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: Shawnigan Residents Association

To: the Respondents

And to: 0949812 B.C. Ltd.,
0949811 B.C. Ltd.
Active Earth Engineering Ltd.
South Island Aggregates Ltd.
Kristin R. Marrs practicing as Herald Street Law
Cook Roberts LLP

And to: Cowichan Valley Regional District
John Hayes and Lois Hayes
Richard Sanders

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 July 13, 2015 (in the week of) at 10 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An interim and interlocutory stay of the March 20, 2015 decision of the Environmental Appeal Board in proceeding 2013-EMA-G02 and of the Ministry of Environment Permit PR-105809.

2. An order that lawyer Kristin R. Marrs practicing as Herald Street Law, the corporate records office of South Island Aggregates Ltd. and Cobble Hill Holdings Ltd., preserve and within 5 business days produce to the applicant for inspection and copying the following records in her possession:

   (a) any original signed agreement made February 14, 2013 between South Island Aggregates Ltd., Cobble Hill Holdings Ltd., 0949812 B.C. Ltd. and 0949811 B.C. Ltd. (the "**February 14, 2013 Agreement**");

   (b) alternatively, any copy of the February 14, 2013 Agreement held by the records office;

   (c) a copy of all of the corporate records of South Island Aggregates Ltd. and Cobble Hill Holdings Ltd. relating to the February 14, 2013 Agreement, including any directors or shareholders resolutions and any other agreement in the possession of the corporate records office modifying, amending, terminating or replacing the February 14, 2013 Agreement;

   (d) the current central securities registers for South Island Aggregates Ltd. and Cobble Hill Holdings Ltd.;

   (e) all files related to South Island Aggregates Ltd. and Cobble Hill Holdings Ltd.

3. An order that the law firm Cook Roberts LLP, the corporate records office for 0949812 B.C. Ltd. and 0949811 B.C. Ltd,. preserve and within 5 business days produce to the applicant for inspection and copying the following records in its possession:

   (a) any original signed February 14, 2013 Agreement;

   (b) alternatively, any copy of the February 14, 2013 Agreement;

   (c) a copy of all of the corporate records of 0949812 B.C. Ltd. and 0949811 B.C. Ltd relating to the February 14, 2013 Agreement, including any directors' or shareholders' resolutions concerning the February 14, 2013 Agreement and any other agreement in the possession of the corporate records office modifying, amending, terminating or replacing the February 14, 2013 Agreement;

   (d) the current central securities registers for 0949812 B.C. Ltd. and 0949811 B.C. Ltd.

   (e) all files related to 0949812 B.C. Ltd. and 0949811 B.C. Ltd.

4. An order that South Island Aggregates Ltd., Cobble Hill Holdings Ltd. and Active Earth Engineering Ltd. preserve and within 5 business days each produce to the applicant for inspection and copying:

   (a) any original signed version of the February 14, 2013 Agreement in their possession or control;

   (b) alternatively, any copy of the February 14, 2013 Agreement in their possession or control;

   (c) all records relating to the February 14, 2013 Agreement, including any other agreements between any of these parties or their principals and any correspondence between or on behalf of any of South Island Aggregates Ltd., Cobble Hill Holdings Ltd. and Active Earth Engineering Ltd., or their principals, relating to the February 14, 2013 Agreement.

5. Costs on a basis to be determined by the Court following the results of the production orders above.

6. Such further and other relief as this Court may determine to be just.

Part 2: FACTUAL BASIS

Introduction

1. The applicant has brought a judicial review of a March 20, 2015 decision of the Environmental Appeal Board (the "**Board**") in proceeding 2013-EMA-G02 (the "**Decision**"). The Decision upheld the issuance of Ministry of Environment Permit PR-105809 (the "**Permit**"). The Permit authorizes the respondent Cobble Hill Holdings Ltd. ("**CHH**") and its related company South Island Aggregates Ltd. ("**SIA**") to establish and operate a contaminated soil landfill on a property located on the south slope of the Shawnigan Lake watershed.

