ("the Director") brings this Consent Application on the grounds that the proposed acquisition by Canada Waste Services Inc. ("CWS") of the shares of Laidlaw Waste Systems (Canada) Ltd. and Laidlaw Waste Systems Ltd. (collectively, "Laidlaw") from Allied Waste Holdings (Canada) Ltd. ("Allied"), hereinafter referred to as the "Proposed Acquisition", prevents or lessens, or is likely to prevent or lessen, competition substantially in the provision of non-hazardous solid waste management services in Sarnia (including the surrounding area of Lambton County), and Brantford (including the surrounding area of Brant County). In addition, the Director brings this Consent Application on the grounds that the previous acquisition of the non-hazardous solid waste management assets of Waste Management Inc. ("WMI") by Laidlaw, hereinafter referred to as the "WMI Transaction", substantially prevents or lessens competition in the provision of non-hazardous solid waste management services in Ottawa (including the cities of Ottawa, Nepean, Kanata, Gloucester and the surrounding communities in the Ottawa-Carleton region), and Outaouais (including the cities of Hull, Gatineau and Aylmer).
2. The Director, with the consent of the purchaser CWS, respectfully submits for approval a Draft Consent Order which, if implemented, will eliminate the substantial lessening of competition resulting from the Proposed Acquisition and the WMI Transaction.

3. The following Statement of Grounds and Agreed Material Facts form the basis of the Consent Application. CWS and the Director have agreed to the facts set out herein for the purposes of this Consent Application only, but such agreement shall not be taken as an admission by the CWS or the Director of any such facts for any other purposes.

II. THE PARTIES

4. The Applicant is the Director appointed under section 7 of the Competition Act and is the sole person authorized to make this Application to the Competition Tribunal.
5. The Respondent CWS is a corporation incorporated under the laws of the Province of Ontario, having its principal office in North York, Ontario. CWS is a wholly owned subsidiary of USA Waste Services, Inc., ("USA Waste") a corporation existing under the laws of the State of Delaware.
6. CWS first entered the Canadian marketplace in 1996 through several acquisitions, the first and most significant being the acquisition of the non-hazardous solid waste management business of Philip Environmental Inc. in August 1996. CWS currently operates non-hazardous solid waste collection and disposal facilities in Ontario and Quebec.
7. Allied is a corporation incorporated under the laws of Canada, having its principal office in Burlington, Ontario. Allied is a wholly owned subsidiary of Allied Waste Industries, Inc. ("Allied Parent") a corporation existing under the laws of the State of Delaware.

8. In December 1996, Allied entered the Canadian marketplace through its acquisition of the non-hazardous solid waste business of Laidlaw from Laidlaw Inc., a corporation incorporated under the laws of the State of Delaware, hereinafter referred to as the "Laidlaw Transaction".
9. Through its direct and indirect subsidiaries, Allied currently operates non-hazardous solid waste collection and disposal facilities in six provinces, namely Quebec, Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia.
10. Laidlaw Waste Systems, Inc. ("LWS") is a corporation incorporated under the laws of the State of Delaware.

III. THE TRANSACTIONS

A. The Proposed Acquisition

11. Allied Parent, Allied, LWS, US Waste and CWS entered into a share purchase agreement ("the Agreement") dated January 15, 1997 whereby Allied would sell to CWS all of the issued and outstanding shares in Laidlaw and their subsidiaries including Laidlaw Energy Technologies Ltd., Laidlaw Waste Systems (Richmond) Ltd., Laidlaw Waste Systems (Storrington) Ltd., Laidlaw Waste Systems (Ottawa) Ltd., 3240720 Canada Inc., 635952 Ontario Inc., Laidlaw Waste Systems (Durham) Ltd., Laidlaw Waste Systems (Warwick) Ltd., 2686848 Canada Inc., Bestan Inc., Gestion de Rebutis Laidlaw Quebec Ltee., Centre de Tri Transit (1) Inc./Transit Sorting Center (1) Inc., Location Sanico Ltee, Dechex Ltee and Endwaste Inc.
12. The Proposed Acquisition involves the purchase of certain collection and disposal assets, including trucks, containers, administration and maintenance

garages or hubs, ("hubs"), transfer stations, and landfill sites, as well as customer contracts and employees throughout Canada. The value of the Proposed Acquisition is approximately U.S.\$518 million.

