

Federal Court



Cour fédérale

**Date: 20201119**

**Docket: T-775-13**

**Citation: 2020 FC 1071**

**Ottawa, Ontario, November 19 2020**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**HENDRIK TEPPER**

**Plaintiff**

**and**

**ATTORNEY GENERAL OF CANADA**

**Defendant**

**CONFIDENTIALITY ORDER**

**UPON** motion in writing pursuant to Rule 369 of the *Rules of the Federal Courts*, SOR/98-106 [Rules] brought on behalf of the Plaintiff, Mr. Hendrik Tepper, seeking a Confidentiality Order pursuant to Rules 151 and 152;

**AND UPON** considering the materials contained in the Plaintiff's Motion Record including the affidavit of the Plaintiff sworn on October 1, 2020 and the consent provided on behalf of the Defendant dated October 22, 2020;

**AND UPON** being satisfied, pursuant to Rule 151, that a confidentiality order is necessary to prevent a serious risk to important interests, specifically the sensitive personal and commercial information described in the Plaintiff's motion, and that in these circumstances the salutary benefits of the requested order outweigh its deleterious effects on the public interest in open and accessible Court proceedings (*Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 53) but finding that in addition to filing a sealed copy of the documents containing confidential information the Parties must, at the same time, file a public version of the document with any confidential information removed or redacted;

**AND UPON** noting that the Defendant consented to a draft confidentiality order, in the form provided in the Plaintiff's Motion Record, on the basis that: the Defendant does not accept as true or has no knowledge of the allegations contained in the Plaintiff's affidavit and the Plaintiff's written representations, both as contained in the Plaintiff's Motion Record; without prejudice to the Defendant's right to take any position regarding such evidence or to cross-examine any such evidence at trial; and, that the order shall be granted without costs;

**AND UPON** further noting that, prior to issuance, both Parties were provided with a copy of my draft order, which varies in format but not greatly in substance from the draft order agreed by the parties and submitted in the Plaintiff's Motion Record. The Parties have confirmed that they consent to this Order, however, the Defendant's consent remains premised on the basis set out above;

**THIS COURT ORDERS** that:

1. “Confidential Information”, for the purposes of this action, means sensitive personal information of the Plaintiff, his family members, his former legal counsel and other individuals, and means sensitive commercial information of the Plaintiff’s business, to the extent that all such personal and commercial information is not publicly available or available through open source methods. In that regard:

i. Sensitive personal information includes:

- (a) the Plaintiff’s social insurance number, health insurance number, passport number, vehicle license plate number, driver’s license number, cell phone account number, and home phone number;
- (b) residential addresses, home phone numbers, cell phone numbers and personal e-mail addresses of the Plaintiff’s family members;
- (c) residential addresses and/or e-mail addresses of private citizens who signed petitions or contacted the government during the Plaintiff’s incarceration in Lebanon to advocate for his release;
- (d) cell phone numbers, e-mail addresses and other personal information of various individuals appearing in notes and/or correspondence that would not normally be in the public domain; and
- (e) bank account information, wire transfer details, credit card numbers and other personal information of legal counsel who assisted the Plaintiff during the time of his incarceration in Lebanon.

ii. Sensitive commercial information includes:

- (a) the wage information of specific identifiable employees as it appears in company wage ledgers; and
- (b) Restructuring Agreement dated March 16, 2012 between the Tobique Corporations, Tobique Farms Operating (2012) Limited, Berend Tepper, Henk Tepper, Ella Tepper and BMO Bank of Montreal, which contains a confidentiality clause.

2. A Party, when it reasonably believes it will be disclosing or has disclosed Confidential Information, shall through its Counsel designate such information as Confidential Information in the manner set out in this Order. Thereafter, the Confidential Information shall be governed by the terms of this Order, subject to the right of the non-producing Party to challenge the designation of the information as Confidential Information.
  
3. All designations of Confidential Information shall be made in good faith by the designating Party. The inadvertent failure to designate Confidential Information at the time it is disclosed does not constitute a waiver of the right to designate Confidential Information such that a producing Party may designate Confidential Information after disclosure has been made, provided that such designation is made forthwith upon the discovering of such failure.
  