2. The chronology of events relating to the Permit is set out in the Statement of Facts in the Application for Judicial Review. Key facts here include:

   - CHH and SIA are closely held private companies run by principals Martin Block and Michael Kelly.

   - CHH and SIA retained engineers from Active Earth Engineering Ltd. ("**Active Earth**") to serve as their "Qualified Professionals" in investigating and reporting on the potential for a contaminated soil facility on CHH's property at 840 Stebbings Road in Shawnigan Lake.

   - A Qualified Professional is an independent scientist or engineer who is retained by a proponent and whose work is to be relied upon by decision makers in the Ministry of Environment (the "**Ministry**").

- Active Earth is a small engineering firm based in British Columbia with key individuals being engineers Matthew Pye and David Mitchell.
- Active Earth submitted to the Ministry a Technical Assessment Report in August 2012.
- Thereafter Active Earth provided the Ministry with many follow-up reports, communications and presentations in support of the proposed permit.
- At no time did Active Earth, CHH or SIA disclose to the Ministry that Active Earth had a direct business interest in the project for which they sought the Permit.
- In August 2013, the Permit was granted and the Shawnigan Residents Association brought an appeal to the Board. Four other parties also brought appeals: the Cowichan Valley Regional District, John and Lois Hayes and Richard Sanders.
- The appeals were heard in a combined hearing between March and July 2014.
- On March 20, 2015, the Board dismissed the appeal.
- On May 19, 2015, the Shawnigan Residents Association filed an application for judicial review.

3. A document has now come to light that raises serious issues about the representations made by SIA, CHH and Active Earth to the Ministry and to the Board. The document shows an agreement dated February 14, 2013 whereby engineers from Active Earth, operating through a company called 0949812 B.C. Ltd. ("**AECO**"), contracted with SIA and CHH to form a separate company called 0949811 B.C. Ltd. ("**OPCO**"). The agreement provides that CHH would be the applicant for the Permit, but would be a bare trustee for OPCO which would be the owner of the beneficial interest in the contaminated soil landfill. In other words, the third party experts and the named proponent formed a secret business entity to jointly incur the costs to obtain the Permit and jointly profit from the 50 year operation of the landfill (the "**Profit Sharing Agreement**").

See: Cook Affidavit #2, Exhibits A and B

4. While the source of the applicant's copy of the Profit Sharing Agreement is unknown to the applicant, the document appears authentic on its face. It is 17 pages and bears the signatures and initials of the principals of the parties. It is a sophisticated legal agreement that was appears to have been drafted by lawyers. The signatures appear to be those of the signing individuals when compared to other documents that have been disclosed in the proceedings.

See: Cook Affidavit #2, Exhibits E, F, G, H

5. Moreover, the contents of the document are consistent with information in the corporate registry for British Columbia. AECO and OPCO are British Columbia companies of which the individuals who signed the Profit Sharing Agreement are directors. The dates of incorporation are consistent with the agreement being drafted in the fall of 2012 and being signed in February 2013. Filings to keep the numbered companies in good standing have been made since their incorporation. The registered offices of the numbered companies are at Cook Roberts LLP.

See: Cook Affidavit #2, Exhibits C and D

6. If authentic, the Profit Sharing Agreement shows that fundamental representations made by CHH, SIA and Active Earth to the Ministry and the Board were false. In particular, the director and president of CHH and SIA represented to the Ministry and testified before the Board:

   (a) that CHH was the applicant for the Permit, when in fact it was acting as a bare trustee;

   (b) that Active Earth was an arm's-length firm of expert environmental engineers serving as "Qualified Professionals" for the Permit application with no financial interest in the contaminated soil landfill, when in fact Active Earth was SIA and CHH's secret business partner with a 50-50 profit sharing arrangement; and

   (c) that SIA and CHH had disclosed all relevant documents, when in fact they concealed the Profit Sharing Agreement.

