

contains no editorial content, other than letters to the editor, that reflects the market to which it is addressed, it does contain a great deal of the same editorial content of *TIME U.S.*¹⁸

21. The table illustrates that not only does *TIME Canada* not provide content directed to the market for which it is produced, it does not need to rely on advertising revenues to underwrite the cost of editorial content. These costs have been covered by the higher priced magazine sold in the much larger home market. By reproducing material from *TIME U.S.*, *TIME Canada* is able to produce a magazine that appears physically comparable to *Maclean's* for a fraction of the cost. Low editorial costs reduce *TIME Canada's* needs to rely on advertising revenue and, in a highly competitive advertising market such as exists between *TIME Canada* and *Maclean's*, allows it to both offer advertising at extremely competitive rates and take most of the advertising revenue it earns as pure profit.¹⁹ This problem is exacerbated by the fact that *TIME Canada* sells its content at a cover price that is less expensive than the comparable U.S. cover price when converted at current rates of exchange.

22. The comparison of editorial content that is shown in this table demonstrates that the problems that the *Excise Tax Act* amendments were designed to address are very real. Notwithstanding that it is ostensibly produced for the Canadian market, *TIME Canada* fails to provide editorial content that is anything other than the editorial content that was originally produced for either the U.S. market or for easy inclusion in *TIME U.S.*'s other international editions. As *TIME Canada* contains no material produced for the market in which it is distributed, it incurs no additional cost in producing its editorial content prior to distribution in the Canadian market and it sells its content at a cover price that is less expensive than the comparable U.S. cover price when converted at current rates of exchange. The diversion of advertising revenues from a market without the provision of any corollary editorial benefit to the market is exactly the practice that the *Excise Tax Act* provisions are designed to discourage.

23. The Panel queried the rationale of the grandfathering clause in the Act. Where a *prima facie* case is established that the tax is payable in respect of advertising in a particular edition, the potential taxpayer may be able to establish that the particular edition is covered by the grandfathering provision in the legislation. The rationale for the inclusion of a grandfathering clause is the recognition of the principle that vested rights should be respected and that a legislative measure, such as a tax on advertising revenues, should not have a

¹⁸ The material that is not identical has an international focus for easy inclusion in *TIME U.S.*'s other international editions.

¹⁹ As is expected in a highly competitive market, the advertising pages contained in each of *TIME Canada* and *Maclean's* will vary considerably by issue. For example, in the October 7, 1996 issue *Maclean's* carries more advertising than does *TIME Canada*. However, the September 1996 issues of *TIME Canada* contained more advertising than did the same issues of *Maclean's*. In September 1996, issues of *TIME Canada* contained a total of 125 advertising pages while issues of *Maclean's* contained 93 advertising pages.