

**IN THE MATTER OF *SECURITIES ACT*,
R.S.O. 1990, C. S5, AS AMENDED**

**AND IN THE MATTER OF BRIDGING FINANCE INC., DAVID SHARPE, BRIDGING
INCOME FUND LP, BRIDGING MID-MARKET DEBT FUND LP, BRIDGING
INCOME RSP FUND, BRIDGING MID-MARKET DEBT RSP FUND,
BRIDGING PRIVATE DEBT INSTITUTIONAL LP, BRIDGING REAL ESTATE
LENDING FUND LP, BRIDGING SMA 1 LP, BRIDGING INFRASTRUCTURE FUND
LP, AND BRIDGING INDIGENOUS IMPACT FUND**

File No. 2021-15

**MOTION
OF DAVID SHARPE**

(For an Order staying the Capital Markets Tribunal's Order dated July 5, 2022
Under sections 16.1 and 25.0.1 of *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22)

A. ORDER SOUGHT

The Moving Party, David Sharpe, requests, with notice, that the Capital Markets Tribunal (the "**Tribunal**") make the following order:

1. An Order temporarily staying the Order of the Tribunal dated July 5, 2022, which revoked the confidentiality Order dated December 20, 2021 and made the adjudicative records in the within proceeding public (the "**Confidentiality Order**").

B. GROUNDS

The grounds for the motion are:

1. On September 22, 2021, Mr. Sharpe filed a notice of motion in the within proceeding and a notice of application in OSC File No. 2021-26, seeking various remedies in connection with enforcement staff of the Commission ("**Staff**") publicly disclosing, by filing in the open court record, confidential compelled evidence given by Mr. Sharpe (the "**Compelled Evidence**") pursuant to a summons under s. 13 of the Ontario Securities

Act, R.S.O. 1990, c. S.5 (the "**Act**"). The Compelled Evidence was publicly disclosed by Staff in connection with an application to appoint a receiver over Bridging Finance Inc. and related entities, under Court File No. CV-21-00661458-00CL (the "**Receivership Application**").

2. Among other relief, Mr. Sharpe sought an order that the Commission's investigation order issued under s. 11 of the Act (the "**s. 11 Order**") be revoked and that compelled evidence contained in the Application Record of Staff filed in connection with the within proceeding in support of the application to extend a temporary cease-trade order (the "**TCTO Application Record**") be marked confidential and not be available to the public. The TCTO Application Record contains the entire record filed with the Court by Staff in connection with the Receivership Application.
3. Vice-Chair Moseley directed that Mr. Sharpe's motion and application be heard together and that before a full merits hearing, there would be a hearing at which two preliminary questions of law would be addressed, without reference to the record. The two questions of law were to be supplemented by a limited set of agreed facts.
4. The parties jointly submitted a Statement of Agreed Facts on November 19, 2021. The Statement of Agreed Facts contained limited information about the circumstances surrounding the disclosure and publication of the Compelled Evidence.
5. On March 30, 2022, the Commission issued the decision on the two questions of law, finding that the Commission, through its Staff, acted in breach of the Act when it publicly disclosed the Compelled Evidence without first obtaining an order under s. 17 of the Act and that Mr. Sharpe's reasonable privacy expectations were defeated by the public disclosure of the Compelled Evidence (the "**March Decision**").

6. The Commission declined to address Staff's unsubstantiated assertion that Mr. Sharpe had suffered no prejudice from the disclosure of his Compelled Evidence. The Commission noted that neither of the two questions of law contemplated that parties could tender evidence about any alleged harm or prejudice.
7. At the end of the decision, the Commission directed the parties to make submissions no longer than five pages in length with respect to Mr. Sharpe's request for a confidentiality order.
8. In his submissions dated April 14, 2022, Mr. Sharpe asked that the TCTO Application Record and the Factum filed by Staff in connection with the TCTO proceedings remain confidential or, in the alternative, if the materials should be made public, that all compelled evidence of Mr. Sharpe and other compelled witnesses, as well as references to that compelled evidence, be redacted. Mr. Sharpe's submissions were accompanied by a detailed schedule of requested redactions and the copy of the records at issue with proposed redactions.
9. On July 5, 2022, the Tribunal issued a decision refusing Mr. Sharpe's confidentiality request on the basis, *inter alia*, that it was not obvious that Mr. Sharpe would suffer prejudice if the TCTO Application Record were to be made publicly available.
10. Mr. Sharpe intends to seek judicial review of the Confidentiality Order on the basis that, among other things, (a) the Tribunal erred in its approach to the disclosure of compelled evidence under s.17(6) in circumstances in which Staff seek a temporary order; (b) the Confidentiality Order is inconsistent with, and fundamentally undermines, the Commission's March Decision; and (c) the Confidentiality Order may foreclose a

potential remedy to Mr. Sharpe for Staff's prior breach of s.16 of the Act and therefore cause him further prejudice.

11. If a temporary stay is not granted, Mr. Sharpe's judicial review application will, in effect, be rendered moot.
12. The balance of convenience favours the granting of a temporary stay.
13. Accordingly, Mr. Sharpe requests that the Tribunal stay the Confidentiality Order temporarily, until such time as the court renders the decision on Mr. Sharpe's application for judicial review.
14. The Tribunal has authority to temporarily stay its orders pursuant to sections 16.1 and 25.0.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

DATED this 15th day of July, 2022.

CRAWLEY MACKEWN BRUSH LLP

Barristers & Solicitors
Suite 800, 179 John Street
Toronto ON M5T 1X4

Alistair Crawley (LSO# 38726D)

acrawley@cmlaw.ca

Tel: 416.217.0806

Melissa MacKewn (LSO# 39166E)

mmackewn@cmlaw.ca

Tel: 416.217.0840

Alexandra Grishanova (LSO# 73215N)

agrishanova@cmlaw.ca

Tel: 416.217.0859

Tel: 416.217.0806

GREENSPAN HUMPHREY WEINSTEIN LLP

15 Bedford Road
Toronto, ON M5R 2J7

Brian H. Greenspan (LSO# 14268J)

bgreenspan@15bedford.com

Tel: 416.868.1755 x 4222

Naomi M. Lutes (LSO# 60192Q)

nlutes@15bedford.com

Tel: 416.868.1755 x 4226

Lawyers for the moving party

TO: ONTARIO SECURITIES COMMISSION

20 Queen St. W., 22nd Floor
Toronto, ON M5H 3S8

Mark Bailey (LSO# 38096I)

mbailey@osc.gov.on.ca

Tel: 416.593.8254

Adam Gotfried (LSO# 67044K)

agotfried@osc.gov.on.ca

Tel: 416.263.7680

Tel: 416.593.8314

Staff of the Commission

AND TO: THORNTON GROUT FINNIGAN LLP

TD West Tower, Toronto-Dominion Centre
3200-100 Wellington Street West
Toronto, ON M5K 1K7

John L. Finnigan (LSO# 24040L)

jfinnigan@tgf.ca

Tel: 416.304.0558

Tel: 416.304.1616

Lawyers for the Receiver

AND TO: ROSS NASSERI LLP
300 - 123 John Street
Toronto, ON M5V 2E2

Erin Pleet (LSO# 24040L)
eplet@rossnasseri.com
Tel: 416.572-4903 ext. 109

Tel: 416.572.4910

Lawyers for the Receiver