Capital Markets Tribunal | Tribunal des marchés financiers | 22nd Floor 20 Queen Street West Toronto ON M5H 3S8 | 22e étage 20, rue Queen ouest Toronto ON M5H 3S8

Citation: *Lehri (Re)*, 2023 ONCMT 47
Date: 2023-12-01
File Nos. 2023-17, 2023-18 and 2023-19

IN THE MATTER OF
ZAHIR HUSSAIN LEHRI

AND

IN THE MATTER OF
MUHAMAD ASHGAR SADIQ

REASONS FOR DECISION

(Section 17 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	M. Cecilia Williams (chair of the panel) Geoffrey D. Creighton Russell Juriansz	
Hearing:	By videoconference, October 16, 2023	
Appearances:	Alan Melamud Shelly Feld	For Staff of the Canadian Investment Regulatory Organization
	Erin Hoult Sean Grouhi	For Staff of the Ontario Securities Commission

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REASONS FOR DECISION

1. OVERVIEW

[1] The Canadian Investment Regulatory Organization (**CIRO**) brought three related confidential applications for authorization, under s. 17 of the *Securities Act*[1] (***Act***), to disclose information it received pursuant to s. 11 investigation orders. It intends to disclose the information during CIRO proceedings against a person over whom it has regulatory jurisdiction.

[2] The applications were framed as requests for relief, if necessary. CIRO did not want to run afoul of the confidentiality provisions in s. 16 of the *Act*. It submitted that no s. 17 order is required by CIRO in these circumstances, but if s. 17 relief is required, the applications should be granted.

[3] Staff of the Ontario Securities Commission (**OSC Staff**) supported CIRO's position. OSC Staff submitted that no s. 17 order is required to permit CIRO's proposed use of the subject information in its own proceeding.

[4] The hearing of the applications proceeded confidentially under s. 17(2.1) of the *Act*, without notice to the two individuals named in the applications. The two individuals therefore did not have the opportunity to make submissions or otherwise participate in the hearing.

[5] For the reasons below, we concluded orally at the hearing that the applications were dismissed, because CIRO is not required, in these circumstances, to obtain an authorization under s. 17 to disclose the information in issue.

[6] These reasons, and the application materials, previously marked as confidential by the Tribunal, are public, at the request of CIRO and OSC Staff.

2. FACTS

[7] CIRO, a recognized self-regulatory organization (**SRO**), is the successor to the former Mutual Fund Dealers Association of Canada (**MFDA**) and the Investment Industry Regulatory Organization of Canada (**IIROC**). On January 1, 2023, the

[1] RSO 1990, c S.5

MFDA and IIROC were consolidated into a new SRO, subsequently named CIRO. Under the recognition order for CIRO, for practical purposes on these applications, all references to the MFDA prior to consolidation became references to CIRO.

[8] In 2019, the MFDA commenced investigations concerning Muhamad Ashgar Sadiq, and then Zahir Hussain Lehri, each of whom was a registrant, and under the MFDA rules, an "Approved Person". With respect to Lehri, the MFDA was investigating whether he had facilitated so-called 'stealth advising' by Sadiq and had failed to satisfy his know-your-client obligations.

[9] MFDA investigators (like CIRO's now) had the power to compel present and former MFDA Approved Persons to attend interviews and to produce information relevant to MFDA investigations. They did not have the power to compel information directly from financial institutions other than mutual fund dealers. Eventually, MFDA investigators determined they wished to review banking records relating to Sadiq, and later to Lehri. By the time MFDA investigators made those determinations, neither Sadiq nor Lehri was reachable or cooperating with the MFDA's investigation.

[10] As a result, the MFDA sought the assistance of the Commission to obtain banking records relating to Sadiq and Lehri. On December 18, 2019, and June 22, 2021, the Commission issued investigation orders under s. 11(1)(a) of the *Act*, authorizing investigations into possible violations of MFDA Rules by Sadiq and Lehri (the **Investigation Orders**). The June 22, 2021, investigation order in respect of Lehri made explicit reference to his interaction with Sadiq.

[11] Among other things, the Investigation Orders noted that "the MFDA has requested to be named hereto for the purpose of receiving information obtained pursuant to this order" and specified, pursuant to s. 16(2) of the *Act*, that "information obtained pursuant to this order is for the exclusive use of the MFDA and the Commission".

[12] Thereafter, banking records for accounts of Sadiq, Lehri, and a numbered company associated with Lehri (collectively, the **Documents**) were compelled from two banks by Commission investigators, and provided to the MFDA.

[13] Subsequently, the MFDA commenced proceedings against Sadiq. The MFDA could not locate Sadiq and the hearing proceeded without him. The MFDA hearing panel made findings of misconduct against Sadiq. The MFDA chose not to use any of the Documents in its proceeding against Sadiq.

[14] In October 2022, the MFDA commenced a proceeding against Lehri (the **CIRO Proceeding**), alleging contraventions of the MFDA rules. Following the issuance of its Notice of Hearing, the MFDA received correspondence from Lehri, and he has since been participating in the CIRO Proceeding.

