

enacted in 1976, however, that established the current legislative standard. RPM is proscribed under s. 61 of the *Competition Act* which reads as follows:

61. (1) No person who is engaged in the business of producing or supplying a product, or who extends credit by way of credit cards or is otherwise engaged in a business that relates to credit cards, or who has the exclusive rights and privileges conferred by a patent, trademark, copyright or registered industrial design shall, directly or indirectly,

- (a) by agreement, threat, promise or any like means, attempt to influence upward, or to discourage the reduction of, the price at which any other person engaged in business in Canada supplies or offers to supply or advertises a product within Canada; or
- (b) refuse to supply a product to or otherwise discriminate against any other person engaged in business in Canada because of the low pricing policy of that other person.

A related provision is found in subsection (6) which states:

No person shall, by threat, promise or any like means, attempt to induce a supplier, whether within or outside Canada, as a condition of his doing business with the supplier, to refuse to supply a product to a particular person or class of persons because of the low pricing policy of that person or class of persons.

The legislation is silent regarding the effect of the impugned practice on competition. Once the court is satisfied that all the required elements of the offence are present and that none of the available defences apply, a violation will be found regardless of whether or not there has been, or will likely be, a substantial lessening of competition. Therefore, RPM in Canada is accorded the equivalent of *per se* treatment under the *Competition Act*. Contravention of either subsection (1) or (6) is an indictable offence, which upon conviction may lead to a fine or to imprisonment for a maximum term of five years, or both, at the discretion of the court.

The proscription applies to any person engaged in the business of manufacturing or supplying a product, persons extending credit by way of credit cards and those holding intellectual property rights. It should also be noted that the term "product" is defined under the Act to include services as well as articles. Similarly, the definition of the word "article" encompasses both real and personal property "of every description", while "service" captures those of "any description whether industrial, trade, professional or otherwise". Subsection (2) stipulates that subsection (1) does not apply where the influencer and the influencee, so to speak, are affiliated corporations or directors, agents, officers or employees of the same or affiliated entities. Legal principal-agent relationships under which title in the goods remains with the principal, as would occur in *bona fide* consignment arrangements, for example, also lie beyond the purview of s. 61.

Because the Act only proscribes attempts to influence resale prices of those "engaged in business", a person may, with impunity, influence the resale prices of persons not so