

Federal Court



Cour fédérale

**Date: 20170627**

**Docket: T-1070-16**

**Citation: 2017 FC 625**

**Ottawa, Ontario, June 27, 2017**

**PRESENT: Madam Prothonotary Mandy Ayles**

**BETWEEN:**

**DAVID SUZUKI FOUNDATION,  
FRIENDS OF THE EARTH CANADA,  
ONTARIO NATURE, AND  
WILDERNESS COMMITTEE**

**Applicants**

**and**

**MINISTER OF HEALTH,  
SUMITOMO CHEMICAL COMPANY  
LIMITED, BAYER CROPSCIENCE INC. AND  
VALENT CANADA INC.**

**Respondents**

**ORDER AND REASONS**

[1] **UPON MOTION** by the Respondent, Bayer CropScience Inc. [Bayer], for an order that the documents listed in Appendix “A” to the Notice of Motion be treated as confidential when filed with the Court pursuant to Rules 151 and 152 of the *Federal Courts Rules* [Rules];

[2] **CONSIDERING** the Notice of Motion filed May 19, 2017, the documents listed in Appendix “A” to the Notice of Motion, the affidavit of Seshadri Iyengar sworn May 18, 2017 and the exhibits thereto, the supplementary affidavit of Seshadri Iyengar sworn May 24, 2017, the affidavit of Jeffrey Parsons sworn June 22, 2017 and the exhibits thereto, and the written representations filed by Bayer;

[3] **CONSIDERING** that the other Respondents do not oppose the relief sought;

[4] **CONSIDERING** the written representations of the Applicants, who initially opposed the entirety of the relief sought, but subsequently agreed to the confidential treatment of portions of paragraphs 59, 60, 62, 63, 64, 67, 76, 88, 89, 90, 108, 115, 117, 150, 151 and 175 of the affidavit of Jeffrey Parsons sworn March 30, 2017 [Parsons Affidavit] and portions of Exhibits P, Q, R, S, V, AA, GG, HH, II, JJ, OO, UU, VV, WW, YY, ZZ, AAA, CCC, JJJ, MMM, QQQ, SSS, TTT, UUU, WWW, FFFF, GGGG, and HHHH to the Parsons Affidavit;

[5] **CONSIDERING** that Bayer has abandoned its request for a confidentiality order in relation to portions of Exhibits II, CCC, DDD and WWW of the Parsons Affidavit and to paragraphs 89, 124 and 157 of the Parsons Affidavit;

[6] **CONSIDERING** the submissions of the parties at the hearing of this motion on June 16 and 23, 2017 and the brief of proposed redactions to the evidence remaining in dispute;

[7] The only remaining issue for determination on this motion is whether portions of Exhibits AAA, BBB and UUU appended to the Parsons Affidavit as it appears in the Respondents' joint motion record for use by the Respondents in support of their motion to dismiss this application should be protected by a confidentiality order [Contested Information].

[8] The Contested Information is contained in letters sent by the Pest Management Regulatory Agency of Health Canada [PMRA] to Bayer in response to Bayer's applications to convert certain conditional registrations for two of Bayer's pesticides to full registrations. Each of the three letters contains the PMRA's analysis of certain hive studies submitted by Bayer in support of its conversion applications and detail concerns raised by the PMRA regarding aspects of those hive studies.

[9] Bayer's evidence is that the PMRA's assessment of the hive studies in Exhibits AAA and BBB (which are identical) raises three areas of concern: (1) contamination of control hives with clothianidin [Concern 1]; (2) failure to address the overwintering period [Concern 2]; and (3) the applicability of results to potato treated areas [Concern 3]. Concerns 1 and 2 are also raised in Exhibit UUU.

[10] Bayer acknowledges that the facts underlying Concern 1 are disclosed in a public study which was provided by the Applicants to Bayer in response to this motion and is appended as Exhibit G to Mr. Parsons' affidavit sworn June 22, 2017 [Public Study 1].

[11] Bayer's evidence is that the facts underlying Concern 2 are at odd with the discussion of the overwintering analysis contained in Public Study 1 and, according to Mr. Parsons, "appear to relate to other data provided by [Bayer] to PMRA in confidence". Bayer has not identified the source of that other data or when it was delivered by Bayer to the PMRA.

