

**THE COMPETITION TRIBUNAL**

File No.: CT-2003-009

Registry Document No.: 0017

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED	AUG 4 2004 <i>ML</i>
REGISTRAR - REGISTRAIRE	
OTTAWA, ON	0017

**BETWEEN: ALLAN MORGAN AND SONS LTD.**

**APPLICANT**

**AND: LA-Z-BOY CANADA LIMITED**

**RESPONDENT**

**Affidavit of Documents**

I, Perry Morgan, Vice-President of Allan Morgan and Sons Ltd., trading as Morgan's Furniture, ("Morgan's Furniture"), of the Town of Bay Roberts in the Province of Newfoundland and Labrador, SWEAR THAT:

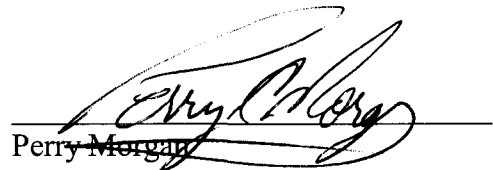
1. I am the Vice-President of Morgan's Furniture, the Applicant herein.
2. I have conducted a diligent search Morgan's Furniture's records and have made appropriate inquiries of others to inform myself in order to make this affidavit.
3. This affidavit discloses, to the full extent of my knowledge, information and belief, all of the documents relevant to any matter in issue in the application that are in Morgan's Furniture's possession, power or control, that were but are no longer in Morgan's Furniture's possession, power or control or that I believe are in the possession, power or control of a person who is not a party to the application.
4. I have listed and described in Schedule 1 all of the relevant documents, or bundles of relevant documents, that are in Morgan's Furniture's possession, power or control and for which no privilege is claimed.

5. I have listed and described in Schedule 2 all of the relevant documents, or bundles or relevant documents, that are or were in Morgan's Furniture's possession, power or control and for which privilege is claimed and have stated in that Schedule the grounds for each claim of privilege in respect of a document or bundle of documents.
  
6. I have listed and described in Schedule 3 all of the relevant documents, or bundles of relevant documents, that were but are no longer in Morgan's Furniture's possession, power or control and for which no privilege is claimed and have described in that Schedule how possession, power or control of any document or bundle of documents was lost and their current location, so far as I can determine.
  
7. I have listed and described in Schedule 4 all of the relevant documents, or bundle of relevant documents, that I believe are in the possession, power or control of a person who is not a party to the action and have described in that Schedule the identity of each such person, including the person's name and address, if known.
  
8. I am not aware of any other relevant document other than those that are listed in this affidavit or that are or were only in the possession, power or control of another party in the application.

Sworn before me at the Town of Bay Roberts in the Province of Newfoundland and Labrador on the 2<sup>nd</sup> day of August, 2004.



\_\_\_\_\_  
Lisa Clarke  
A Notary Public in and for the Province  
of Newfoundland and Labrador

  
\_\_\_\_\_  
Perry Morgan

**THE COMPETITION TRIBUNAL**

**File No.:** CT-2003-009

**Registry Document No.:**

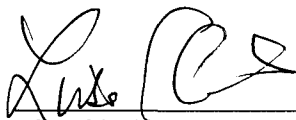
**BETWEEN:**            **ALLAN MORGAN AND SONS LTD.**            **APPLICANT**

**AND:**                **LA-Z-BOY CANADA LIMITED**            **RESPONDENT**

**Certificate of Solicitor**

I, Lisa Clarke, certify that I have explained to the deponent of this affidavit of documents the necessity of making full disclosure under Rule 223 of the *Federal Court Rules, 1998* and the possible consequences of failing to do so.

The documents listed in Schedule 1 to this affidavit may be inspected at a place, date and time to be agreed upon.



---

Lisa Clarke  
Solicitor - NL

## Schedule 1

The following are all of the relevant documents, or bundles of relevant documents, that are in Morgan's Furniture's possession, power or control and for which no privilege is claimed:

