BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re Birdsall, 2026 BCSECCOM 120 Date: 20260413

Lucas Christopher Birdsall

Panel	Gordon Johnson James Kershaw Jason Milne	Vice Chair Commissioner Commissioner
Submissions completed	March 20, 2026	
Date of ruling	April 13, 2026	

Counsel

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Ruling and Reasons

I. Introduction

[1] On December 10, 2025, this panel issued the liability decision in this proceeding (*Re Birdsall*, 2025 BCSECCOM 533) relating to a notice of hearing issued against Birdsall on October 3, 2024. The findings were that Birdsall failed to comply with a summons and a demand for production of documents, both of which had been issued in the course of an investigation. The decision directed the parties to deliver submissions regarding sanctions according to a specified schedule. There have been some adjustments to the schedule since then.

[2] On December 22, 2025, Birdsall filed an application to stay the notice of hearing on the basis that the underlying demand for production of documents and summons violated sections 8 and 7 of the *Charter*, respectively.

[3] On January 16, 2026, the executive director filed his submissions regarding sanctions.

[4] On February 9, 2026, Birdsall filed this application seeking an order:

a) that the sanctions hearing be adjourned pending conclusion of Birdsall's application for a *Charter* remedy,

b) for disclosure of materials in relation to the executive director's allegation that the investigation was impeded by Birdsall's conduct, and

c) for an order permitting Birdsall to cross examine any witness at the sanctions hearing.

[5] This decision addresses the February 9, 2026 application.

II. Events subsequent to the filing of the application

[6] The parties delivered their remaining submissions regarding sanctions. Birdsall's response was delivered February 9, 2026 and the executive director's reply was delivered March 6, 2026.

[7] On March 3, 2026, Birdsall delivered a further application seeking to stay the notice of hearing based upon alleged violations of Birdsall's *Charter* rights and based upon section 171 of the Securities Act.

[8] On March 9, 2026 the panel issued its decision dismissing Birdsall's December 22, 2025 application.

[9] On April 2, 2026, a hearing notice was issued setting the hearing date regarding sanctions for September 9, 2026.

III. No need to address in detail the applications to adjourn and to cross examine any sanctions witness

[10] There are *Charter* arguments outstanding in a separate application which are being considered by the panel. The panel expects to issue its decision with respect to those arguments well in advance of the date of the oral hearing. Depending on the timing and outcome of that decision, it may be appropriate for this panel to consider an adjournment of the sanctions hearing. But there is no reason to consider an adjournment at this point given the hearing is scheduled approximately five months from now.

[11] Birdsall's application for an order permitting the cross examination of witnesses at the sanctions hearing in not necessary. Our procedures automatically include such cross examination where witnesses are called to give oral evidence, both in the liability and in the sanctions portion of a hearing. If there is ever to be an exception, it will be incumbent on the party seeking that exception to apply and justify it. There is no such exception being sought here. In fact, the executive director has stated he has no intention to call any witness at the sanctions hearing. As a result, we need not address the cross examination issue raised by Birdsall. That issue is moot.

[12] The only application which remains for us to address at this time is the disclosure application.

IV. Disclosure application

A. Position of Birdsall

[13] The executive director's submissions regarding sanctions includes the following language:

> However, by failing or refusing to produce records that are reasonably required for an investigation under the Act, Birdsall impaired the efficient and effective conduct of the investigation and this undermined the Commission's ability to protect investors and the integrity of the capital markets.
>
> Birdsall's misconduct is aggravated by the fact that he was a subject of the investigation and had previously delayed and impeded the investigation by evading service of an earlier Demand for Production dated August 2, 2023. He then further impeded the investigation by refusing to produce any records – despite the fact that he understood that the Demand reasonably related to the investigation – after he was served with the Demand under the Substituted Service Order.

[14] In response to those submissions, Birdsall submits that the executive director has not introduced evidence within the sanctions portion of this proceeding to support the position that

Birdsall's conduct delayed or impeded the investigation. Birdsall submits that based upon *Re Nuttall*, 2012 BCSECCOM 97 [*Nuttal*] and *Re Cerisse*, 2017 BCSECCOM 142 [*Cerisse*], such evidence is required if an inference is to be drawn that an investigation was impeded.

[15] Birdsall also submits that production is required of materials relevant to the allegation that Birdsall had impeded the progress of the investigation.

