

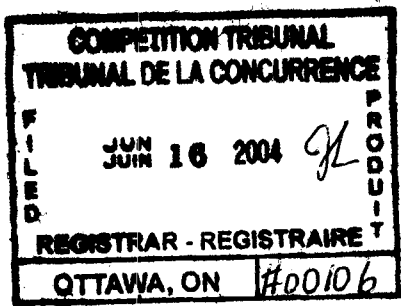
THE COMPETITION TRIBUNAL  
File No. CT-2003-009

BETWEEN:

ALLAN MORGAN AND SONS LTD.

*Applicant*

- and -



LA-Z-BOY CANADA LIMITED

*Respondent*

AFFIDAVIT

I, CRISTA REA, of the City of Windsor in the County of Essex and Province of Ontario, MAKE OATH AND SAY:

1. I am an associate of Wilson Walker LLP, solicitors for the Respondent, La-Z-Boy Canada Limited ("La-Z-Boy") and have reviewed the file in connection with this matter. The facts to which I hereinafter depose are based on my personal knowledge, except where such information is said to be based on information and belief and in such cases I believe the information to be true.
2. I swear this Affidavit in support of a motion to stay the Order of the Honourable Justice Lemieux, dated February 5<sup>th</sup>, 2004, granting leave to the Applicant to bring an Application under section 75 of the *Competition Act* ("Act").

**BACKGROUND**

3. The Respondent, La-Z-Boy, manufactures and sells upholstered and leather furniture. The most prominent feature of La-Z-Boy products is its recliner feature.
4. La-Z-Boy sells its furniture through retail furniture dealers throughout Canada.

5. In 1997, La-Z-Boy conducted a reorganization of its dealer networks. La-Z-Boy categorized its dealers in the following categories:

- (a) Motion chair dealer,
- (b) Major upholstery dealer, and
- (c) Full line dealer, which dedicates approximately 5,000 to 8,000 square feet for the display of La-Z-Boy products in a gallery setting or deals exclusively with La-Z-Boy products.

6. La-Z-Boy imposed restrictions on various lines of products that could be made available to a dealer, which depended on the category to which the dealer fell.

7. This differed from its distribution policy prior to 1997. Prior to 1997, regardless of the extent to which a dealer sold La-Z-Boy products, dealers were permitted access to La-Z-Boy's full line of furniture. Dealers were provided with catalogues containing the full line of La-Z-Boy products, which could be purchased by its customers even though it was not displayed or carried by the dealer.

8. After the 1997 reorganization, only full line dealers operating La-Z-Boy furniture galleries were provided access to all La-Z-Boy products. Dealers in the other two categories were only permitted access to La-Z-Boy products that were displayed on their store room floor.

9. The Applicant, Alan Morgan & Sons Ltd. ("Morgan Furniture"), was classified as a motion chair dealer. Therefore, La-Z-Boy provided Morgan Furniture with extracts from its catalogues, price sheets and fabric samples relating to only the products Morgan Furniture displayed on its floor.

10. From 1998 to 2001, the volume of product which Morgan Furniture purchased from La-Z-Boy declined.

11. It was no longer economically practical for La-Z-Boy to continue to permit Morgan Furniture to offer La-Z-Boy's lines of products for sale to the public. For this reason, on August 27, 2002, La-Z-Boy advised Morgan Furniture that it was terminating Morgan Furniture's right to sell La-Z-Boy products effective December 31<sup>st</sup>, 2002.

**APPLICATION PURSUANT TO SECTION 103.1 OF THE ACT**

12. On November 26<sup>th</sup>, 2003, Morgan Furniture commenced an Application to the Competition Tribunal for an Order granting leave pursuant to section 103.1 of the Act to bring an Application for an Order under s. 75 of the Act.

13. The Competition Tribunal, by reasons delivered by the Honourable Justice Lemieux, on February 5, 2004, granted leave to Morgan Furniture on the basis that it is directly and substantially affected in its business by the actions of La-Z-Boy. A true copy of the Order of Justice Lemieux is attached hereto and marked as Exhibit "A".