1. Map of the Avalon Peninsula, the area that Allan Morgan and Sons Ltd. ("Morgan's Furniture") primarily serves.
2. Letter dated August 27, 2002 from Mark Wiltshire, Vice-President of Sales and Marketing with La-Z-Boy Canada Limited ("La-Z-Boy") to Perry Morgan, Vice-President of Morgan's Furniture, advising that La-Z-Boy will terminate its relationship with Morgan's Furniture effective December 31, 2002.
3. Comparative chart showing the La-Z-Boy styles available to Morgan's Furniture for the years from 1998 to 2002, inclusive, (prepared by Perry Morgan and supported by purchase invoices for the years from 1998-2002).
4. Letter dated April 1, 1997, from Iain W. Douglas, Vice-President of Sales and Marketing with La-Z-Boy to All La-Z-Boy Dealers advising of the details of its new product categories.
5. Letter dated July 5, 1999, from Iain W. Douglas to All La-Z-Boy Dealers announcing that there would be manufacturing and distribution changes.
6. Order form no. 788689 dated September 30, 1997, where Morgan's Furniture placed an order with La-Z-Boy, and a facsimile of a hand written note from Debbie Hirperger of La-Z-Boy.
7. Facsimile dated November 14, 1997, from Perry Morgan to Debbie Hirperger, addressing the cancellation of items no. 865.
8. Facsimile dated November 19, 1997, from Perry Morgan to Debbie Hirperger, addressing the cancellation of items no. 865.
9. Facsimile dated September 30, 1997 from Bonnie Crowley of La-Z-Boy to Perry Morgan of respecting style no. 506.
10. Facsimile dated October 1, 1997 from Perry Morgan to Bonnie Crowley and a hand written note from Bonnie Crowley to Perry Morgan, respecting style no. 506.
11. Letter dated June 4, 2002, from Mark Wiltshire to La-Z-Boy Dealers addressing the deterioration of their delivery performance of many of their leather items.

12. Order form no. 1044515 dated August 9, 1999, where Morgan's Furniture placed an order with La-Z-Boy.
13. Acknowledgement and confirmation of order no. 1044515 dated August 10, 1999.
14. Facsimile dated August 18, 1999, from Sonia Sgarbossa of La-Z-Boy to Perry Morgan, advising that all Morgan's Furniture's orders must be placed through the sales and marketing consultant of La-Z-Boy designated for Morgan's Furniture, Danny Burbine, and that Morgan's Furniture's orders for style no. 554 were cancelled and would not be produced.
15. Facsimile dated August 19, 1999 from Perry Morgan to Sonia Sgarbossa requesting clarification that style no. 554 is no longer produced by La-Z-Boy.
16. Facsimile dated August 20, 1999, from Sonia Sgarbossa to Perry Morgan, advising that style no. 554 has not been cancelled by La-Z-Boy, but that Danny Burbine has made the style exclusive to another account.
17. Revised acknowledgement and confirmation of order no. 1044515 dated August 24, 1999, cancelling all style no. 554 orders placed by Morgan's Furniture.
18. Facsimile dated August 27, 1999, from Perry Morgan's to Bonnie Crowley and Danny Burbine, resent September 27, 1999, respecting making style no. 554 exclusive to another account and concerning the inability of Morgan's Furniture to obtain price information on various chair and sofa styles.
19. Letter dated September 7, 1999, from Perry Morgan to Patrick H. Norton, Chairman of La-Z-Boy, requesting clarification on specific issues.
20. Letter dated September 27, 1999, from Iain W. Douglas to Perry Morgan, responding to Morgan's Furniture's letter of September 7, 1999.
21. Letter dated October 19, 1999, from Perry Morgan to Iain W. Douglas, responding to La-Z-Boy's letter dated September 27, 1999, requesting further clarification on specific issues and a facsimile cover sheet showing the same letter being forwarded to Patrick H. Norton.
22. Order form no. 1058664 dated November 4, 1999, where Morgan's Furniture placed an order with La-Z-Boy and copy of a hand written note on the order from Perry Morgan to Danny Burbine.

23. Facsimile dated May 17, 2001, from Claudine Moore of Morgan's Furniture to Bonnie Crowley cancelling order no. 1255463 after receiving word from Bonnie Crowley that they could not guarantee that the leather used in the individual sectional pieces would match.
24. Invoice dated July 10, 2001, respecting the order of style no. 554.
25. Order form no. 1256456 dated May 17, 2001, where Morgan's Furniture placed an order with La-Z-Boy.
26. Invoice dated November 9, 2001, respecting the order of style no. 554.
27. Order form no. 1304490, dated April 26, 2002, where Morgan's Furniture placed an order with La-Z-Boy and facsimile of a hand written note on the invoice, received on May 3, 2002, from La-Z-Boy to Morgan's Furniture explaining that the requested fabric was exclusive to galleries, and that the no. 554 sectional was not available to Morgan's Furniture.
28. Order form dated April 26, 2002, where Morgan's Furniture placed an order with La-Z-Boy, and a hand written note on the invoice from Morgan's Furniture to La-Z-Boy requesting the pricing of style no. 554 sectional pieces for floor stock, grade D fabric and requesting a letter from La-Z-Boy setting out style, floor stock and price list policy concerning the no. 554 sectional.
29. Letter dated May 1, 2002, from Perry Morgan to Bonnie Crowley and Danny Burbine inquiring into the status of order no. 1304490 and seeking clarification as to the unavailability of the no. 554 sectional.
30. Facsimile dated September 10, 2002, from Perry Morgan to Danny Burbine respecting an order of five pieces of the no. 554 style recliner in leather GL746209 from La-Z-Boy and the variation in tone of the leather on individual furniture pieces. Enclosed with the fax was order form no. 1304337, dated April 11, 2002, where Morgan's Furniture placed an order with La-Z-Boy, copy of an invoice dated June 20, 2002, and copies of pictures of the furniture showing the variation in tone of the leather on the furniture received.
31. La-Z-Boy price list which shows style no. 554 and available fabric and leather grades for that particular style.
32. Order form no. 1058693 dated October 27, 1999, where Morgan's Furniture placed an order with La-Z-Boy and a hand written request from Perry Morgan for La-Z-Boy to advise how long it would take to ship the chair, as the customer needed the chair desperately.

