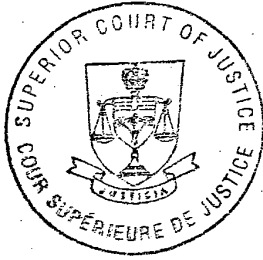


**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:



MR. A

Applicant

- and -

ONTARIO SECURITIES COMMISSION

Respondent

APPLICATION UNDER Rule 14.05(3) of the Ontario Rules of Civil Procedure

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on Tuesday, the 4th day of April, 2006, at 10:00 a.m., at 393 University Avenue, Toronto, Ontario.

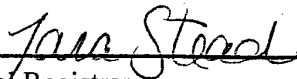
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: March 8, 2006

Issued by


Local Registrar

Address of
court office

393 University Avenue
Toronto, ON M5G 1E6

TO: Ontario Securities Commission
Suite 1903, 20 Queen Street West
Toronto, Ontario M5H 3S8

APPLICATION

I. The Applicant makes Application for:

- (1) An interlocutory order sealing the file in this application and ordering that the public be excluded from the hearing of this application;
- (2) A declaration pursuant to ss. 7 and 24(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") that the Applicant cannot be compelled to testify under oath pursuant to a Summons to Witness, dated March 1, 2006 (the "*Summons*"), issued by the Investigator appointed under two orders issued pursuant to ss. 11 and 13 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "*Act*") on June 18, 2004 and February 22, 2006 (the "*Orders*");
- (3) A declaration pursuant to ss. 8 and 24(1) of the *Charter* that the Applicant cannot be compelled to produce any documents pursuant to the Summons or the Orders;
- (4) An order pursuant to ss. 7 and 24(1) of the *Charter* quashing the Summons;
- (5) In the alternative, an order pursuant to ss. 7 and 24(1) of the *Charter* sealing the transcript of any testimony compelled from the Applicant pursuant to the summons ("*transcript*") and prohibiting the copying, communication or disclosure of the transcript or of any information or documents obtained through the compelled testimony of the Applicant, other than to persons referred to in the Orders for the purposes only of the investigation by the Ontario Securities Commission ("*OSC*") under s. 11 of the Act, who are ordered to keep such testimony, information and documents confidential; and

- (6) Such further and other relief as this Honourable Court deems just.

II. THE GROUNDS FOR THE APPLICATION ARE:

Background

- (1) The Applicant was an employee of a company, herein referred to as, B Corporation from 1976 to 2004;
- (2) B Corporation has issued a series of public statements reporting the restatement of its financial results for various prior periods;
- (3) B Corporation has reported that it had terminated the Applicant for cause, following an internal investigation into the events underlying these restatements;

The U.S. Proceedings

- (4) B Corporation and former senior executives of B Corporation, such as the Applicant, are the subjects of regulatory and criminal investigations in the United States;
- (5) In particular, the United States Securities and Exchange Commission (the "SEC") has issued a formal order of investigation in connection with B Corporation's restatement of its financial statements;
- (6) The SEC has subpoenaed records relating to B Corporation's restatements, including the personnel and compensation records of the Applicant, all documents physically located in the office of the Applicant or his secretaries or assistants and documents concerning, involving or related to communications by or with the Applicant;

- (7) B Corporation has announced that it has received a United States Federal Grand Jury Subpoena for the production of certain documents, which were sought in connection with an ongoing criminal investigation being conducted by the U.S. Attorney's Office;

The OSC Proceedings

- (8) On June 18, 2004, the OSC has issued an order pursuant to s. 11 of the Act that appointed several individuals to investigate matters related to B Corporation's restatements;
- (9) On February 22, 2006, the OSC issued a further order pursuant to s. 11 of the Act;
- (10) Pursuant to this second order, the Investigator issued the Summons on March 1, 2006, requiring the Applicant to attend before the Investigator and to give evidence under oath;

Infringement of the Applicant's Right Against Self-Incrimination

- (11) Pursuant to ss. 11 and 13 of the Act, the Summons would compel the Applicant to give evidence under oath and produce documents to the Investigator, which evidence and documents would relate to the same matter as the U.S. proceedings;
- (12) Section 16 of the Act provides that, subject to s. 17 of the Act, the nature or content of the Orders and the name of the person to be examined are not to be disclosed;
- (13) The SEC and the OSC have entered into a Memorandum of Understanding (the "MOU"), dated January 8, 1988;

- (14) Under the MOU, the OSC states that it will provide assistance to the SEC, including providing access to information contained in OSC files;
- (15) Under the MOU, the OSC states that it will use reasonable efforts to obtain the necessary authorization to provide assistance to the SEC;
- (16) There is a significant likelihood that any evidence that the Applicant is compelled to give in response to the Summons could be used against him in a criminal proceeding in the United States;
- (17) The use or potential use of the Applicant's compelled evidence against him would render meaningless the Applicant's right against self-incrimination, protected by the Fifth Amendment to the United States Constitution and s. 7 of the *Charter*;
- (18) Sections 7, 8, 13 and 24(1) of the *Charter*;
- (19) Sections 135 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (20) Sections 11 to 18 of the Act;
- (21) Rules 14.05 and 38 of the *Rules of Civil Procedure*.

III. The following documentary evidence will be used at the hearing of the application:

- (1) The Affidavit of John Dash;
- (2) The Affidavit of Daniel Richman; and
- (3) Such further and other evidence as counsel may advise and this Honourable Court may permit.

March •, 2006

McCarthy Tétrault LLP
Barristers & Solicitors
Suite 4700, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Thomas G. Heintzman, Q.C.
Tel: 416-601-7627
Fax: 416-868-0673
LSUC#: 11014T

Michael Dunn
Tel: 416-601-8077
Fax: 416-868-0673
LSUC#: 51512F

Solicitors for the Applicant

MR. A and
Applicant

ONTARIO SECURITIES COMMISSION

Respondents

Court File No: ⁰⁶06-6328

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

NOTICE OF APPLICATION

McCarthy Tétrault LLP
Barristers & Solicitors
Suite 4700, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Thomas G. Heintzman LSUC#: 11014T
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Solicitors for the Applicant
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