13. With respect to the Proposed Acquisition, only the Sarnia and Brantford operations directly or indirectly owned by Laidlaw, when combined with certain operations of CWS, will likely substantially prevent or lessen competition.
14. On February 4, 1997, CWS and Allied filed a short-form filing pursuant to section 121 of the Competition Act (the "Act") with respect to the Proposed Acquisition.
15. The Agreement provides that the Proposed Acquisition was to close on February 28, 1997, subject to the expiration of the mandatory seven day period following this filing, as well as the receipt of required approvals from Investment Canada and Revenue Canada and subject to change upon mutual consent of the parties. It is contemplated that closing will take place on or about March 5, 1997.
16. The seven day period under section 121 of the Act expired on February 11, 1997. Based on a preliminary examination and assessment of the Proposed Acquisition, the Director commenced a formal inquiry on February 28, 1997.

B. Other Relevant Transactions

17. In September 1996, Laidlaw purchased the non-hazardous solid waste business from WMI in the Ottawa and Outaouais areas as described in paragraph 1 above. The WMI Transaction was not pre-notifiable under Part IX of the Act. The Director proceeded to commence an examination of the WMI Transaction to determine its competitive impact in the Ottawa and Outaouais markets. The Director commenced a formal inquiry on February 28, 1997.

18. The WMI Transaction involved the acquisition of trucks, containers, and customers contracts. The WMI premises in Ottawa and Outaouais were not acquired in the WMI Transaction
19. Subsequent to the WMI Transaction, Allied purchased the non-hazardous solid waste business of Laidlaw in Canada as described above in paragraph 8. Prior to the Laidlaw Transaction, Allied was not engaged in the non-hazardous solid waste business in Canada.
20. At the time of the Laidlaw Transaction, which closed in December 1996, the Director had not completed the examination of the WMI Transaction. In the course of the Director's examination of the WMI Transaction, the Director notified Allied that the transaction was likely to give rise to a substantial lessening of competition in the Ottawa and Outaouais markets.
21. At the time of the Proposed Acquisition, the Director and Allied had not reached an agreement to settle the Director's competition concerns regarding the WMI Transaction. CWS has nonetheless agreed to resolve the competition issues in respect of the Ottawa and Outaouais markets which it will inherit upon completion of the Proposed Acquisition. It is for these reasons that the Ottawa and Outaouais markets are being discussed in this Consent Order.

IV. COMPETITIVE ANALYSIS

A. Product Market

22. Laidlaw and CWS are engaged in the business of providing solid waste management services to institutional, commercial, industrial, and residential

customers located in Canada. Solid waste management services include the collection, compaction, transportation, recycling, resource recovery, transfer and disposal of non-hazardous solid waste.

23. The non-hazardous solid waste management business is segmented into four distinct product markets in relation to waste collection, namely commercial lift-on-board, industrial, residential, and recycling.
24. First, the commercial lift-on-board market, also known as front-end service, involves the collection and disposal of containers of waste by front-end trucks from customers who generate a significant quantity of solid waste and are often restaurants, offices, and small commercial establishments. Secondly, the industrial market, also known as roll-off service, is required by industrial customers who generate large amounts of waste, which is often not compactable. The large containers used to collect this waste are loaded onto a flat-bed truck and taken to disposal sites. Thirdly, the residential market, involves the collection and disposal of small quantities of waste from individual residences and apartments pursuant to contracts with cities, towns and municipalities. Contracts are generally awarded on the basis of tenders. Finally, the recycling market involves the collection, sorting and disposal of recyclable solid waste from residences and apartments. Like residential service, this service is provided under contracts with cities, towns and municipalities, a significant portion of which are awarded on the basis of tenders.
25. Whatever the relevant solid-waste product, once collected this waste is disposed of at either transfer stations or sanitary landfills. Transfer stations are commonly used in urban centres as areas where waste is off-loaded into larger open top transport trailers which are then taken to landfills. Transfer stations and landfills are owned and operated either by municipal or regional governments or by

private companies, some of whom are also involved in the collection and disposal of solid waste. The cost of disposal is a very significant component of the total cost of providing non-hazardous solid waste collection and disposal services, and as such it is important for those companies who do not have their own disposal facilities to have access to transfer stations and landfills at competitive rates.

B. Geographic Market

26. The relevant geographic markets for non-hazardous solid waste collection and disposal services are local in nature. The geographic limits of the market are circumscribed by such factors as legal payloads and other regulatory requirements, type and density of customers, cost of disposal, and the time taken to travel to and from customers and then to disposal sites.
27. There are a number of local markets in which both CWS and Laidlaw currently compete. These include Sarnia (including the surrounding area of Lambton County), Brantford (including the surrounding area of Brant County), Niagara, Hamilton-Wentworth, Halton (including the cities of Burlington and Oakville), Peel Region, Toronto and Montreal.

