



Reference: *The Commissioner of Competition v. Labatt Brewing Co. Ltd. et al.*, 2007 Comp. Trib. 7
File No.: CT-2007-003
Registry Document No.: 0021

IN THE MATTER OF an application by the Commissioner of Competition for an Interim Order pursuant to section 100 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an inquiry pursuant to paragraph 10(1)(b) of the *Competition Act* into the proposed acquisition by Labatt Brewing Company Limited of all of the outstanding units of Lakeport Brewing Income Fund.

B E T W E E N :

The Commissioner of Competition
(applicant)

and

Labatt Brewing Company Limited
Lakeport Brewing Income Fund
Lakeport Brewing Limited Partnership
Roseto Inc.
Teresa Cascioli
(respondents)



Decided on the basis of the written record
Presiding Judicial Member: Phelan J.
Date of Order: March 27, 2007
Order signed by: Mr. Justice M. Phelan

CONFIDENTIALITY ORDER - ON CONSENT OF THE PARTIES

[1] **FURTHER TO** the application filed by the Commissioner of Competition (the "Commissioner") for an Interim Order pursuant to section 100 of the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act") prohibiting the Respondents from closing or taking steps toward closing the proposed acquisition by Labatt Brewing Company Limited of all of the outstanding units of the Lakeport Brewing Income Fund;

[2] **AND FURTHER TO** Labatt Brewing Company Limited's request for a confidentiality order;

[3] **AND FURTHER TO** the draft confidentiality order filed on consent by the parties;

THE TRIBUNAL ORDERS THAT:

[4] For purposes of this order,

- (a) "Proceeding" means the application filed by the Commissioner for an Interim Order pursuant to section 100 of the Act prohibiting the Respondents from closing or taking steps toward closing the proposed acquisition by Labatt Brewing Company Limited of all of the outstanding units of the Lakeport Brewing Income Fund;
- (b) "Protected Document" means any document (including the information such document contains) produced in the Proceeding, including documents listed in expert reports, pleadings, affidavits, or submissions, with respect to which:
 - i) A party claims confidentiality; or
 - ii) The Tribunal has determined is confidential.
- (c) "Document" means any document whatsoever whether in physical or electronic form, including the things defined as "records" in s. 2(1) of the *Competition Act*.

[5] Disclosure of documents containing any of the following types of information could cause specific and direct harm:

- (a) Information relating to prices (to the extent that such prices have not been published or made generally known to competitors and customers), specific output or revenue data or market shares, or negotiations relating to prices, rates and incentives;
- (b) Lists of existing, prospective, and former customers;
- (c) Confidential contractual arrangements between the parties and their customers;

- (d) Financial data and reports;
- (e) Business plans, marketing and strategic plans, budgets, forecasts, and other similar information;
- (f) Internal market studies and analyses;
- (g) Confidential financial information relating to the parties, their customers; and
- (h) Other documents containing competitively sensitive and/or proprietary information of the parties.

[6] Protected Documents will be identified in the following manner for the purpose of this Proceeding:

- (a) At the time of production of a document, or as soon thereafter as possible, a party that claims confidentiality over a document shall provide counsel for the other parties with written notice identifying that document as a Protected Document;
- (b) All documents designated as Protected Documents shall, on a preliminary basis, be treated as a Protected Document, pending further determination;
- (c) Following the exchange of documents, the parties shall use their best efforts to agree as to whether the documents (or portions thereof) are to be treated as Protected Document;
- (d) If agreement cannot be reached, the parties may apply to the Tribunal to determine whether the document or a portion thereof, is a Protected Document.

[7] With respect to the Application Record filed by the Commissioner of Competition in the Proceeding, Exhibits “2” to “20” and Exhibits “23” to “31” to the Affidavit of Gregory Lang sworn March 20, 2007; the portions of the Affidavit of Philip B. Nelson sworn March 20, 2007 relating to protected exhibits to the Affidavit of Gregory Lang; and Exhibits “9” and “10” to the Affidavit of Stephen Peters sworn March 21, 2007, are designated as Protected Documents.

[8] Documents designated as Protected Documents may only be disclosed to the following people, except as required by law: (i) counsel for the parties and their staff; (ii) independent experts retained by the parties who have executed Confidentiality Undertakings in the form attached as Schedule A; and (iii) the Commissioner and the Commissioner’s staff.

[9] Prior to gaining access to Protected Documents referred to in this order, independent experts shall execute a Confidentiality Undertaking in the form attached as Schedule A. Confidentiality Undertakings shall be filed promptly with the Registrar of the Tribunal, who shall retain them in confidence until completion or final disposition of this Proceeding and any related appeals.

[10] If there are Protected Documents, or portions thereof, that a Respondent's counsel wishes to share with his or her client(s), that counsel shall provide counsel for the other parties with written notice of this fact. The parties shall then use their best efforts to come to an agreement as to whether the Protected Documents, or portions thereof, can be disclosed. If an agreement cannot be reached amongst the parties, the parties may apply to the Tribunal who will then decide the issue.

[11] If a party is required by law to disclose a Protected Document, or if a party receives written notice from a person who has signed a Confidentiality Undertaking pursuant to this order that they are required by law to disclose a Protected Document, that party shall give prompt written notice to the party that claimed confidentiality over the Protected Document so that the party that claimed confidentiality may seek a protective order or other appropriate remedy.

[12] Counsel for a party and his or her staff, and the Commissioner and her staff may make copies as they require in connection with the Proceeding.