[12] Bayer's evidence is that the facts underlying Concern 3 are not disclosed anywhere in Public Study 1 or a further bee hive study which was provided by the Applicants to Bayer in response to this motion and is appended as Exhibit F to Mr. Parsons affidavit sworn June 22, 2017 [Public Study 2]. Bayer has not identified when those facts were delivered by Bayer to the PMRA, but states that they are based on confidential test data provided by Bayer to the PMRA.

[13] At the hearing of the motion, Bayer abandoned its request for a confidentiality order in relation to the portions of the Confidential Information related to Concern 1, given Bayer's admission that the facts related to Concern 1 are in the public domain. Accordingly, the Court need only address the Contested Information related to Concerns 2 and 3.

[14] Bayer asserts that the Contested Information related to Concerns 2 and 3 constitutes confidential test data [CTD] as defined in subsection 2(1) of the *Pest Control Products Act* [PCPA]. The Contested Information was provided to the PMRA in accordance with the PCPA regime, with the expectation that it would be maintained in confidence. Bayer states that it has always treated the Contested Information as confidential, that it was designated as confidential information in accordance with the Protective Order issued by the Court in relation to this

application and that serious harm would arise to Bayer's commercial, proprietary and scientific interests if the Contested Information is not protected by a confidentiality order.

[15] Bayer submits that the Court should grant the requested confidentiality order pursuant to Rule 152, on the basis that the PCPA requires that the Contested Information be treated as confidential. Alternatively, Bayer submits that the Court should grant the requested confidentiality order pursuant to Rule 151 on the basis that Bayer has satisfied the test enunciated by the Supreme Court of Canada in *Atomic Energy of Canada Limited v. Sierra Club of Canada*, 2002 SCC 41 [*Sierra Club*].

[16] Rule 152(1) of the *Rules* provides:

Where the material is required by law to be treated confidentially or where the Court orders that material be treated confidentially, a party who files the material shall separate and clearly mark it as confidential, identifying the legislative provision or the Court order under which it is required to be treated as confidential.

Dans le cas où un document ou un élément matériel doit, en vertu d'une règle de droit, être considéré comme confidentiel ou dans le cas où la Cour ordonne de le considérer ainsi, la personne qui dépose le document ou l'élément matériel le fait séparément et désigne celui-ci clairement comme document ou élément matériel confidentiel, avec mention de la règle de droit ou de l'ordonnance pertinente.

[17] Where material is required by law to be treated confidentiality, a party need not meet the requirements of the *Sierra Club* test. Rather, a party need only demonstrate that the information falls within the protections of the legislation at issue and that the legislation at issue requires that the information be treated confidentially by this Court.

[18] Accordingly, the first issue to be determined is whether the Contested Information constitutes CTD within the meaning of the PCPA. Section 2(1) of the PCPA defines CTD as “test data to which access may be refused under the *Access to Information Act*”. At the hearing of the motion, Bayer confirmed that the relevant provision of the *Access to Information Act* [AIA] is section 20(1)(b), which permits a government institution to refuse to disclose any record requested under the AIA that contains:

financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;	des renseignements financiers, commerciaux, scientifiques ou techniques fournis à une institution fédérale par un tiers, qui sont de nature confidentielle et qui sont traités comme tels de façon constante par ce tiers;
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[19] In order to qualify for the exemption in section 20(1)(b) of the AIA, the information must be (i) financial, commercial, scientific or technical information; (ii) confidential and consistently treated in a confidential manner by the third party; and (iii) supplied to a government institution by a third party [see *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 133 [Merck]].

[20] One of the requirements of the section 20(1)(b) exemption is that the information be supplied by the third party to a government institution. As the documents at issue contain the PMRA’s analysis of Bayer’s hive studies, this raises the question of whether the Contested Information was in fact supplied by Bayer to the PMRA. In *Merck*, the Supreme Court of Canada confirmed at paragraph 158 that:

(...) whether confidential information has been “supplied to a government institution by a third party” is a question of fact. The

content rather than the form of the information must be considered: the mere fact that the information appears in a government document does not, on its own, resolve the issue. The exemption must be applied to information that reveals the confidential information supplied by the third party, as well as to that information itself. Judgments or conclusions expressed by officials based on their own observations generally cannot be said to be information supplied by a third party.

