



CT-1989-003-Doc #224a

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

Intervenors



**ORDER REGARDING CONFIDENTIALITY,  
DATED SEPTEMBER 13, 1989**

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**Date of Hearing by Conference Call:**

September 12, 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.  
Alain Lortie

**Counsel for the Intervenors:**

**(a) Attorney General of Quebec**

Yves Bériault  
Madeleine Renaud

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

Ronald A. Pink

**(c) National Anti-Poverty Organization**

**Rural Dignity of Canada**

**Consumers Association of Canada (Saskatchewan)**

D.A. Rollie Thompson

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

James O'Grady, Q.C.

**(e) Pioneer Petroleums**

Sandra J. Simpson

**Representative for Intervenor:**

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

E.F. Anthony Merchant

**COMPETITION TRIBUNAL**  
**ORDER REGARDING CONFIDENTIALITY,**  
**DATED SEPTEMBER 13, 1989**

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*The Director of Investigation and Research*

v.

*Imperial Oil Limited*

FURTHER TO the motion of the intervenor, Pioneer Petroleums, on notice to the parties and intervenors;

AND UPON CONSIDERING the claims to confidentiality in respect of the documents or portions of documents filed by the applicant and the respondent;

THIS TRIBUNAL ORDERS THAT:

1. The applicant and the respondent shall make available to counsel for the respondent and counsel for the intervenors access to the documents and portions of documents in respect of which confidentiality has been claimed.
2. Any document for which confidentiality in whole or in part has been claimed shall be marked, on the cover or first page thereof and on each page that contains confidential information, with the words "SUBJECT TO PROTECTIVE ORDER".
3. Counsel for the respondent and counsel for the intervenors shall be entitled to examine such documents. No copies of such documents shall be made without the consent of the Director or the respondent, as the case may be, except to the extent that such are necessary for the purpose of preparing evidence and argument for the hearing of this application and then only one copy for each counsel shall be made. The counsel requesting such copy shall be the judge of what he or she considers necessary for the preparation of the case but counsel for the applicant and counsel for the respondent are

not thereby precluded from questioning the relevance of that material as part of that intervenor's case at the hearing of the application.

4. Counsel may make one copy of their copy of any documents or portions thereof available to each independent expert or consultant retained by their clients for the purposes of this application provided that any such expert or consultant first executes a confidentiality agreement in accordance with the attached form.

5. If the intervenor, Atlantic Refining and Marketing Employees Association and Atlantic Oilworkers Union Local I, is unable to hire an independent expert, two internal experts whose names, addresses, professional qualifications and present occupations are first filed with the Tribunal and made known to both the Director and the respondent may be selected. These individuals shall be treated as independent experts for the purposes of this order. If, however, the Director or the respondent has reason to believe that the two individuals so identified may not understand the full burden of the requirements imposed upon them by the confidentiality order or are not likely to respect the terms of the order, the Director or the respondent may apply to the Tribunal to prevent disclosure to those individuals.

6. Counsel for the parties and intervenors who examine or receive copies of documents shall use such documents or information therein, together with any materials related to these, for the purposes of this application only, shall keep such documents, information and related materials confidential and shall not disclose or allow anyone access to such documents, information or related materials other than persons entitled by the terms of this order to have access.

7. All independent experts and consultants who obtain access to the confidential documents or information therein shall treat and use such documents, information and all related materials in the same manner as required of counsel in paragraph 6 above. And, in particular, no disclosure is to be made to employees or representatives of the respondent, intervenors or their affiliates.

8. Those portions of documents and related materials containing information protected by this order shall not form part of the public record, unless the Tribunal orders otherwise.

9. Upon completion or final disposition of this application and any appeals resulting therefrom, all documents marked SUBJECT TO PROTECTIVE ORDER and all copies thereof which have been made by counsel, their independent experts, or anyone on their behalf, as well as all documents containing any information protected by this order, shall be returned to the applicant unless the applicant indicates in writing that the claim for confidentiality has been withdrawn.

10. For greater certainty, it should be noted that this order does not cover Beacon Hill Service (2000) Ltd. because that entity is not appearing through independent counsel. The position of that intervenor will be dealt with in a separate order of the Tribunal.

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

DATED at Vancouver, this 13<sup>th</sup> day of September, 1989.

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

(s) B. Reed  
B. Reed

**COMPETITION TRIBUNAL  
CONFIDENTIALITY AGREEMENT**

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TO: The Director of Investigation and Research (the "Director")

and to

Imperial Oil Limited ("Imperial")

and to

The Competition Tribunal

IN CONSIDERATION of being provided with the confidential information 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 information claims for confidentiality have been advanced, I \_\_\_\_\_, of the City of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_, hereby agree to maintain the confidentiality of such information. It shall not be copied or disclosed to any other person without the written consent of the Director and the respondent 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 such information, any copies of same, shall be returned to the counsel who retained me for return to the Director.

I acknowledge that I am aware of the order granted by the Competition Tribunal on September 13, 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 information has been made available.

I will keep a record of each location of the information and will promptly, upon the Director's request, advise where such locations are and, at the conclusion of my

involvement in the proceedings deliver to the Director the information without retaining copies thereof. All documents relating to the information 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.

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

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 neither the Director nor Imperial would 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 the Director or Imperial 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)