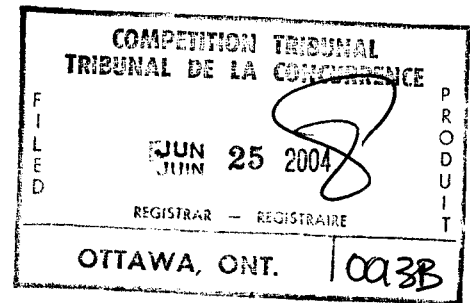


**THE COMPETITION TRIBUNAL**  
**File No.: CT2003009**



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

**APPLICANT**

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

**RESPONDENT**

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**AFFIDAVIT OF PERRY MORGAN**

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**McInnes Cooper**  
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**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  
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**AND TO: Mr. Gaston Jorré**  
**Commissioner of Competition, Acting**  
**Industry Canada**  
50 Victoria Street  
Gatineau, Quebec K1A 0C9  
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**AND TO: LA-Z-Boy Canada Limited**  
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**RESPONDENT**

**AFFIDAVIT**

I, Perry Morgan, of Bay Roberts, Newfoundland and Labrador, make oath and say as follows:

1.     I am the Vice-President of Allan Morgan and Sons Ltd., trading as Morgan's Furniture, the Applicant herein ("Morgan's Furniture"), and, as such, I have knowledge of the matters contained herein except where otherwise stated.
  
2.     I give this Affidavit in support of opposing a motion to stay the Order of Lemieux J., dated February 5<sup>th</sup>, 2004, granting leave to Morgan's Furniture to bring an Application under section 75 of the *Competition Act* ("Act")
  
3.     Morgan's Furniture was established in 1957 and has operated since that time as a family business by the Morgan Family as a furniture retail store serving primarily the Avalon Peninsula ("Area").

4. In the 1970's, Morgan's Furniture, then a well established furniture retail store, secured the dealership for La-Z-Boy Canada Limited ("La-Z-Boy") products ("Product").
5. Over the course of in excess of 25 years, Morgan's Furniture developed a significant market for the Product, including La-Z-Boy's recliners, in the Area. In fact, the Product comprised a significant portion of Morgan's Furniture's motion furniture sales.
6. Morgan's Furniture and La-Z-Boy enjoyed a long and mutually prosperous relationship, however, in 1997 their relationship changed.
7. Morgan's Furniture started to experience restrictions placed upon it by La-Z-Boy in the Product it could obtain from La-Z-Boy. The actions of La-Z-Boy referred to herein include, but are not limited to: (a) excluding Morgan's Furniture from vital product information to which retail dealers of the Product would normally have access; (b) restricting Morgan's Furniture from purchasing certain of the Product, which are high market product styles, for display to customers on its store floor and, in turn, preventing Morgan's Furniture from marketing such styles to its customers, while making such Product available to Morgan's Furniture's major competitor, Island Furniture ("Island Furniture"); (c) excluding Morgan's Furniture from the purchase of certain of the Product's style which are popular market items with Morgan's Furniture's customers while making these same styles available to Island Furniture; and (d) excluding Morgan's Furniture from advertising and promotional campaigns, while making such advertising and promotional campaigns available to Island Furniture.
8. As a consequence thereof, the Product Morgan's Furniture could offer to its customers and the market, in general, in the Area seriously diminished. In turn, Morgan's Furniture's sales of the Product decreased significantly. By the year 2001, Morgan's Furniture's sales of the Product was down by 46%.