[21] I have reviewed the Contested Information together with the specific evidence provided by Bayer in relation thereto in the affidavit of James Parsons sworn June 22, 2017. I find that the evidence provided by Mr. Parsons regarding the Contested Information and its transmission to the PMRA is lacking in detail regarding the specifics as to when and how the Contested Information was provided to the PMRA. However, considering the Contested Information in the context of the broader analysis that was being undertaken by the PMRA and the information provided by Bayer that would have lead up to the analysis undertaken by the PMRA, I am prepared to accept that the Contested Information constitutes Bayer's confidential commercial, scientific or technical information and that Bayer has consistently treated the Contested Information in a confidential manner.

[22] In relation to the third element of the section 20(1)(b) exemption, I find that the Contested Information was supplied by Bayer to the PMRA. While the documents at issue contain the PMRA's analysis and conclusions regarding the test data provided by Bayer, I agree with Bayer that the PMRA's analysis and Bayer's test data are inextricably intertwined to such an extent that one cannot separate the analysis from the test data. Accordingly, I find that that the Contested Information constitutes CTD within the meaning of the PCPA, as it is test data to which access may be refused under section 20(1)(b) of the AIA.

[23] The Applicants urged me to go further in my analysis of whether the Contested Information meets the definition of CTD by not only looking at whether access to the Contested Information could be refused under section 20(1)(b) of the AIA, but also to consider whether the head of a government institution would disclose the Confidential Information pursuant to section 20(6) notwithstanding that it meets the requirements of section 20(1)(b) section, on the basis that disclosure would be in the public interest as it relates to protection of the environment and the public interest in disclosure clearly outweighs in importance any financial loss to Bayer.

[24] I reject the Applicants' assertion that this further analysis is required in order to meet the definition of CTD in the PCPA. The definition of CTD requires an analysis of whether the head of a government institution "could" refuse access to the test data under the AIA, not whether it "would" refuse access. Section 20(1)(b) contains a mandatory exemption and once the criteria are met, I am satisfied that the test data could be refused access under the AIA within the meaning of section 2(1) of the PCPA. Whether or not the head of a government institution could, if it deems it appropriate, produce the records nonetheless pursuant to section 20(6) of the AIA is irrelevant.

[25] Having found that the Contested Information constitutes CTD within the meaning of the PCPA, the question then arises whether the PCPA mandates that the Contested Information be treated confidentially pursuant to Rule 152.

[26] Counsel for the parties have not been able to provide me with any case law in which the PCPA has been considered under Rule 152. There is also limited case law in which this Court



has applied Rule 152 in the absence of a confidentiality order issued pursuant to Rule 151. However, in those cases, the statutes under review generally contained provisions that specifically require the Court to take all reasonably necessary measures to protect information that is deemed confidential under the applicable statute.

[27] In *British Columbia Lottery Corporation v. Canada (Attorney General)*, 2012 FC 1204 [*Lottery Corp.*], the Court was reviewing the decision of Prothonotary Milczynski, who had issued a confidentiality order over information protected by section 55 of the *Proceeds of Crime and Money Laundering Act*. In issuing the confidentiality order, Prothonotary Milczynski did not apply the test enunciated by the Supreme Court of Canada in *Sierra Club*, but rather held that a confidentiality order had to issue as a result of the application of the clear and unambiguous provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, which required that:

ss. 73.21 (4) In an appeal, the Court shall take every reasonable precaution, including, when appropriate, conducting hearings in private, to avoid the disclosure by the Court or any person or entity of information referred to in subsection 55(1).

73.21 (4) À l'occasion d'un appel, la Cour fédérale prend toutes les précautions possibles, notamment en ordonnant le huis clos si elle le juge indiqué, pour éviter que ne soient communiqués de par son propre fait ou celui de quiconque des renseignements

[28] Prothonotary Milczynski's order was upheld on appeal.

[29] Similar provisions are found in the AIA and have been cited by this Court as a basis upon which to issue a confidentiality order pursuant to Rule 152 [see *Bradwick Property Management Services Inc. v. Canada (Minister of National Revenue)*, 2016 FC 1056].

[30] The PCPA contains no provision that mandates that this Court take any precautions to preserve the confidentiality of information protected under the PCPA. However, Bayer asserts that such a provision is not required for Rule 152 to apply. Rather, the Court must consider the entirety of the statute to determine whether a confidentiality order is “required by law”. Bayer asserts that a review of the entirety of the PCPA reveals that it mandates the issuances of a confidentiality order to protect the Contested Information.

