

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, C. s5, AS AMENDED**

**AND IN THE MATTER OF AN ORDER ISSUED UNDER SUBSECTION 11(1)(A) OF
THE *SECURITIES ACT*, R.S.O. 1990, C. S.5, DATED SEPTEMBER 11, 2020**

**AND IN THE MATTER OF A SUMMONS ISSUED PURSUANT TO SECTION 13 OF
THE *SECURITIES ACT*, R.S.O. 1990, C. S.5, DATED SEPTEMBER 28, 2020**

NOTICE OF APPLICATION OF DAVID SHARPE

The Applicant, David Sharpe (“**Sharpe**”), a respondent in the above matter, will make an Application to the Ontario Securities Commission (the “**OSC**” or “**Commission**”) on a date to be set by the Commission.

THE APPLICATION IS FOR:

- (a) a declaration that Enforcement staff of the OSC (“**Staff**”) violated sections 16 and 17 of the *Securities Act* (the “**Act**”) ¹ by disclosing, and facilitating the unlimited public dissemination of, compelled testimony, documents and information that Staff obtained from the respondents in the within proceeding pursuant to s. 13 of the Act (the “**Compelled Evidence**”) during Staff’s ongoing investigation;
- (b) a declaration that Staff’s breach of the confidentiality provisions of the Act constituted an abuse of process;
- (c) an Order quashing the Order authorizing Staff’s investigation;
- (d) a declaration that none of the Compelled Evidence disclosed by Staff to date, or any evidence obtained as a result of Staff’s disclosure of the Compelled Evidence be used in any future proceeding before the Commission or in any other forum;

¹ R.S.O. 1990, c. S.5

- (e) an Order directing Staff to request that the Court remove, or in the alternative seal, the Compelled Evidence included in the Court file in the matter of the receivership of Bridging Finance Inc. and related entities (collectively, “**Bridging Finance**”), Court File No. CV-21-00661458-00CL (the “**Receivership**”);
- (f) an Order directing Staff to request PricewaterhouseCoopers Inc. (“**PwC**” or the “**Receiver**”) to remove the Compelled Evidence from its website and to instruct all persons to whom the Compelled Evidence was disseminated by the Receiver to immediately destroy and to refrain from referring to or relying on the Compelled Evidence;
- (g) an Order that Staff’s Application Record on the application to extend a temporary order under subsections 127(8) and 127(1) of the Act, OSC File No. 2021-15 (the “**CTO Application Record**”) be marked confidential and not available to the public; and
- (h) such further relief as counsel may advise and the Commission may permit.

THE GROUNDS FOR THIS APPLICATION ARE:

1. Pursuant to a summons issued under s. 13 of the Act, Sharpe was compelled to attend an investigative interview by Staff. Staff advised Sharpe in the cover letter accompanying the summons that “*there is a high degree of confidentiality associated with this matter*” and specifically directed Sharpe to the full text of section 16 – the confidentiality provision – of the Act.
2. Section 16(1) of the Act states:

Except in accordance with subsection (1.1) or section 17, no person or company shall disclose at any time,

 - (a) the nature or content of an order under section 11 or 12; or

(b) **the name of any person examined or sought to be examined** under section 13, **any testimony given under section 13**, any information obtained under section 13, **the nature or content of any questions asked under section 13**, **the nature or content of any demands for the production of any document or other thing under section 13**, or the fact that any document or other thing was produced under section 13. [emphasis added]

(1.1) A disclosure by a person or company is permitted if,

(a) the disclosure is to the person's or company's counsel; or

(b) the disclosure is to the person's or company's insurer or insurance broker ...

3. Sharpe's compelled interview was conducted over the course of three days: October 23, 2020, October 27, 2020 and April 29, 2021.

4. Pursuant to section 13 of the Act, Sharpe was required to, and did, answer all questions put to him by Staff (with privileged matters being the only exception). However, he had corresponding expectations of privacy, confidentiality and use protections with respect to his Compelled Evidence.

5. Sharpe took the use and derivative use protections against self-incrimination available to him under Canadian and Ontario law, including section 9 of the Ontario *Evidence Act*, with respect to all questions asked and answers given.

6. Sharpe's interview with Staff concluded on April 29, 2021, at 4:13 pm.

7. On April 30, 2021, Staff filed at the Superior Court of Justice, Commercial List, a notice of application and application record (the "**Application Record**") in support of an *ex parte* application for an Order under s. 129 of the Act appointing PwC as receiver over all of the assets, undertakings and properties of Bridging Finance (the "**Receivership Application**").

