



CT-1989-003 – Doc # 275

IN THE MATTER OF an application by the Director of Investigation  
and Research under sections 92 and 105 of the *Competition Act*,  
R.S.C., 1985, c. C-34, as amended;

AND IN THE MATTER OF the acquisition by Imperial Oil Limited  
of the shares of Texaco Canada Inc.

BETWEEN:

The Director of Investigation and Research  
Applicant

and

Imperial Oil Limited  
Respondent

and

Attorney General of Quebec  
Beacon Hill Service (2000) Ltd.  
Atlantic Refining and Marketing Employees Association  
and Atlantic Oilworkers Union Local I  
National Anti-Poverty Organization  
Rural Dignity of Canada  
Consumers Association of Canada (Saskatchewan)  
Consumers' Association of Canada  
Pioneer Petroleums  
Claude Harnois Inc.  
Barron Hunter Hargrave Strategic Resources Inc.  
Attorney General for Newfoundland and Labrador  
Intervenors



ORDER REGARDING CONFIDENTIALITY,  
DATED OCTOBER 3, 1989

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**Date of Hearing by Conference Call:**

October 2, 1989

**Presiding Member:**

The Honourable Madame Justice Barbara J. Reed

**Lay Member:**

Dr. Frank Roseman

**Counsel for the Director of Investigation and Research:**

George N. Addy

**Counsel for Imperial Oil Limited:**

John F. Howard, Q.C.

**Counsel for the Intervenors:**

**(a) Attorney General of Quebec**

Madeleine Renaud

**(b) Atlantic Refining and Marketing Employees Association  
and Atlantic Oilworkers Union Local I**

Ronald A. Pink

**(c) Pioneer Petroleums**

Sandra J. Simpson

**(d) National Anti-Poverty Organization  
Rural Dignity of Canada**

**Consumers Association of Canada (Saskatchewan)**

Not represented

**(e) Consumers' Association of Canada**

Not represented

**(f) Beacon Hill Service (2000) Ltd.**

Not represented

**(g) Claude Harnois Inc.**

Not represented

**(h) Barron Hunter Hargrave Strategic Resources Inc.**

Not represented

**(i) Attorney General for Newfoundland and Labrador**

Not represented

COMPETITION TRIBUNAL  
ORDER REGARDING CONFIDENTIALITY,  
DATED OCTOBER 3, 1989

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*The Director of Investigation and Research*

v.

*Imperial Oil Limited*

FURTHER TO the motion of the respondent, brought on notice to the applicant and the intervenors, for access, upon terms, to certain portions of the Evidence Statement filed by the intervenor Pioneer Petroleum ("Pioneer") on September 25, 1989;

UPON CONSIDERING the claims to confidentiality advanced by Pioneer with respect to its Evidence Statement;

AND UPON HEARING the submissions of counsel for the parties and the intervenors;

THE TRIBUNAL ORDERS THAT:

1. Pioneer shall release the information contained in paragraphs 33, 41, 54, 79(e), 79(f) and in the text preceding the graph in paragraph 42 of its Evidence Statement over which it claims confidentiality to counsel for the respondent and to counsel for the intervenors on the same terms as set out in the Tribunal Order Regarding Confidentiality, dated September 13, 1989. For greater certainty, the graph on page 18.5 of the Evidence Statement is not to be considered part of paragraph 42 thereof.

2. Pioneer shall allow counsel for the respondent to inspect all remaining portions of its Evidence Statement over which it claims confidentiality.

3. No copies of the confidential material referred to in paragraph 2 are to be made by counsel for the respondent without the consent of Pioneer, except that, after examining

the material, counsel for the respondent may determine that a copy is necessary in order to prepare for the hearing of this application or to seek the advice of an independent expert. Counsel for the respondent should make this determination bearing in mind that counsel for the applicant and two of his independent experts have access to the material. In the event that counsel for the respondent requests a copy, only one copy is to be made.

4. Counsel for the respondent may make one copy of his copy of the confidential material available to an independent expert, provided that the identity of such expert is first disclosed to counsel for Pioneer and the expert executes a confidentiality agreement in the attached form.

