



Ontario  
Securities  
Commission

Commission des  
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**IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, c. S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF DAVID M. O'BRIEN**

**DECISION  
(Motion on Disclosure)**

**BACKGROUND**

On February 24, 2011, the Ontario Securities Commission (the "Commission") ordered that a motion hearing regarding disclosure take place on April 21, 2011 at 10:00 a.m at the offices of the Commission. On December 17, 2010, the respondent David Michael O'Brien ("Mr. O'Brien") attended at the offices of the Commission to obtain from Staff of the Commission ("Staff") initial disclosure materials. Prior to receiving the disclosure materials, Mr. O'Brien signed an undertaking as to confidentiality (the "Previous Undertaking") and a disclosure receipt, as requested by Staff. On March 18, 2011, Mr. O'Brien attended at the offices of the Commission to obtain additional disclosure materials. Mr. O'Brien advised Staff at that time that he would not sign a further undertaking. As a result, Mr. O'Brien did not obtain those disclosure materials.

Mr. O'Brien has brought this motion seeking an order from the Commission requiring Staff to provide Mr. O'Brien with all additional disclosure materials without requiring him to execute a further undertaking.

A hearing of that motion took place on April 21, 2011 and Staff and Mr. O'Brien appeared before the Commission and made submissions. Mr. O'Brien acknowledged at the hearing that he understands that he is subject to both the confidentiality provisions contained in section 16 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") and the implied undertaking rule, which restricts the use of materials produced in a proceeding solely to that proceeding, a recognized principle of law in Ontario which applies to Commission proceedings.

## **DECISION**

I decided that Staff shall provide further disclosure materials to Mr. O'Brien without requiring the signing by him of an undertaking as to the confidentiality of that disclosure. In making that decision, I determined that:

1. All disclosure materials provided to Mr. O'Brien are confidential and may be used by him only for the purpose of making full answer and defence in this proceeding. The use of disclosure materials for any other purpose is strictly prohibited. All disclosure materials provided to Mr. O'Brien are subject to the strict confidentiality restrictions imposed by section 16 of the Act.
2. Mr. O'Brien is also subject to the implied undertaking that all disclosure materials provided to him are subject to the restrictions on use referred to in paragraph (1).
3. The Previous Undertaking signed by Mr. O'Brien is binding upon him and applies by its terms to all of the disclosure materials provided by Staff to Mr. O'Brien, including all disclosure materials provided by Staff to Mr. O'Brien in the future; if Mr. O'Brien wishes to challenge the validity of the Previous Undertaking he is entitled to bring a motion before the Commission to do so.
4. If Mr. O'Brien wishes to use the disclosure materials provided by Staff to him for any purpose other than as provided in paragraph (1), he must make an application to the Commission under section 17 of the Act for an order of the Commission consenting to that use.

I also decided that the temporary cease trade order issued in this matter be extended to the conclusion of the hearing on the merits, subject to the right of Mr. O'Brien to bring an application for variation of that order if he wishes at any time to do so. A formal order confirming the extension of the temporary cease trade order will be issued by the Commission.

**DATED** at Toronto this 21<sup>st</sup> day of April, 2011.

*"James E.A. Turner"*

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James E.A. Turner