



McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

R. Paul Steep

Direct Line: (416) 601-7998
Direct Fax: (416) 868-0673
Email: psteepp@mccarthy.ca

Assistant: Allan, Sandy
Direct Line: (416) 601-8200 x542449
Email: sallan@mccarthy.ca

August 29, 2022

Via Email

Registry
Supreme Court of Canada
301 Wellington Street
Ottawa ON K1A 0J1

Ms. Colleen Bauman
Goldblatt Partners LLP
500-30 Metcalfe Street
Ottawa ON K1P 5L4
Ottawa Agent for the Applicants

Dear Registrar and Counsel:

**Re: Go-To Developments Holdings Inc., et al. v. Ontario Securities Commission ("OSC")
File No. 40267; Response to Application for Leave to Appeal**

The OSC requests that the application for leave to appeal be dismissed. The matter does not raise any issue of national or public importance which merits granting the leave of this Court.

By way of background, following an investigation which raised significant concerns about the Applicants' ability to operate lawfully in the capital markets,¹ the OSC applied for the appointment of a receiver over the corporate Applicants and continuation of two freeze directions relating to the individual Applicant (Furtado).² On December 10, 2021, the Ontario Superior Court of Justice denied the Applicants' adjournment request and granted the "Receivership Order". Since that time, the freezes have been continued and the Receivership has been ongoing.³ The Court of Appeal for Ontario denied the Applicants' request for a stay of the Receivership Order and later dismissed the Applicants' appeal.

The denial of the Applicants' request for an adjournment does not raise an issue of procedural fairness. Justice Pattillo correctly adverted to the relevant factors; the risk of the Applicants remaining in charge of the business, protection of the investors, and the Applicants' ability to respond to the application. Justice Pattillo heard the Applicants' counsel (who had been acting for the Applicants during the OSC investigation) and concluded that the Applicants did have sufficient time to file material on the receivership application.⁴ Justice Pattillo was best placed to make this determination. At root, the Applicant is now attempting to overturn a factual finding and discretionary order plainly available to the Superior Court.

¹ Reasons for Decision para. 26, AR Vol 1, (PDF) p.16.

² Pursuant to ss. 129 and 126, respectively, of the [Securities Act](#), RSO 1990, c. 5.

³ The Superior Court continues to make orders in the Receivership, which are accessible on the Receiver's [website](#).

⁴ Reasons for Decision para. 6, AR Vol. 1 p. 14. The factual finding was not disturbed by the Court of Appeal: Appeal Reasons paras. 4, 12, AR Vol. 1 pp. 47, 49. The Applicants provided no materials to support their adjournment request; there is no reason to believe this was not a strategic choice, the consequences of which they properly bear.

Importantly, Justice Pattillo found it necessary to hear the matter and appoint the Receiver to protect investors, given the evidence of the potential breaches of the *Securities Act*, including fraud.⁵ Justice Pattillo's concern was well-founded. The fresh evidence on appeal showed improper dealing by Furtado while he had notice of the application.⁶ Furthermore, the Receivership Order allowed any interested party to move before the Superior Court to vary or amend it.⁷ The Applicants did not seek to vary or amend the Order, they only appealed.

The *Securities Act* permits appointment of a receiver where it is in the best interests of stakeholders, or is appropriate for the due administration of Ontario securities law; that is what the application concerned.⁸ The liability of Mr. Furtado and others for breaches of the *Act*, if any, are the subject of a separate proceeding before the Capital Markets Tribunal.⁹ Any findings made with respect to the Receivership Order were made in a context where the Applicants were found to have sufficient time to file material, but did not.

The Applicants again try to raise an issue they did not raise before Justice Pattillo, on their stay application, or in their Notice of Appeal; that the Superior Court relied on purportedly inadmissible evidence, namely testimony obtained under the *Securities Act*. On this issue, the Applicants refer to a decision of the Capital Markets Tribunal in an unrelated matter post-dating the Receivership Order, *Sharpe*.¹⁰ Not only did the Applicants not argue inadmissibility below, they took a contrary position that production of the complete transcripts was required (as opposed to excerpts that were included).¹¹ Whether *Sharpe* is applicable or persuasive was not a question litigated before or resolved by the courts below. The Court of Appeal rightly declined to address a "complex" statutory interpretation issue in the absence of a record.¹² This Court should do likewise. This is particularly so where, as here, the statutory provisions in issue have since been amended.¹³

In conclusion, the first issue essentially seeks to overturn a factual determination and a discretionary order well within the authority of the Superior Court. The second issue was only raised on appeal, though the Applicants took a directly contrary position in the Court below. Accordingly, there is no record on which to consider the issue, and in any event the statutory provisions at the heart of the asserted issue have been amended. There is simply no issue of national or public importance warranting leave. Lastly, we note that the Receivership Order was found to be in the best interests of the investors.¹⁴ Any further appeal may impact the ongoing Receivership, which itself affects the interests of dozens of persons including investors.

⁵ Reasons for Decision paras. 6, 26-27, 31, AR Vol. 1 pp. 14, 16-17.

⁶ Appeal Reasons para. 12, AR Vol. 1 p. 49.

⁷ Receivership Order para. 39, AR Vol. 1 p. 33. No person affected by the Order (which includes investors, creditors, and other stakeholders of the Applicant entities) has brought such a motion.

⁸ Reasons for Decision paras. 20-21, AR Vol. 1 p. 16, *Securities Act* s. 129.

⁹ The Statement of Allegations was issued after the Receivership Order and is not in the record. It is available [here](#).

¹⁰ *Sharpe (Re)*, 2022 ONSEC 3.

¹¹ Appeal Reasons paras. 13-15, AR Vol. 1 p. 50.

¹² Appeal Reasons para. 15, AR Vol. 1 p. 50.

¹³ Amendments to the *Securities Act* came into force April 29, 2022. Compare ss. 16-17, and especially s. 17(6), of the [prior version](#) to the [present one](#); see *Sharpe* paras. 89-91.

¹⁴ Reasons for Decision para. 22, AR Vol 1, p. 16.

The OSC accordingly requests the application for leave to appeal be dismissed, with costs.

Yours truly,

A handwritten signature in blue ink, appearing to read "R. Paul Steep".

R. Paul Steep

RPS/sa

ec: Erin Hoult, Braden Stapleton, OSC, co-counsel for the Respondent
Ian Aversa, Tamie Dolny, Aird & Berlis LLP, counsel for the Receiver
MTDOCS 45628119