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PRACTICE

Appeal from Prothonotary's order dismissing motion for protective order — Plaintiff in underlying action alleging defendant infringed Canadian Patent No. 2,486,935 — Parties beginning discovery process — Negotiating protective order to govern way in which sensitive, confidential information exchanged — Prothonotary holding that decision to issue protective order matter of discretion, to be viewed in particular circumstances of each case — Finding, *inter alia*, that defendant not meeting its burden to demonstrate need for order, order not offering any great advantage above protections offered by implied undertaking rule — Observing that orders interchangeably referred to as “protective” or “confidentiality” orders containing provisions allowing parties to file materials under seal, that those orders “hybrid” versions of what is understood today by terms “protective order”, “confidentiality order” — Reasoning that test for issuance of such orders is test to be applied for confidentiality orders alone — Noting that old test in *AB Hassle et al v. Canada (Minister of National Health and Welfare) et al* (1998), 161 F.T.R. 15 (*AB Hassle*), *Apotex Inc. v. Wellcome Foundation Ltd.* (1993), 69 F.T.R. 161 displaced by *Federal Courts Rules*, SOR/98-106, r. 151, *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522 (*Sierra Club*) — Whether Prothonotary erring in law by applying incorrect legal test in dismissing protective order — Prothonotary not explaining why test in *Sierra Club* having to be understood to exclusively apply to filing of materials with Court under seal — Nothing in text of *Sierra Club* supporting distinction offered by Prothonotary — Clear that *AB Hassle* order containing provisions relating to exchange of confidential information between parties — Characterizing that order as “hybrid” not justifying departure from existing test — Rationale behind *Sierra Club* test protection of sensitive information — Prothonotary's attempt to read *Sierra Club* as exclusive to confidentiality orders exercise in splitting hairs — Both criteria in *Sierra Club* test met herein — Protective order issued — While Prothonotary's examination of evolution of implied undertaking rule, protective orders, their application in modern context not without merit, not appropriate for fundamental shift in longstanding practice to arise from case law of this Court — That is legislature's role — Appeal allowed.

SEEDLINGS LIFE SCIENCE VENTURES, LLC V. PFIZER CANADA INC. (T-608-17, 2018 FC 956, Ahmed J., reasons for order dated September 27, 2018, 16 pp.)