7. Assuming it is authentic, the Profit Sharing Agreement was undoubtedly concealed because it places the engineers from Active Earth in a direct conflict of interest whereby they were relied upon by the Ministry and the Board for scientific objectivity, but had a direct financial interest in the project and are in fact principals of the true applicant company.

8. In the appeal before the Board, the Shawnigan Residents Association expressly put in issue, among other things: (a) the identity of the Permit applicant, (b) the suitability of the CHH and SIA to be trusted with operating a landfill, (c) the credibility of the principal of CHH and SIA who testified, (d) the ethics and credibility of the engineers from Active Earth, (e) the quality and validity of Active Earth's scientific conclusions, and (f) whether CHH and SIA had disclosed all relevant records. On each of these issues, the Board made findings in favour of SIA and CHH, but did so without knowing of the existence of the Profit Sharing Agreement or that it was being concealed from the Ministry and the Board by CHH and SIA. The Ministry supported SIA and CHH's position throughout the proceeding before the Board, but did so without knowing of the secret agreement or that CHH wasn't the beneficial owner of the project. .

9. If the Profit Sharing Agreement is authentic, then the Decision was made on false premises and similarly the Permit was issued on false premises. The Permit is not issued to the correct party, as CHH doesn't own the beneficial interest in the project. Both the Decision and the Permit should be stayed on an interim and interlocutory basis pending

the conclusion of this judicial review, which, if the Profit Sharing Agreement is authentic, will be amended to add perjury and fraud as a further ground for setting aside the Decision and quashing the Permit.

10. Orders should therefore be made to verify the Profit Sharing Agreement's authenticity and to require the corporate records offices and these parties to disclose their records relating to it.

11. The balance of the application below proceeds on the assumption that the Profit Sharing Agreement is authentic and operative for any period of time.

The False Representations

A. That CHH was the Applicant when in Fact it was a Bare Trustee

12. Initially, the application for the Permit was SIA. That was subsequently changed to CHH with the consent of the Ministry. Mr. Block explained as follows in his testimony in chief to the Board on May 23, 2014:

> Q Mr. Block, can you explain to me briefly, why did you change the application from -- for the permit from SIA to Cobble Hill Holdings?
>
> A That came about close to the very end of the process. I was up at the Ministry office going through the draft permit with them. On the way home I realized that all of the correspondence and application has been in SIA's name. It dawned on me that it probably made more sense that a permit like this actually belongs to the land, not to an active company. So, I called Hubert and mentioned to him that Cobble Hill actually owns the land in question and I felt it probably made more sense to issue the permit in Cobble Hill's name opposed to SIA's. And there was some question also, when SIA was formed the address for -- for the corporate office was Mike's home address, so I also mentioned that, too, that Mike didn't want his home address as sort of the corporate offices for -- for this permit process.
>
> Cook Affidavit #2, Exhibit J

13. In the Decision, the Board explained its understanding of the name change as follows:

> [37] As a matter of clarification, Cobble Hill did not make the original application for a permit: the application was made by South Island Aggregates Ltd. ("SIA"). It was not until February of 2013 that the companies asked the Ministry to change the applicant to the owner of Lot 23: Cobble Hill.
>
> [38] SIA filed the initial application because it is the operator of the rock quarry on Lot 23. SIA operates the quarry under mining permit Q-8-094, issued by the Ministry of Energy and Mines. The mine permit was issued to SIA on April 20, 2009. Cobble Hill leases Lot 23 to SIA for the mining operation. The quarry

began operating in 2006, and it is expected to be mined over the next 40 to 50 years.

[39] The mine operations extend onto Lot 21, to the north of Lot 23. The owner of Lot 21 is 0782484 B.C. Ltd. This company is referred to in this decision as "the numbered company". Lots 21 and 23 are being mined at this time.