C. Nature of Application

28. The Director has concluded that the Proposed Acquisition does not and is not likely to substantially prevent or lessen competition in the provision of non-hazardous solid waste management services except in the Sarnia and Brantford markets. This is based on the existence of effective remaining competition from at least two suppliers in these other markets, including Browning Ferris Industries ("BFI"), WMI, and/or strong local independents, as well as the

enhanced opportunities for new entry or expansion by existing companies given the industrial and commercial make-up of particular markets.

29. However, the Director has concluded that the Proposed Acquisition will likely prevent or lessen competition substantially in the provision of non-hazardous solid waste management services in Sarnia and Brantford and that the WMI Transaction has likely prevented or lessened competition substantially in the provision of non-hazardous solid waste management services in the Ottawa and Outaouais markets.
30. The Director's conclusion is based on a number of factors, including CWS's high post-merger market shares, the absence of acceptable substitutes, the limited effectiveness of remaining competitors within each of the Sarnia, Brantford, Ottawa and Outaouais markets, and the difficulty of competitive entry into these geographic markets.

D. Brantford

(1) Assets

31. In this market, CWS's asset base includes certain collection equipment including trucks, containers, a hub, as well as customer contracts related to their Brantford operations. Similarly, Laidlaw's asset base includes certain collection equipment including trucks, containers, a hub, as well as customer contracts related to their Brantford operations.

(2) Market Concentration

32. Post-merger, CWS will hold more than 80% of the Brantford commercial lift-on-

board market and more than 70% of the Brantford industrial market. Currently, CWS holds between 75% and 80% of the residential market.

33. The remainder of the market is held by a number of much smaller fringe players, none of whom have significant market share.

(3) Section 93 Factors

(a) Foreign Competition

34. The Brantford market area is located approximately 100 kilometres from the U.S. border at Niagara Falls. Under present market circumstances, it is not economic for a U.S. company to serve the Brantford market from a base of operations in the U.S. It is therefore highly unlikely that a U.S. company would enter this market from its U.S. base.

(b) Acceptable Substitutes

35. There are no acceptable substitutes for third party waste removal. Although companies and municipalities have the option of buying their own trucks and containers instead of contracting with third parties to provide waste removal services, in *Laidlaw* the Tribunal concluded that this could not be considered as a substitute. Furthermore, with respect to any one of commercial lift-on-board, industrial, residential and recycling services, there are operational impediments to the other three alternatives being a cost-effective substitute such that customers would not switch to these alternatives in the face of a significant, non-transitory price increase.

(c) Barriers to Entry

36. Barriers to entry differ in each of the relevant product markets. The roll-off or industrial market is the easiest to enter due to the absence of contractual barriers as well as few significant sunk costs. Customers are accessible because they usually require service on an “as-needed” basis and are not tied into contracts.
37. Contractual barriers are also not evidenced in the residential market. Customers are typically obtained through competitive tenders. Municipalities have the option of splitting contracts to allow smaller operators to have an opportunity to bid on these contracts. For the same reason, municipalities may have separate tenders for recycling services.
38. Conditions of entry in the recycling business are similar to those of other residential services. In addition, contractors providing collection services must have access to a suitable sorting facility, either through ownership or contract.
39. Barriers to entry in the commercial lift-on-board market are higher than in the other markets. Entry into this business is characterized by the need for a large critical mass of customers and route densities in order to establish and operate a viable business. In particular, a route has to have a large number of customers over a short driving distance. This is referred to as “route density”.
40. Additionally, according to extensive industry contacts, commercial lift-on-board business is typically subject to exclusive long term contracts, with automatic renewal clauses, and sixty-day notice of early termination provisions. These contract terms may act as a barrier to entry since they inhibit the ability of a competitor to obtain customers.

41. Typically, entry in the commercial lift-on-board business is facilitated once a service provider has established a viable industrial and or residential business. However, information from industry contacts is that the Brantford market is not an attractive market since the customer base is relatively small. The total value of the market for waste management services is approximately \$8 million.
42. The barriers described in paragraphs 32-37 above will effectively discourage new entry into the commercial lift-on-board market. As well, given the non-industrial nature of Brantford, it is unlikely that a new entrant could effectively penetrate the Brantford market by first attempting to establish a viable industrial business.

