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

Citation: Re Lamarche, 2025 BCSECCOM 521 Date: 20251201

Jean Andre Lamarche

Panel	Marion Shaw	Commissioner
	Deborah Armour, KC	Commissioner
	Karen Keilty	Commissioner
Submissions completed	November 5, 2025	
Ruling	November 13, 2025	
Reasons	December 1, 2025	
Counsel		
Joven Narwal, KC Jenny Musyj	For Jean Andre Lamarche	
Stephen Zolnay Beverly Ma	For the executive director	

Reasons for Ruling

I. Introduction

[1] On November 13, 2025, we issued a Ruling, *Re Lamarche*, 2025 BCSECCOM 499, granting an adjournment application brought by Jean Andre Lamarche (Respondent) in enforcement proceedings pursuant to the *Securities Act*, RSBC 1996, c. 418 (Act), with reasons to follow.

[2] The history leading up to the adjournment application is outlined in our recent reasons in *Re Lamarche,* 2025 BCSECCOM 412, and we adopt the descriptions of the procedural history of this proceeding and of the events of September 6 through 8, 2025, described therein.

[3] After the September 8, 2025 hearing date was adjourned, the Commission set January 27, 28 (am only) and 29, 2026 (the January Dates) for the hearing of the Respondent's constitutional application relating to:

a) the statutory interpretation of section 144 of the Act (Stage 1), and

b) whether section 144 of the Act infringes the Respondent's rights under sections 7 and 8 of the *Canadian Charter of Rights and Freedoms*. (Stage 2)

[4] On September 17, 2025, the Respondent applied for further disclosure to be made by the executive director.

[5] On October 6, 2025, at a hearing management meeting, the panel chair directed that the executive director provide:

a) affidavit evidence with respect to the breach of confidentiality that led to the September 8, 2025 adjournment, by October 31, 2025, and

b) submissions on the outstanding applications of the Respondent by November 28, 2025.

[6] On October 22, 2025, the Respondent applied to the Commission to adjourn the January Dates. On November 5, 2025, the executive director provided response submissions opposing the application for an adjournment, and the Respondent filed a reply. We heard the adjournment application in writing.

[7] After consideration of the parties' written submissions, on November 13, 2025, we adjourned the January Dates, with reasons to follow. These are our reasons.

II. Positions of the Parties

[8] The Respondent seeks to adjourn the January Dates so he can prepare for and engage in the future constitutional applications with the benefit of knowing the outcome of his disclosure applications, which he says may "redefine the issues to be argued, the evidence to be called, and the very framework of the proceedings."

[9] The Respondent further argues that Charter applications should not be decided in a factual vacuum, citing *MacKay v. Manitoba*, [1989] 2 S.C.R. 357 at paras. 9 and 20, and *Danson v. Ontario (Attorney General)*, [1990] 2 S.C.R. 1086 at paras. 1 and 33. It would be appropriate, the Respondent submits, to allow the parties to carefully consider the unfolding record and to advance positions that reflect the current situation.

[10] The executive director opposed the adjournment application, pointing out that the Respondent initially raised the constitutional matter in March 2023, and the hearing dates have been rescheduled several times over more than 2 ½ years to accommodate him. The executive director submits that this subsequent adjournment application would be an "indefinite adjournment".

[11] The executive director further submits that the Respondent supports his application for an adjournment by making broad statements without explanation. For example, the Respondent argues that the outcome of his disclosure applications will "influence his approach" to Stage 1 and Stage 2 of the hearing, but he does not provide any detail relating to that argument. The executive director submits that Stage 1 deals with a statutory interpretation question, and Stage 2 questions whether section 144 of the Act is constitutional on its face – neither of which requires the potential evidence that could be disclosed under the pending applications. The executive director says that both issues turn on the wording of section 144 rather than on the particular facts of the case.

[12] The executive director points out that the parties had agreed that any evidence relating to whether there had been a breach of the Respondent's *Charter* rights, and the evidence of Commission staff's procedures for handling potentially privileged communications, would be addressed later in Stage 3 of the constitutional application. That agreement led to the scheduling of oral argument on Stages 1 and 2 earlier this year, after the parties filed written submissions.

III. Analysis and Ruling

[13] BC Policy 15-601 *Hearings* states, in subsection 3.4(c):

> (c) ***Adjournment Applications*** – The Commission expects parties to meet scheduled hearing dates. If a party applies for an adjournment, the Commission considers the circumstances, the timing of the application in relation to any hearing date, the fairness to all parties and the public interest in having matters heard and decided efficiently and promptly. The Commission will generally only grant adjournments if a panel is satisfied based on the evidence filed by the applicant that there are compelling circumstances. Where an adjournment application is based on a party's health, the Commission usually requires sufficient evidence from a medical professional.