[31] I have reviewed the PCPA and while it is clearly designed to afford a level of protection to CTD submitted by third parties (such as Bayer) to the PMRA, the protections afforded to CTD are limited. While the PCPA does not permit properly designated CTD to be publicly available through its inclusion in the PMRA’s Register of Pest Control Products [Register], the public is able to access CTD and the Minister is empowered to make CTD publicly available pursuant to specific provisions of the PCPA. In that regard, I note that one of the ancillary objectives of the PCPA is to “encourage public awareness in relation to pest control products by informing the public, facilitating public access to relevant information and public participation in the decision-making process”.

[32] Pursuant to section 42 of the PCPA, the Minister establishes and maintains a Register that contains a variety of information about pest control products, as detailed in section 42(1).

Pursuant to section 42(4), the Minister must grant the public access to, and copies of, any information in the Register that:

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| (a) Is not confidential test data or confidential business information; or  | a) il ne s'agit pas de données d'essai confidentielles ni de renseignements commerciaux confidentiels;  |
| (b) Is confidential test data that has been made subject to public disclosure in accordance with the regulations made under paragraph 67(1)(m). | b) il s'agit de données d'essai confidentielles qui font l'objet d'une divulgation en conformité avec les règlements pris en vertu de l'alinéa 67(1)m). |

[33] However, section 43(1) of the PCPA permits a person to inspect CTD in the Register, provided that the person submits to the Minister:

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| (a) an application in the form and manner directed by the Minister; and  | a) une demande accompagnée d'un affidavit ou   |
| (b) an affidavit made under oath or a statutory declaration under the Canada Evidence Act made before a commissioner for oaths or for taking affidavits, stating                                     | b) d'une déclaration solennelle — faits aux termes de la Loi sur la preuve au Canada — reçus devant tout commissaire compétent et faisant état, à la fois :  |
| (i) the purpose of the inspection, and   | i) de l'objet de cette consultation;   |
| (ii) that the person does not intend to use the test data, or make the test data available to others, in order to register a pest control product in Canada or elsewhere or to amend a registration. | ii) du fait que le demandeur n'a pas l'intention d'utiliser les données d'essai confidentielles pour obtenir ou modifier l'homologation d'un produit antiparasitaire au Canada ou à l'étranger ni de mettre ces données à la disposition d'un tiers à cette fin. |

[34] A Minister may, pursuant to section 43(2), permit a person who has submitted an application and an affidavit to inspect CTD if the Minister is satisfied that the person does not intend to:

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| (a) use the test data in order to register a pest control product in Canada or elsewhere, or to amend a registration; or                                | a) ni de les utiliser pour obtenir ou modifier l'homologation d'un produit antiparasitaire au Canada ou à l'étranger;                           |
| (b) make the test data available to others for the purpose of registering a pest control product in Canada or elsewhere, or of amending a registration. | b) ni de les mettre à la disposition d'un tiers pour obtenir ou modifier l'homologation d'un produit antiparasitaire au Canada ou à l'étranger. |

[35] The parties confirmed at the hearing of the motion that members of the public who are granted access to CTD may make notes regarding the CTD and may use the CTD in their written comments submitted to the Minister during a public consultation process. In that regard, as part of the public consultation process, section 28(6) of the PCPA permits the Minister to disclose in a consultation statement under section 29(2) or a decision statement under section 29(5) any CTD that the Minister considers to be in the public interest.

[36] The Minister also has the discretion to disclose CTD to the public in its decisions and reasons issued pursuant to sections 35(5) and 39(2) of the PCPA.

[37] The Minister also has the broad discretion pursuant to section 42(3) to include any CTD he believes appropriate in an evaluation report contained in the Register.

[38] Having reviewed the entirety of the PCPA, I find that while protections are afforded to CTD, particularly vis-à-vis a party's competitors, the protections afforded are not sufficient for me to conclude that the PCPA requires that this Court issue a confidentiality order in relation to information deemed CTD under the PCPA. I base this finding on the fact that the PCPA affords the public access to CTD in numerous circumstances and more importantly, there is no provision in the PCPA that directs this Court to take precautionary measures to safeguard information that is deemed confidential under the PCPA. Accordingly, Bayer's request that I issue a confidentiality order pursuant to Rule 152 is denied.

