IN THE MATTER OF

THE BRITISH COLUMBIA SECURITIES COMMISSION
Section 161 of the *Securities Act*, R.S.B.C. 1996, c. 418

Justin Edgar Liu, Lukor Capital Corp.,
Asiatic Management Consultants Ltd.,
Anthony Kevin Jackson, BridgeMark Financial Corp.,
Jackson & Company Professional Corp.,
Robert John Lawrence, Tavistock Capital Corp.
Cameron Robert Paddock, Rockshore Advisors Ltd.

(the "**Respondents**")

Section 161 of the *Securities Act*, R.S.B.C. 1996, c. 418

NOTICE OF APPLICATION

APPLICANTS:	Anthony Jackson BridgeMark Financial Corp. Jackson & Company Professional Corp., (the "**Applicants**")
TO:	The Executive Director of the British Columbia Securities Commission 12th Floor, 701 West Georgia Street Vancouver, BC V7Y 1L2 Attention: Graham McLennan and James Torrance

TAKE NOTICE that an application will be made by the Applicants to the British Columbia Securities Commission at 701 West Georgia Street, in the City of Vancouver, in the Province of British Columbia at a time and date to be set by the Commission Secretary for the Order set out below.

Introduction

1. This is a pre-Hearing application in the context of a matter that is set to proceed to Hearing in October 2023. The Applicants seek production of the following documents:

    a. All internal memoranda and correspondence from the Executive Director regarding:
        i. strategy or and/or intended communication with the media with respect to the above-noted matter and the named respondents herein; and or
        ii. the definition of the "Bridgemark Group" in the Notice of Hearing; and

    b. All external correspondence between the Executive Director and the media regarding:
        i. the above-noted matter and/or the named respondents herein; and or
        ii. the definition of the "Bridgemark Group.

(collectively, the "**Document Production**").

2. BC Policy 15-601 permits respondents to proceedings to apply to the Commission for orders relating to disclosure (Section 3.4(a)).

3. The Document Production is relevant to the integrity of the process including the Applicants right to a fair hearing.

Disclosure Principles

4. The principles around disclosure applications are well-established and include the following follows:[1]

    a. Disclosure provides an opportunity for respondents to prepare the case adequately and to make tactical decisions about the presentation of their case;

    b. A party's right to adequate notice regarding administrative proceedings they are involved in is a fundamental component of the administrative process;

    c. In the context of pre-hearing disclosure, it is appropriate that a broad view of relevance be adopted. If the information may be of some use, it is relevant and should be disclosed;

    d. The threshold requirement for disclosure is set quite low; and

    e. Information must be disclosed unless it is clearly irrelevant, privileged or its disclosure is otherwise governed by law.

5. Disclosure is a matter of fundamental justice based on fairness to the respondents. To that end, the hearing process as a whole must be considered in determining the existence of procedural fairness:[2]

> The executive director's **disclosure obligation is based on that articulated by the Supreme Court of Canada in *R v. Stinchcombe***, [1991] 2 SCR 326 (see *Fernback* 2004 BCSECCOM 378).
>
> That said, it is worth noting that *Stinchcombe* was articulated as a disclosure standard for criminal proceedings. Although a *Stinchcombe*-like standard has been applied in administrative proceedings before securities tribunals, it does not follow that every evolution of the *Stinchcombe* standard in the criminal courts, or indeed the *Stinchcombe* standard itself, automatically applies to proceedings before the Commission. As the Supreme Court of Canada has made clear (see, for example, *May v. Ferndale Institution* 2005 SCC 82 (CanLII), [2005] 3 SCR 809), the standard of disclosure for administrative tribunals is not *Stinchcombe*. **The issue is whether the hearing process**

[1] *Canaco Resources*, 2012 BCSECCOM 493 at paras. 10-12 [*Canaco*]; *Law Society of Upper Canada v. Paradiso*, 2015 ONLTSA 3 at para. 16; *Re Fernback*, 2004 BCSECCOM 378 at paras. 33-359

[2] *Canaco* at paras. 8-9 [emphasis added]

> as a whole satisfied the requirements of procedural fairness in the context of proceeding before the tribunal concerned.

6. Several of these principles have been summarized in Section 3.6 of BC Policy 15-601 which reads in part as follows:

    a. General Principle – Full and timely disclosure permits fairness and efficiency in hearings. The Commission expects each party who intends to produce evidence in a hearing to disclose that evidence to other parties long enough before the hearing to give them reasonable time to prepare.

    b. Enforcement hearings – In an enforcement hearing, the executive director must disclose to each respondent all relevant information that is not privileged.

