OSC draws a hard line on confidentiality in cross-border litigation

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On Nov. 20, 2025, the Capital Markets Tribunal (the Tribunal) dismissed an application by Katanga Mining Limited (Katanga) under s. 17 of the *Securities Act* (the Act) for authorization to disclose confidential investigative documents to its parent company, Glencore plc (Glencore) otherwise prohibited from disclosure under s. 16 of the Act, for use in ongoing civil proceedings before the U.K. High Court of Justice.

The decision—*Katanga Mining Limited v Ontario Securities Commission*, 2025 ONCMT 16—reaffirms the inflexibility of Ontario's statutory confidentiality regime governing compelled evidence and provides important guidance for issuers and litigants navigating parallel foreign civil proceedings.

Background

The Ontario Securities Commission (OSC) commenced a confidential investigation into Katanga and certain of its officers and directors in 2017, resulting in an approved settlement in 2018. In 2020, Katanga became a wholly-owned subsidiary of Glencore. Glencore now faces a U.K. civil action alleging misleading disclosure, in which a U.K. case-management order directed Glencore to produce documents provided to Katanga by the OSC, including transcripts of compelled testimony (the Confidential Documents). The Tribunal had previously granted Katanga limited authorization to share certain confidential materials with Glencore's U.K. counsel solely for the purpose of conducting a relevance review, allowing counsel to determine which documents were required to be disclosed in the U.K. litigation.

Katanga applied under s. 17 of the Act—which permits the Tribunal to authorize disclosure of confidential information where it is in the public interest—for permission to disclose the Confidential Documents to Glencore for *use* in the U.K. civil proceedings. Section 16 of the Act, under which virtually all aspects of an OSC investigation are confidential, including any testimony given or documents produced in response to a summons under s. 13 of the Act, prohibited Katanga from disclosing the Confidential Documents to anyone without the Tribunal's authorization.

The central question in the application was whether disclosure of OSC investigative materials for use in foreign private civil litigation could satisfy the public-interest

standard under s. 17. The Tribunal dismissed Katanga's application, finding that it did not establish that disclosure to Glencore was in the public interest.

Key findings

Disclosure for private civil proceedings is "generally not in the public interest"

The Tribunal reaffirmed that the investigation and enforcement provisions of the Act are not designed to assist private litigants in recovering losses arising from alleged breaches of securities law. The Act's purposes—investor protection, market integrity, capital formation, and systemic stability— are protective and preventative, not compensatory.

A foreign court's production order does not determine the s. 17 analysis

Katanga argued that the U.K. case-management order requiring production created a special circumstance favouring disclosure. The Tribunal disagreed, finding that a foreign order cannot expand the exceptions in s. 16 or redirect the s. 17 inquiry toward foreign procedural needs.

The Tribunal distinguished its decision in *Hamlin (Re)*, 2023 ONCMT 5, where disclosure aligned with a cooperative cross-border regulatory investigation and posed no risk to privacy or investigation integrity, on the basis that the present case involved private civil litigation unrelated to the purposes of the Act.

According to the Tribunal, if the existence of a foreign production order were sufficient to justify disclosure under s. 17, the disclosure provision would be transformed from a narrow exception into a mechanism to accommodate foreign discovery rules—contrary to the language of the Act.

Confidentiality continues even after an investigation ends

Katanga argued that confidentiality concerns were reduced because the OSC investigation concluded in 2018. The Tribunal rejected this submission, noting that confidentiality under s. 16 does not lapse when an investigation concludes.

The Tribunal noted that witnesses provide compelled evidence on the understanding that its use will remain tightly confined, as demonstrated by the fact that some of the individuals whose testimony was included in the Confidential Documents advised that the request to disclose the transcripts was contrary to their expectations that the information provided in the interviews would be kept confidential. In the Tribunal's view, these responses highlighted that maintaining confidentiality after an investigation is necessary to maintain trust in the OSC's processes.

Key takeaways for issuers and litigants

- **OSC investigative materials remain confidential**, even long after an investigation has concluded. Any unauthorized disclosure would constitute a breach of Ontario securities law.
- **Foreign discovery or production orders do not override the Act's confidentiality provisions**, nor do they create a presumption of "public interest" under s. 17.
- **Parties facing parallel cross-border litigation should not assume compelled OSC evidence can be deployed in foreign civil actions**, even with protective orders in place abroad.
- **Expectations of confidentiality by individuals examined under s. 13** weigh heavily against disclosure.
- **Section 17 remains a narrow exception**, reserved for rare circumstances where disclosure advances the public interest under the Act, which does not include assisting private litigants in recovering losses arising from alleged breaches of securities law.

By

Caitlin Sainsbury, Graham Splawski, Maureen Doherty, Natalia Vandervoort, Brianne Taylor

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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