8. The Application Record contained the Affidavit of Daniel Tourangeau, Senior Forensic Accountant at the Enforcement Branch of the OSC, sworn on April 29, 2021. Attached as exhibits to the affidavit were excerpts from the transcript of Sharpe's compelled interview held on October 23, 2020. Later in the day on April 30, 2021, Staff filed with the Court the First Supplemental Affidavit of Daniel Tourangeau sworn on April 30, 2021 (the "**Supplemental Tourangeau Affidavit**"). Attached as an exhibit to the affidavit was the **entire rough draft** of the transcript of Sharpe's compelled interview held the day before (the "**April 29 Transcript**") as well as additional Compelled Evidence.

9. Staff did not obtain an Order from the Commission under s. 17 of the Act authorizing it to disclose any of the Compelled Evidence.

10. Staff did not put Sharpe on notice that his Compelled Evidence would be disclosed in court proceedings and posted on the Receiver's website or give him any opportunity to oppose the proposed disclosure.

11. The *ex parte* Receivership Application was heard by The Honourable Hainey J. at 3:30 pm on Friday, April 30, 2021, via Zoom. Hainey J. granted the requested order appointing the Receiver that evening.

12. Concurrently, the Receiver posted on its website Staff's Application Record, as well as the Supplemental Tourangeau Affidavit, which appended the *entire* April 29 Transcript and other Compelled Evidence, as set out above. These materials were also emailed to the extensive service list connected to the Receivership.

13. On May 1, 2021, the OSC issued a news release announcing the appointment of the Receiver. The news release contained a hyperlink to the Receiver's website and therefore, the Compelled Evidence.

14. On May 3, 2021, the Globe and Mail published an article titled "Inside the interrogation of Bridging's CEO before receivership", which commented on and quoted extensively from Sharpe's April 29 Transcript and other Compelled Evidence (the "**Globe and Mail Article**"). The article is highly prejudicial to Sharpe.

15. The prolific subsequent media reporting with respect to this matter has consistently included direct references to the contents of the April 29 Transcript and other Compelled Evidence, presented in a manner that is both pejorative and irreparably prejudicial to Sharpe.

16. On May 7, 2021, Staff filed with the Commission an application to extend a temporary cease-trade order, issued on April 30, 2021, with respect to Bridging Finance. In support of their application, Staff filed the CTO Application Record in seven volumes, containing the entire Application Record and the Supplemental Tourangeau Affidavit. Staff did not seek a confidentiality Order from the Commission with respect to the Compelled Evidence contained in the CTO Application Record prior to filing it in the public record.

17. Through the above actions, OSC Staff, without statutory authority and in breach of the Act:

- (a) bypassed the supervisory jurisdiction of the Commission with respect to the disclosure of the Compelled Evidence, including the ability of the Commission to order disclosure in the appropriate circumstances but subject to terms and conditions;
- (b) ignored the right of a compelled witness to notice of and the ability to object to any proposed disclosure of their testimony; and

- (c) eviscerated the confidentiality and use protections contained in ss. 17(1)(3) and 17(7) of the Act.
18. The improper disclosure and publication of the Compelled Evidence has:
- (a) caused irreparable prejudice to Sharpe, his reputation, his privacy interests, his expectation of confidentiality and his ability to defend any future proceedings, whether before the OSC or in any other forum;
 - (b) fatally undermined the integrity of Staff's investigation;
 - (c) potentially prejudiced the interests of investors by exacerbating negative media attention to Bridging Finance and its borrowers; and
 - (d) undermined public confidence in the integrity of the OSC's investigative process.
19. The harm is ongoing as the Compelled Evidence continues to be publicly available.
20. The misuse of Staff's extensive investigation powers in the above manner amounts to an abuse of process.
21. Rules 1, 3, 12, 17, and 22(4) of the OSC Rules.
22. Sections 2.1, 11, 13,16, and 17 of the *Securities Act*, R.S.O. 1990, Ch. S.5.
23. Section 2(2) of the *Tribunal Adjudicative Records Act, 2019*, S.O. 2019, c. 7, Sch. 60.
24. Section 25.0.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.
25. Such further and other grounds as the lawyers may advise and the Commission may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Application:

- (a) the affidavit of Mary DeCaire, to be sworn; and

- (b) such further and other evidence as the lawyers may advise.

July 7, 2021

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