(d) Effective Remaining Competition

43. Post-merger the only remaining competition in the Brantford commercial lift-on-board and industrial markets will come from small fringe players, including: Norm Shropshall & Sons with a base of operations in Cayuga, south of Brantford, which has recently entered the Brantford market for commercial lift-on-board and industrial waste; Brantford Disposal Service, which is primarily in the recycled steel business and is involved in the industrial business on a part-time basis; and BT Disposal, which is primarily involved in demolition waste. In the residential market, HGC Management Inc. ("HGC") is the incumbent for the collection of residential waste for the Township of Brantford. HGC is also a competitor in the recycling market as is Unique Disposal and Delta Environmental.
44. These suppliers are considered to be fringe players and not capable of providing strong, effective competition to CWS post-merger.

(e) Removal of Vigorous and Effective Competitor

45. There has been aggressive price competition from Laidlaw in the provision of commercial lift-on-board, industrial, residential and recycling waste management services in the Brantford market. Therefore, the merger removes a vigorous and effective competitor from this market.

(f) Change and Innovation

46. The only significant change and innovation is an increasing use of recycling in the waste management industry in Canada.

E. Sarnia

(1) Assets

47. In this market, CWS' asset base includes certain collection equipment including trucks, containers, a hub, transfer stations, landfill sites known as the Petrolia, Blackwell Road, and Unitec landfills, as well as customer contracts related to their Sarnia operations. Laidlaw's asset base includes certain collection equipment including trucks, containers, a hub, a landfill site, namely the Watford landfill (or otherwise known as the Warwick landfill), as well as customer contracts related to their Sarnia operations.

(2) Market Concentration

48. Post-merger, CWS will hold more than 90% of the Sarnia commercial lift-on-board market and a similar share of the industrial and residential markets.

49. The remainder of these markets is currently held by BFI and WMI.

(3) Section 93 Factors

(a) Foreign Competition

50. Although Sarnia is located near the Michigan State border, there appear to be no competitors in adjacent U.S. regions who are in a position to enter the Sarnia market.

(b) Acceptable Substitutes

51. As described above in paragraph 35, there are no acceptable substitutes for third party waste removal.

(c) Barriers to Entry

52. The barriers to entry described in paragraphs 36 to 40 also apply to the Sarnia market. In addition, competitively priced disposal options for new entrants are currently limited and will become increasingly restrictive due to the planned closure of the county landfills within the next three to five years. Therefore, it is unlikely that entry will occur post-merger in the Sarnia market.

(d) Effective Remaining Competition

53. As indicated, the only remaining competitors to CWS post-merger in the commercial lift-on-board, industrial and residential markets are BFI and WMI. The Director has determined that certain market developments in Sarnia, particularly relating to access to competitively priced disposal, may limit the

extent to which these players could be considered effective competitors to CWS post-merger.

(e) Removal of Vigorous and Effective Competitor

54. Pre-merger, Laidlaw was the most significant competitor to CWS in the Sarnia market. Therefore, the Proposed Acquisition will result in the removal of a vigorous and effective competitor in this market.

(f) Change and Innovation

55. As mentioned in paragraph 46 above, the only significant change and innovation is an increasing use of recycling in the waste management industry in Canada.

F. Ottawa

(1) Assets

56. At the time of the WMI Transaction, Laidlaw's asset base included certain collection equipment including trucks, containers, a hub, a landfill site, namely the West Carleton disposal facility, a recycling facility as well as customer contracts related to their Ottawa operations. WMI's asset base included certain collection equipment including trucks, containers, as well as customer contracts related to their Ottawa operations.

(2) Market Concentration

57. Post-merger, CWS will hold more than 70% of the Ottawa commercial lift-on-board market and more than 50% of the Ottawa industrial market. CWS will also

hold over 70% of the residential and recycling markets.

58. The remainder of the commercial lift-on-board, industrial, residential and recycling markets is held by a number of other suppliers, with BFI being the only significant remaining competitor. The remaining fringe players do not have sufficient market share to constitute an effective competitor to the merged entity.

(3) Section 93 Factors

(a) Foreign Competition

59. In view of the fact that Ottawa is over 100 km from a major U.S. urban centre, it is not likely that foreign competitors will be able to enter and economically service the Ottawa market from the U.S.

(b) Acceptable Substitutes

60. As described above in paragraph 35, there are no acceptable substitutes for third party waste removal in Ottawa.

(c) Barriers to Entry

61. The barriers to entry described in paragraphs 36 to 40 also apply to the Ottawa market. In addition, competitively priced disposal options for new entrants are limited. Of the three landfills in the Ottawa-Carleton area, only the regional landfill and Laidlaw's landfill are licensed to accept both dry and wet waste, whereas the third, owned by Huneault Waste Management ("Huneault") is restricted to dry (i.e. industrial) waste. Laidlaw's landfill is the largest of the two privately owned sites. The owner of a landfill site has a disposal advantage

since it can set its own disposal price. The disposal advantage currently held by Laidlaw in the commercial lift-on-board market, coupled with the restrictive nature of contractual terms, and the disposal advantage held by both Laidlaw and Huneault in the industrial market, indicate that it is unlikely that effective new entry will occur in the commercial lift-on-board and industrial markets in Ottawa.