33. Invoice dated November 5, 1999, respecting order no. 1058693.
34. Facsimile dated November 3, 1999, from Bonnie Crowley to Perry Morgan explaining that order no. 1058693 was placed but they are unable to give a precise delivery date.
35. Facsimile dated November 2, 1999, from Perry Morgan to Danny Burbine and Bonnie Crowley regarding status of order no. 1058693 and a scratch on a piece of furniture and facsimile of a hand written note dated November 3, 1999, from La-Z-Boy to Morgan's Furniture stating order no. 1058693 was placed.
36. Order form no. 1058872 dated December 1999, where Morgan's Furniture placed an order with La-Z-Boy, and a hand written note on the order form from Bonnie Crowley to Perry Morgan cancelling the order claiming that Morgan's Furniture did not display that style and a handwritten note from Perry Morgan to Bonnie Crowley responding that a floor model was, in fact, displayed for which they were reordering, as well as a second recliner, which was a tag order for its customer.
37. Order form no. 1255832 dated September 13, 2001, where Morgan's Furniture placed an order with La-Z-Boy.
38. Acknowledgement and confirmation of order no. 1255832 dated October 16, 2001.
39. Letter dated December 21, 1999 from Iain W. Douglas to Perry Morgan regarding pricing and catalogue sheets and responding to Perry Morgan's request of October 19, 1999, for further clarification of specific issues.
40. Letter dated January 10, 2000, from Iain W. Douglas to All Sales & Marketing Consultants regarding distribution.
41. Facsimile dated October 28, 2000, from Perry Morgan to La-Z-Boy regarding the fabrics Morgan's Furniture could sell.
42. Facsimile dated April 18, 2001, from Perry Morgan to Bonnie Crowley and Danny Burbine requesting fabric swatches and facsimile of a handwritten note from La-Z-Boy respecting the availability and price of swatches.
43. Invoice for swatches dated April 26, 2001.
44. Letter dated January 16, 1998, from Iain W. Douglas to La-Z-Boy Dealers explaining that La-Z-Boy's Co-op Advertising Program would be discontinued as of January 1, 1998, and the money spent in that program would now be redirected to better fliers and "P.O.P."

45. Advertisements for La-Z-Boy products which Island Furniture used.
46. Details from the La-Z-Boy website on a contest for sweepstake and prizes offered to the retail customers of La-Z-Boy dealers and a list of La-Z-Boy dealers where customers could visit to take part in the contest, dated September 27, 1998.
47. Advertisement for a free racoon giveaway which was run in local newspaper on the November 18, 1999.
48. Advertisements for La-Z-Boy products which Morgan's Furniture used.
49. Letter dated September 24, 2002, from Jeffrey M. Slopen of Miller Canfield, solicitors for La-Z-Boy, to Deborah L.J. Hutchings of McInnes Cooper, solicitors for Morgan's Furniture, responding to Morgan's Furniture's letter of September 4, 2002, where Morgan's Furniture expressed account termination concerns.
50. Table A - Comparative Yearly Sales - providing a comparison of sales figures of Morgan's Furniture as between Berkline and La-Z-Boy products and a percentage of growth for La-Z-Boy sales, for the years 1998 to 2002, inclusive, (prepared by Perry Morgan and supported by purchase invoices from suppliers and volume rebate summaries from Cantrex, an independent buyer group, plus an average mark-up, for the years from 1998-2002).
51. Island Furniture advertisement from the Telegram, a local St. John's newspaper, in December, 2001, advertising prices starting at \$399.00.
52. Island Furniture advertisement from the Telegram, a local St. John's newspaper, in December, 2002, advertising prices starting at \$499.00.
53. Table B - Yearly Sales by Category - providing the sales figures of Morgan's Furniture for different product categories for the years 1998 to 2002, inclusive, (prepared by Perry Morgan and supported by purchase invoices from suppliers and volume rebate summaries from Cantrex, an independent buyer group, plus an average mark-up, for the years from 1998-2002).
54. Table C - Gross Profits - providing the gross profits of Morgan's Furniture for the different product categories for the years 1998 to 2002, inclusive, (prepared by Perry Morgan and supported by purchase invoices from suppliers and volume rebate summaries from Cantrex, an independent buyer group, plus an average mark-up, for the years from 1998-2002).
55. Table D - Gross Profits - Percentage - providing the gross profits percentage of Morgan's Furniture for the different product categories for the years 1998 to 2002, inclusive,