[16] Some of the principles which Birdsall relies upon are drawn from *May v Ferndale Institution*, 2005 SCC 82, where the Supreme Court of Canada stated that the duty of procedural fairness generally requires that the decision-maker disclose the information that he or she relied upon. Birdsall emphasizes the Supreme Court's statement that the "requirement is that the individual must know the case he or she has to meet".

[17] Birdsall submits that the concept of ensuring a respondent knows the case to be met applies not just to the issue of liability. It also applies at the sanctions stage. This is expressed as a general principal, but it is also supported by reference to BC Policy 15-601, which states in s. 3.6(a) Disclosure, in part, that:

> The Commission expects each party who intends to produce evidence in a hearing to disclose that evidence to the other parties long enough before the hearing to give them reasonable time to prepare. This includes identifying evidence to be relied on, the identity of the witnesses the party intends to call, and what they expect the witness will say.

B. Position of the executive director

[18] The executive director's submissions regarding production of documents was delivered at essentially the same time as his reply regarding sanctions.

[19] The executive director's reply regarding sanctions includes the following paragraphs:

> The Executive Director has established, based on the Investigation Order and related memorandum, that the records requested in the Demand were reasonably required for the investigation. Birdsall has not provided any of those records. The only reasonable conclusion is that he has delayed or otherwise impeded the investigation.
>
> The Executive Director cannot be expected to lead evidence showing specifically how the absence of the records requested in the Demand – which staff have not seen – impeded the investigation. Only Birdsall knows what information is contained in the records that he has failed to produce to Commission staff.
>
> The subjects of an investigation are not entitled to evidence from the investigator showing what evidence has been gathered to date or showing how their evidence might advance the investigation. They should not be rewarded for their failure to comply with a demand by receiving this information once the Executive Director initiates enforcement proceedings against them for their non-compliance.

[20] The executive director expanded on his position that disclosure regarding the course of an active investigation should be made only in limited circumstances, including by quoting from paragraph 89 of *Morabito v. British Columbia (Securities Commission)*, 2022 BCCA 279 as follows, emphasis added by the executive director:

> In my view there are also practical considerations that militate in favour of the conclusion that the subject of an investigation is not entitled to require the Commission to justify that order before the investigation has been completed and a hearing ordered under s. 161.

> Placing the onus on the director would normally require him or her to disclose what the investigation has shown so far and what he or she expects it will show as it progresses. In my opinion, such disclosure would open the door to the subjects of such orders to take evasive actions to forestall the discovery of possible contraventions of the Act. Many investigations would grind to a halt or bog down into 'pre-hearings' that would delay and distract the Commission from completing the investigation.

[21] In his reply submission regarding this application for the production of records, the ED takes the position that the evidence relied upon regarding impeding the investigation consists of the liability findings of the panel and the logical inferences which arguably should follow from those findings.

C. Analysis

[22] We begin our analysis with the precedents which have been cited to us from this Commission, *Nuttall* and *Cerisse*.

[23] In the *Nuttall* case, Nuttall had lied under oath in a compelled interview regarding trading in the shares of Dynamic Ventures. However, the underlying investigation was focused on the trading in the shares of Impala Mineral Exploration Corp. The hearing panel said that although this distinction was not relevant for the purposes of liability and the breach in question was inherently significant, "it is relevant to the consideration of the seriousness of her conduct for the purpose of determining sanctions. There is no evidence that she traded Impala shares."

[24] The hearing panel stated the following at paragraphs 10 and 11:

> [10] What makes this sort of misconduct serious is the potential impact on an investigation. Giving false or misleading information in an interview could hinder or frustrate an investigation in several ways. If, as here, the witness keeps information from investigators, the information withheld could be what investigators need to know to determine if wrongdoing has occurred (and if so, how much and by whom), or what they need to know to avoid following false leads.
>
> [11] Here, there is no evidence that Nuttall's false statements hindered or frustrated the investigation, which the executive director acknowledges.

[25] The hearing panel concluded that it should decline the executive director's invitation to speculate that because of Nuttall's false and misleading statements, investigative paths were not followed. The panel did not impose sanctions which would follow upon evidence that the misconduct hindered or frustrated the investigation.

[26] In the *Cerisse* matter, Cerisse had lied on three separate occasions, under oath, in an interview with Commission staff. The panel found that the consistent nature of the lies led to a conclusion that Cerisse was intentionally attempting to conceal the identity of the ownership or control over several entities that had participated in, or were connected to, a public market transaction that the Commission was investigating.