[39] I now turn to consider whether a confidentiality order should be issued to protect the Contested Information pursuant to Rule 151 of the *Rules*. Rule 151 allows for the issuance of an order to allow material to be filed in a confidential manner where the Court is "satisfied that the material should be treated as confidential, notwithstanding the public interest in open and accessible court proceedings".

[40] The Supreme Court of Canada held in *Sierra Club* that a confidentiality order under Rule 151 should only be granted where:

- A. Such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- B. The salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on

the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[41] The first branch of the *Sierra Club* test requires that all three of the following elements be satisfied:

- A. The risk claimed must be real and substantial, in that the risk is well grounded in evidence, and poses a serious threat to the commercial interest in question.
- B. The importance of the commercial interest must be one which can be expressed in terms of a public interest in confidentiality. If there is no general principle at stake, there can be no important commercial interest for the purpose of the *Sierra Club* test.
- C. The Court must consider reasonably alternative measures and limit the order as much as is reasonably possible while preserving the commercial interest in question.

[42] In considering the first branch of the test, the only evidence put forward by Bayer regarding the consequences of disclosure of the Contested Information is found in the following two paragraphs of the affidavit of Seshadri Iyengar sworn May 18, 2017:

23. Public disclosure of Bayer CropScience's confidential business information and confidential test data listed in Exhibits "A" and "B" would pose real and substantial risks to its commercial, proprietary and scientific interests.

24. Bayer CropScience's market position would be put at risk by the disclosure of confidential business, scientific and technical information. Bayer CropScience spends many millions of dollars

in developing and testing its pest control products. This investment would be undermined, and future investments discouraged, if Bayer CropScience's confidential business information and confidential test data were disclosed to the public.

[43] The foregoing evidence was filed by Bayer at a time when the request for a confidentiality order related to a far broader group of documents. Leading up to the hearing of this motion, the information at issue on the motion was significantly narrowed. Following the adjournment of the hearing of this motion to permit Bayer to respond to Public Study 1 and Public Study 2, I directed Bayer to file a supplementary affidavit from a representative of Bayer providing evidence, if any, to support the continued claim of confidentiality over the Contested Information. The affidavit of Jeffrey Parsons sworn June 22, 2017 and filed by Bayer in response to my Direction provides no evidence as to the consequences to Bayer of the public disclosure of the Contested Information.

[44] I find that Bayer has failed to provide evidence of the risk to Bayer's market position by the disclosure of the Contested Information as required by the first branch of the *Sierra Club* test. There is no specific evidence as to how the disclosure of the PMRA's concerns regarding overwintering (Concern 2) and the applicability of the results of Bayer's testing to potato treated areas (Concern 3) poses a serious risk to Bayer's commercial interests. While at the hearing of the motion counsel for Bayer attempted to provide an explanation of the risk of disclosure that specifically addressed the Contested Information, there is simply no evidence to support that explanation in the motion record, notwithstanding the opportunity that was given to Bayer to do so pursuant to my Direction dated June 16, 2017. Accordingly, I find that Bayer has not satisfied the first branch of the *Sierra Club* test.

[45] Consequently, having found that Bayer failed to satisfy the first branch of the *Sierra Club* test, it is unnecessary for me to consider the remaining elements of the *Sierra Club* test. Bayer's request that I issue a confidentiality order pursuant to Rule 151 is denied.

[46] On the issue of costs, I see no reason to depart from the general rule that costs should follow the event. While the parties may have been able to reach an agreement regarding an extensive amount of the material over which a confidentiality order was sought, the Contested Information remained at issue and Bayer was ultimately unsuccessful on this aspect of its motion. On that basis, the Applicants are entitled to their costs.

[47] In determining the appropriate quantum of costs, I am mindful of the fact that the parties were required to attend to argue this motion on two occasions. On the first occasion, Bayer sought an adjournment at the commencing of the hearing to provide it with an opportunity to review Public Study 1 and Public Study 2, which had been provided by the Applicants to Bayer the evening before to rebut the evidence put forward by Bayer that none of the information that then remained at issue on the motion was in the public domain. As a result of the provision of those studies, Bayer abandoned its request for confidentiality over a number of paragraphs in the Parsons Affidavit and over portions of a number of exhibits thereto. The Applicants should not have been put to the expense of having to appear on June 16, 2017, nor put to the expense of responding to the ever-changing nature of Bayer's motion, which changed again on the morning of the June 23, 2017 hearing.



