

**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.

**APPLICATION
OF DAVID AND NATASHA SHARPE**

(For Variation of a Decision under s. 144.1 of the Ontario *Securities Act*, R.S.O. 1990, c S.5)

A. ORDER SOUGHT

The applicants, David and Natasha Sharpe (the “Sharpes”), request, with notice, that the Tribunal make the following orders:

- (a) an Order varying the Tribunal’s Order dismissing the Sharpes’ Disclosure Motions (as defined below) dated January 30, 2023, with reasons for decision dated February 21, 2023;
- (b) an Order that the submissions on this application be made orally at the commencement of the hearing of the motions to stay the Tribunal’s proceedings under Tribunal file no. 2022-9, returnable May 23, 2023, or at such other time as the Tribunal orders;
- (c) abridging the time for service and filing of this application; and
- (d) such further relief as counsel may advise and the Tribunal may permit.

B. GROUNDS

1. On October 21, 2022, David Sharpe brought a motion for a stay of the Tribunal’s proceedings *In the Matter of Bridging Finance Inc., David Sharpe, Natasha Sharpe and Andrew Mushore*, Tribunal file no. 2022-9 (the “Enforcement Proceedings”), against him on the basis that the Ontario Securities Commission (the “Commission”), acting through enforcement staff (“Staff”), engaged in abuse of process by publicly disseminating confidential compelled evidence of Mr. Sharpe, Natasha Sharpe and others, in breach of the Ontario *Securities Act*. Ms. Sharpe

brought a motion to stay the proceedings against her on the same basis on November 24, 2022 (collectively, the “Stay Motions”).

2. On November 24, 2022, Mr. Sharpe brought a motion for disclosure of Staff records relevant to Mr. Sharpe’s Stay Motion (the “Staff Records”). Ms. Sharpe brought a similar motion for disclosure on December 2, 2022 (collectively, the “Disclosure Motions”).

3. On January 30, 2023, the Tribunal issued an Order, followed by reasons dated February 21, 2023, dismissing the Sharpes’ Disclosure Motions (the “Disclosure Decision”). The Tribunal found that the Stay Motions did not meet a tenable case threshold required to obtain disclosure of Staff Records. In dismissing the Sharpes’ motions, the Tribunal relied on a “reasonable prospect of success” threshold established in criminal caselaw related to summary dismissal of stay motions.

4. On April 28, 2023, the Supreme Court released a decision, *R. v. Haevischer*, 2023 SCC 11, in which the court found that the “reasonable prospect of success” is an inappropriately high threshold and that in order to be permitted to proceed with an application for stay for abuse of process and obtain the necessary disclosure, a party must only establish that the application is not “manifestly frivolous”.

5. On May 15, 2023, the Tribunal issued an Order, followed by reasons for decision dated May 16, 2023, dismissing the Sharpes’ motion to summon witnesses at the Stay Motions as an impermissible attempt to re-litigate issues that were decided in the Disclosure Decision.

6. The Sharpes’ Application for judicial review of the Disclosure Decision was quashed by the Divisional Court on May 16, 2023 as premature. One of the primary reasons for the court’s

decision was the availability of an application to vary the Disclosure Decision under s. 144.1 of the *Securities Act* in light of the *R. v. Haevischer* decision, which was a route suggested by Staff at the hearing of the motion to quash the judicial review on May 15, 2023. The parties became aware of the Court's decision on May 18, 2023.

7. The change in the law makes it desirable that the Tribunal reconsider and vary the Disclosure Decision so that, should a threshold test be applied on the issue of disclosure, the appropriate test is used - the "manifestly frivolous" standard.

8. Based on the new legal threshold and the principles enunciated in *R. v. Haevischer*, the Sharpes ought to be provided disclosure of the requested Staff Records for the purposes of arguing the Stay Motions on the appropriate evidentiary record.

9. The requested variation of the Disclosure Decision will not be prejudicial to the public interest and will, in fact, ensure that the Tribunal's adjudication of this matter is consistent with the clear directive of the highest court in the country.

10. Rules 1, 3, and 15 of the Tribunal's Rules of Procedure and Forms.

11. Sections 2.1 and 144 of the *Securities Act*, R.S.O. 1990, Ch. S.5.

12. Such further and other grounds as the lawyers may advise and the Commission may permit.

C. EVIDENCE

The applicant intends to rely on the following evidence for the application:

- (a) the motion record and written submissions of the moving and responding parties on the Disclosure Motion;

(b) the motion record and written submissions of the moving and responding parties on the Stay Motion; and

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

DATED this 19th day of May, 2023.

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