(d) Effective Remaining Competition

62. BFI is the largest remaining competitor in the Ottawa commercial lift-on-board and industrial markets. However, BFI and other smaller players are at a disposal disadvantage because they do not have landfill sites in the area and do not have sufficient volume in the market to negotiate a preferred rate at a landfill. As well, contractual barriers impede their ability to gain more customers. As a result, their ability to be price-competitive is limited. Small players have recently exited the Ottawa market due to their inability to compete.

(e) Removal of Vigorous and Effective Competitor

63. Prior to the WMI Transaction, WMI was aggressively price competitive. The acquisition by Laidlaw removed a vigorous and effective competitor from the Ottawa market.

(f) Change and Innovation

64. As mentioned in paragraph 46 above, the only significant change and innovation in the waste management industry is the increasing use of recycling.

G. Outaouais

(1) Assets

65. At the time of the WMI Transaction, Laidlaw's asset base included certain collection equipment including trucks, containers, a hub, as well as customer contracts related to their Outaouais operations. WMI's asset base included certain collection equipment including trucks, containers, as well as customer contracts related to their Outaouais operations.

(i) Market Concentration

66. Post-merger, CWS will hold over 95% of the Outaouais commercial lift-on-board market. Prior to the WMI Transaction, Laidlaw held approximately 55% of this market, whereas WMI held between 25-30%, Myral Entreprises ("Myral") held between 10-15%. Myral's commercial lift-on-board business was acquired by Laidlaw in February 1996.
67. Post-merger CWS will also have a significant share of the industrial, residential and recycling markets.

(ii) Section 93 Factors

(a) Foreign Competition

68. In view of the fact that the Outaouais region is approximately 100 km from the U.S. border, it is not likely that foreign competitors will be able to enter and economically serve the Outaouais market from the U.S.

(b) Acceptable Substitutes

69. As described above in paragraph 35, there are no acceptable substitutes for third party waste removal.

(c) Barriers to Entry

70. The barriers to entry described in paragraphs 36 to 40 also apply to the Outaouais market, the most significant being the contractual barriers. However, access to disposal is not problematic since the only sanitary landfill for wet and dry waste is owned and controlled by the Region (C.U.O). As a result, competitors are on a level playing field with respect to disposal in this market.

(d) Effective Remaining Competition

71. The only competitors to the merged entity in Outaouais are Huneault, Malex (a former WMI employee who has recently started his own business) and a number of smaller players, most of which are primarily involved in serving industrial customers. BFI does not operate in the Outaouais market.

(e) Removal of Vigorous and Effective Competitor

72. As indicated above in paragraph 59, prior to the WMI Transaction, WMI was aggressively price competitive. Therefore, the acquisition by Laidlaw removed a vigorous and effective competitor from the Outaouais market.

(f) Change and Innovation

73. As mentioned in paragraph 63 above, the only significant change and innovation

in the waste management industry is the increased use of recycling.

V. RELIEF SOUGHT

The Director has therefore concluded that the acquisition by CWS of Laidlaw's solid waste management business in the Sarnia and Brantford markets, and the previous acquisition by Laidlaw of WMI's solid waste management business in Ottawa and Outaouais prevents or lessens, or is likely to prevent or lessen, competition substantially in the provision of solid waste management services to institutional, commercial, industrial and residential customers. Although barriers to entry and high market shares are most evident in the commercial lift-on-board market, in order to preserve the integrity of a possible remedy, namely to create a viable business in the commercial lift-on-board market in Sarnia, Brantford, Ottawa and Outaouais, it is considered crucial that all the waste management businesses in these areas, including commercial lift-on-board, industrial, residential, and recycling businesses, be divested pursuant to the Draft Consent Order. It is submitted that the substantial lessening or prevention of competition that would be likely to ensue from the Proposed Transaction and from the WMI Transaction will be eliminated by the implementation of the Draft Consent Order, which will restore effective competition, as explained more fully in the Consent Order Impact Statement.

The Director therefore seeks, pursuant to sections 92 and 105 of the Act, the issuance of the draft Consent Order attached hereto to remedy the substantial prevention or lessening of competition in the Sarnia, Brantford, Ottawa, and Outaouais markets.

DATED at Hull, Quebec this 5th day of March, 1997.



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