14. On March 3, 2004, La-Z-Boy filed a Notice of Appeal of the Order of Justice Lemieux granting leave on the basis that Justice Lemieux failed to consider whether the alleged practice could be the subject of an Order under s. 75 of the Act. A true copy of the Notice of Appeal is attached hereto and marked as exhibit "B".

15. Since such time, the Appeal Book and Memorandum of Fact and Law has been served and filed by La-Z-Boy to the Federal Court of Appeal.

### **STAY OF PROCEEDINGS**

16. On May 20<sup>th</sup>, 2004, counsel for Morgan Furniture and La-Z-Boy participated in a case management conference with Justice Lemieux. At this time, Justice Lemieux made an Order setting a date for the filing of the Application under s. 75 of the Act and responding material. A true copy of the Order of Justice Lemieux dated May 20<sup>th</sup>, 2004 is attached hereto and marked as Exhibit "C".

17. I verily believe that the Application pursuant to section 75 should be stayed pending the outcome of the Appeal of the Order granting leave to bring the Application.

18. The claim made in the Appeal raises a serious question to be tried by the Federal Court of Appeal. It is important to the interpretation and application of s. 103.1 of the Act to ensure the test granting leave is applied consistently and completely to all applications made pursuant to that section.

19. If the Application is permitted to proceed and the Order sought in this motion is not granted, La-Z-Boy will suffer irreparable harm. La-Z-Boy will have to bear the expense of proceeding with its Application and accept Morgan Furniture as a supplier of its furniture should Morgan Furniture be successful in its application and obtain an Order from the Tribunal. This will require La-Z-Boy to supply Morgan Furniture with La-Z-Boy furniture, product samples and price lists and accept Morgan Furniture customer orders.

20. La-Z-Boy's reputation will be harmed and confusion will be caused to its customers if thereafter La-Z-Boy's Appeal is granted and La-Z-Boy does not have to accept Morgan Furniture as a supplier of its furniture.

21. Since January 1<sup>st</sup>, 2003, Morgan Furniture has not supplied La-Z-Boy products for sale to customers. It will not be inconvenienced or prejudiced if the Application is stayed pending the outcome of the Appeal because it has for the past one and a half years sold products of La-Z-Boy's competitors.

22. Therefore, I verily believe that La-Z-Boy will suffer the greater harm if the Order staying this Application is not granted because it may be required to incur the expense of adding Morgan Furniture as its supplier whereas Morgan Furniture will continue to operate as it has since January 1<sup>st</sup>, 2003.



23. I verily believe that it is appropriate in the circumstances to stay the Application under s. 75 of the Act because the issues raised in the Application will become moot depending on the outcome of the Appeal.

SWORN before me in the City of Windsor )  
 )  
in the County of Essex and Province of Ontario )  
 )  
this 14 day of June, 2004 )

  
\_\_\_\_\_  
CRISTA REA

  
\_\_\_\_\_  
A Commissioner for taking Affidavits, etc.  
WWLIB:309129.1\120055-00016

THIS IS **EXHIBIT "A"**  
REFERRED TO IN THE AFFIDAVIT  
OF CRISTA L. REA  
DATED JUNE 14, 2004

SWORN BEFORE ME AT THE  
CITY OF WINDSOR, COUNTY OF  
ESSEX ON JUNE 14, 2004



\_\_\_\_\_  
A COMMISSIONER, ETC.

## Competition Tribunal



## Tribunal de la Concurrence

600 - 90, rue Sparks Street  
Ottawa, Ontario  
K1P 5B4

## FACSIMILE TRANSMISSION

## TRANSMISSION PAR TÉLÉCOPIEUR

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- AND TO/ET À: **Myron W. Shulgan, Q.C.** Tel. No./N° de tél.: 519-977-1555 Fax. No./N° de télécopieur: 519-977-1565  
Counsel for La-Z-Boy Canada Limited
- AND TO/ET À: **André Lafond** Tel. No./N° de tél.: 819-997-1209 Fax. No./N° de télécopieur: 819-953-8546  
Deputy Commissioner of Competition (Civil Matters)
- FROM/DE: **Jos LaRose** Tel. No./N° de tél.: 613-954-0466<sup>0477</sup> Fax. No./N° de télécopieur: 613-952-1123  
Registry Officer / Agent du greffe
- SUBJECT/OBJET: **Allan Morgan and Sons Ltd. v. La-Z-Boy Canada Limited (CT-2003/009).**