9. The actions of La-Z-Boy forced Morgan's Furniture to bring an application to the Tribunal pursuant to section 103.1 of the Act seeking leave to bring an application for an Order under section 75 of the Act that La-Z-Boy accept Morgan's Furniture as a customer and dealer of the Product on the usual trade terms. Pursuant to the order of Lemieux J., Morgan's Furniture was granted leave to proceed with its application against La-Z-Boy under section 75 of the Act. La-Z-Boy is appealing that decision and, in turn, now seeks a stay of Morgan's Furniture's application to proceed under section 75 of the Act.
10. Pursuant to the discussions I have had with my solicitors and the advice which I have received, I believe that the Application pursuant to section 75 of the Act should not be stayed pending the outcome of the Appeal of the Order granting leave to bring the Application.
11. I do not believe that La-Z-Boy will be put out of business or suffer permanent market loss or irrevocable damage to its business reputation by a Tribunal decision not to grant a stay. If a stay is not granted and, subsequently, Morgan's Furniture successfully obtains an Order requiring La-Z-Boy to accept Morgan's Furniture as a customer and dealer of the Product, on the usual trade terms, then Morgan's Furniture will have the Product available to its customers, just as it did for over 25 years preceding 1997. Customers will not be frustrated or confused, in fact they will be faced with more options and possibly better prices. The general public would not be aware of these proceedings or Morgan's Furniture's complaint to the Tribunal respecting La-Z-Boy's actions towards it and, therefore, I believe that it would be unlikely that the effects complained of by La-Z-Boy, in its application, will occur. Further, La-Z-Boy itself will have another supplier for its products and, as a result, it will likely benefit.
12. If, following an Order pursuant to section 75, the Appeal at the Federal Court of Appeal is allowed, La-Z-Boy will no longer be required to accept Morgan's Furniture as its customer and dealer and, therefore, have the option of terminating the relationship.


Again, customers will not be frustrated or confused by this as this matter has not been made public and, therefore, I believe that it would be unlikely that the effects complained of by La-Z-Boy, in its application, will occur. Customers will have benefited from the addition of the Product to Morgan's Furniture's store, even if for a brief period of time. And La-Z-Boy will likely have benefited for such time as it had to comply with the Order.

13. In summary, I do not believe that La-Z-Boy will suffer irreparable harm if the stay is not granted.
14. Further, La-Z-Boy will be put to no inconvenience if the stay is not granted and, subsequently, Morgan's Furniture is successful in its section 75 application to be added as a customer and dealer of La-Z-Boy. In fact, La-Z-Boy could possibly serve to benefit from such a decision as it would have an additional dealer, who is very familiar with the Product and who has established a market for such Product in the Area. Further, such Area services a more expansive area than currently being serviced by La-Z-Boy's existing dealer, Island Furniture, and, as a result, would likely increase La-Z-Boy's overall sales.
15. Morgan's Furniture, however, would be put to the continued inconvenience of being prevented from selling the Product if a stay is granted.
16. Morgan's Furniture developed a significant market for the Product and, in fact, the Product comprised a significant portion of Morgan's Furniture's motion furniture sales. Since La-Boy's refusal to deal, the Product Morgan's Furniture could offer to its customers and the market, in general, in the Area seriously diminished. In turn, Morgan's Furniture's sales of the Product decreased significantly. By the year 2001, Morgan's Furniture's sales of the Product was down by 46%.
17. Restrictions were placed on Morgan's Furniture beginning in 1997 and by the start of 2003 Morgan's Furniture was no longer supplied with the Product at all. Despite its

efforts, Morgan's Furniture has been unsuccessful in obtaining a motion furniture product to adequately replace the Product, and, consequently, Morgan's Furniture sales in motion furniture has not recovered since being terminated as a La-Z-Boy dealer. Morgan's Furniture has already suffered great harm because of La-Z-Boy's actions and such harm will continue if a stay is granted. The harm will continue until the Tribunal proceedings proceed and reach a conclusion.

18. Therefore, Morgan's Furniture will suffer greater harm if the stay is granted than La-Z-Boy would suffer if the stay is not granted.
  
19. Unfortunately, the application for stay is yet another unexpected and additional expense incurred by Morgan's Furniture in the process in seeking reinstatement as a La-Z-Boy dealer. Furthermore, if the stay is granted, this will delay Morgan's Furniture in bringing its Application under section 75 of the Act. The delay will be detrimental to Morgan's Furniture in trying to maintain its status in the marketplace as a La-Z-Boy dealer with its existing and potential customers. In other words, the longer it takes for Morgan's Furniture to be reinstated as a La-Z-Boy dealer, the more difficult it may be for it to re-establish itself in the marketplace as a La-Z-Boy dealer. Timing, therefore, is crucial in this respect.
  
20. I believe that Application pursuant to section 75 of the Act should not be stayed pending the outcome of the Appeal of the Order granting leave to bring the Application.

**SWORN TO** at St. John's, in the Province of Newfoundland and Labrador, this 23<sup>rd</sup> day of June, 2004, before me:

  
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Barrister - NL

  
\_\_\_\_\_  
PERRY MORGAN