[40] Marty Block and Mike Kelly are directors and officers of all 3 of the closely held companies.

14. What the Board was not informed was that what actually occurred in February 2013 was that the Profit Sharing Agreement was signed and pursuant to its terms, CHH was just a bare trustee for the real applicant, which was OPCO, a company whose underlying shareholders were engineers from Active Earth and the principals of CHH and SIA. Clause 3.04 of the Profit Sharing Agreement provides as follows (underlining added):

> The Permit will be issued in the name of CHH as the owner of the Land but will belong to and be an asset of OPCO; to that end CHH will execute and deliver to OPCO a declaration that the Permit is held by CHH on an irrevocable trust for the sole and exclusive benefit of OPCO and that subject to Article XIV, CHH has no beneficial interest of any nature or kind in the Permit.
>
> Cook Affidavit #2, Exhibit A

15. Thus the Board, the Ministry and the parties to the appeals were misled as to who was the true applicant, and continue to be misled.

B. That Active Earth had no Financial Interest in the Project when in Fact it did

16. In the hearings before the Board, the engineers from Active Earth were not called by CHH as witnesses to testify, although they were often present in the hearing, sitting behind and communicating with the principals from CHH and their counsel. Martin Block, a director and officer of CHH and SIA did testify.

17. On May 24, 2014, in cross examination by counsel for the Shawnigan Residents Association, Mr. Block testified that Active Earth and its engineers did not have a financial relationship with CHH and SIA other than the ordinary fee for service agreement that expert engineering firms normally have with clients. His evidence was as follows:

> Q Now, does Active Earth have a financial stake in your companies going forward, sir?
>
> A Financial stake in our company? No.
>
> Q Does it -- have you ma-- has your companies -- have your companies made any commitment to Active Earth that they will be hired to serve in the

capacity of qualified professionals going forward if this permit is allowed to remain in place?

A We have, yes.

Q Okay. And is that commitment -- how many years into the future does that go?

A There's no -- there's no set time on that right now.

Q Is that something that's captured in -- in a written agreement?

A No.

Q And so what's the nature of the commitment?

A That they will -- they will be basically the engineers on record and on site while the -- while we get the facility up and running and in the foreseeable future. We'll just see -- see how everything goes.

Q And what consideration did you receive from Active Earth for that promise to retain them as the qualified professionals going forward?

A Well, it's not so much consideration. We -- it's not so much consideration they gave us, it's more consideration we gave them. We originally -- knowing that this was going to be a one year long process and the amount of testing and wells and -- and so forth that we assumed we were doing, we had a budget that we had sort of allocated for this process and we blew that budget seven times over. So once we hit that budget number, Active Earth agreed to carry on with their billing and they would be paid in due course once the material came in. So obviously they're going to be the engineers on record.

Q And so, what -- what was the original budget?

A 250,000.

Q And was that -- is that something that was given to you in writing with all the steps set out?

A No, that was -- that was our budget and -- that was our -- sort of our budget back to them, and they felt that that was very doable. That budget included the wells. So, essentially -- essentially that budget would be paying them sort of 160– to $180,000 and -- and then the rest of the money would be budgeted towards soft costs and wells.

Q Okay. And so you've paid -- you have paid off the drillers, I take it?

A Yes.

Q Okay. So -- so Active Earth has been paid its -- its approximately 160,000 --

A Mm-hm.

Q -- and how much do you owe them then?

A The balance of -- of their -- their bill that's in [indiscernible].

Q Well, their bill only went up to December 2013 and I notice they were certainly involved in the proceedings --

A Yes, I think --

Q -- to an extent. Have you got a -- sort of a --

A Yeah.

Q -- a bigger -- a bigger amount now?

A Oh, I do, yeah. They have -- they have billed in excess of another $200,000.

Q So if my math is right, you owe them $540,000 or so?

A Pardon me?

