

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

**THE HONOURABLE
JUSTICE SWINTON**

) **THURSDAY**, THE **21ST** DAY
) OF **OCTOBER**, 2010
)

BETWEEN:

SIERRA CLUB CANADA

Applicant

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
AS REPRESENTATIVE OF THE MINISTRY OF NATURAL RESOURCES and
THE MINISTRY OF TRANSPORTATION**

Respondent

ORDER

THIS MOTION, made by the parties on consent, for an order requiring the Respondent, Her Majesty the Queen in Right of Ontario as Representative of the Ministry of Natural Resources and the Ministry of Transportation (the "Disclosing Party") to provide the Applicant, Sierra Club of Canada, with a copy of the Ontario Ministry of Transportation's application for a permit pursuant to section 17(2)(d) of the *Endangered Species Act, 2007* and underlying confidential data and related information in respect thereof (the "Confidential Data") and that the Applicant may file the "Confidential Data" in its Application Record, under seal, was read this day at 130 Queen Street West, Toronto, Ontario.

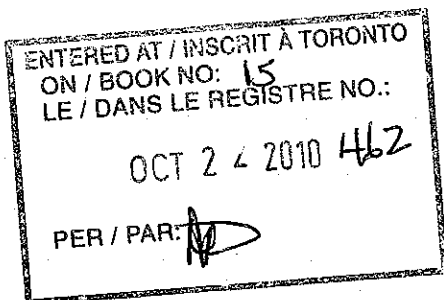
ON BEING ADVISED of the consent of the parties to the form of this order,

1. **THIS COURT ORDERS** that the Disclosing Party provide to the Applicant a hard copy of the Confidential Data.

2. **THIS COURT ORDERS** that the Applicant's counsel and expert witnesses shall execute and comply with the Undertaking as to Confidentiality agreed upon and attached to this order as Schedule A, which is hereby approved.

3. **THIS COURT ORDERS** that the Applicant may file the Confidential Data as part of its Application Record, in a separate volume and under seal.

4. **THIS COURT ORDERS** that each party shall bear its own costs of this motion.



Rozmani Shah
Assistant Registrar

SCHEDULE "A"

Court File No. 412/10

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- and -

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Respondent

UNDERTAKING OF CONFIDENTIALITY

WHEREAS Her Majesty the Queen in Right of Ontario as Representative of the Ministry of Natural Resources and the Ministry of Transportation (the "Disclosing Party") has in its possession a copy of the Ontario Ministry of Transportation's application for a permit pursuant to section 17(2)(d) of the *Endangered Species Act, 2007* and underlying confidential data and related information in respect thereof (the "Confidential Data");

AND WHEREAS the Disclosing Party agreed through its legal counsel to disclose the Confidential Data to legal counsel for Sierra Club Canada pursuant to an undertaking as to confidentiality:

1. The Undersigned agrees that the Confidential Data will be kept confidential pursuant to this Undertaking of Confidentiality. This written Undertaking of Confidentiality will record the specific terms of this Undertaking.

2. The Undersigned agrees that all information and copies of all documents containing Confidential Data are confidential.
3. The Undersigned agrees that all information and copies of all documents containing Confidential Data shall not form any part of the public record in this application, unless consented to in writing by the Disclosing Party or its counsel. The Confidential Data may be used at the hearing of this application subject to this Undertaking, and subject to any further directions that the Court might issue.
4. Upon termination of these proceedings, the Undersigned agrees to forthwith return all copies of Confidential Data to the Disclosing Party or its legal counsel.
5. The Undersigned agrees that Confidential Data will only be disclosed to client representative Dan McDermott and its expert, Dr. Robert Murphy, who has already reviewed portions of the Confidential Data in relation to a related legal proceeding, and has signed an Undertaking as to Confidentiality for that proceeding. The Disclosing Party acknowledges that Dr. Murphy is unable to sign a second Undertaking as to Confidentiality in relation to this process until his return from overseas at the end of November.
6. The Undersigned agrees to provide every Recipient with a copy of this Confidentiality Agreement for execution by each Recipient. It is acknowledged that the Undersigned and every Recipient is liable for performance of this Undertaking.
7. The Undersigned acknowledges that the parties may apply to the Court at any time to vary this Undertaking, and nothing in this Undertaking shall be deemed to

prejudice their rights to seek such variation.

8. The Undersigned acknowledges that disclosure of the Confidential Data in accordance with this Undertaking is without prejudice to the Disclosing Party's ability to argue at the hearing of the application that the Confidential Data are not relevant to the issues raised on the application.

IN WITNESS WHEREOF AND IN CONSIDERATION of receiving copies of or having an opportunity to inspect the Confidential Data, I give my Undertaking this 5th day of October, 2010 at Toronto.

A handwritten signature in black ink, appearing to read "Paula Boutis". The signature is stylized with a large, sweeping initial "P" and a cursive "Boutis".

Paula Boutis, Counsel for the Applicant

SIERRA CLUB CANADA

Applicant

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO AS REPRESENTATIVE OF THE
MINISTRY OF NATURAL RESOURCES et al.**

Respondents

Court File No. 412/10

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

Proceeding commenced at Toronto

ORDER

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