

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

**AND IN THE MATTER OF BRIDGING FINANCE INC., DAVID SHARPE,
NATASHA SHARPE AND ANDREW MUSHORE**

File No. 2022-09

**MOTION
OF DAVID SHARPE**

For an Order for Disclosure under Rules 27 and 28 of the Tribunal’s Rules of Procedure

A. ORDER SOUGHT

The applicant, David Sharpe, requests, with notice, that the Tribunal make the following order(s):

- (a) An Order directing Staff to disclose the requested materials and information to the David Sharpe; and,
- (b) such further relief as counsel may advise and the Tribunal may permit.

B. GROUNDS

1. David Sharpe was the Chief Executive Officer and ultimate designated person of Bridging Finance Inc. (“BFI”), an alternative financing business that provided financing to middle-market companies through various funds that it manages. On September 11, 2020, the Commission issued an order under section 11 of the OSA authorizing Staff to investigate BFI (the “Investigation Order”).

2. Mr. Sharpe is currently the subject of ongoing proceedings before the Capital Markets Tribunal including an outstanding motion for a stay of proceedings to be scheduled. That motion

relates to the unlawful use by Staff of Mr. Sharpe's compelled testimony.

3. Disclosure is sought both in relation to that motion and more generally.

Background to the Stay Motion

4. On September 28, 2020, Staff summonsed Mr. Sharpe under section 13 of the *OSA*, and required Mr. Sharpe to attend an examination by Staff in connection with the Investigation Order. In response to the Summons, Mr. Sharpe gave compelled testimony at Staff's examination which took place over three days: October 23, 2020, October 27, 2020, and April 29, 2021 (the "Compelled Testimony"). As required by section 13 of the *OSA*, Mr. Sharpe answered all questions put to him by Staff, with the exception of privilege claims.

5. The day after Mr. Sharpe's final compelled examination, the OSC brought an *ex parte* application at the Superior Court of Justice seeking a receivership order pursuant to which PricewaterhouseCoopers (the "Receiver") would be appointed receiver and manager over all of the assets, undertakings, and properties of BFI and associated entities (the "Receivership Application"). Mr. Sharpe is not a party to the receivership.

6. In support of its *ex parte* Receivership Application, the OSC, through Staff, publicly filed an application record which contained the April 29, 2021 Affidavit of Daniel Tourangeau which attached excerpts from Mr. Sharpe's Compelled Testimony and excerpts of six other individuals' compelled interviews. Later the same day, the Commission, through Staff, filed the First Supplemental Affidavit of Daniel Tourangeau. This affidavit appended an entire draft transcript of Mr. Sharpe's compelled interview held the day before and the compelled evidence of other witnesses interviewed by Staff.

7. Staff had not sought an order from the Commission authorizing disclosure of compelled evidence as required by s. 17 of the *OSA* or provided notice to Mr. Sharpe prior to the public disclosure of his Compelled Testimony, as required by s. 17. Despite their obligation of full and frank disclosure, Staff did not bring it to the court's attention that their application materials for the Receivership Application contained confidential compelled evidence. The *ex parte* Receivership Application was heard and granted April 30, 2021.

8. On May 1, 2021, the Receiver posted the Receivership Application Record and the Supplemental Tourangeau Affidavit on its website. The website post included the entire April 29 Sharpe Transcript.

The Materials Sought

9. By letter dated October 28, 2022, Mr. Sharpe, through counsel, requested that the following items be disclosed by Staff:

- (i) All communications between enforcement staff of the Commission ("Staff") and the receiver of Bridging Finance Inc. and related entities (the "Receiver") and/or counsel for the Receiver, particularly any communications or correspondence relating to the compelled evidence of David Sharpe and other witnesses interviewed by Staff in connection with this proceeding and publicly disclosed in connection with the application to appoint the Receiver and the ongoing receivership;
- (ii) Any and all staff investigation notes or memoranda not yet produced and disclosed in this enforcement proceeding, including those related to the application to appoint the Receiver, the ongoing receivership, and the application for a cease-trade order, Commission File No. 2021-15 (the "TCTO"), including handwritten notes. If any staff notes or related documents have or are being withheld, please provide the justification and/or any related assertion of privilege

- (iii) The list of any records or documents over which Staff claim privilege in this enforcement proceeding
- (iv) Any internal OSC communications, including those with the Director of the Enforcement Branch, the Executive Director of the Commission, the Chair of the Commission, the Chief Administrative Officer of the Commission and any commissioners/tribunal members, as well as communications with any other regulators, with respect to the appointment of the Receiver, including the selection of the receiver; the ongoing receivership; and the TCTO application. If any records have or are proposed to be withheld, please provide the basis for this
- (v) Any communications between the OSC and the individuals on Staff's witness lists to date
- (vi) Any communications or Staff's discussions concerning the Commission's position on the Tribunal's decision of March 30, 2022, OSC File Nos. 2021-26 and 2021-15, following the release of that decision
- (vii) Any communications or correspondence between Staff and the *Globe and Mail* in connection with this enforcement proceeding, the preceding investigation by Staff, the application to appoint the Receiver, and the TCTO application

10. Staff responded on November 11, 2022, taking the position that the request was too broad and/or unclear. Counsel for Mr. Sharpe responded by letter dated November 22, 2022 clarifying certain categories of information requested.

11. In addition to the foregoing items which have already been requested, Mr. Sharpe seeks disclosure of all communications between Staff and law enforcement in relation to any ongoing or potential criminal investigations.

Materials are not clearly Irrelevant

12. Rule 27 of the Tribunal's Rules of Procedure require Staff to disclose copies of all non-

privileged documents in its possession that are relevant to an allegation. Relevance means relevance in the *Stinchcombe* sense, and includes not only material which Staff may rely upon, but material which could assist in advancing a defence or making tactical decisions: *Deloitte & Touche LLP v. Ontario (Securities Commission)*, 2002 CanLII 44980 (Ont. C.A.).

13. Disclosure should also be made of information which is relevant to issues which might be properly raised: *BDO Canada LLP (Re)*, 2019 ONSEC 21.

14. A live issue already before the Tribunal is the alleged abuse of process arising from the improper and unlawful disclosure of Mr. Sharpe's compelled testimony. Information which is relevant to Mr. Sharpe's abuse of process motion is relevant to the proceeding, in that it advances a serious issue being raised by Mr. Sharpe. As well, some of the categories of information sought could relate more generally to tactical decisions and defences to be advanced.

15. Disclosure of the information sought is necessary to meet Staff's disclosure obligations.

C. EVIDENCE

The moving party intends to rely on the following evidence for the motion:

1. Affidavit of Michelle Agoston, sworn November 23, 2022; and
2. Such further and other evidence as counsel may advise.

DATED this 24th day of November, 2022.

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