

## PRACTICE

### PROTECTIVE ORDERS

Motion seeking issuance of protective order — Parties negotiating between themselves exact terms, content of proposed order — Detailing therein how designated documents marked as confidential, exchanged, disclosed — Proposed order not confidentiality order as contemplated in *Federal Courts Rules*, SOR-98/106, rr. 151, 152 — Parties not making formal motion or explaining why Court should issue order as proposed — Arguing, *inter alia*, that provisions merely private contractual agreement between them unless incorporated in Court order — Provisions of proposed order including restriction to number of people to who designated information may be disclosed, obligation to give prior notice of intention to file that designated information — Issue whether necessary for Court to issue protective orders drafted, agreed to by parties where no genuine dispute present as to their scope, no special circumstances justifying Court's involvement — No merit to parties' arguments — Court obliging such requests in the past but not without inconvenience to itself, cost to public purse — Not blindly rubber-stamping protective orders — Judicial, registry staff time required to vet, process proposed confidentiality orders — Common law doctrine of implied undertaking rule recognized, entrenched in Court's practice — Rule premised on necessity to preserve litigants' privacy rights in face of compulsory discovery, balancing parties' privacy rights against promotion of full discovery — Implied undertaking rule arising, operating to bind parties, counsel, third parties — Separate agreement not needed — Undertakings strictly related to procedural aspects of litigation, aiming to assist in regulating Court's process, are of the same kind as the implied undertaking rule — They do not need to be expressly acknowledged by the Court in order to be amenable to enforcement — Alternatively, such protective orders expanding on implied undertaking rule ought not be issued on demand — Parties' concerns that Federal Court lacking jurisdiction to regulate or provide relief in case of breach of parties' private confidentiality undertakings unless enshrined in a prior order unfounded — Court having required jurisdiction to acknowledge parties' prior undertakings, make remedial orders to ensure future compliance — No useful purpose to be served in incorporating in order parties' self-imposed limits on number of persons allowed access to designated discovery information — Not necessary to incorporate in Court order provision requiring advance notice of intention to file designated information for it to be effective — Motion dismissed.

LIVE FACE ON WEB, LLC V. SOLDAN FENCE AND METAL (2009) LTD.) (T-2064-16, 2017 FC 858 Tabib P., order dated September 25, 2017, 18 pp.)