Q You owe them $540,000 or so? I was taking that, sir, from their total to December 12, 2013 it was 507,000, so I just rough -- leaving -- let's say that's 500–. You say there's another 200–, so that's 700–. 700– minus 160–, that's 540–.

A Yes, it's probably -- it's in that ballpark, yes.

Q And --

A The reason I say it's in that ballpark, they're managing their -- their hours, but they're not -- they're not producing invoices because as soon they produce that invoice, they're paying --

Q Yeah.

A -- taxes on it, so ...

Q Exactly. But by these -- by this reckoning, in terms of the costs summary that we looked at for Exhibit 100, they had spent 93,000 in 2011, and then in 2012 they had spent -- they spent $184,000. So at some point partway

through 2012 they had reached the 160,000 which they had -- they had billed at.

A Mm-hm. Yes.

Q And so they have been out -- since mid-2012 they have been without payment?

A We've been -- we've been covering their -- well, we've been covering all the hard costs. If there's any external reports that needed doing or tests that needed to be done, those were being billed direct to us.

Q And the -- in order to forgo that amount of money, the deal you have in place is -- is a verbal commitment to retain them as the qualified professionals going -- for some period going forward?

A Well, they're not foregoing any money. There is -- there is a complete intention of them being paid, whether this permit continues or not. They do a lot of -- Active Earth does a lot of work with us. They're presently doing the engineering on a 60 lot subdivision. They're doing another one on 115 lot subdivision. So, Active Earth clearly recognizes that their goodwill, if you will, in billing during this process, they're -- they're fairly well secured.

Q Secured by the goodwill?

A Well, goodwill knowing that they -- they're going to do the civil engineering on our projects and there certainly is the ability to pay on those other projects.

Q Okay. Is the verbal agreement that if the permit isn't maintained, that they will not get paid for that 540,000?

A No. That -- that money is -- is due and owed.

Cook Affidavit #2, Exhibit K

18. On June 4, 2014, Mr. Block gave further evidence on the subject of the relationship between CHH, SIA and Active Earth:

Q Now, apart from the amounts owed to them for professional services and the prospect of future work as qualified professionals, is Active Earth financially connected in any other way to SIA or Cobble Hill Holdings?

A No.

Q Or the principals?

A No.

Cook Affidavit #2, Exhibit L

19. In view of the Profit Sharing Agreement, that evidence was not true. The terms of the Profit Sharing Agreement show that Active Earth was not working on a fee for service basis and was not, as Mr. Block testified, going to be paid even if the Permit was not granted. Instead, Active Earth was in the same position as CHH and therefore it was significantly financially incentivized to do whatever it took to ensure the Permit was issued. Their ability to provide objective scientific information and advice was fundamentally compromised.

20. CHH and SIA stated as follows at paragraph 98 of their written argument in support of the Permit:

> Active Earth was an advocate to the extent that any qualified person is an advocate for a permit application, no more no less. They were the applicant on behalf of the landowner/operator.
>
> Cook Affidavit #1, Exhibit J

21. In view of the Profit Sharing Agreement, this submission was untrue due to the concealment of the secret business partnership that these engineers had. Their relationship was much more than a qualified professional has with a client and they were not acting on behalf of CHH and SIA; as part of OPCO, *they were* the secret applicants.

C. That CHH and SIA had Disclosed all Relevant Documents When They Had Not

22. The parties were required to produce all relevant documents in advance of the hearing. Many documents were produced. In the EAB Hearing, CHH and SIA asserted that they had disclosed all of their relevant documents.