Pursuant to section 54 of the *Competition Tribunal Rules*, I hereby serve Allan Morgan and Sons Ltd., La-Z-Boy Canada Limited and the Commissioner of Competition with the Reasons and Order regarding Application for Leave to Make an Application under Section 75 of the *Competition Act* (Doc. No. 0005a)

\*\*\*\*\*

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I certify that this document does not contain classified/designated/protected information./ Je certifie que ce document ne contient aucun renseignement classifié/désigné/protégé.

Signature: 

Date: February 5, 2004

Time/Heure: 3:15 p.m.

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communiquer avec Jos LaRose au (613)954-0466

Jos LaRose at (613)954-0466/En cas de problèmes pendant la transmission, veuillez





Reference: *Allan Morgan and Sons Ltd. v. La-Z-Boy Canada Ltd.*, 2004 Comp. Trib. 4  
File no.: CT2003009  
Registry document no.: 0005a

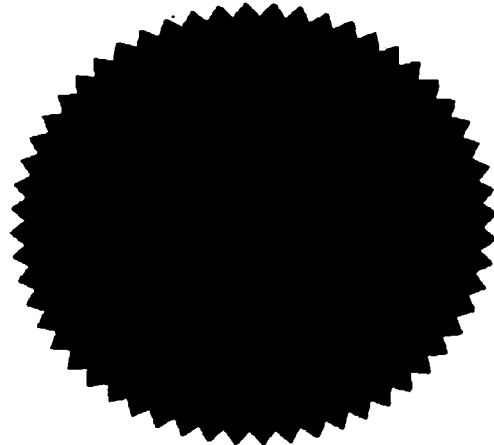
IN THE MATTER OF an application by Allan Morgan and Sons Ltd., for an order pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34, granting leave to bring an application under section 75 of the Act.

BETWEEN:

Allan Morgan and Sons Ltd.  
(applicant)

and

La-Z-Boy Canada Ltd.  
(respondent)



Decided on the basis of the written record.  
Member: Lemieux J. (presiding)  
Date of reasons and order: 20040205  
Reasons and order signed by: Lemieux J.

**REASONS AND ORDER REGARDING APPLICATION FOR LEAVE TO MAKE AN APPLICATION UNDER SECTION 75 OF THE *COMPETITION ACT***

## **I. THE APPLICATION FOR LEAVE**

[1] Allan Morgan and Sons Ltd. ("Morgan's Furniture") has applied to the Competition Tribunal (the "Tribunal") pursuant to subsection 103.1(1) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, (the "Act"), for leave to make an application under section 75 of that Act.

[2] Morgan's Furniture is a family business established in 1957. It is a furniture retail store serving primarily the area of Conception Bay North to St. John's, Newfoundland, as well as throughout the Avalon Peninsula. It deals with moderate to high end furniture.

[3] Morgan's Furniture alleges La-Z-Boy Canada Limited ("La-Z-Boy"), a Canadian furniture manufacturer of various types of upholstered and leather furniture including occasional chairs, stationary sofas and love seats, motion furniture, recliners, sofa beds and high leg chairs (the "products"), is refusing to supply it with its products contrary to the provisions of section 75 of the Act. It seeks an order from the Tribunal that La-Z-Boy accept forthwith Morgan's Furniture as a customer and dealer of its products on the usual trade terms.

[4] Morgan's Furniture states in the 1970s it secured the dealership for La-Z-Boy products and over the course of 25 years developed a significant market for La-Z-Boy products, notably, its recliners. It says that on August 27, 2002, La-Z-Boy notified Morgan's Furniture that their relationship would be terminated effective December 31, 2002.