[27] The hearing panel noted that there was no evidence that Cerisse's false statements hindered or frustrated the Commission's investigation. As a result, the sanctions in the range of *Nuttall* and similar cases were more appropriate than those in cases where a panel found that a respondent's lies had an impact of the Commission's investigation.

[28] One conclusion which we draw from *Nuttall* and *Cerisse* is that, although the very fact of a breach can be serious, the impact of the breach on the course of the underlying investigation should be a material factor in assessing the appropriate sanction. We also note that in both cases where it was found that an investigation was impeded and in cases where no such finding was made, the analysis was based upon the evidence introduced in the liability portion of the proceeding and in the conclusions contained in the liability decision.

[29] Turning to Birdsall's arguments that he is entitled to know the case to be met and that the duties of fairness continue in the sanctions portion of this proceeding, we agree with Birdsall regarding those general propositions. However, we conclude that the case against Birdsall has been fully communicated to him and that Birdsall is being treated fairly even in the absence of a production order of the type which he seeks.

[30] In explaining our reasoning, it is useful to begin with an explanation of some of the differences between the liability phase and the sanctions phase of a proceeding under BC Policy 15-601. During the liability phase of a proceeding, all issues, and the primary identification of the case which respondent must meet, are anchored to the notice of hearing, including what evidence will be relevant. In general, the executive director's production in relation to sanctions will be and should be provided early in the liability phase.

[31] Liability proceedings sometimes evolve over time such that, by the date that evidence is presented, a respondent might allege that the executive director's case has changed in a manner that now exceeds the allegations set out in the notice of hearing. A respondent might have concerns that the case to be met is evolving right up until the time when the submissions of the executive director are presented.

[32] During the sanctions portion of a proceeding, the nature of the case which a respondent must answer is restrained by both the notice of hearing and the findings with respect to liability. Often, no new evidence is introduced during the sanctions phase of a proceeding, although parties have the opportunity to do so. For example, a respondent might choose to introduce evidence about the lack of an ability to pay a substantial financial sanction or the executive director might choose to introduce evidence to establish that the respondent had not cured one of the breaches which was proven in the liability phase.

[33] It would be rare for the executive director to produce and rely upon new evidence during the sanctions proceeding which was not previously disclosed but was in the executive director's possession at the time when production was made to the respondent, and a dispute might follow about whether such evidence should be admitted.

[34] In the present case, the executive director has made it clear that he relies upon the evidence which was before the panel at the liability hearing and the conclusions of the hearing panel. From those sources, the executive director is making a submission that the panel should draw inferences about whether the investigation was delayed or impeded. Perhaps the executive director will succeed with that submission or perhaps, as occurred in *Nuttall*, the executive director will fail. Either way, Birdsall knows the case to be met.

[35] Returning to our discussion of the differences between the liability phase of a proceeding and the sanctions phase, we note that, in general, a notice of hearing will say almost nothing about the sanctions sought or the basis for the sanctions. However, at the sanctions phase, all parties have the advantage of having read the panel's findings on liability, which frames what is relevant at the sanctions proceeding. For example, if the allegations in the notice of hearing are

unregistered trading and fraud, but the fraud is not proven in the liability phase, the nature of the sanction submissions on the seriousness of the breach will be different than if it had been proven.

[36] Further, the respondent has the advantage of receiving the executive director's sanction submissions in writing, in advance of the oral hearing. At that point, unlike prior to a hearing during the liability phase, when the evidence has not been presented and there is the potential that future submissions might evolve to match the evidence, a respondent has a complete picture of the case to be met.

[37] Birdsall is required to meet the case which has been presented, and has correctly pointed out that there are no specific records in evidence supporting the submission that the investigation was impeded by his conduct. Birdsall is not required to meet some other hypothetical case which might potentially make now undefined categories of documents relevant. Given the nature of this application, the clarity of the executive director's submission regarding the sanctions sought, and the basis for those sanctions, the executive director has framed the sanctions portion of the proceeding such that no other materials are relevant.

V. Outcome

[38] The application for production of documents is dismissed.

[39] The application to allow a cross examination of any witness who might be called is dismissed.

[40] The application for an adjournment of the sanctions hearing date is itself adjourned.

April 13, 2026

For the Commission

Gordon Johnson
Vice Chair

James Kershaw
Commissioner

Jason Milne
Commissioner