

**IN THE MATTER OF A CONFIDENTIAL INVESTIGATION INTO CERTAIN
FOREIGN CORPORATIONS (THE “FOREIGN CORPORATIONS”)**

CONFIDENTIAL APPLICATION OF THE FOREIGN CORPORATIONS

For an Order pursuant to ss. 17(1) and 17(4) of the *Securities Act* and Confidentiality Orders pursuant to Rule 22 of the Capital Markets Tribunal Rules of Procedure and Forms, s. 2(2) of *Tribunal Adjudicative Records Act, 2019*, S.O. 2019, c. 7, Sch. 60 and s. 9(1)(b) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22

Under Section 17(1) and 17(4) of the *Securities Act*, R.S.O. 1990, c. S.5, Rules 17(1) and 22 of the Capital Markets Tribunal Rules of Procedure and Forms.

**NOTICE OF MOTION OF STAFF OF THE ONTARIO SECURITIES COMMISSION
(For an order quashing the application)**

A. ORDER SOUGHT

1. The Moving Party, Staff of the Ontario Securities Commission, requests that the Tribunal make the following order(s):

- (a) An order quashing this Application; and
- (b) Such further relief as this counsel may advise and this Tribunal may permit.

B. GROUNDS

2. The grounds for this motion are:

- (a) **The Tribunal does not have authority to grant the relief sought by the Applicants**

3. Section 17(1) gives the Tribunal the power to “make an order authorizing the disclosure to any person or company” of certain matters. This power may only be exercised where a person is seeking authorization to disclose. The Tribunal has recognized this fact in its *Rules of Procedure and Forms*, which describe (at Rule 12) an application under s. 17 as “a request for an order under s. 17 of the Act authorizing disclosure of information about an investigation or examination” [emphasis added];

4. The primary relief the Applicants seek in this Application is:

Orders pursuant to ss. 17(1) and 17(4) of the *Securities Act*, R.S.O. 1990, c. S. 5 (the “*Act*”) addressing whether, and if so, under what terms and conditions certain confidential information protected by s. 16(1) of the *Act* (the “**Confidential Information**”) may be disclosed (including being filed with the Court) in connection with an application to the Ontario Superior Court of Justice [(the “**Court**”)] by Enforcement Staff of the Ontario Securities Commission (“**Staff**”) to have the [Applicants] found in contempt (the “**Contempt Application**”);

5. The Application is not a request for an order authorizing disclosure by the Applicants;

6. Rather, the Application is a request for declaratory relief and an order restraining disclosure by Staff;

7. The Tribunal does not have the authority to grant such relief;

8. The Court has exclusive jurisdiction over the Contempt Application and has the authority to determine the central issue raised in this Application, namely, whether the Commission is

required to obtain an order from the Tribunal under s.17(1) in order to disclose the Confidential Information in the Contempt Application;

- (b) **In any event, the Contempt Application is a proceeding under the Act, and therefore no order under s. 17(1) is required**

9. Section 17(6) provides, in relevant part, that:

A person appointed to make an investigation or examination under this Act may disclose or produce anything mentioned in subsection (1), but may do so only in connection with,

- (a) a proceeding commenced or proposed to be commenced under this Act;

10. The Contempt Application is a proceeding seeking to hold the Applicants liable for contempt for refusal to comply with a summons under s. 13 of the Act. The Court only has authority to grant that relief because s. 13 of the Act gives it that authority. The Contempt Application is therefore a proceeding commenced under s. 13 of the Act;

11. Staff is therefore authorized to commence the Contempt Application by s. 17(6) of the Act, without an order under s. 17(1) of the Act;

12. The Applicants' Application before this Tribunal for an order under s. 17(1) is therefore moot;

13. Section 13(1) and 17(6) of the *Securities Act*, R.S.O. 1990, c. S.5.

14. Rule 12 and 28 of the *Capital Markets Tribunal Rules of Procedure and Forms*;

15. Such further and other grounds as counsel may advise and the Tribunal may permit.

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

(a) Such evidence as counsel may advise and this Tribunal may permit.

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