[5] Morgan's Furniture acknowledges over the period 1998 to 2001 inclusive, its sales of La-Z-Boy products had been declining but denies this decline was as a result of inadequate representation of La-Z-Boy's products or the failure to promote them. It says the declining sales were a direct result of La-Z-Boy's restrictions placed on Morgan's Furniture to obtain product and these restrictions were implemented to the exclusivity of a newly established retail furniture store competitor in St. John's.

[6] The restrictions in place since 1997 included (1) difficulties in obtaining product information directly from La-Z-Boy or from its Atlantic Canada sales representative; (2) restrictions on access to products; and (3) restrictions on advertising and promotional campaigns.

[7] Morgan's Furniture adds the sales figures for 2002 are misleading because they represent only the first eight months of that year. For that year, it states it ordered approximately 100 pieces from La-Z-Boy, a figure comparable to the other years mentioned.

## **II. LA-Z-BOY'S POSITION**

[8] La-Z-Boy opposes the Tribunal granting leave in this matter. It states that La-Z-Boy justifiably terminated the right of Morgan's Furniture to act as its representative and the termination has not had an adverse effect on competition in the furniture market and there continues to be adequate supplies of comparable products to that which La-Z-Boy and other furniture manufacturers with whom it competes, sell to the public.

[9] La-Z-Boy states in 1997 it implemented a series of changes in its policy by which it determined what products would be supplied to retailers it permitted to sell its products. This policy was put in place to improve service to its customers.

[10] La-Z-Boy's position is that it terminated its relationship with Morgan's Furniture because it felt Morgan's Furniture's low volume indicated it had inadequately represented La-Z-Boy products and had failed to promote them.

### III. ANALYSIS

[11] This is the third application for leave brought to the Tribunal under the recent amendments to the Act providing for what has been termed "a private access action" because the proceeding is initiated by private interests rather than the Commissioner of Competition.

[12] The first application for leave was decided by Justice Dawson in *National Capital News v. Milliken*, 2002 Comp. Trib. 41 ("National Capital News") and the other I decided in *Barcode Systems Inc. v. Symbol Technologies Canada ULC*, 2004 Comp. Trib. 1 ("Barcode").

[13] The test for the Tribunal granting leave is set out in subsection 103.1(7) of the Act. It provides as follows:

*The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicant[']s business by any practice referred to in one of those sections that could be subject to an order under that section. (emphasis added)*

[14] In Barcode I wrote, commencing at paragraph 8:

What the Tribunal must have reason to believe is that Barcode is directly and substantially affected in its business by Symbol's refusal to sell. The Tribunal is not required to have reason to believe that Symbol's refusal to deal has or is likely to have an adverse effect on competition in a market at this stage.

I make this observation because Symbol, in its vigorous opposition to leave being granted, described what, in its view, was a highly competitive marketplace and argued that Barcode had provided no evidence as to this requirement as described in paragraph 75(1)(e) of the Act.

As I read the Act, adverse effect on competition in a market is a necessary element to the Tribunal finding a breach of section 75 and a necessary condition in order that the Tribunal make a remedial order under that section. It is not, however, part of the test for the Tribunal's granting leave or not.

Justice Dawson in *National Capital News, supra*, described what kind of proof the Tribunal had to have before it in order to have "reason to believe". She concluded that

...the leave application [must be] supported by sufficient credible evidence to give rise to a *bona fide* belief that the applicant may have been directly and substantially affected in [its] business by a reviewable practice [the refusal to deal here], and that the practice in question could be subject to an order.

What this standard of proof means is that the applicant Barcode must advance sufficient credible evidence supported by an affidavit to satisfy the Tribunal that there is a reasonable possibility that its business has been directly and substantially affected because of Symbol's refusal to deal.

[15] In an affidavit filed in support of the application for leave, Perry Morgan, Vice-President of Morgan's Furniture, details the efforts made to obtain replacement brands without success. He states Morgan's Furniture has for some years carried another brand alongside La-Z-Boy products. He provides evidence of sales, in particular recliners, showing the other brand is a weak sales performer which he attributes to the fact the products of the other brand are not equivalent to La-Z-Boy's products as to quality, styles and fabrics.

