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

Citation: Re Lamarche, 2025 BCSECCOM 412 Date: 20250916

Jean Andre Lamarche

Panel	Marion Shaw	Commissioner
	Deborah Armour, KC	Commissioner
	Karen Keilty	Commissioner
Submissions completed	September 8, 2025	
Ruling	September 8, 2025	
Reasons	September 16, 2025	

Counsel

Paul Smith	For the executive director
Joven Narwal, KC	For Jean Andre Lamarche
Derek Ball	For the Attorney General of British Columbia

Reasons for Ruling

I. Introduction

[1] This matter relates to enforcement proceedings brought by the executive director against Jean Andre Lamarche (Respondent) pursuant to the *Securities Act*, RSBC 1996, c. 418 (Act).

[2] The September 8, 2025 hearing before the panel was intended to be the first in a series of dates scheduled to hear the Respondent's applications regarding the interpretation and constitutionality of section 144 of the Act.

[3] At the beginning of the first day's proceedings, then counsel for the executive director advised that he had inadvertently reviewed a document that was protected by solicitor-client privilege. The document was part of a category of documents in the custody of the Commission that had accidentally become available in the course of an upgrade of the Commission's document management system. As a result, his position as counsel for the executive director had become untenable. He requested that he be allowed to withdraw. We allowed his withdrawal.

[4] Paul Smith, on behalf of the executive director, then applied to have the hearing adjourned, given that former counsel could no longer act and new counsel would need to be appointed.

[5] The Respondent acknowledged the circumstances giving rise to counsel's withdrawal but objected to the adjournment unless certain orders were issued by the Commission, including a sealing order relating to the potentially privileged records at issue, as well as a direction that those records be removed from the custody of the executive director and placed with either the Supreme Court registry or with another independent party.

[6] The Attorney General consented to the adjournment requested by the executive director and took no position on the orders sought by the Respondent.

[7] After hearing from the parties, we:

a) adjourned the hearing, and

b) issued an order that the executive director and staff of the Commission be prohibited from reviewing any records gathered during the course of the investigation relating to the Notice of Hearing in this matter.

[8] These are the reasons for our ruling.

II. Background

[9] The underlying enforcement proceeding against Mr. Lamarche commenced with a Notice of Hearing, 2022 BCSECCOM 481, dated December 18, 2022.

[10] An outline of much of the procedural history of this matter since the Notice of Hearing was issued can be found in our decision *Re Lamarche*, 2025 BCSECCOM 313.

[11] In particular, the Respondent filed a notice of civil claim in British Columbia Supreme Court regarding the constitutionality of section 144 of the Act. The Commission made an application to the court that argued that the Respondent's notice of civil claim was premature because the matter was before a panel of the Commission.

[12] In *Lamarche v British Columbia (Securities Commission)*, 2024 BCSC 1137, the court stayed the constitutional claims, remitting the matter back to the Commission. The Respondent appealed the decision.

[13] After the BC Court of Appeal considered the Respondent's appeal and rejected the request for a stay of these proceedings in *Lamarche v. British Columbia (Securities Commission)*, 2025 BCCA 146 and 2025 BCCA 291, respectively, the proceeding set to begin before us on September 8, 2025 was to be a consideration of:

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)

[14] The parties, including the Attorney General of British Columbia, filed written submissions in advance of the hearing.

[15] On Saturday, September 6, 2025, the Hearing Office was sent correspondence from the Respondent that included a letter from counsel for the executive director to him. The letter from the executive director was provided to the Respondent on Saturday, September 6, 2025, and states:

> I write to notify you of my inadvertent review of a privileged document in this matter.
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> Late yesterday afternoon, I discovered a category of documents in the Commission's document management software. I partially reviewed one, an email, which I identified as privileged. I immediately closed the document and took steps to ensure the entire

> category was no longer accessible. I have sought advice on how it became available to view. I have learned that it happened in the context of a system upgrade but I do not yet have any further technical details.

[16] Upon receipt of the letter from the executive director, the Respondent wrote to the Hearing Office that same day as follows:

> I am writing to bring to the immediate attention of the Panel scheduled to hear my constitutional challenge on Monday and to the Commission more broadly, that I have just been informed, as set out in the attached letter and email below, that solicitor-client privileged material in the custody of the Executive Director and the Commission has been accessed and a breach of privilege has occurred.
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> To have this disclosure made on Saturday before the hearing is a stunning development that goes directly to the core of my constitutional challenge and further demonstrates that the Executive Director and Commission cannot be a trusted custodian of privileged information.
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> In addition to other remedies I will seek, I am asking that the entire file at the Commission relating to these proceedings be immediately sealed with no further review or access and that all solicitor-client privileged material be removed from the Commission's custody, deposited at the Vancouver Supreme Court registry and permanently deleted from Commission systems as well as any other safeguards that are necessary to protect the privileged communications.