[48] Accordingly, I find that the Applicants are entitled to their costs of this motion, fixed in the amount of \$2,200.00, inclusive of fees, disbursements and taxes.

**ORDER**

**THIS COURT ORDERS that:**

1. On the consent of the parties, portions of paragraphs 59, 60, 62, 63, 64, 67, 76, 88, 89, 90, 108, 115, 117, 150, 151 and 175 of the Parsons Affidavit and portions of Exhibits P, Q, R, S, V, AA, GG, HH, II, JJ, OO, UU, VV, WW, YY, ZZ, AAA, CCC, JJJ, MMM, QQQ, SSS, TTT, UUU, WWW, FFFF, GGGG, and HHHH to the affidavit of James Parsons sworn March 30, 2017 [Confidential Information] may be filed and treated as confidential in accordance with this Confidentiality Order, and in particular, Schedule “A” hereto.
2. Bayer Cropscience Inc.’s request for a confidentiality order in relation to portions of Exhibits AAA (page 1659 of the Respondents’ joint motion record), BBB (page 1666 of the Respondents’ joint motion record) and UUU (page 1783 of the Respondents’ joint motion record) of the affidavit of James Parsons sworn March 30, 2017 is dismissed.
3. Whenever a party seeks to file in this Court documents or portions thereof, including affidavits, exhibits, transcripts or motion materials which contain or discuss Confidential Information, as defined in paragraph 1 of this Confidentiality Order, in a manner that would reveal its content, the Confidential Information shall be segregated from other information and documentation being submitted for filing and shall be submitted to the Court in sealed envelopes identifying this proceeding and permanently marked with the following legend:

**CONFIDENTIAL INFORMATION:**

**PURSUANT TO THE ORDER IN FEDERAL COURT FILE NO. T-1070-16 DATED JUNE 27, 2017, THIS ENVELOPE SHALL REMAIN SEALED IN THE COURT FILES AND BE TREATED IN ACCORDANCE WITH RULE 152.**

4. Where it is not reasonably practical to segregate Confidential Information from non-confidential information, the parties may file an entire document or volume thereof in a sealed envelope, provided that a public version of the document or volume, from which Confidential Information has been redacted or removed, is also filed on the public record. When filed on the public record on the Motion (whether in a joint motion record for the purpose of this proceeding and the proceeding in Court File No. T-1071-16 or otherwise) or any other step in this proceeding, the Confidential Information shall be redacted in the manner attached hereto as Schedule "A".
5. The terms and conditions of use of Confidential Information and the maintenance of the confidentiality thereof during any hearing of this proceeding shall be matters in the discretion of the Court seized of this matter. In any event, the terms of this Confidentiality Order do not apply to the hearing of this application on its merits or to the manner in which the final judgment and reasons for judgment are to be written and treated, unless specifically ordered by the Court.
6. Where it appears to the Court or to a party that documents have been filed under seal pursuant to this Confidentiality Order which do not fall within the scope of this Confidentiality Order or that information designed by this Confidentiality

Order as Confidential Information is available or has been obtained by the receiving party other than through disclosure in this proceeding, or is or has been made public and should no longer be treated as Confidential Information, the party may seek directions or the Court may unilaterally issue directions for the filing party to show cause why the documents should not be unsealed and placed on the public record.

7. Any Confidential Information filed with the Court in accordance with this Confidentiality Order shall be treated as confidential by the Registry of the Court and not be available to anyone other than the parties and appropriate Court personnel.
8. The Respondent, Bayer CropScience Inc., shall pay to the Applicants their costs of this motion fixed in the amount of \$2,200.00, inclusive of fees, disbursements and taxes.

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"Mandy Ayles"  
Prothonotary

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1070-16

**STYLE OF CAUSE:** DAVID SUZUKI FOUNDATION, FRIENDS OF THE EARTH CANADA, ONTARIO NATURE, AND WILDERNESS COMMITTEE v MINISTER OF HEALTH, SUMITOMO CHEMICAL COMPANY LIMITED, BAYER CROPSCIENCE INC. AND VALENT CANADA INC.

**PLACE OF HEARING:** OTTAWA, ONTARIO  
EDMONTON, ALBERTA

**DATE OF HEARING:** JUNE 16 & 23, 2017

**ORDER AND REASONS:** AYLEN P.

**DATED:** JUNE 27, 2017

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Andrea Bourke

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