[16] As a result, he attests, Morgan's Furniture is losing customers.

[17] Perry Morgan's affidavit contains four tables. Table B, at tab 49, sets out for the period 1998 to 2002 inclusive (the "period"), Morgan's Furniture's sales by category comparing sales of recliners with other lines such as wood, sofas, beds, lamps, clocks and appliances.

[18] Table C to his affidavit, at tab 50, for the same period and categories, provides figures in gross profits earned while Table D, at tab 51, calculates the percentage of gross profits earned by category of products sold by Morgan's Furniture.

[19] Finally, Table E to that affidavit, at tab 52, compares profit figures for the period generated by all the products sold with the La-Z-Boy products and estimates the profit loss due to La-Z-Boy restrictions.

[20] The impact of the financial data for 2003 would be magnified because as La-Z-Boy admits it is no longer supplying Morgan's Furniture.

[21] The data provided by Morgan's Furniture is sufficient to convince me the applicant may have been directly and substantially affected by the actions of La-Z-Boy. Morgan's Furniture, at the leave stage, is not required to meet any higher standard of proof threshold.

**FOR THESE REASONS THE TRIBUNAL ORDERS THAT:**

**[22] This application for leave is granted.**

**[23] The Tribunal is prepared to expedite the hearing of the application and invites the parties to communicate with the Deputy Registrar of the Tribunal for this purpose.**

**DATED at Ottawa, this 5<sup>th</sup> day of February, 2004.**

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

**(s) François Lemieux**

**REPRESENTATIVES**

**For the applicant:**

**Allan Morgan and Sons Ltd.**

**Deborah L.J. Hutchings**


**For the respondent:**

**La-Z-Boy Canada Ltd.**

**Myron W. Shulgan, Q.C.**

THIS IS **EXHIBIT "B"**  
REFERRED TO IN THE AFFIDAVIT  
OF CRISTA L. REA  
DATED JUNE 11, 2004

SWORN BEFORE ME AT THE  
CITY OF WINDSOR, COUNTY OF  
ESSEX ON JUNE 11, 2004

  
\_\_\_\_\_  
A COMMISSIONER, ETC.

FEDERAL COURT OF APPEAL

BETWEEN:

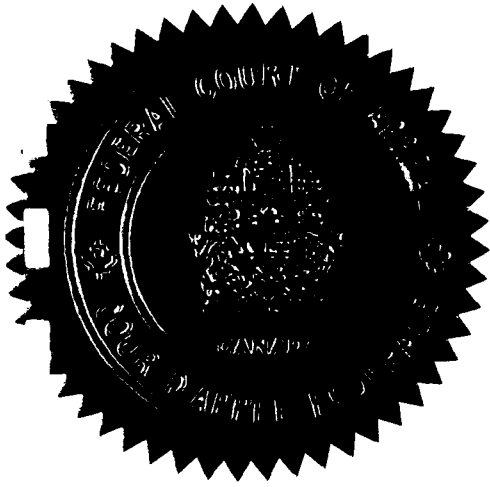
LA-Z-BOY CANADA LTD.

Appellant  
(Respondent)

- and -

ALLAN MORGAN AND SONS LTD.

Respondent  
(Applicant)



NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Appellant. The relief claimed by the Appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the Appellant. The Appellant requests that this appeal be heard at 330 University Avenue, 7<sup>th</sup> Floor, Toronto, Ontario, M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Court Rules 1998* and serve it on the appellant's solicitor, or where the Appellant is self-represented, on the Appellant, WITHIN 10 DAYS of being served with this Notice of Appeal.