[17] The Hearing Office provided that correspondence to the panel prior to the commencement of the hearing on Monday, September 8, 2025. When the hearing commenced, counsel for the executive director advised that he could not continue as counsel and sought to be excused as counsel for the executive director. The panel granted that request and he left the hearing. Upon former counsel's departure, Mr. Smith for the executive director applied to adjourn the hearing, stating that the executive director was unable to argue Stages 1 and 2 until such time as new counsel had been appointed and had had an opportunity to prepare for argument. Noting that dates in January 2026 have been set for a subsequent stage of the proceedings, the executive director requested that the hearing on Stages 1 and 2 be adjourned to then.

III. Positions of the parties

A. Adjournment

[18] The executive director submitted that the requested adjournment should be granted, noting that the Commission had on many occasions ordered an adjournment where a party found itself without counsel on the eve of a hearing, and that the executive director had often consented to those adjournments on the basis that it is in the public interest that panels should have the benefit of submissions from counsel who are well-versed in the matter. The executive director suggested that the dates that have already been set aside for this matter may prove sufficient to complete all the contemplated steps,

[19] While acknowledging that an adjournment would likely be granted in the circumstances, the Respondent objected to the matter being adjourned. He argued that any adjournment must be made conditional on protective orders to ensure that his rights not be further breached.

[20] The Attorney General of British Columbia consented to the adjournment application.

B. Protective orders

[21] The Respondent made detailed submissions with respect to the importance placed by the courts on the preservation of solicitor-client privilege. Asserting that the risk of breaching privilege was no longer theoretical, the Respondent sought the following protective orders:

a) immediately sealing the enforcement file relating to these proceedings, and

b) ordering that all records relating to the issue of solicitor-client privilege be removed from the Commission's custody and deposited at the Supreme Court registry, and then permanently deleted from the Commission's systems.

[22] The Respondent later clarified that the sealing order he sought related only to the data-set consisting of the email communications of the Respondent that were obtained from Shaw Communications in the investigation, and not the entire enforcement file.

[23] The Respondent relied on the Commission's decision in *Re Parhar*, 2017 BCSECCOM 286, as support for his argument that the Commission has the jurisdiction to make the protective orders he seeks. In that case, application was made for an order restraining the executive director and Commission staff from inspecting or examining certain seized records pending a determination of the issues. The requested restraining order was referred to there as a "stay". The Respondent referred us to paras 26 to 29, where the Commission states:

> [26] We do not agree with the submissions of the executive director on this jurisdictional point and find that we have the authority under section 171 of the Act to grant the Stay.
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> [27] First, we consider granting of the Stay as a form of variance of the Investigation Order and the Business Premises Search Order. In granting the Stay, we are, in effect, imposing a condition or restriction on the operative effect of those orders (i.e. that certain materials, obtained under those orders, not be reviewed by Commission staff pending the determination of Parhar's substantive applications).
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> [28] Secondly, the Supreme Court of Canada, in *British Columbia v. Oliver Co-Operative Growers Exchange*, [1963] S.C.R. 7, has held that language similar to that in section 171 of the Act confers upon a government agency a broad and necessary authority to vary or revoke a prior decision of that agency to provide an outcome not otherwise specifically provided for by the agency's governing legislation. By definition, in section 1 of the Act, the Investigation Order and/or the Business Premises Search Order, are decisions of the Commission, and there is no doubt that we could revoke them in their entirely. It is consistent with that power to also have the lesser authority to temporarily stay, in a prescribed manner, the operative effect of those orders.
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> [29] Lastly, and most importantly, the Commission is an administrative tribunal. One of the cornerstones of an effective administrative tribunal is that it is to be the master (within the confines of administrative law principles) of its own procedures. The practical effect of accepting the executive director's submissions on this issue is that Parhar would have to seek the Stay in a superior court. It would be inconsistent with the Commission having control of its own processes and of providing a fair and efficient setting for the hearing and determination of matters properly to be determined by it (i.e. the substantive applications set out in paragraph 5 above), if we were unable to make interlocutory orders like the Stay.

[24] Noting that the application for those orders was made in the Respondent's email of September 6, 2025 to the Hearing Office, the executive director submitted that it was not appropriate to address those issues at this time, given that the immediate cause of the breach was no longer an issue. He submitted that the Respondent's application should be in writing, with supporting materials, and with sufficient notice for all parties to call evidence and make submissions on the law.

[25] The executive director advised that an investigation was underway and evidence would be provided about what had occurred relating to the viewing of a privileged document, including a log of who had accessed it, and when. He said that he was uncertain how long it would take to assemble that evidence, but it was not yet available for the panel and would not become available this week. Counsel advised that he had been informed that one document had been accessed by one individual, former counsel for the executive director, and that the category of records – those that are potentially or actually privileged – was no longer accessible and that the software upgrade that appears to have been the cause of the lapse will not take place again. He took the position that that being so, there was no risk of a further breach of solicitor-client privilege.

