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

Citation: Re Birdsall, 2026 BCSECCOM 79 Date: 20260309

Lucas Christopher Birdsall

Panel	Gordon Johnson	Vice Chair
	James Kershaw	Commissioner
	Jason Milne	Commissioner

Submissions completed March 3, 2026

Date of ruling March 9, 2026

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Ruling and Reasons

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I. Introduction

[1] In a notice of application filed December 22, 2025, Birdsall seeks:

a) an order pursuant to s. 24(1) of the *Charter* that the demand for production of documents (the “Demand”) dated June 21, 2024 be set aside as violating s. 8 of the *Charter*;

b) an order pursuant to s. 24(1) of the *Charter* that the summons to attend a compelled interview (the “Summons”) dated June 21, 2024 be set aside as violating s. 7 of the *Charter*; and

c) an order staying the Notice of Hearing issued April 17, 2024.

(the Current Application)

II. Procedural History

[2] On October 3, 2024, the executive director issued a Notice of Hearing 2024 BCSECCOM 426 (NOH). The subsequent findings of liability related to the NOH are outlined in *Re Birdsall*, 2025 BCSECCOM 533 (Findings), issued on December 10, 2025.

[3] The Summons and Demand were a significant subject of the Findings, and Birdsall's liability under the *Securities Act* (Act) stems from his failure to comply with the Demand.

[4] Twelve days after the Findings were issued, on December 22, 2025, Birdsall filed the Current Application, under sections 7, 8 and 24(1) of the *Canadian Charter of Rights and Freedoms,* Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter]. However, there is a long history of applications in this matter, commenced well before this most recent issue, as briefly outlined below.

[5] Prior to the issuance of the NOH, Birdsall applied under section 171 of the Act to have a substituted service order and a demand for production set aside, as well as further disclosure. This application was dismissed [PreNOH Application].

[6] In October 2024 Birdsall made an application under s. 13 of the Charter to set aside the NOH on the allegation that it was an abuse of process, as well as for orders that the NOH be subject to anonymization, for further disclosure and an order for an exemption from complying with a demand for production.

[7] On December 23, 2024, Birdsall made an application that the Commission decline to apply sections 161(6.1) and 162(3) of the Act, on the basis that they are contrary to section 96 of the Constitution Act, 1867, as well as for an order staying the NOH.

[8] On March 20, 2025, Birdsall amended his October 2024 applications, seeking orders, among other things, under section 171 of the Act as well as s.13 of the Charter setting aside a substituted service order as well as the NOH.

[9] Birdsall also applied to have the panel recuse itself because of an alleged reasonable apprehension of bias, as the same panel that heard the PreNOH Application heard the hearing on the merits in this matter.

[10] Our reasons relating to the applications outlined above in paragraphs 6 through 9 are found in paragraphs 10 through 81 of the Findings, where we dismiss seven applications brought by Birdsall, before addressing the hearing on the merits.

[11] On February 9, 2026, Birdsall followed up the Current Application with another application, seeking to adjourn the sanctions portion of the hearing pending the outcome of the Current Application, as well as for further disclosure and an order permitting cross examination of any witnesses at the pending sanctions hearing.

[12] On March 3, 2026, Birdsall filed his Reply submissions in the Current Application, along with yet another application (March 3, 2026 Application), this time for an order under section 171 of the Act revoking the Findings, an order under section 24(1) of the Charter setting aside the Demand, and a stay of proceedings against Birdsall. There is a significant degree of overlap between the substance of the March 3, 2026 Application and the Current Application.

III. Position of the Parties on the Current Application

A. Position of Birdsall

[13] These proceedings are unique in that there have been numerous applications throughout, including before the NOH was issued, prior to the commencement of the liability proceeding, and now, even after the Findings. In the Current Application, Birdsall seeks an order under s. 24(1) of the Charter, setting aside the Summons and Demand dated June 21, 2024 as contravening ss. 7 and 8 of the Charter.

[14] Birdsall does not indicate that he relies upon any particular provision of the Act as a basis for the relief sought. Birdsall does not provide any evidence in support of his application.

[15] In brief, Birdsall complains for the first time in these proceedings, and after the liability hearing has been held and a decision rendered, that:

a) he did not receive the investigation order in this matter before the deadline for complying with the Demand, and

b) the Demand was overly broad and did not meet the relevancy requirements set out in the Ontario Court of Appeal decision *Binance Holdings Ltd. v. Ontario (Securities Commission)* 2025 ONCA 751 [*Binance*].

[16] In his submissions, Birdsall relies significantly on *Binance*, where the Ontario Court of Appeal holds that a summons issued under the Securities Act must not be so overly broad that a person is compelled to produce records that the Commission has no foundation to believe may be relevant to the underlying investigation.

[17] In particular, Birdsall submits that the powers of investigators to compel evidence under the Act are limited to relevant evidence as determined by the scope of the investigation.

[18] Birdsall now argues that the Demand does not comply with s. 8 of the Charter, because its scope is "unrestricted", as it requires the production of 'records and things and classes of records and things…relating to the matter' noted on its face. Similarly, Birdsall argues, the Summons affirms a similar "virtually unlimited" nature of the Demand, requiring Birdsall to "bring…all records and things in your custody, possession or control" relating to five issuers.

[19] Birdsall also now argues the Summons does not have any "reasonable foundation" of relevance in relation to the proposed examination, in contravention of s. 7 of the Charter. In particular, Birdsall submits that the foundation of relevance must be provided to the witness. He argues that in this instance, the scope of relevance was only known to the investigator and the authorizing Commission – depriving the witness of any meaningful awareness of the acceptable boundaries of his or her compelled testimony, making s. 7 protections meaningless.