Copies of the *Federal Court Rules, 1998*, information concerning the local offices of the Court and other necessary information may be obtained on request of the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

March 3, 2004

**Todd R. Desanti**  
**Registry Officer**  
Issued by: Agent du greffe  
(Registry Officer)

Address of local office:  
330 University Avenue, 7<sup>th</sup> Floor  
Toronto, Ontario  
M5G 1R7



**To: Deborah L.J. Hutchings  
McInnes Cooper**  
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Solicitors for the Respondent (Applicant)

**To: The Registrar  
The Competition Tribunal**  
The Thomas D'Arcy McGee Building  
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Ottawa, Ontario K1P 5B4  
(613) 957-7851  
(613) 952-1123 Fax

**To: Allan Morgan and Sons Ltd.**  
Birch Hills, Bay Roberts, Nfld.  
P.O. Box 430  
Clarke's Beach, Nfld. A0A 1W0  
(709) 786-2100  
(709) 786-6403 Fax

## APPEAL

**THE APPELLANT APPEALS** to the Federal Court of Appeal from the decision of the Competition Tribunal ("Tribunal") of Lemieux J., dated February 5<sup>th</sup>, 2004 by which the Tribunal granted leave to the Respondent pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C.34 ("Act") to allow the Respondent to bring an application against the Appellant under section 75 of the Act.

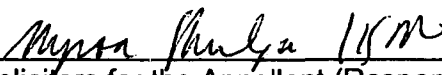
**THE APPELLANT ASKS** that the said decision of the Tribunal to grant leave to the Respondent to pursue an application under section 75 of the Act be set aside and that the Respondent's application as against the Appellant be dismissed.

**THE GROUNDS FOR THE APPEAL** are as follows:

1. The decision of the Tribunal that is the subject matter of this Appeal is contrary to the law and evidence;
2. The Tribunal erred in ruling that the Respondent met the requirements of section 103.1 of the Act;
3. The Respondent has not met all of the requirements of section 103.1 of the Act, namely,
  - (a) the Respondent has not been substantially affected in its business or precluded from carrying on business due to its inability to obtain adequate supplies of product anywhere in a market on usual trade terms,
  - (b) the Respondent is able to obtain adequate supplies of the product because there is sufficient competition among suppliers of product in the market,
  - (c) the Respondent has not been willing and/or able to meet the usual trade terms of suppliers of the product, and
  - (d) the refusal of the Appellant to supply the Respondent with product is not and is not likely to have an adverse effect on competition in the market;
4. The Tribunal erred in ruling that it was not necessary for it to determine whether the Appellant's refusal to supply product to the Respondent was a result of wrongful conduct by the Appellant and that such conduct will have an adverse effect on competition in the market, prior to granting leave to the Respondent pursuant to section 103.1 of the Act;
5. Section 13(1) of the *Competition Tribunal Act* R.S.C. 1985 c. C.19; and
6. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE APPELLANT PROPOSES** that this Appeal be heard at Toronto in the Province of Ontario.

March 1, 2004

  
\_\_\_\_\_  
Solicitors for the Appellant (Respondent)

**MYRON W. SHULGAN, Q.C.**  
**WILSON WALKER LLP**  
Barristers and Solicitors  
P.O. Box 1390  
300-443 Ouellette Avenue  
Windsor, Ontario  
N9A 6R4

Telephone: (519) 977-1555  
Facsimile: (519) 977-1565

(LSUC # 13823F-1B)

LÁ-Z-BOY CANADA LIMITED

v.

ALLAN MORGAN AND SONS LTD.

Court File No.: \_\_\_\_\_

THE FEDERAL COURT OF APPEAL

NOTICE OF APPEAL

**MYRON W. SHULGAN, Q.C.**

**WILSON, WALKER LLP**

Barristers & Solicitors

300 - 443 Ouellette Avenue

P.O. Box 1390

Windsor, Ontario N9A 6R4

Telephone: (519) 977-1555

Facsimile: (519) 977-1565

**LSUC: 13823F-1B**

Solicitors for the Appellant (Respondent)

File #120055-16 /gd

THIS IS **EXHIBIT "C"**  
REFERRED TO IN THE AFFIDAVIT  
OF CRISTA L. REA  
DATED JUNE 14, 2004

SWORN BEFORE ME AT THE  
CITY OF WINDSOR, COUNTY OF  
ESSEX ON JUNE 14, 2004



\_\_\_\_\_  
A COMMISSIONER, ETC.