23. One document that they failed to disclose was an agreement with the Malahat First Nation that provided the Malahat would support CHH's application for the Permit in return for a number of financial benefits and a term that the agreement would be kept confidential. After being confronted in cross-examination with the failure to disclose that agreement, Mr. Block testified as follows on May 24, 2014:

> Q. Now, I have two questions before the break, if we could. And I know it's getting hot in here. Sir, two questions. I ... The document that we looked at, which has been marked as Exhibit 100, I believe, the agreement -- 101, the agreement with Malahat First Nation --
>
> A Yes.
>
> Q -- that was a document that was not produced by the permit holders?
>
> A I don't know. I don't know where that came from.
>
> Q Yeah. You -- sir, you -- you didn't produce a copy of that in your production?
>
> A I don't think so, no.

Q And are there other documents like that that are relevant that you have chosen to keep away from the materials that are before this Board?

A Not that I know of, no.

Q Any other documents that are subject to a confidentiality agreement to not reveal them that are relevant to this Board?

A Not that I can think of offhand, no.

Cook Affidavit #2, Exhibit K

24. At one juncture, questions were specifically asked of Mr. Block about a document that had been produced by counsel for CHH and described by CHH's counsel as "invoices" from Active Earth. It looked much more like an accounting spreadsheet and in view of the Profit Sharing Agreement appear to be a detailing of expenses that were being posted to OPCO. In the EAB Hearing, however, Mr. Block purported not to know what it was when he testified on June 4, 2014:

Q I'd like to introduce a document that was produced by your counsel and it came -- it was underneath the spreadsheet that was provided to us showing Active Earth's outstanding amount, sir. Do you recall that document? It was a little table that we looked at last day that showed the amounts owing to Active Earth for 2011, 2012 and 2013. Do you recall that document?

A Yes.

Q And this is the bal-- is what was within the rest of the package that we were provided by your counsel. It's called "Active Earth Engineering Ltd. Item Actual Revenue Detail"; do you see at that?

A Yes.

Q You have -- you have seen that before?

A I'm not sure I've seen this exact document.

Q Okay. It was described to us in your counsel's letter of May 23 as being a copy -- redacted copies of Active Earth's invoices up to August 2013 prior to the hearing. That's how it was described to us. Does that assist you at all?

A Not really, but I'm looking at the document, so okay.

Q All right. I'm looking at this document. It doesn't look like an -- an invoice to me. Is this what you would describe as an invoice or invoices? From Active Earth.

A No, it doesn't look like an invoice, no.

Q Is this from -- do you recognize this as being something from your computer system?

A No, I couldn't tell you it's from my computer system, no.

Q You see at the top left-hand corner it says February 28, 2014, and that date carries on throughout each of the pages, which suggests to me that that was the date it was printed.

A Okay.

Q Apart from that do you -- the -- the information you received from your counsel is this was a redacted version of Active Earth's invoices. Do you know what the redacted portions of this document are?

A No, I don't.

Q But you acknowledge that it was produced by Cobble Hill Holdings to the other parties?

A Yes.

MR. HERN: I'm not sure what we can do with that, Mr. Chair, but I think we've got far enough along to --

THE CHAIR: Yes. Okay.

MR. HERN: -- mark it as an exhibit and ...

THE CHAIR: Exhibit 105 and it's Active Earth Engineering Ltd. revenue details from January 1, 2011 through to December 12, 2013.

Cook Affidavit #2, Exhibit L

25. In its application materials and in the appeal, Active Earth, CHH and SIA never disclosed the Profit Sharing Agreement or any of the related corporate records. Instead, it appears that they specifically and deliberately concealed and lied about that fact to both the Ministry and to the Board.

Part 3: LEGAL BASIS

1. Assuming it is authentic, the revelation of the Profit Sharing Agreement is highly compelling evidence that CHH and SIA committed a fraud upon the Ministry and a fraud upon the Board in concealing its existence. The fraud was also perpetrated on the parties in the EAB appeals who were participating in good faith, believing in the integrity of the adjudicative process, its disclosure obligations and the integrity of those who swear oaths to tell the truth when they testify. All were deceived.

2. Section 10 of the *Judicial Review Procedure Act* ("*JRPA*") provides that "the court may make an interim order it considers appropriate until the final determination of the application".

