
From: Koehnen, Mr. Justice Markus (SCJ) [REDACTED]
Sent: Wednesday, October 13, 2021 11:58 AM
To: Goodis, Ben; JUS-G-MAG-CSD-Toronto-SCJ Commercial List; Noah Goldstein; Xcent Lawyers; Sam Dukesz; Picone, John M.; Lauren Mills Taylor; Jonathan Joffe; Shara Roy; akreaden@stikeman.com; Levine, Natalie
Subject: Re: Randhawa v. Randhawa, CV-18-593636-00CL
FilingDate: 10/13/2021 12:01:00 PM

Email Endorsement

1. I attach a signed, unopposed order arising out of today's hearing.
2. The order reflects a partial agreement between the Investigative Receiver and Sukhdeep Randhawa ("Sukhdeep") pursuant to which Sukhdeep will deliver information to the Receiver and the Receiver will hold certain portions of it in confidence and will not share it with Paul or Rana without consent or further order of the court.
3. The order also provides that to the extent any party wishes to use such information in a court proceeding, it will be filed under seal, at least provisionally.
4. In *Sherman Estate v. Donovan*, 2021 SCC 25 the Supreme Court of Canada held at para. 38 that an applicant for a sealing order must establish that:
 - (1) court openness poses a serious risk to an important public interest;
 - (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
 - (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.
5. I am satisfied that these terms have been met in the case before me. As a starting point, the information is being provided to an Investigative Receiver who is really a court appointed Inspector under the OBCA. The information the Inspector obtains is not information produced in a court proceeding but is information obtained in a private investigation authorized by the court. As a starting point, the open courts principle does not necessarily apply to information obtained by an Inspector. That may change to the extent that the information later becomes part of a court record. Whether it does though, will depend on the use for which the information is put in the later record. Hence my order that any such information be provisionally filed under seal.

6. Sukhdeep has expressed concern about potential abuse of any information she provides to the Inspector/Receiver given that it discloses information about private investments. That is an interest worth protecting, especially when it involves someone who is not even a litigant before the court.
7. I am satisfied that the provisional filing under seal is proportional and that its benefit in getting information to the Inspector sooner outweighs any potential detriment. Particularly because I am making no findings about how the information should be treated in future proceedings if the issue should ever arise.
8. Sukhdeep also raised a concern about having certain undertakings on her behalf be included in an order rather than in an agreement that would be reflected in an endorsement. There is some benefit to having the agreement included in a court order. That would make clear that any breach of the obligation is not merely a matter of breach of contract in respect of which one would have to prove damages to warrant a remedy. Rather it is a more serious obligation in respect of which more urgent and compelling remedies would be appropriate. The order should, however indicate that it is being granted as a result of Sukhdeep's consent and/or undertaking. That should protect Sukhdeep against any adverse inference resulting from a court order against her.
9. The parties have agreed to work out language for an order. If they cannot agree, each can send me a short statement of the issue and a short statement about why their position should prevail.

Justice Markus Koehnen

Ontario Superior Court of Justice

361 University Ave.

Toronto, Ont.

M5G 1T3