[26] In the absence of any evidence, the Respondent rejected the executive director's assertions that whatever problem had caused the breach of privilege had been corrected.

[27] The Attorney General of British Columbia took no position on the preventive orders sought by the Respondent.

IV. Analysis and Ruling

[28] 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.

[29] In considering the application to adjourn the hearing, we considered the circumstances giving rise to the application, the submissions of the parties, the timing of the application, the fairness to the parties, and the public interest in having the matter proceed.

[30] The facts giving rise to the recusal of the executive director's former counsel were unforeseen and happened on the eve of the hearing. He acted swiftly and appropriately both in bringing the matter to the attention of the Respondent and in asking to withdraw as counsel for the executive director.

[31] At the commencement of the hearing on September 8, 2025, we were faced with the submission of the executive director that he was unable to proceed with arguing Stages 1 and 2, and that new counsel would need to be appointed and become familiar with the file. We noted the Respondent's objection, but given the timing of the events giving rise to counsel's recusal and the importance of the issues before the panel, we had little difficulty in determining that an adjournment of the hearing on Stages 1 and 2 was appropriate and in the public interest; accordingly, we granted it. Dates for the adjourned hearing will be set with input from the parties.

[32] The Respondent sought to condition the adjournment on the protective orders requested by him. While we regard those as separate matters, in this case they arise from the same circumstances. We disagree with the executive director's contention that the Respondent's applications for protective orders needed to be brought formally in writing with further evidence. The unanticipated and unfortunate event that gave rise to the adjournment application also gave rise to the applications for protective orders. Just as the executive director's adjournment application was not brought in writing in these circumstances, the Respondent's applications are also appropriately dealt with without written materials.

[33] While the executive director sought to assure us that the cause of the breach giving rise to the need for the adjournment has been fixed, he was not yet able to provide specific evidence about the nature of the breach, its scope, or the manner in which it was said to have been fixed. The letter outlined above from former counsel contains very little detail.

[34] We take very seriously the inadvertent breach of solicitor-client privilege. Causing us significant further concern is that we have no idea if other potentially privileged records related to this matter could accidentally be reviewed by the executive director. We have no evidence on how they were initially safeguarded, who had access to those records, what happened to those safeguards, and how many records had those safeguards removed and then reinstated. Furthermore, we do not know what the corrective action entailed and whether that action can ensure that all the records at issue are once again beyond the purview of the executive director. All we have is a statement from the letter from former counsel that he "took steps to ensure the entire category was no longer accessible."

[35] 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.

[36] We agree with the Respondent that, as outlined in *Parhar*, we have the jurisdiction to issue a sealing order to prevent access to a category of records to ensure that a similar breach does not occur again. Further, we agree that given the serious nature of the issue before us and the potential harm that would be caused by a further breach of solicitor-client privilege, a sealing order in these circumstances is warranted.

[37] While the Respondent narrowed his request to sealing only those records that could potentially be privileged, given the importance of protecting solicitor-client privilege we consider that a much broader order is required at this time. Because of the nature of the breach in this instance and the lack of evidence about what happened and how it has been remedied, and without knowing whether other potentially privileged records have inadvertently been migrated into non-privileged categories of records, we find that it is appropriate to seal the entire enforcement file, prohibiting staff of the Commission from reviewing any records gathered during the course of the investigation underlying the Notice of Hearing dated December 18, 2022.

[38] The sealing order will allow the executive director the ability to review the document management system and the administration of the enforcement file to identify the cause and scope of the breach, and to assemble and provide evidence to the panel that an appropriate remedy has been implemented. This panel will consider varying the sealing order on application by the executive director with such evidence.

[39] The sealing order will also ensure that, in the interim, there can be no further inadvertent breach of solicitor-client privilege.

[40] While a question was raised (and will be considered by counsel) whether the fact of an inadvertent breach might affect the constitutionality analysis, the parties agreed that it seems likely that Stages 1 and 2 could still be dealt with before us if the executive director did not then have access to the records gathered during the investigation in this matter, including those he intended to rely on at the liability hearing.

[41] On the second order sought by the Respondent – that all records relating to the issue of solicitor-client privilege be removed from the Commission's custody and deposited at the Supreme Court registry or elsewhere – we heard extensive submissions from the Respondent and very little from the executive director. Given the scope of the sealing order provided above, we find that that question can wait until we have the benefit of comprehensive written submissions from the parties.

[42] We therefore directed that the parties attend a Hearing Management Meeting on September 12, 2025, to discuss scheduling those submissions, as well as scheduling dates for hearing Stages 1 and 2, adjourned above.

September 16, 2025

For the Commission

Marion Shaw
Commissioner

Deborah Armour, KC
Commissioner

Karen Keilty
Commissioner