FYI

Competition Tribunal



Tribunal de la Concurrence

600 - 90, rue Sparks Street  
Ottawa, Ontario  
K1P 5B4

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- AND TO/ET À: Myron W. Shulgan, Q.C. Tel. No./N° de tél.: 519-977-1555 Fax. No./N° de télécopieur: 519-977-156  
Counsel for La-Z-Boy Canada Limited
- FROM/DE: Jos LaRose Tel. No./N° de tél.: 613- 954-0466 Fax. No./N° de télécopieur: 613- 952-111  
Registry Officer / Agent du greffe
- SUBJECT/OBJET: Allan Morgan and Sons Ltd. v. La-Z-Boy Canada Limited (CT-2003/009).

Pursuant to section 54 of the *Competition Tribunal Rules*, I hereby serve Allan Morgan and Sons Ltd and La-Z-Boy Canada Limited with the Order Setting a Date for Filing of Application under Section 75 of the *Competition Act* (Doc. No. 0007)

\*\*\*\*\*

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Signature:

Date: May 20, 2004

Time/Heure: 1:50 p.m.

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**Competition Tribunal****Tribunal de la Concurrence**

Reference: *Allan Morgan and Sons Ltd. v. La-Z-Boy Canada Ltd.*, 2004 Comp. Trib. 7

File no.: CT2003009

Registry document no.: 0007

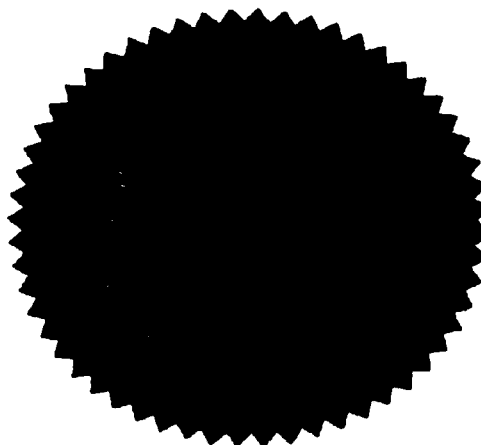
IN THE MATTER OF an application by Allan Morgan and Sons Ltd. for an order pursuant to section 75 of the *Competition Act*, R.S.C. 1985, c. C-34.

**B E T W E E N :**

**Allan Morgan and Sons Ltd.**  
(applicant)

and

**La-Z-Boy Canada Ltd.**  
(respondent)



Date of conference call: 20040519

Member: Lemieux J. (presiding)

Date of order: 20040520

Order signed by: Lemieux J.

**ORDER SETTING A DATE FOR FILING OF APPLICATION UNDER SECTION 75 OF  
THE *COMPETITION ACT***

[1] FURTHER TO an application for leave pursuant to subsection 103.1(1) of the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act") to make an application under section 75 of that Act;

[2] AND FURTHER TO the Reasons and Order Regarding Application for Leave to Make an Application Under Section 75 of the *Competition Act*, dated January 15, 2004, [2004] C.C.T.D. No. 4 (QL);

[3] AND FURTHER TO subsection 103.1(8) of the Act and the Practice Directions for the Competition Tribunal dated August 30, 2002 (the "Practice Directions");

[4] AND ON CONSIDERING the submissions of counsel for both the applicant and the respondent at a conference call on May 19, 2004;

**THE TRIBUNAL ORDERS THAT:**

[5] The applicant shall file its application under section 75 of the Act within 30 days of the date of this order.

[6] The respondent shall file a response within 30 days after the service of the application pursuant to subsection 113(1) of the Practice Directions.

[7] After the expiration of the period for filing a response, the registry of the Competition Tribunal shall contact counsel for the applicant and the respondent to set a date for a case management conference pursuant to section 120 of the Practice Directions.

DATED at Ottawa, this 20<sup>th</sup> day of May, 2004.

SIGNED on behalf of the Tribunal by the judicial member.

(s) François Lemieux



**APPEARANCES**

**For the applicant:**

**Allan Morgan and Sons Ltd.**

**Deborah L.J. Hutchings  
Lisa Clarke**

**For the respondent:**

**La-Z-Boy Canada Ltd.**

**Myron W. Shulgan, Q.C.**