[15] CIRO proposes to disclose the Documents to Lehri, and use them, in the course of the CIRO Proceeding. CIRO advised that it brought these applications "out of an abundance of caution, owing to uncertainty with respect to the application of section 16(2) of the *Act*". CIRO sought an order under s. 17 to permit it to use the Documents in the CIRO Proceeding, if necessary; but both CIRO and OSC Staff submitted that a s. 17 order was not required for that intended use.

[16] CIRO brought the applications pursuant to s. 17(2.1) of the *Act*, which allows the Tribunal to proceed without notice to those named in the applications if the Tribunal considers that it would be in the public interest to do so. The hearing proceeded with only CIRO and OSC Staff in attendance, and we heard all of the applications together given their significant overlap.

3. ISSUES

[17] The applications present two main issues for our consideration:

a. Does CIRO, having received the Documents pursuant to the Investigation Orders, require a s. 17 order to use them in the CIRO Proceeding, both to make required disclosure to Lehri, and to adduce them as evidence in its case against him? and

b. If CIRO does require a s. 17 order for these purposes, is it in the public interest for the Tribunal to grant it?

[18] For the reasons below, we concluded that CIRO does not require a s. 17 order in the circumstances. As a result, we do not need to consider issue (b).

4. ANALYSIS

4.1 The Statutory Provisions in Issue

[19] The Investigation Orders were issued under s. 11 of the *Act*, and the Documents were compelled under s. 13. Section 16 of the *Act* imposes broad confidentiality requirements on information obtained in an investigation. Those requirements are subject to exceptions in s. 16(1.1) (relating to insurers and of no relevance here), and s. 16(2). If the exceptions do not apply, a s. 17 order is required for disclosure.

[20] Subsection 16(2) provides that where an order has been issued under s. 11 or s. 12, the documents and information obtained under s. 13 "are for the exclusive use of the Commission or of such other regulator as the Commission may specify in the order, and shall not be disclosed to any other person or company or in any other proceeding except in accordance with subsection (1.1) or section 17."

[21] Section 17(1) states that if the Tribunal considers that it would be in the public interest, it may make an order authorizing disclosure of information otherwise protected by s. 16.

[22] We were asked to interpret s. 16(2) in the context of the Investigation Orders, the Documents obtained under them, and their proposed use in the CIRO Proceeding. Principles of statutory interpretation require us to read s. 16(2) in its entire context and in its grammatical and ordinary sense, harmoniously with the scheme of the *Act*, and the intention of the legislative body.[2]

[23] The "ordinary meaning" of a provision is "the natural meaning which appears when the provision is simply read through as a whole".[3] It is also an important principle of statutory interpretation that "all words in a statute must be given meaning".[4] This means, in interpreting legislative provisions, "we eschew

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[2] *R v Breault,* 2023 SCC 9 at paras 25-26

[3] *Canadian Pacific Air Lines Ltd v Canadian Air Line Pilots Association*, [1993] 3 SCR 724 at 735; *R v Walsh*, 2021 ONCA 43 at para 60

[4] *Winters v Legal Services Society*, [1999] 3 SCR 160 at para 48; *R v Katigbak*, 2011 SCC 48 at para 59

interpretations that render any portion of a statute meaningless, pointless, or redundant".[5]

[24] We bear these principles in mind as we determine the meaning of s. 16(2) in the circumstances of these applications.

4.2 The Meaning of s. 16(2) of the *Act*

[25] Subsection 16(2) confirms that a regulator – like CIRO – specifically named in a s. 11 order may receive and "use" information compelled under that order. Thus, CIRO may "use" the Documents. Uncertainty arises, the parties submit, because the limitations on that "use" are not stated clearly in the subsection, and there is scarce jurisprudence on the point.

[26] In *Mega-C Power Corporation (Re)*,[6] the Tribunal found that s. 16(2) presumes that compelled information can be produced or disclosed in proceedings before a regulator named in a s. 11 order, stating:

> subsection 16(2) makes it clear that information and material obtained pursuant to an Investigation Order are for the exclusive use of the Commission (or such other regulator identified in the Order). Further, **the words used in subsection 16(2)**, set out above, **presume that information obtained** pursuant to sections 11, 12 and 13 **can be produced or disclosed in the course of a Commission proceeding**, since there is a prohibition from disclosure of such information and material "in any other proceeding" "except as permitted by section 17". The reference to "any other proceeding" must be a reference to a proceeding other than the relevant Commission proceeding **and/or a proceeding of any other regulator named in the relevant order.** (emphasis added)

[27] In *Boock (Re)*,[7] in the context of a s. 11(1)(b) order that stated that the materials were "for the exclusive use" of a foreign regulator (in that case, the U.S. Securities and Exchange Commission), the Tribunal found that the phrase "for the exclusive use" was meant primarily to convey to the Commission's

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[5] *R v Ali,* 2019 ONCA 1006 at para 67

[6] 2007 ONSEC 11 (***Mega-C***) at para 28

[7] 2010 ONSEC 1 (***Boock***) at para 78

regulatory counterpart that the information could not be passed on to third parties such as criminal authorities.

