

ONTARIO
SUPERIOR COURT OF JUSTICE
(EAST REGION)

IN THE MATTER OF the *Competition Act*, RSC 1985, c C-34;

AND IN THE MATTER OF an *ex parte* application by an authorized representative of the Commissioner of Competition for the issuance of warrants to enter, search and copy or seize for examination or copying certain records or other things pursuant to sections 15 and 16 of the *Competition Act*;

AND IN THE MATTER OF an *ex parte* application pursuant to section 487.3 of the *Criminal Code* to seal and prohibit disclosure of the Information to Obtain of Simon Bessette, the search warrants and the affidavit with respect to the present sealing order.

AFFIDAVIT OF SIMON BESSETTE

I, Simon Bessette, of the City of Ottawa, public officer, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Senior Competition Law Officer with the Cartels and Deceptive Marketing Practice Branch of the Competition Bureau (the “**Bureau**”). I am an authorized representative of the Commissioner of Competition (the “**Commissioner**”), appointed and designated to administer and enforce the *Competition Act* (“**Act**”). I have been employed by the Bureau since 2008, first as a student and, since 2010, in the position of Competition Law Officer (a Senior Competition Law Officer since October 2016).
2. As a Competition Law Officer, I have participated in inquiries in a responsible position, including: assessing complaints, analyzing evidence, conducting interviews and recommending initiation of court proceedings. I have also participated in numerous searches, including in the role as a search leader on several occasions.

3. I hold a Bachelor of Arts (Honours) and a Master of Arts from McGill University and a Bachelor of Laws from the University of New Brunswick. I was called to the Bar of Ontario in June 2013.
4. I am responsible for the investigation into allegations that Canada Bread, Limited ("**Canada Bread**"); Weston Foods (Canada), Incorporated ("**Weston Bakeries**"); Loblaw Companies Limited ("**LCL**"); Wal-Mart Canada Corporation ("**Walmart**"); Sobeys Incorporated ("**Sobeys**"); Metro Incorporated ("**Metro**"); Giant Tiger Stores Limited ("**Giant Tiger**") and other persons known and unknown have engaged in conduct contrary to paragraphs 45(1)(b) and (c) of the Act (as it existed from 2001-2010) and paragraph 45(1)(a) of the Act, as amended in 2010.
5. The Commissioner commenced an inquiry on 11 August 2017, which was expanded on 23 October 2017, pursuant to subparagraph 10(1)(b)(iii) of the Act, to investigate allegations that Canada Bread, Weston Bakeries, LCL, Walmart, Sobeys, Metro, Giant Tiger, and other persons known and unknown, participated in a conspiracy to fix the wholesale and retail price of fresh commercial bread in Canada from the period in or around November 2001 to the present, the exact dates being unknown (the "**Inquiry**")
6. I have personal knowledge of the matters set out in this Sealing Order Affidavit (the "**Affidavit**"), except where the same are stated to be based upon information or belief.

BACKGROUND TO INVESTIGATION

7. In the course of my involvement with the Inquiry, on 26 October 2017, I swore an Information to Obtain ("**ITO**") search warrants pursuant to sections 15 and 16 of the Act. Phillips J. of the Ontario Superior Court of Justice (East Region) granted the sealing order.
8. On 30 October 2017 I swore an ITO to obtain search warrants for the Immunity Applicant's sites. I am not, at the present time, aware of the status of my sealing order application in respect of those application materials.

9. On 31 October 2017, I swore an ITO to obtain additional search warrants pursuant to sections 15 and 16 of the Act for the sites belonging to the targets.

SEALING ORDER

10. I request that a Sealing Order, pursuant to subsection 487.3(1) of the *Criminal Code*, be placed on the ITO, the accompanying search warrants and this Affidavit, which contain details of the Bureau's ongoing Inquiry, on the grounds that their disclosure will compromise the Inquiry's nature and extent. Due to the scope and complexity of the Bureau's Inquiry, I believe that there is a strong possibility that the Bureau will require additional investigative steps and/or court authorizations to gather additional evidence.
11. Specifically, my ITO discloses that I am seeking warrants to search both the targets of the Inquiry and a third party in order to collect evidence for the Bureau's ongoing Inquiry. My ITO also discloses my reasonable grounds to believe. At this time, the Bureau is aware of the alleged involvement of seven (7) parties, namely, Canada Bread and Weston Bakeries (collectively, the "**Suppliers**"); and, LCL, Walmart, Sobeys, Metro and Giant Tiger (collectively, the "**Retailers**"). Further, the Bureau is collecting facts to determine the precise time frame of, and the participants in, the alleged conspiracy. Analyzing the records the Bureau obtains from the search warrants sought in the ITO will take time; however, it would only be after such analysis is performed that the Bureau would be in a position to determine whether additional investigative steps are required. Should the details of the Bureau's ongoing investigation be made available to the public, the integrity of the evidence available through further investigative steps and/or court authorizations may be compromised (*e.g.*, the loss or destruction of records).
12. Further, the Immunity Applicant (LCL, George Weston Limited and Weston Bakeries, collectively) came forward to disclose its participation in the alleged cartel on a confidential basis. The Bureau's Immunity Program states that the Bureau will keep confidential the identity of the party seeking immunity unless:

- a. Disclosure is required by law;
 - b. Disclosure is necessary to obtain or maintain the validity of a judicial authorization for the exercise of investigative powers;
 - c. Disclosure is for the purpose of securing the assistance of a Canadian law enforcement agency in the exercise of investigative powers;
 - d. The party has agreed to disclosure;
 - e. There has been public disclosure by the party; or
 - f. Disclosure is necessary to prevent the commission of a serious criminal offence.
13. There is a particular sensitivity surrounding the privacy of the individual witnesses on whose information I have relied on in drafting my ITO. These individuals are covered by the Immunity Program and provided information on a confidential basis.
14. For the reasons outlined above, I believe that the premature disclosure of the information contained in the Information to Obtain, the accompanying search warrants and this Affidavit would subvert the ends of justice. Further, I believe that an order sealing the Information to Obtain, the accompanying search warrants and this Affidavit would comply with subparagraph 487.3(2)(a)(ii) and subparagraph 487.3(2)(b) of the *Criminal Code* as the importance of keeping this information confidential at this time outweighs the importance of open access to these documents.
15. Accordingly, I request that a Sealing Order be granted prohibiting access to the Information to Obtain, the accompanying search warrants and this Affidavit and that the aforementioned documents be sealed and kept in a place to which the public has no access until a subsequent Order of this Court orders the opening of the sealed packet.

SWORN BEFORE ME at the City of
Gatineau, in the Province of Québec,
this 31st day of OCTOBER, 2017.

Simon N. Bessette
Simon Bessette (the Affiant)

[Signature]
Commissioner of Oaths

LSUC#: 66693F