3. Here, an immediate stay of the Decision and the Permit, and further orders to facilitate the production of the original Profit Sharing Agreement is the appropriate response where the integrity of the administrative processes below and the justice system itself appears to have been compromised by a party before this Court.

4. If the Profit Sharing Agreement is authentic, the Shawnigan Residents Association will be seeking to amend its judicial review application to add fraud and perjury as a basis for quashing the Decision and the Permit. In the words of Lord Denning in *Lazarus Estates Ltd v Beasley*, [1956] 1 QB 702 (CA) at 712:

> No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

5. Evidence of fraud can be introduced into a judicial review proceeding directly on the basis of the court's overriding jurisdiction to address fraud and perjury or as "new evidence"; see *St. John's Transportation Commission v. Amalgamated Transit Union, Local 1662 et al.*, 161 Nfld & PEIR 199, [1998] N.J. No. 35 (NL SCTD) at paras 38-40.

6. The Court's inherent jurisdiction authorizes orders for preservation and disclosure of documents in a judicial review proceeding in exceptional circumstances; see *Nechako Environmental Coalition v. British Columbia (Minister of Environment, Lands and Parks*, [1997] B.C.J. No. 1790 (S.C.) at paras 25-26. Addressing allegations of fraud and perjury during the tribunal processes below is an exceptional circumstance.

7. A stay of the underlying decision or its execution can be ordered under s. 10 of the *JRPA*; *Timberwest Forest Corp v. Campbell River* (City), 2009 BCSC 1862; *Northburn Prescriptions Ltd. v. British Columbia*, 2014 BCSC 2124. A stay of the Permit was made, and later varied, by the Environmental Appeal Board during the proceedings below to protect the environment while the appropriateness of the Permit was being adjudicated.

8. Here, interim and interlocutory relief is warranted to protect the environment, which is put at risk from a fundamentally flawed decision-making process below, and to protect the integrity of the administrative processes and the courts. Here, if the Profit Sharing Agreement is authentic, the Permit was granted to a party that does not hold the beneficial interest in the Permit and it is instead beneficially held by another party that has not been disclosed to the Ministry. The science on which the Permit was issued was done not by a Qualified Professional, but effectively by an applicant. The Permit application and supporting materials were a sham, and the evidence that followed was received and considered without knowing the truth about which parties were to hold the Permit and comply with its obligations and without knowing which parties had a financial stake in making the representations advanced in support of the Permit's issuance.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit of Calvin Cook #2, sworn July 8, 2015;

2. Application for Judicial Review;

3. Affidavit of Calvin Cook #1, sworn May 18, 2015.

The applicant estimates that the application will take 1.5 days.

☐ This matter is within the jurisdiction of a 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 the 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).

Dated: July 9, 2015

Sean Hern + Robert Anderson QC

Lawyers for the Applicant

THIS NOTICE OF APPLICATION is prepared and delivered by Robert S. Anderson Q.C. and Sean Hern of the firm Farris, Vaughan, Wills & Murphy LLP, Barristers & Solicitors, whose place of business and address for service is 3rd Floor, 1005 Langley Street, Victoria, BC, V8W 1V7.

To be completed by the court only: **Order made** ☐ in the terms requested in paragraphs of Part 1 of this notice of application ☐ with the following variations and additional terms: _____ _____ _____ _____	
Dated:	**Signature of** ☐ **Judge** ☐ **Master**

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

☐ discovery: comply with demand for documents
☐ discovery: production of additional documents
☒ other matters concerning document discovery
☐ extend oral discovery
☐ other matter concerning oral discovery
☐ amend pleadings
☐ add/change parties
☐ summary judgment
☐ summary trial
☐ service
☐ mediation
☐ adjournments
☐ proceedings at trial
☐ case plan orders: amend
☐ case plan orders: other
☐ experts
☒ other