

IN THE SUPREME COURT OF BRITISH COLUMBIA**BETWEEN:****NISGA'A NATION****PETITIONER****AND:****NISGA'A PACIFIC VENTURES LIMITED PARTNERSHIP
and NISGA'A PACIFIC VENTURES LTD.****RESPONDENTS****NOTICE OF APPLICATION****Name of applicant:** Nisga'a Nation**To:** Nisga'a Pacific Ventures Limited Partnership ("NPVLP")**And To:** Nisga'a Pacific Ventures Ltd. (the "Company")

TAKE NOTICE that an application will be made by Nisga'a Nation (the "Nation") to the presiding judge in chambers at the courthouse at 800 Smithe Street, Vancouver, British Columbia on Friday, December 14, 2018, at 9:45 a.m. for the order set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. A sealing order in the form attached as Schedule "A" to this Notice of Application.

Part 2: FACTUAL BASIS

1. Pursuant to a Petition to the Court (the "Petition"), the Petitioner is seeking an order appointing a receiver in respect of the Respondents.
2. In support of the Petition, the Petitioner will file affidavits addressing the relationship between the parties and the need for the receiver. Additionally, the Petitioner proposes to file an affidavit with exhibits in support of the Petition, which contains confidential and commercially sensitive information about the Respondents and about other entities related to the Respondents that are not parties to the Petition.
3. In particular, Affidavit #2 of Terry Holt, made December 11, 2018, attaches as exhibits confidential reports related to the business and affairs of the Respondents and its related entities, including financial projections, and frank and candid analyses and recommendations to the Petitioner regarding the Respondents' business, assets and liabilities and how the Petitioner might deal with the Respondents and the related entities in relation to their wind-up or restructuring.

4. Mr. Holt's affidavit also includes internal interim financial statements for the Respondents which are not publicly available and which contain information regarding related entities the release of which risks serious harm to the Respondent's commercial interests, those of the related entities, and those of creditors and other stakeholders who potentially stand to benefit from the appointment of a receiver over the Respondents.

Part 3: LEGAL BASIS

1. The court has the inherent jurisdiction to make an order sealing a pleading or affidavit.

Orr v. Sojitz Tungsten Resources Inc., 2009 BCSC 1635, para. 12

2. The principles as to when public access to a court file may be restricted are set out in *Sahlin v. Nature Trust of British Columbia, Inc.*, 2010 BCCA 516, citing from the Supreme Court of Canada's decision in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41. The following two part-test applies:

- (i) Is the order necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (ii) Do the salutary effects of the sealing order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

3. This Application meets both prongs of the *Sierra Club* test. First, a sealing order is necessary to prevent serious risk not only to the Respondents' important commercial interests, but also to the interests of the broader business community in maintaining the confidentiality of sensitive information and professional business advice. Second, the salutary effects of the requested sealing order will clearly outweigh any minimal deleterious effects. Not only is there no objection from the Respondents, but the request will not have any material effect on the public's ability to understand the basis for the Petition, which will otherwise take place in an open and accessible court proceeding.

4. The *Sahlin* court examined the issue by asking whether a sealing order would "create a cloud of secrecy under which justice will wither." There can be no suggestion of a cloud of secrecy under which justice will wither in an order that maintains the confidentiality of private business information and advice while otherwise leaving the proceeding open to the public at large.

5. Such further and other grounds as counsel may advise and this Honourable Court deem just.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #2 of Terry Holt made December 11, 2018, which is to be sealed;
2. The pleadings and proceedings herein; and,
3. Such further and other material as counsel may advise and this Honourable Court deems just.

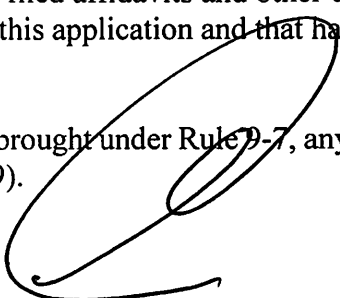
The applicant estimates the application will take 20 minutes.

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).

Dated: December 13, 2018



Signature of Gregory Gehlen,
Lawyer for the Applicant,
Nisga'a Nation

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:

Dated: _____
Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

APPENDIX

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

3. Items to be sealed

Document Name:	Date Filed:	Number of copies filed, including any extra copies for the judge.	Duration of Sealing Order: (to specific date or until further order)	Sought	Granted	
					YES	NO
1) <u>Entire File</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) <u>Specific Documents</u>	Affidavit of Terry Holt #2 made December 11, 2018		Until further order of the court.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3) <u>Clerk's Notes</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) <u>Order</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. The approval by the Respondents as to the form of this order is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Gregory Gehlen
Lawyer for Nisga'a Nation

By the Court.

Registrar

Items to be Sealed – Specific Documents:

1. Affidavit #2 of Terry Holt, made December 11 2018.