[28] The case which apparently sowed some doubt concerning the use of the Documents in the CIRO Proceeding, and led to CIRO's filing of the confidential applications, is the Tribunal's decision in *Sharpe (Re)*.[8] That case involved a receivership application in the Superior Court of Justice. Without seeking a s. 17 order, the Commission filed compelled testimony obtained under s. 13 in the public court record, and published a news release including a link to the receiver's website, where the compelled testimony could be found. In those circumstances, the Tribunal found that "the Commission cannot publicly disclose compelled evidence (or any similarly protected material) in the context of an application to the Court to appoint a receiver, without first obtaining a s. 17 order".[9]

[29] The facts in *Sharpe* are clearly distinguishable from the present case, and the Tribunal's ruling as stated above is specific to its particular context. Much of the discussion in *Sharpe,* involving public disclosure of compelled testimony, is focused on the balancing between the legitimate interest of the regulator, and the privacy interests of compelled witnesses, and how that is reflected in legislation and jurisprudence. In its reasons, however, the Tribunal discussed the meaning of s. 16(2) and in particular commented that it could not make sense of the word "other" before "proceeding" in its closing phrase (given the lack of any antecedent reference to a "proceeding" in the subsection).

[30] Before us, OSC Staff conceded that s. 16(2) is not "a paragon of clarity", but proposed an interpretation which attempts to give each word meaning, and is consistent with the scheme of the *Act* and legislative intent, including that derived from legislative history.

[31] The interpretative quandary arises from the fact that s. 16(2) speaks of "any other" person or company and "any other" proceeding, without providing any

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[8] 2022 ONSEC 3 (***Sharpe***)

[9] *Sharpe* at paras 133-134

antecedent for those terms. What is the person, company, or proceeding from which these are the "other"?

[32] The word "other" is used to modify both "person or company" and "proceeding". OSC Staff submitted that s. 16(2) in this respect can be understood to mean that the Commission and any other regulator named in a s. 11 order shall not disclose any of the identified materials to:

a. any person or company; or

b. in any proceeding;

other than where the disclosure is for the Commission's or other regulator's own "use".

[33] We agree that this interpretation gives meaning to the word "other" as used in s. 16(2), and is consistent with the discussions in *Mega-C* and *Boock.* It is an interpretation that appears not to have been put forward in *Sharpe*, and we find it persuasive.

[34] CIRO and OSC Staff also submitted that unintended consequences could follow if it were determined that CIRO requires a s. 17 order in a situation of this nature. For example, CIRO has mandatory disclosure obligations to respondents in its proceedings. If it needs a s. 17 order to make disclosure, it subjects this obligation to a separate litigation process (namely, a s. 17 proceeding before the Tribunal) which renders CIRO's ability to fulfil its obligations uncertain. We find this submission to be persuasive, and it supports an interpretation of s. 16(2) which avoids such a result.

4.3 Permitted "Use" of the Documents

[35] Pursuant to s. 16(2) of the *Act*, CIRO (and the Commission) have exclusive "use" of the Documents. As interpreted above, s. 16(2) prevents CIRO from disclosing the Documents other than for its own "use". The term "use" is not defined in the *Act*. This lack of definition does not mean, however, that such uses are unbounded.

[36] OSC Staff submits that the proper uses of compelled materials are constrained by the regulator's mandate, powers and obligations. CIRO's submission, more

narrowly, is that it should be able to use compelled materials for matters with a rational connection to, or nexus with, the relevant investigation order.

[37] We are not required, for purposes of disposing of these applications, to determine the limits of permissible use of compelled information by CIRO or the Commission, and we decline to do so. The provisions of Part VI of the *Act*, which includes ss. 11 through 18, do not exist in a vacuum and must be interpreted in light of the particular circumstances of each case and the other legal principles, legislation and jurisprudence that may apply.

[38] In the three applications before us, CIRO sought to use the Documents in the CIRO Proceeding. In the first instance, CIRO sought to use them to make disclosure to Lehri, under its obligation to disclose all relevant documents to a respondent. It also sought to use them for the purpose of making its case in the CIRO Proceeding.

[39] The nexus, or rational connection, between the Investigation Orders and the CIRO Proceeding is clear. The investigation order of June 22, 2021, in respect of Lehri refers specifically to his interaction with Sadiq.

[40] We conclude that these are clearly permitted uses of the Documents by CIRO, and not disclosure which is prohibited by s. 16(2) of the *Act*.

5. CONCLUSION

[41] For these reasons, we concluded that these applications be dismissed. CIRO does not require a s. 17 order to disclose and use the Documents in the CIRO Proceeding.

[42] Given this finding, we do not find it necessary to consider the issue of whether it would be in the public interest to grant the s. 17 applications in the alternative.

[43] Finally, we will issue an order that the application materials, previously marked as confidential by the Tribunal, shall be made available to the public.

Dated at Toronto this 1st day of December, 2023

"M. Cecilia Williams"

M. Cecilia Williams

"Geoffrey D. Creighton"

Geoffrey D. Creighton

"Russell Juriansz"

Russell Juriansz