4. Any Confidential Information that a Party seeks to file with this Court shall be segregated from other information and documentation and shall be submitted in sealed envelopes, clearly marked as confidential, and prominently displaying the following notice:

**CONFIDENTIAL INFORMATION**

**PURSUANT TO THE ORDER OF THIS COURT DATED \_\_\_\_\_, IN COURT FILE NO. T-775-13, THIS ENVELOPE SHALL REMAIN SEALED IN THE COURT FILES AND SHALL NOT BE OPENED EXCEPT IN ACCORDANCE WITH THE TERMS OF SAID ORDER OR UPON FURTHER ORDER OF THE COURT AND ALL SUCH SEALED ENVELOPES SHALL NOT BE OPENED EXCEPT BY THE COURT AND ITS STAFF.**

5. When filing documents that include Confidential Information, the Parties shall at the same time file with the Court a public version of the documents, from which Confidential Information shall be removed or redacted, and which document shall be publically available.
6. A copy of both the public and confidential version of the subject document(s) shall be served on the other Party three (3) days prior to the physical (electronic or hard copy) filing of the documents with the Court, to allow the other Party time to make any appropriate objections to the serving Party's designation of the information as Confidential Information.
7. In the event of a challenge by the non-producing Party to the designation of information as Confidential Information, the producing Party shall have the burden, on a balance of probabilities, of establishing that the information is, in fact, confidential.
8. At any cross-examination or other proceeding before a court reporter in this action, where evidence is given or documents are produced which are designated by a Party to contain Confidential Information, the Parties shall request that the court reporter prepare a public version of the transcript, from which Confidential Information is removed or redacted, and a complete version containing the Confidential Information, to be kept confidential in the manner described above.

9. All documents, exhibits and things which contain unredacted Confidential Information shall be marked on each page or prominently on the first page thereof with the following notice:

**CONFIDENTIAL**

**Subject to Confidentiality Order in Court File no T-755-13  
dated \_\_\_\_\_**

10. Subject to paragraph 12 hereof, in the absence of written permission from the Party who disclosed Confidential Information, Confidential Information shall not be disclosed to anyone except the Court, Court personnel, stenographic and video reporters engaged in the within proceeding and the following firms and Individuals:

- (a) The Plaintiff and the Defendant;
- (b) Norton Rose Fulbright Canada LLP, counsel for the Plaintiff, and its support staff;
- (c) the Department of Justice, counsel for the Defendant, and its support staff;
- (d) expert witnesses; and
- (e) such other persons as the Parties may agree in writing or as the Court may order.

11. Prior to the disclosure of Confidential Information to the persons listed in paragraph 11(d) hereof, counsel for the Party responsible for making such disclosure shall furnish the intended recipient with a copy of this Confidentiality Order and shall obtain from opposing counsel, or the intended recipient pursuant to paragraph 11(d), an acknowledgement in writing that the intended recipient has read the

- Confidentiality Order, understands it, agrees to be bound by it and expressly consents to the jurisdiction of the Court in connection with any proceeding or hearing related to the Confidential Information and the terms of the Confidentiality Order. Counsel shall retain a copy of the written acknowledgement, but need not provide a copy of same to opposing counsel except upon request to do so. For greater certainty, the Plaintiff and the Defendant are not required to complete an acknowledgement in writing in order to review their own Confidential Information.
12. Only one paper copy of the documents containing Confidential Information will be provided to the persons listed in paragraph 11 hereof. Confidential Information shall not be reproduced in whole or in part except as may be required by law including by the *Federal Courts Rules* or as required for the hearing of this action.
  13. The Confidential Information shall be used solely for the purpose of this action and may not be used for any other purpose, subject to any further order of this Court.
  14. A Party may waive in writing all or any part of its right over its own Confidential Information under the Confidentiality Order.
  15. A Party may apply to the Court to modify or vacate the restrictions on disclosure imposed by this Confidentiality Order as applied to any specific item or items of Confidential Information.
  16. Subject to any further order of this Court, the termination of this action shall not relieve any person to whom Confidential Information was disclosed pursuant to this Confidentiality Order from the obligation of maintaining the confidentiality of such

information in accordance with the provisions of this Confidentiality Order. The provisions of this Order shall continue after the final disposition of this action.

17. Upon final termination of this proceeding (including appeals), each Party shall destroy within sixty (60) days all items containing Confidential Information pursuant to this Confidentiality Order and file a certificate of destruction with the Court. Notwithstanding the above, counsel for the Parties may keep one (1) copy of Confidential Information in their files.
18. This Order is on a without costs basis.

“Cecily Y. Strickland”

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Judge