[14] Before deciding whether to adjourn the January Dates, we reviewed the submissions of the parties and considered the timing of the application, fairness to all the parties, the manner in which the matter has unfolded to date, the nature of the outstanding preliminary applications before us, and the public interest in having the matter proceed.

[15] We also reconsidered the previously agreed manner of hearing the constitutional application in stages, as described above.

[16] The Respondent filed a notice of civil claim in British Columbia Supreme Court in 2024 challenging the constitutionality of section 144 of the Act. When the Supreme Court stayed the constitutional claims, remitting the matter back to the Commission, the Respondent appealed that decision. The British Columbia Court of Appeal upheld the Supreme Court's decision and rejected the Respondent's request for a stay of these proceedings in *Lamarche v. British Columbia (Securities Commission)*, 2025 BCCA 146 and 2025 BCCA 291, respectively.

[17] In *Lamarche*, 2025 BCCA 146, the Court of Appeal said that:

> [36] While some fragmentation may occur, it seems to me that there is considerable benefit to having the Commission decide the statutory interpretation and constitutional issues at first instance, within the ambit of its experience in interpreting and applying its home statute. In fact, while this is ultimately for the Commission to decide, there would appear to be certain advantages to be gained by the Commission rendering one decision addressing all of the issues I outlined above, being: (1) the statutory interpretation of s. 144 of the Act; (2) the constitutional issues raised by Mr. Lamarche; and (3) the Commission's jurisdiction to review the records for privilege. As I have noted, all of these issues can be determined without the need for the Commission to review the documents for privilege.

[18] Prior to September 8, 2025, the parties proposed and the panel agreed that it made sense to split the constitutional questions up into Stages 1 through 3, as they could be dealt with serially and in isolation, with a fourth stage if necessary to hear arguments on remedy. The parties having filed written submissions, the hearing set to begin before us on September 8, 2025 was scheduled for the hearing of oral arguments on the following issues:

a) whether, given the language of that provision, section 144 of the Act authorized the issuance of a demand for production to the Respondent's internet provider (Stage 1); and

b) whether, given the absence of a provision in the statute that protects solicitor-client privilege, section 144 of the Act infringes the Respondent's rights under sections 7 and 8 of the Canadian *Charter of Rights and Freedoms* (Stage 2).

[19] However, the agreement by the parties to wait to address the handling of potentially privileged communications was reached before the events of September 6 to 8, 2025. Former counsel for the executive director has admitted to actually, albeit inadvertently, reviewing privileged materials. Now that a breach has occurred, the issues relating to Stage 3, and in particular the safeguarding of privileged information by the executive director, can no longer be considered purely a potential risk. That breach led to the adjournment of the hearing of Stages 1 and 2 and the issuance by this panel of a sealing order on the investigation file.

[20] As we stated in paragraph 35 of *Re Lamarche,* 2025 BCSECCOM 412, as it relates to these proceedings:

> While the issues relating to how the executive director screens, stores and safeguards potentially privileged records during an investigation might have been expected to be canvassed by the parties later in these proceedings depending on the outcome of Stages 1 and 2, given the inadvertent breach of solicitor-client privilege in the run-up to this hearing, they are squarely before us now.

It may be appropriate to proceed differently now.

[21] The Respondent in his submissions relied on a series of cases for the proposition that *Charter* applications should not be decided in a factual vacuum. We note that those cases involved situations where no factual foundation for the constitutional claims was before the court. Patently, that is not the case here.

[22] Nevertheless, while we cannot now see how the outcome of the Respondent's application for further disclosure might affect the contemporaneous constitutional applications before us, we cannot say with certainty that it will have no impact. As we stated in *Re Lamarche, supra*, we take very seriously the inadvertent breach of solicitor-client privilege. We agree with the Respondent that it is appropriate to allow the parties sufficient time to carefully consider what impact, if any, that breach will have on their arguments in the context of the constitutional application. The executive director may be correct, in retrospect, that it had none, but we are not prepared to foreclose at the outset the opportunity to consider it.

[23] Given the foregoing, we adjourned the January Dates and directed that the parties attend a hearing management meeting to discuss how the constitutional application should be scheduled now that Stages 1 and 2 have become co-mingled with issues that were to have been addressed at Stage 3.

[24] Finally, we take this opportunity to specifically reject submissions made by the Respondent in support of the adjournment application, that "every indulgence of time has been extended to the Executive Director while the Respondent has been afforded none." The procedural record, as outlined in *Re Lamarche*, 2025 BCSECCOM 313 at paras. 5-19 (which was itself a decision granting an adjournment requested by the Respondent), makes abundantly clear that the panel

has been fair and accommodating towards all parties to these proceedings. Any suggestion that the Commission has favoured one party over another is unhelpful and inaccurate.

December 1, 2025

For the Commission

Marion Shaw
Commissioner

Deborah Armour, KC
Commissioner

Karen Keilty
Commissioner