5. Any copies of the confidential material made pursuant to paragraphs 3 and 4 shall be marked with the words "SUBJECT TO PROTECTIVE ORDER".

6. For the purposes of paragraphs 3 and 4 of this order, an independent expert shall not include any present or former employee of the respondent or of any of its affiliates. If counsel for Pioneer has reason to believe that the expert named by counsel for the respondent is not truly independent or that disclosure to that individual is likely to cause competitive harm to Pioneer, then she may apply to the Tribunal to prevent disclosure of the confidential information to that individual and to have an alternative expert named.

7. Counsel for the respondent and any independent expert who examine or receive a copy of the confidential material pursuant to paragraphs 2, 3 and 4 of this order, shall use such copy and the information therein, together with any related materials, for the purposes of this application only, shall keep such copy, information and related materials confidential and shall not disclose or allow anyone access to such copy, information or related materials.

8. Those portions of the Evidence Statement of Pioneer and any related materials containing information protected by this order shall not form part of the public record and

all discussion of such information at the hearing of this application shall take place *in camera*, unless the Tribunal orders otherwise.

9. Upon completion or final disposition of this application and any appeals resulting therefrom, all documents containing information protected by this order shall be returned to Pioneer, unless Pioneer indicates in writing that the claim for confidentiality has been withdrawn.

10. This order is subject to the right of Pioneer to withdraw any of the material filed with the Tribunal as part of its Evidence Statement over which it claims confidentiality, in lieu of disclosing such material pursuant to the terms of this order.

11. This order is subject to further direction of the Tribunal.

DATED at Ottawa, this 3<sup>rd</sup> day of October, 1989.

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

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B. Reed

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Pioneer Petroleums  
Claude Harnois Inc.  
Barron Hunter Hargrave Strategic Resources Inc.  
Attorney General for Newfoundland and Labrador

Intervenors

**CONFIDENTIALITY AGREEMENT**  
**ATTACHED TO ORDER DATED OCTOBER 3, 1989**

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COMPETITION TRIBUNAL  
CONFIDENTIALITY AGREEMENT

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TO: Pioneer Petroleums ("Pioneer")  
and to  
Imperial Oil Limited ("Imperial")  
and to  
The Competition Tribunal

IN CONSIDERATION of being provided with the confidential material described in Schedule A hereto in connection with the Consent Order application by the Director with respect to the merger of Imperial and Texaco Canada Inc., over which material claims for confidentiality have been advanced by Pioneer, I \_\_\_\_\_ of the City of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_, hereby agree to maintain the confidentiality of such material and all information contained therein. It shall not be copied or disclosed to any other person without the written consent of Pioneer nor shall it be used by me for any purpose other than in connection with the Consent Order application.

Upon completion of this application, I agree that my copy of the confidential material shall be returned to counsel for the respondent for return to Pioneer.

I acknowledge that I am aware of the order granted by the Competition Tribunal on October 3, 1989 in this regard and agree to be bound by same.

Until the disposition of the Consent Order application I will not disclose to any other person that the confidential material has been made available.

I will keep a record of the location of the confidential material and will promptly, upon the request of either counsel for Pioneer or counsel for the respondent, advise where

such location is and, at the conclusion of my involvement in the proceedings, deliver to counsel for the respondent the material without retaining copies thereof. All documents relating to the confidential material will be destroyed, except that I may retain in my confidential files, subject to the requirements of confidentiality imposed by this Agreement, materials prepared by me, such as study results, and materials of a general nature which do not replicate the information contained in the confidential material.

In the event that I am required by law to disclose any of the confidential material, I will provide counsel for Pioneer with prompt written notice so that Pioneer may seek a protective order or other appropriate remedy. In any event, I will furnish only that portion of the material which is legally required and I will exercise my best efforts to obtain reliable assurance that confidential treatment will be accorded to the material.

I acknowledge that any breach of this Agreement by me will be considered to be a breach of an order made by the Competition Tribunal. I further acknowledge and agree that Pioneer would not have an adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, I agree that Pioneer 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.

This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario.

Signed, sealed and delivered before a witness this day of \_\_\_\_\_ ' 1989.

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Signature)