

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** an Application by the Commissioner of Competition for an Interim Order pursuant to section s. 100 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

**AND IN THE MATTER OF** an Inquiry pursuant to subsection 10(1)(b) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, into the proposed acquisition by Labatt Brewing Company Limited of all of the outstanding units of Lakeport Brewing Income Fund.

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

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT March 23, 2007	
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	#0012

**THE COMMISSIONER OF COMPETITION**

Applicant

- and -

**LABATT BREWING COMPANY LIMITED  
LAKEPORT BREWING INCOME FUND  
LAKEPORT BREWING LIMITED PARTNERSHIP  
ROSETO INC.  
TERESA CASCIOLI**

Respondents

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**MEMORANDUM OF ARGUMENT OF THE  
RESPONDENTS LAKEPORT BREWING INCOME FUND,  
LAKEPORT BREWING LIMITED PARTNERSHIP,  
ROSETO INC.,  
AND TERESA CASCIOLI**

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Fund, Lakeport Brewing Limited  
Partnership, Roseto Inc., and Teresa  
Cascioli**

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**PART I - INTRODUCTION**

1. Lakeport Brewing Income Fund, Lakeport Brewing Limited Partnership, Roseto Inc. and Teresa Cascioli (collectively, the "Lakeport Respondents") adopt and rely on the submissions made in the Memorandum of Argument filed on behalf of Labatt Brewing Company Limited ("Labatt").
2. The Lakeport Respondents make the following additional submissions.

## PART II - CONVERSION OF UNITS

3. The Commissioner of Competition (the "Commissioner") has applied for an Order prohibiting the Respondents Teresa Cascioli and Roseto Inc. ("Roseto") from converting their respective interests in Lakeport Brewing Limited Partnership ("Lakeport LP") into units of the Lakeport Brewing Income Fund ("Lakeport Fund") and from depositing their interests or units in acceptance of Labatt's offer to purchase, as provided for in the Founder's Agreement dated January 31, 2007, between Labatt, Teresa Cascioli and Roseto (the "Founder's Agreement").

*Commissioner's Notice of Application at Para. 1(b)*

*Founder's Agreement, Exhibit "2" to the Affidavit of Stephen Peters sworn March 21, 2007*

4. The Lakeport Respondents submit that an Order prohibiting Teresa Cascioli and Roseto from exchanging (the Commissioner's Notice of Application uses the term "converting") Roseto's interests in Lakeport LP for units of the Lakeport Fund and depositing interests or units in acceptance of Labatt's offer to purchase would be inappropriate and unnecessary, as it would not be necessary to prevent closing.
5. The Lakeport Respondents respectfully submit that for the Commissioner to seek an Order in those terms is over-reaching, and leaves Teresa Cascioli and Roseto in a different position than other unitholders for no reason that the Commissioner could justify. Simply put, if the closing of the Proposed Acquisition is to be prevented by Order of this Tribunal (which the Lakeport Respondents submit should not happen), there is no need for a separate provision restraining Ms. Cascioli and Roseto from effecting an exchange that they are entitled to do irrespective of the proposed acquisition of the units of Lakeport Funds by Labatt (the "Proposed Acquisition"), or for a separate

provision to restrain the deposit by them of the units in acceptance of the Labatt offer to purchase.

6. The right of Roseto to exchange its interests in Lakeport LP for units in Lakeport Fund exists entirely independently of the Proposed Acquisition.

*Founder's Agreement, Exhibit "2" to the Affidavit of Stephen Peters sworn March 21, 2007*

*Prospectus of Lakeport Brewing Income Fund dated June 8, 2005, Exhibit "21" to the Affidavit of Gregory Lang sworn March 20, 2007.*


7. Pursuant to the Founder's Agreement (section 3.2), Teresa Cascioli must cause Roseto to conditionally exchange and Roseto must conditionally exchange its interests in Lakeport LP for units in Lakeport Fund and deposit such units in valid acceptance of Labatt's offer to purchase at least ten days before the final acceptance date of Labatt offer, or if Labatt's offer is extended, within ten days of the final acceptance date of Labatt's extended offer. In other words, these are steps prior to closing (*i.e.*, prior to take-up and payment for units), and do not amount to closing.

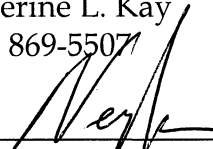
*Founder's Agreement, Exhibit "2" to the Affidavit of Stephen Peters sworn March 21, 2007*

8. Importantly, other unitholders of Lakeport Fund have already deposited their units in acceptance of Labatt's offer to purchase.
9. While the exchange of the interests and the deposit of the units are steps that would need to be taken prior to closing, those steps do not constitute the closing of the Proposed Acquisition. The exchange right applies independently of the Proposed Acquisition. The deposit by Roseto of the units issuable upon exchange of its interests in Lakeport LP would be the same as the deposit by the other unitholders who have already tendered their units in acceptance of Labatt's offer to purchase.

10. The exchange of the interests in Lakeport LP for units of Lakeport Fund and the deposit of units in acceptance of Labatt's offer to purchase, without such units being taken up or paid for, does not impact the Tribunal's ability to prevent closing. Therefore, if the Competition Tribunal determines that it will issue an Order prohibiting closing, which the Lakeport Respondents respectfully submit the Tribunal should not do, it is not necessary to prohibit Teresa Cascioli and Roseto from exchanging Roseto's interests in Lakeport LP for units of Lakeport Fund and depositing such interests or units in acceptance of Labatt's offer to purchase.
11. Accordingly, even if the closing of the Proposed Transaction were to be prohibited by Order of this Tribunal, the relief sought in paragraph (1)(b) of the Commissioner's Notice of Application should not be granted.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

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Of counsel for the Lakeport Respondents

File No.

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