7. In *Fernback (Re)*, 2004 BCSECCOM 378, the Panel granted the respondents' application for an order that the commission Staff produce further disclosure, including investigative files including all notes, memoranda, documents, e-mails, computer created documents and any other documents or materials in that file including but not limited to any document or documents supplied by or relating to conversations with various individuals and notes of all interviews, investigative files and reports (to the extent it was not privileged).[3]

8. The *Fernback* Panel concluded that the *Stinchcombe* standard applies[4], and as such staff was required to disclose "fruits of the investigation". This includes materials created by staff in connection with the investigation or for the purpose of the hearing.[5]

9. The *Stinchcombe* standard, as articulated by the Supreme Court of Canada was summarized by the panel in *Fernback*:

> there is a general duty on the part of the Crown to disclose all material it proposes to use at trial and especially all evidence which may assist the accused even if the Crown does not propose to adduce it.
> […]
> The discretion of Crown counsel is, however, reviewable by the trial judge. Counsel for the defence can initiate a review when an issue arises with respect to the exercise of the Crown's discretion. On a review, the Crown must justify its refusal to disclose. Inasmuch as disclosure of all relevant information is the general rule, the Crown must bring itself within an exception to that rule.
> The trial judge on a review should be guided by the general principle that information ought not to be withheld if there is a reasonable possibility that the withholding of the information will impair the right of the accused to make full answer and defence, unless the non-disclosure is justified by the law of privilege

[3] *Fernback (Re)*, 2004 BCSECCOM 378 at para. 14.
[4] *Fernback (Re)*, 2004 BCSECCOM 378 at para. 36.
[5] *Fernback (Re)*, 2004 BCSECCOM 378 at para. 21.

10. With respect to document disclosure, fairness to the respondents dictate. The Commission is not the prisoner of a formula, and the fairness of its procedures must always be paramount, regardless of the words used in past decisions to guide parties in determining what is fair.[6]

The Document Production Application

11. The Applicant's position is that the Executive Director's approach at the time the Temporary Orders were imposed by the Executive Director has impaired the Applicants' right to a procedurally fair process.

12. Specifically, the Applicant will argue that the Executive Director used an incorrect prejudicial definition when it creatively dubbed the vast majority of the Respondents as the "Bridgemark Group" in its original Notice of Hearing and in News Releases issued by the Executive Director at the time the Executive Director imposed the Temporary Orders and the resulting media coverage.

13. The Applicant's position is that the prejudicial definition created by the Executive Director in 2018 has created ripple effects that have permeated the integrity of this process.

Background: Tactical Definitions

14. On November 26, 2018, the Executive Director commenced its proceedings with a Temporary Order and a Notice of Hearing, where the Executive Director defined all of the Respondents other than eleven public issuers as the "BridgeMark Group" (the "**Abusive Definition**").

15. The Executive Director then used the Abusive Definition to say:

    a. The BridgeMark Group engaged in conduct abusive to the capital markets;
    b. Members of the BridgeMark Group purported to be consultants when they were not;
    c. Members of the BridgeMark Group participated in cheque swap transactions;
    d. Members of the BridgeMark Group acquired over $50 million of securities in private placements as part of a scheme;
    e. The BridgeMark Group generated profits of over $6 million from only four of eleven Issuers and engaged in the conduct to earn that profit;
    f. The members of the BridgeMark Group facilitated the Issuers illegal distribution of securities by purporting to be consultants when they were not;
    g. The BridgeMark Group companies would use the scheme with other issuers.

16. On the same day, the Executive Director issued a News Release. In the News Release, the Executive Director notes that the ongoing investigation concerns transactions between a group that Executive Director Peter Brady refers to as the BridgeMark Group. The News Release also refers to both the BridgeMark Group and BridgeMark in the News Release saying:

[6] *Fernback (Re)*, 2004 BCSECCOM 378 at para. 28; see also *Canaco* at para. 9.

a. The BridgeMark Group netted over $6 million by selling securities into the market;
b. The sales to BridgeMark were illegal;
c. BridgeMark improperly used the consultant exemption;
d. The Executive Director is concerned that the BridgeMark Group members are not consultants and provided little or no consulting services;
e. The Executive Director is concerned that the BridgeMark Group members engaged in the scheme for their own profit;
f. The Executive Director describes the conduct of the BridgeMark Group as abusive to the capital markets.

17. Taken together, the Executive Director was telling the world that BridgeMark orchestrated an abusive cheque swap scheme across a number of different Issuers to earn profits, and the conduct was such that needed to be addressed by Temporary Orders without notice to any of the respondents.

18. The Abusive Definition leads any reasonable reader to conclude that BridgeMark puppeteered and masterminded the conduct.

