



Capital  
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Citation: *DEF Co v Ontario Securities Commission*, 2026 ONCMT 27

Date: 2026-06-05

File No. 2026-22

**BETWEEN:**

**DEF CO.**

**(Applicant)**

**- and -**

**ONTARIO SECURITIES COMMISSION**

**(Respondent)**

**REASONS FOR DECISION**

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

**Adjudicator:** Tim Moseley

**Hearing:** By videoconference, May 6, 2026

**Appearances:** For DEF Co. (a pseudonym) Name protected by confidentiality order

For the Ontario Securities Commission Johanna Braden

## REASONS FOR DECISION

- [1] In 2025, the Ontario Securities Commission issued a confidential order under s. 11 of the *Securities Act*<sup>1</sup> (the **Act**), in relation to a named Ontario reporting issuer and various matters involving that issuer. The order appoints certain individuals to investigate whether the issuer: (i) failed to make adequate disclosure about the matters mentioned in the order; or (ii) made misleading or untrue statements about those matters.
- [2] Section 16 of the *Act* makes the investigation order and other related information confidential. In April 2026, the issuer applied to the Capital Markets Tribunal for an order under s. 17 of the *Act*, authorizing the issuer to disclose the investigation and related information to a regulatory body that oversees the issuer and to the issuer's auditors. The OSC supported the issuer's application, which was initially to be heard in writing.
- [3] Ordinarily, the Tribunal would grant that kind of relief without an oral hearing and without issuing reasons for decision. It is generally in the public interest for an issuer to inform its regulators and auditors when it is the subject of an investigation.
- [4] However, in this instance, I convened an oral hearing to hear submissions from the parties about the form of order the issuer requested. After hearing submissions, I granted a revised order for reasons to follow. In these reasons, I explain how the order changed from that requested and why those changes were necessary.
- [5] Because the investigation is confidential, I have identified the applicant by a pseudonym (DEF Co.). I also accepted applicant counsel's request not to name them, to prevent speculation about the applicant's identity. In my view, issuing reasons in this form best balances the public interest in transparency about the Tribunal's decisions with the statutory mandate to protect the confidentiality of investigations and the subjects of those investigations.

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<sup>1</sup> RSO 1990, c S.5

- [6] DEF Co. proposed that the s. 17 order authorize the disclosure to its auditors and regulator of:
- a. not only the 2025 s. 11 order, but “any additional [*i.e.*, as yet unissued] order(s) made under subsection 11(1)(a) of the *Act* in connection with the [OSC’s investigation of DEF Co.]”;
  - b. not only summonses issued under the 2025 s. 11 order, but also “any summons issued pursuant [to]” a subsequent s. 11 order; and
  - c. any “additional” information protected by s. 16 of the *Act* “relating to the [OSC’s investigation of DEF Co.] as may be required by [DEF Co.’s regulator] or [DEF Co.’s auditor]”.
- [7] That proposal reflected a joint effort by DEF Co. and the OSC to be efficient and to avoid, as much as reasonably possible, the need for future s. 17 applications.
- [8] I applaud that effort, but I concluded that the requested order was not sufficiently precise. While the Commission sometimes issues additional s. 11 orders that are obviously connected to an earlier order, that connection is not always clear. A further order could, for example, significantly broaden the scope of an investigation and/or name additional subjects of the investigation. There are many possible variations.
- [9] As a result, I was not prepared to issue an order that would leave uncertainty about later developments, and specifically about whether a future s. 11 order would be covered by the s. 17 order I issued here. Similarly, I was not prepared to authorize the disclosure of additional (unspecified) information required by the regulator or the auditor.
- [10] I was, however, comfortable issuing an order that anticipates the possibility of future s. 11 orders where the only change from the original order was to the list of persons appointed to conduct the investigation. Such a change will always be unambiguous and objectively determinable.

- [11] For the above reasons, I issued a confidential order on May 7, 2026, that authorized DEF Co. to disclose to its regulator or its auditors:
- a. the 2025 s. 11 order;
  - b. any further order of the Commission, made under s. 11(1)(a) of the *Act*, that relates to the same matters described in the preamble to the 2025 s. 11 order, and that has as its sole purpose a change to the identity of the individuals appointed to investigate and inquire into the matters described in the existing s. 11 order; and
  - c. anything described in s. 17(1)(b) of the *Act* that results from an order mentioned in the preceding two subparagraphs.
- [12] Nothing in the order I issued or in these reasons prevents DEF Co. from bringing a further s. 17 application if future developments warrant.
- [13] The confidentiality required by s. 16 of the *Act* outweighs the public interest in knowing more about this application than I have disclosed in these reasons. I therefore ordered, under s. 2(2) of the *Tribunal Adjudicative Records Act, 2019*,<sup>2</sup> and rule 8(4) of the *Capital Markets Tribunal Rules of Procedure*, that the adjudicative record of this proceeding be kept confidential and not disclosed to the public.
- [14] I further order that the identity of the applicant and of its counsel be kept confidential.

Dated at Toronto this 5<sup>th</sup> day of June, 2026

*"Tim Moseley"*

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Tim Moseley

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<sup>2</sup> SO 2019, c 7, Sch 60