(prepared by Perry Morgan and supported by purchase invoices from suppliers and volume rebate summaries from Cantrex, an independent buyer group, plus an average mark-up, for the years from 1998-2002).

56. Table E - Comparison of Profit Figures Generated by All Products and La-Z-Boy Product Exclusively - for the years 1998 to 2002, inclusive, (prepared by Perry Morgan and supported by purchase invoices from suppliers and volume rebate summaries from Cantrex, an independent buyer group, plus an average mark-up, for the years from 1998-2002).
57. Invoices for rebate dated January 11, 2000, and February 7, 2000.
58. Facsimile dated October 13, 2000, from Scott Morgan of Morgan's Furniture to Customer Service at La-Z-Boy and a reply facsimile dated October 19, 2000, from Customer Service at La-Z-Boy to Scott Morgan regarding a repair.
59. Facsimile letter dated September 26, 2002, from Jeffrey M. Slopen to Deborah L.J. Hutchings referring to and enclosing La-Z-Boy's letter of January 10, 2000, to All Sales & Marketing Consultants, regarding distribution.
60. Picture of Morgan's Furniture Delivery Truck, showing La-Z-Boy insignia.
61. Facsimile dated May 28, 2002, from Perry Morgan to Danny Burbine and Bonnie Crowley requesting an appointment with the La-Z-Boy showroom during the Toronto Summer Market in June and facsimile of a hand written note dated May 29, 2002, from La-Z-Boy to Perry Morgan indicating they are not showing in June.
62. Letter dated June 28, 2002, from Ron Balzer, National Sales Manager with La-Z-Boy to La-Z-Boy Dealers inviting them to the La-Z-Boy showroom during the Canadian August Gift Show.
63. Letter dated July 11, 2002, from Perry Morgan to Ron Balzer regarding an invitation to the La-Z-Boy showroom during the Canadian August Gift Show.

## **Schedule 2**

The following are all of the relevant documents, or bundles of relevant documents, that are or were Morgan's Furniture's possession, power or control and for which privilege is claimed:

All correspondence between solicitor and client, in relation to this application, for which solicitor client privilege is claimed.

### **Schedule 3**

The following are all of the relevant documents, or bundles of relevant documents, that were but are no longer in Morgan's Furniture's possession, power or control and for which no privilege is claimed:

NIL

#### **Schedule 4**

The following are all the relevant documents, or bundles or documents, that I believe are in the possession, power or control of a person who is not a party to the application:

NIL

**TO: The Registrar**  
**The Competition Tribunal**  
The Thomas D'Arcy McGee Building  
600 - 90 Sparks Street  
Ottawa, ON K1P 5B4  
Telephone number: (613) 957-7851  
Facsimile number: (613) 952-1123

**AND TO: Mr. Gaston Jorré**  
**Commissioner of Competition, Acting**  
**Industry Canada**  
50 Victoria Street  
Gatineau, Quebec K1A 0C9  
Telephone number: (819) 997-3301  
Facsimile number: (819) 953-5013

**AND TO: LA-Z-Boy Canada Limited**  
c/o Myron W. Shulgan, Q.C.  
Kristina Savi-Mascaro  
**Wilson Walker LLP**  
Barristers and Solicitors  
P.O. Box 1390  
300-443 Ouellette Avenue  
Windsor ON N9A 6R4  
Telephone number: (519) 977-1555  
Telephone number: (519) 977-1565

**The Applicant's address for service is as follows:**

c/o McInnes Cooper  
5<sup>th</sup> Floor, Baine Johnston Centre  
10 Fort William Place  
P.O. Box 5939  
St. John's, NL A1C 5X4  
Attention: Deborah L.J. Hutchings  
Telephone: (709)722-8254  
Facsimile (709) 722-1763  
E-mail: [deborah.hutchings@mcinnescooper.com](mailto:deborah.hutchings@mcinnescooper.com)