

No. 15 1867
VICTORIA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SHAWNIGAN RESIDENTS ASSOCIATION

PETITIONER

AND:

**DIRECTOR, ENVIRONMENTAL MANAGEMENT ACT,
COBBLE HILL HOLDINGS LTD. and
ENVIRONMENTAL APPEAL BOARD**

RESPONDENTS

NOTICE OF APPLICATION }

Name of applicant: Cobble Hill Holdings Ltd.

To: Shawnigan Residents Association

And to: Director, Environmental Management Act
Environmental Appeal Board

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 850 Burdett Avenue on 15 July 2015 at 9:45 am for the order set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order that the application of the Shawnigan Residents Association filed July 11, 2015 on short notice be adjourned;
2. An order that the within application be heard on short notice; and

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80.00

3. Costs of the adjournment and short notice application payable by Shawnigan Resident's Association to Cobble Hill Holdings Ltd. forthwith, in any event of the cause.

Part 2: FACTUAL BASIS

1. Multiple people are interested and affected by the relief, including the "interim" relief being sought who were not served with the Shawnigan Lake Residents' application and are entitled to make representations with respect to it.
2. The Shawnigan Residents Association has brought an application seeking an interim stay and interlocutory stay.
3. The effect of either stay will bankrupt Cobble Hill Holdings Ltd. and the operator South Island Resource Management Ltd.
4. The basis for the stay is that Shawnigan Residents Association alleges a risk to the environment and human health because of an abandoned agreement.
5. This is contrary to the decision of the Environmental Appeal Board as is evident in the record of the Board's decision under challenge.
6. The Shawnigan Residents Association has refused to produce the record and seeks to avoid any obligation to do so by making prejudicial accusations that do not go to the heart of the decision under review in the main Petition.
7. The design of the Permitted operation is such that incoming soil is not immediately placed in the reclamation area. First, it is managed in the soil management area. When it is read to be used in the reclamation of the mine it is encapsulated and placed in a cataloged location. The encapsulation of the soil protects it from immediate contact with the natural environment and all potential contact water is monitored closely. At all times it is under the supervision of qualified professions with independent professional and ethical obligations and further subject to report requirements to the Ministry of Environment.
8. An adjournment will not prejudice anyone.
9. The Shawnigan Residents Association has never been successful in providing any evidence that the Permit, facility design and multi-barrier approach were inadequate to protect the environment and the issue is *res judicata*.
10. To the extent that the Shawnigan Residents Association alleges the "operator is not reliable" the Court should take comfort that a new operator with appropriate qualifications and expertise is responsible for the day to day operation of the mine and compliance with the Permit.

11. The Ministry of Environment has completed a recent compliance audit under the Permit in June 2015 and was satisfied with the operation.
12. There is no evidence of a real risk.
13. The Court should hear from all persons affected. The Shawnigan Residents Association knew that South Island Resource Management was the operations manager at the mine and did not serve them.

Part 3: LEGAL BASIS

1. An adjournment is proper when a person whose interests are affected has not had the opportunity to marshal evidence, arguments and seek representation.
2. It is not in the interests of justice that any party be rushed into a hearing that has the potential outcome of an order that will significantly affect his rights.
3. There is no prejudice to the Shawnigan Residents Association by a reasonable adjournment that will allow the parties and interested persons to:
 - a. Determine who must marshal the record so that the arguments to be made in the Shawnigan Residents Association can be fairly assessed;
 - b. Seek representation; and
 - c. Properly prepare evidence and argument in response.
4. The Shawnigan Residents Association has provided no evidence of risk that requires an interim injunction and the parties whose interests are deeply affected are entitled to have a proper opportunity to make defence.

Part 4: MATERIAL TO BE RELIED ON

1. The petition;
2. Affidavit #1 of Michael James Kelly;
3. All materials in the proceeding and applications.

The applicants estimate that the application will take 1 hour.

[Check the correct box]

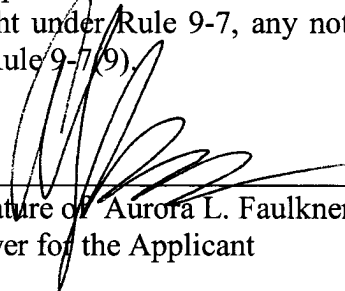
This matter is within the jurisdiction of as master.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: 14/July/2015



 Signature of Aurora L. Faulkner-Killam
 Lawyer for the Applicant

To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs of Part 1 of this notice of application
<input type="checkbox"/>	with the following variations and additional terms:
.....	
Date:[dd/mmm/yyyy].....
	Signature of [] Judge [] Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

n/a