B. Position of the executive director

[20] The executive director submits the Current Application is out of time and lacks merit.

[21] In particular, the executive director argues that Birdsall could have raised the allegation that he had not received the investigation order before the deadline for complying with the Demand, and that the Demand was too broad, long before the completion of the liability hearing. He chose not to do so.

[22] This point is exacerbated by the direction from the panel imposing a firm deadline of March 14, 2025 to file submissions and evidence for any further applications. The Current Application does not comply with that direction.

[23] The executive director further submits that the substance of the Current Application is unfounded. Specifically he submits that Birdsall received the investigation order well before the September 16, 2024 deadline to comply with it. Unlike the facts in *Binance*, there is no indication in the Findings that the investigator used the Demand to conduct a fishing expedition. The executive director refers us to paragraphs 140 and 141 of the Findings, where the panel already found that:

- the records sought in the Demand were reasonably required for the investigation, and
- Birdsall was provided information about the scope of the investigation before the deadline,

as outlined below:

> [140] The memorandum in support of the investigation order provides context for the meaning of the investigation order and the investigation order itself determines the scope of the investigation. In context, and in simple terms, the investigation included a focus on what are sometimes referred to as Trojan asset transactions, or transactions where assets are acquired by a company at inflated prices, usually with a public announcement which is meant to attract investors, and later it is disclosed that the asset value had to be written down. <u>The documents sought from Birdsall in the Demand included records related to Champignon and to the companies that Champignon acquired in exchange for its shares. Objectively, it is established that the records sought were reasonably required for the investigation.</u>
>
> [141] We agree with the conclusion of the Alberta Securities Commission in *Re North American Frac Sand, supra*, that the section requires a finding that the information in question was reasonably required for the investigation. It does not require a finding that a respondent knew it was reasonably required. <u>However, in this case the evidence quoted above from the executive director's submissions amply demonstrates that Birdsall was provided with information about the scope of the investigation before the deadline which establishes Birdsall's refusal to produce records which were subject to the Demand.</u> We have enough information to draw the inference that having received the investigation order and the Demand prior to September 16, 2024, Birdsall would have understood by that date that the Demand reasonably related to the investigation.
>
> [emphasis added]

[24] Furthermore, the executive director submits that the findings in *Binance* are not novel, as the Court came to its conclusions by applying principles set out by the Supreme Court of Canada in several earlier decisions, such as *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3 [*Branch*].

C. Position of Birdsall in reply

[25] In his reply submissions, Birdsall argues that in the criminal context, there is precedent for an accused to raise a Charter argument following conviction, and section 171 of the Act confers the discretion on the Commission to make an order revoking or varying a decision if to do so "would not be prejudicial to the public interest."

[26] In the Current Application, Birdsall submits that there is no prejudice to the executive director if the proceedings are reopened to allow his Charter argument. In contrast, if the Current Application is successful that would lead to a different outcome for Birdsall.

[27] As is noted above, along with his reply, Birdsall filed the March 3, 2026 Application, seeking similar relief, only this time grounding it in section 171 of the Act, and section 7 of the Charter. His section 8 Charter argument was not renewed.

IV. Analysis and Reasons

[28] The deadline for new applications in this proceeding expired on March 14, 2025. If Birdsall concluded that a new application was justified after that deadline, it was open to Birdsall to seek leave to do so. Consistent with s.3.4(b) of BC Policy 15-601 *Hearings*, Birdsall would have been required to provide a basis for the panel to grant leave. It was not open to Birdsall to simply file a new application after March 14, 2025 and expect to have it addressed in this proceeding.

[29] Our Findings on liability were issued on December 10, 2025. In general, findings on liability bring that portion of the hearing to a close. After that date, the only issues remaining to be resolved relate to sanctions.

[30] The Current Application provides no basis for us to even consider the merits of the application. The time for such applications had expired and the relevant issues relating to both findings of fact and liability under the Act had been finally determined. No explanation has been given in the Current Application for Birdsall's failure to state a basis to reopen that portion of the proceeding.

[31] The closest that Birdsall comes within the Current Application to explaining its timing is a reference in the Current Application to the deadline for new applications having passed before the *Binance* decision was issued by the Ontario Court of Appeal on November 6, 2025. The implication is that we should not have expected Birdsall to file the Current Application then because the deadline had passed. This raises an obvious question: if it was too late then, how can it not be too late now, after our December 10, 2025 decision on the merits was issued?

[32] Birdsall's reply submissions appear to reflect an effort to convert the Current Application into an application under section 171 of the Act. There are many problems with such an effort, including that it seeks to transform the nature of the application after the executive director had responded to it.

[33] An additional concern about Birdsall's effort to transform the nature of the Current Application in his reply is that the reply was filed concurrently with the March 3, 2026 Application, which is itself an application under section 171 of the Act. It is abusive of our process for a party to file multiple, duplicative applications.

[34] Our conclusion is that we can and should address all section 171 issues in relation to the March 3, 2026 Application. We should not permit Mr. Birdsall to transform the nature of the Current Application, or frankly of any application, in reply. We should dispose of the Current Application based on the material in front of us.

[35] The issues are not complicated. Birdsall could have sought leave to bring the Current Application after the *Binance* decision was issued but before our Ruling on liability was issued. He chose not to do so. The liability phase of this proceeding is over. Birdsall has identified no

basis for us to consider the Current Application.

[36] The Current Application is dismissed.

March 9, 2026

For the Commission

Gordon Johnson Vice Chair	James Kershaw Commissioner
Jason Milne Commissioner	