[13] Nothing in this order prevents a party from having full access to Protected Documents that originated from that party.

[14] For greater certainty, all persons who obtain access to documents through this Proceeding are subject to an implied undertaking to use the documents and information solely for the purposes of this Proceeding (including any application or proceedings to enforce any order made by the Tribunal in connection with this Proceeding) and any related appeals.

For the purpose of this paragraph, "Proceeding" has the meaning set out in paragraph 4(a) of this Order and, in addition, the Commissioner's inquiry into the proposed acquisition by Labatt Brewing Company Limited of all of the outstanding units of Lakeport Brewing Income Fund, and any matter arising therefrom.

[15] Parties shall provide the Tribunal with redacted versions of all Protected Documents at the time of filing for the public record.

[16] At the hearing of the Proceeding:

- (a) Protected documents tendered as evidence at the hearing of the Proceeding shall be identified as such and clearly marked as such;
- (b) The Tribunal may determine whether the document should be treated as Protected Document;
- (c) Protected documents shall not form part of the public record unless the party or parties claiming confidentiality waives the claim, or the Tribunal determines that the document is not a Protected Document.

[17] The termination of the Proceeding shall not relieve any person to whom Protected Documents were disclosed pursuant to this order from the obligation of maintaining the confidentiality of such Protected Documents in accordance with the provisions of this order and any confidentiality agreement.

[18] This order supersedes and replaces any existing confidentiality agreements between the parties with respect to material produced in the Proceeding.

[19] This order shall be subject to further direction of the Tribunal and may be varied by order of the Tribunal.

DATED at Ottawa, this 27th day of March, 2007.

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

(s) Michael Phelan

SCHEDULE "A"

Confidentiality Undertaking

IN CONSIDERATION of being provided with information or documentation in connection with the proceeding in the Competition Tribunal, File Number CT-2007-003 (the "Proceeding"), between the Commissioner of Competition and Labatt Brewing Company Limited ("Labatt"), Lakeport Brewing Income Fund ("Lakeport Income Fund"), Lakeport Brewing Limited Partnership ("Lakeport Limited Partnership"), Teresa Cascioli and Roseto Inc., over which claims for confidentiality have been advanced ("Protected Documents"), I, _____, in the Province of _____, hereby undertake and agree to maintain the confidentiality of any Protected Document that I obtain, and in particular:

1 I will not copy or disclose a Protected Document to any other person, except to a person permitted to receive it under the Confidentiality Order of the Competition Tribunal (the "Tribunal") dated March _____, 2007, or such further order as the Tribunal may make.

2 I will not use the information or documentation so obtained for any purpose other than in connection with the Proceeding (including any application or proceedings to enforce any Order made by the Tribunal in connection with the Proceeding, and any application under s. 106 of the *Competition Act*, to vary or rescind any order made by the Tribunal in connection with the Proceeding), and any related appeals only.

3 Upon completion of this application and any related appeals, I agree that all Protected Documents in my possession, shall be dealt with in accordance with instructions from counsel for the party [I am retained by or that I represent] or as prescribed by order of the Tribunal. [Experts only:] I may retain in my confidential files, subject to the requirements of confidentiality imposed by this undertaking, materials prepared by me, such as my expert report, as well as study results and materials of a general nature which do not replicate any confidential information from a Protected Document.

4 I have read the Confidentiality Order, a copy of which is attached to this agreement, and agree to be bound by it. I acknowledge that any breach of this undertaking by me will be considered to be a breach of the said order of the Competition Tribunal.

5 I acknowledge and agree that Labatt, Lakeport Income Fund, Lakeport Limited Partnership, Teresa Cascioli and Roseto Inc., or any other owner of a Protected Document may not have an adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this undertaking are not performed in accordance with its specific terms or otherwise breached. Accordingly, I agree that any one or more of Labatt, Lakeport Income Fund, Lakeport Limited Partnership, Teresa Cascioli and Roseto Inc., or any other owner shall be entitled to injunctive relief to prevent breaches of this agreement and to specifically enforce the terms and provisions hereof, in addition to any other remedy to which they may be entitled at law or in equity.

6 In the event that I am required by law to disclose any Protected Document that is subject to this undertaking, I will provide [insert name of retaining or employing party] with prompt written notice so that the person that claimed confidentiality over such information or

documentation may seek a protective order or other appropriate remedy. In any event, I will furnish only that portion of the Protected Document that is legally required and I will exercise my best efforts to obtain reliable assurance that confidential treatment will be accorded it.

7 I will promptly, upon the request of the person providing a Protected Document, advise where it is kept by me.

8 I hereby attorn to the jurisdiction of the Federal Court of Canada and/or the Competition Tribunal to resolve any disputes arising under this agreement.

SIGNED, SEALED AND DELIVERED before a witness this ____ day of _____, 2007

(Witness Signature)

(Signature)

(Print Name)

(Print Name)

COUNSEL

For the applicant:

The Commissioner of Competition:

Finlay, Bryan
Miller, William J.
Iatrou, Nikiforos
Levine, Robert
Vermette, Marie-Andrée

For the respondents:

Labatt Brewing Company Limited:

Finkelstein, Neil R
Facey, Brian A.
Beagan Flood, Catherine
Wood, Micah V.

Lakeport Brewing Income Fund, Lakeport Brewing Limited Partnership, Teresa
Cascioli and Roseto Inc.:

Kay, Katherine L.
Neylan, Shawn C.D.
Kilby, Michael D.