19. The Executive Director used the Abusive Definition despite a lack of evidentiary foundation in support of its allegations, and with the motive of creating media coverage, intentionally or despite and with reckless disregard to the contamination of evidence it would so cause, in order to obtain ultimate determinations in its favour.

20. At the hearing on December 7, 2018, counsel for the Applicants made the following submissions before the panel:

> "The other submission that I intimated to that - - and I've told my friend this, I have some concerns about the prejudicial definitions that are being used in this process. My client is BridgeMark. There has been the use of a definition, including by yourself, of the BridgeMark group. The evidence doesn't establish that there's - - the evidence clearly establishes there's connections between the parties, but there's no objective evidence that establishes that anyone ever called it the BridgeMark group except for the definition superimposed by staff as part of its submissions. You know, when we look at the definition of issuers, we don't see the Cryptobloc issuers or the New Point issuers. So I do have some concerns that - - I don't have an application around that today, but I am raising that as a concern, and there are clearly no connections between some of the parties or no attempts to make them."

21. The Abusive Definition was wrongful, prejudicial and abusive. The term and its ramifications permeate to this day.

Media Adoption of Abusive Definition

22. Media coverage of the Temporary Order and Notice of Hearing began the day the Executive Director imposed them.

23. On November 26, 2018, Barbara Shecter's article titled "BCSC slaps trading ban on 'purported consultants' linked to alleged scheme involving crypto, cannabis stocks" was published. The article starts with a photo of the CSE name and starts right under with "The regulator is "concerned that the ***BridgeMark Group's*** members are not consultants, that they provided little or no consulting services to the issuing companies, and engaged in the scheme for their own profit ….". The article specifically references the purported consultants "which the regulator is calling "The BridgeMark Group".

24. The article by Jay Lutz published December 3, 2018 was titled "The BridgeMark Group, #allsharesmatter, and the Companies Involved". The Abusive Definition was used approximately 18 times in this article, not including references to what was then dubbed the "BridgeMark Scheme". Specific allegations as it relates to Bridgemark itself were not even mentioned.

25. The ongoing adoption of the Abusive Definition is readily apparent. Some examples, which are by no means exhaustive include:

    a. A January 17, 2019 publication by Graeme Wood titled "Restrictions revised against BridgeMark associates in crypto-cannabis-mining energy shares scandal".
    b. A February 5, 2019 publication by Graeme Wood titled "Investigation: Vancouver's Bridgemark stock scandal rocks B.C. capital markets". A photo of Mr. Jackson's face is on the front of the article.
    c. A July 16, 2019 publication by Kyle Balzer titled "Investors launch class action suit in alleged Bridgemark Group stock scheme".
    d. A January 10, 2020 publication by Graeme Wood titled "Securities commission lifts freeze on 'Bridgemark Group' properties, brokerage accounts".
    e. A April 29, 2021 publication by Graeme Wood titled "B.C. Securities Commission whittles 'Bridgemark Group' down to four".
    f. A February 17, 2022 publication by Graeme Wood titled "B.C. Securities Commission re-opens book on 'Bridgemark Group' consulting scheme".
    g. A August 5, 2022 publication by Graeme Wood titled "Bridgemark Group freeze orders reduced ahead of insider trading hearing".
    h. A November 18, 2022 publication by Graeme Wood titled "Bridgemark Group illegal insider trading hearing adjourned to September 2023".

Executive Director's Refusal to Disclose the Document Production

26. On August 2, 2023, the Applicants' counsel wrote to the Executive Director requesting copies of the Document Production.

27. The Applicants indicated concern that the Executive Director's approach created a wrongful narrative, advertised to the world, that the "Bridgemark Group" was not just one of the named respondents, but a collective of persons which have no connection to the actual entity.

28. The Applicants further outlined that it considered the Document Production to be relevant as it goes to the heart of the integrity of the evidence relied on by the Executive Director, and whether they have been subjected to an abusive process.

29. On August 14, 2023, the Executive Director advised the Applicants it would not search for or provide the Document Production.

Concerns over the Applicants' right to a fair process

30. That the respondents are entitled to a fair hearing, free from tactical abuses, cannot be controversial. It is settled law.[7]

31. The more the administrative process resembles a judicial hearing, the more important it is to apply the rules of natural justice strictly.[8] The principles of natural justice and the duty of fairness inform every part of administrative proceedings. Conduct contrary to this right is abusive; it compromises the fairness of a hearing and/or risks undermining the integrity of the justice system.

32. Actions which present a real and substantial risk to prejudicing a fair trial or the administration of justice should be specifically avoided by the Executive Director.

