



Reference: *Nadeau Poultry Farm Limited v. Groupe Westco Inc.*, 2009 Comp. Trib. 07

File No.: CT-2008-004

Registry Document No.: 0489

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Order pursuant to section 75 of the *Competition Act*;

AND IN THE MATTER of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Interim Order pursuant to section 104 of the *Competition Act*;

AND IN THE MATTER of a Motion by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for a Show Cause Order;

AND IN THE MATTER of a Motion by the Respondent Groupe Westco Inc. for an Order or Direction regarding the Tribunal's Interim Supply Order;

AND IN THE MATTER of the Show Cause Hearing of Groupe Westco Inc.

B E T W E E N:

**Nadeau Ferme Avicole Limitée/
Nadeau Poultry Farm Limited**
(applicant)

and

**Groupe Westco Inc. and Groupe Dynaco,
Coopérative Agroalimentaire, and Volailles
Acadia S.E.C. and Volailles Acadia Inc./
Acadia Poultry Inc.**
(respondents)



Decided on the basis of the written record.

Presiding Judicial Member: Blanchard J.

Date of Order: July 9, 2009

Order signed by: Justice Edmond P. Blanchard

**ORDER REGARDING DISCLOSURE BY THE RESPONDENT GROUPE WESTCO
INC. IN THE CONTEMPT PROCEEDING**

BACKGROUND

[1] A full description of the events to date is found in my order of June 4, 2009 dealing with pre-hearing production by the applicant.

DISCUSSION

[2] The sole respondent in the contempt proceeding is Groupe Westco Inc. (“Westco”). It says that, in a civil contempt case, it has the right to remain silent and should therefore not be obliged to produce experts’ reports (if any) before the hearing. Indeed Westco goes further and suggests that it has no obligation to produce until the applicant Nadeau has closed its case in the contempt proceeding.

[3] Westco relies on the Federal Court of Appeal’s decision in *Apple Computer Inc. v. Mackintosh Computers Ltd.*, [1988] 3 F.C. 277, wherein the court observed at page 279 that:

More importantly however, the procedure followed by the Motions Judge in this case obligated the person charged with contempt to disclose by way of affidavit his defence before the onus which the accuser carries had been discharged. The contemnor has the right to know, specifically, the case he has to meet. As stated by Rouleau J. in the Selection Testing case:

Whether contempt of Court proceedings are characterized as criminal or civil, the person charged shall always be entitled to the unassailable bastion of common law, that is the right to know the particulars of the accusation and the right to remain silent until the accuser has met and discharged the onus.

[4] The applicant states that it is perfectly reasonable to require Westco to disclose the substance of the proposed testimony of its expert(s). The applicant submits that the civil contempt proceeding has been characterized as “quasi-criminal” by the Tribunal and that even in true criminal proceedings, notice of expert testimony is required. The applicant refers to the *Criminal Code*, R.S.C. 1985, c. C-46, which deals with the disclosure of expert testimony in the following manner:

657.3(3) For the purpose of promoting the fair, orderly and efficient presentation of the testimony of witnesses,

(a) a party who intends to call a person as an expert witness shall, at least thirty days before the commencement of the trial or within any other period fixed by the justice or judge, give notice to the other party or parties of his or her intention to do so, accompanied by

(i) the name of the proposed witness,

(ii) a description of the area of expertise of the proposed witness that is sufficient to permit the other parties to inform themselves about that area of expertise, and

- (iii) a statement of the qualifications of the proposed witness as an expert;
- (b) in addition to complying with paragraph (a), a prosecutor who intends to call a person as an expert witness shall, within a reasonable period before trial, provide to the other party or parties
 - (i) a copy of the report, if any, prepared by the proposed witness for the case, and
 - (ii) if no report is prepared, a summary of the opinion anticipated to be given by the proposed witness and the grounds on which it is based; and
- (c) in addition to complying with paragraph (a), an accused, or his or her counsel, who intends to call a person as an expert witness shall, not later than the close of the case for the prosecution, provide to the other party or parties the material referred to in paragraph (b).

[5] In *R. v. Mousseau*, 2003 ABQB 624, Justice Moen dealt with the purpose of section 657.3 of the *Criminal Code* and stated that subsections 657.3(3) to (5) were added to the *Criminal Code* in 2002 and were intended to produce more fairness for the Crown. Justice Moen stated as follows at paragraph 29 of her reasons:

[29] For a trial to be fair, each party must have notice of the nature of expert evidence to be called. For a trial to be efficient and orderly, that notice must be timely.

[6] I am of the opinion that in order to prevent the adjournment of the hearing on the merits, it is important that the applicant be provided with notice of any expertise to be adduced. I have considered the decision of *Apple Computer Inc., supra*, in light of subsection 9(2) of the *Competition Tribunal Act*, R.S.C. 1985 (2nd Supp.), c. 19 which states that “[a]ll proceedings before the Tribunal shall be dealt with as informally and expeditiously as the circumstances and considerations of fairness permit” and have concluded that a procedure similar to the procedure set out in subsection 657.3(3) of the *Criminal Code* is appropriate to reconcile the interests at stake. To that end, I will order that notice of expert testimony be provided 30 days prior to the hearing and that a copy of the expert report or statement only be produced at the close of the applicant’s case. In this way, the contemptor’s right to remain silent until the accuser has met and discharged its onus will not have been violated.

ORDER

[7] Having read and considered the written submissions filed by the parties and the cases cited therein, the Tribunal orders that:

- (a) the respondent Westco shall, at least 30 days prior to the hearing, give notice to the applicant of the name(s) of any expert it wishes to call along with a description of the area of expertise of the proposed witness sufficient to permit the applicant Nadeau to inform itself about the area of expertise and a statement of qualifications of the proposed expert witness(es).

- (b) the respondent Westco is to provide to the applicant, not later than the close of the applicant's case
- (i) a copy of the expert's report, if any; or
 - (ii) if no report is prepared, a summary of the opinion anticipated to be given by the proposed expert witness and the grounds on which it is based.

DATED at Ottawa, this 9th day of July, 2009.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Edmond P. Blanchard

COUNSEL:

For the applicant

Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited

Leah Price
Joshua Freeman
Ron Folkes

For the respondent

Groupe Westco Inc.

Denis Gascon
Martha A. Healey
Éric C. Lefebvre
Alexandre Bourbonnais
Geoffrey Conrad