

Competition Tribunal



Tribunal de la Concurrence

CT - 98 / 02 – doc # 7

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34,  
and the *Competition Tribunal Rules*, SOR/94-290, as amended;

AND IN THE MATTER of an inquiry pursuant to subsection 10(1)(b) of the  
*Competition Act* relating to the proposed acquisition of ICG Propane Inc.  
by Superior Propane Inc.;

AND IN THE MATTER of an application by the Director of Investigation and  
Research for an interim order pursuant to section 100 of the *Competition Act*.

B E T W E E N:

The Director of Investigation and Research

Applicant



- and -

Superior Propane Inc.  
Petro-Canada Inc.  
The Chancellor Holdings Corporation  
ICG Propane Inc.

Respondents

**REASONS AND ORDER REGARDING THE INTRODUCTION  
OF PORTIONS OF THE EXAMINATION OF ANDREW WISWELL**

**Date of Hearing:**

December 4-6, 1998

**Presiding Member:**

The Honourable Mr. Justice Marshall Rothstein

**Counsel for the Applicant:**

**The Director of Investigation and Research**

William J. Miller  
Josephine A.L. Palumbo

**Counsel for the Respondents:**

**Superior Propane Inc.**

Neil Finkelstein  
Milos Barutciski  
Melanie L. Aitken  
Russell P. Cohen

**Petro-Canada Inc.**  
**The Chancellor Holdings Corporation**  
**ICG Propane Inc.**

Randal T. Hughes

## COMPETITION TRIBUNAL

### REASONS AND ORDER REGARDING THE INTRODUCTION OF PORTIONS OF THE EXAMINATION OF ANDREW WISWELL

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*The Director of Investigation and Research*

v.

*Superior Propane Inc. et al.*

[1] In this application under section 100 of the *Competition Act*, the Director seeks to introduce excerpts of the examination taken pursuant to section 11 of the *Competition Act* of Andrew Wiswell, Chief Executive Officer of ICG Propane Inc. The Director does so in an effort, as I understand it, to be responsive to the Tribunal's questions relating to the relevant product market. The Director says that the evidence was taken under oath, and introducing it in these proceedings would be like reading in evidence from an examination for discovery at a trial. The respondents object to the introduction of this evidence on the grounds that it was not included in the material in support of the Director's application under section 100 and that the evidence was to be treated in confidence because of its competitively sensitive nature. Paragraph 23(1)(a) of the *Competition Tribunal Rules* states:

An application by the Director for an interim order under subsection 100(1) or section 104 of the Act shall be made by filing, in addition to a notice of application that satisfies the requirements of section 3,

an affidavit setting out the facts on which the application is based.

[2] The Director concedes that the Wiswell examination is not referred to in the affidavit supporting the application. This is an application for an interim order, and the rules provide the basis upon which the evidence on which the application is to be decided is to be submitted. While the evidence of Mr. Wiswell was taken under oath and while it may well be analogous to an examination for discovery (which I do not decide), this is not the hearing on the merits. On this application the Tribunal is confined to the affidavit evidence submitted by the Director and by the respondents.

[3] FOR THESE REASONS, THE TRIBUNAL ORDERS THAT the respondents' objection is sustained and excerpts of the Wiswell examination will not be taken into evidence.

DATED at Ottawa this 5<sup>th</sup> day of December, 1998.

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

(s) Marshall Rothstein  
Marshall Rothstein