33. Notably, the doctrine of *Sub Judice* operates to prohibit public statements which have the ability to prejudice court proceedings. It is all of a rule of court, a statutory rule, a parliamentary convention and a practice that has developed in the interaction between media and public officials.

34. The underlying support for the doctrine is the enshrined right to procedural fairness. In *R v. Edmonton Sun*, 2000 ABQB 283 at para. 17 the Court outlines four underlying purposes to the *sub judice* rule:

> "first is 'to avoid prejudicing the fair trial of an issue'…[the] second rationale is 'to preserve the impartiality of the judicial system, protecting it form undue influence which might affect its operation, or at least might appear to do so'…[the] third is to protect the system of evidence, which would be compromised if inadmissible evidence were available publicly…[and the] final rationale is 'generally to uphold the public interest in the due administration of justice."

35. Given the importance of *Sub Judice* rule, ramifications for breach thereof are not trifle: stay of proceedings and contempt of court are both appropriate remedies.[9]

36. That caution and confidentiality is required by staff is entrenched in the *Act*; see e.x., section 11:

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[7] Ex., *British Columbia (Securities Commission) v. Pacific International Inc.*, 2002 BCCA 421 at para. 6; *Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*, 1978 CanLii 24 (SCC), [1979] 1 SCR 311.
[8] *Brtisih Columbia (Securities Commission) v Pacific International Inc*, 2002 BCCA 421 at para 8; *Knight v Indian Head School Division No 19 of Saskatchewan*, [1990] 1 SCR 653, at 683 (per L'Heureux-Dube J).
[9] See ex., *Uni-Jet Industrial Pipe Ltd. v. Canada (Attorney General*, 2001 MBCA 40.

> Every person acting under the authority of this Act must keep confidential all facts, information and records obtained or provided under this Act, or under a former enactment, except so far as the person's public duty requires or this Act permits the person to disclose them or to report or take official action on them.

37. Further, notwithstanding the Executive Director's position that the applications request for the Document Production was "clearly irrelevant", the Executive Director has fairly conceded that the influence on interviewees is "something that you can explore in cross examination". If it can be explored in cross, as *suggested* by the director, then it can be directly inferred it is actually, in fact relevant.

38. Fairness is paramount. In *Shambleau v. Ontario Securities Commission* (2003), 26 O.S.C.B. 1629 (Div. Ct.) at para. 7, the court held:

> The basis of the disclosure requirement is found in the duty of fairness. The question is not whether a particular class of documents must be disclosed or not. Whatever disclosure is necessary to satisfy the duty of fairness must be made. The Commission recognized and accepted this and found that in the present case, the disclosure already made satisfied the duty of fairness without the actual report of Kim Stewart, the document gathering investigator, being produced. We are unable to find that the Commission was unreasonable in so finding.

39. In *Re Fauth*, 2017 ABASC 3 the Panel cited to *Shambleau* at the securities commission:

> In the absence of any privileges, relevance is the primary consideration regarding disclosure. Relevance must be considered from the perspective of the allegations, the case to be answered, and whether the requested information may assist in making a full answer and defence, including the opportunity for impeachment.

40. The Panel in *Fauth* considered the distinction of "staff work product" and "fruits of an investigation" with respect to disclosure requirements. It found that the distinction between them in fact "assists little in determining relevance"[10], and rather, it does not follow that al staff work product is necessarily irrelevant or non-disclosable, but whether it is in fact material from the 'work product' category or the 'investigative fruits' category, the "nature or content, rather than its origin, ultimately determines relevance", with the dissolvability factor ultimately resting on *privilege.*

41. The Document Production is relevant. It is specifically sought for the purpose of the applicant mounting its defence, including for the opportunity of impeachment. On the balance of fairness, and given the stakes of the hearing, including the total livelihood of the applicants, fairness weighs heavily in favour of the applicants.

[10] *Re Fauth*, 2017 ABASC 3 at para. 56.

PART 1: ORDERS SOUGHT

1. An order that the Executive Director disclose all of the following documents or categories of documents:

    a. All internal memoranda and correspondence from the Executive Director regarding strategy or and/or intended communication with the media regarding the above-noted matter and the named respondents herein; and
    b. All external correspondence between the Executive Director and the media regarding the above-noted matter and/or the named respondents herein

    (collectively, the "Document Production").

PART 2: MATERIALS TO BE RELIED ON

1. Affidavit of Chelsi Young made August 29, 2023;
2. Such further and other material as counsel may advise.

Dated at the City of Vancouver, Province of British Columbia, this 6 date of September, 2023.

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Patrick J. Sullivan / Sara Shuchat
Counsel for the Applicants