

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

Citation: Re Lamarche, 2025 BCSECCOM 313

Date: 20250715

**Jean Andre Lamarche**

<b>Panel</b>	Marion Shaw Deborah Armour, KC Karen Keilty	Commissioner Commissioner Commissioner
<b>Submissions completed</b>	June 10, 2025	
<b>Ruling</b>	June 12, 2025	
<b>Reasons</b>	July 15, 2025	
<b>Counsel</b>		
Matthew Smith	For the executive director	
Joven Narwal, KC	For Jean Andre Lamarche	

**Reasons for Ruling**

**I. Introduction**

- [1] On June 5, 2025, Mr. Lamarche (the Respondent) applied to the Commission to adjourn the hearing dates of July 29, 31 and August 1, 2025 (the Summer Dates) set to hear the Respondent's preliminary application and constitutional argument.
- [2] On June 10, 2025, the executive director opposed the adjournment.
- [3] On June 12, 2025, after reviewing the submissions of the parties, the panel adjourned the Summer Dates to the dates previously set for the liability hearing in September, commencing September 8, 2025.
- [4] These are our reasons for granting the adjournment.

**II. Background**

- [5] The underlying enforcement proceeding against Mr. Lamarche commenced with a Notice of Hearing dated December 18, 2022.
- [6] At a hearing management meeting on March 15, 2023, Respondent's counsel stated that he would file an application regarding the constitutionality of section 144 of the Securities Act (Constitutional Application) in the following two weeks.
- [7] At the next hearing management meeting on April 18, 2023, Respondent's counsel stated that he had prepared materials regarding the Constitutional Application and anticipated delivering them by the end of the following week.

- [8] At the next hearing management meeting on May 18, 2023, the Respondent was directed by the panel chair to file his Constitutional Application, if he intended to do so, by no later than June 21, 2023.
- [9] On June 21, 2023, the Respondent filed a Notice of Application and Constitutional Question in the BC Supreme Court Criminal Registry. After some procedural questions as to the correct forum, he abandoned that application and made his constitutional argument in a Notice of Civil Claim filed with the BC Supreme Court Civil Registry on September 28, 2023.
- [10] The executive director subsequently applied to have the Respondent's constitutional claims stayed before the courts, arguing that they should be decided in the first instance by the Commission. The executive director's application was granted by the BC Supreme Court on June 28, 2024.
- [11] In January 2025, the Respondent appealed that decision to the BC Court of Appeal.
- [12] While the jurisdictional issue was before the BC Supreme Court and the Court of Appeal, the Commission, with input from the parties, scheduled hearing dates so that the Constitutional Application could proceed promptly if it was remitted to the Commission.
- [13] At a hearing management meeting on September 16, 2024, the parties set groups of dates through the spring and summer of 2025 to hear the Constitutional Application if the Court of Appeal upheld the Supreme Court decision remitting it back to the Commission. Included in those dates were the Summer Dates.
- [14] The liability hearing was further scheduled for September 8 – 15, 2025.
- [15] The Commission adjourned dates initially set for the spring with input from the parties while the Court of Appeal's decision was still under deliberation. In March 2025, the parties jointly requested a hearing management meeting in early June to set a schedule for exchange of materials in advance of the Summer Dates.
- [16] On May 5, 2025, the British Columbia Court of Appeal issued its decision in *Lamarche v. British Columbia (Securities Commission)*, 2025 BCCA 146, upholding the decision of the Supreme Court declining jurisdiction over the constitutional claims, in part as follows:
- [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.
- [17] At a hearing management meeting on June 4, 2025, the panel chair noted that the Court of Appeal had provided clear guidance on how to proceed, and sought to have the parties agree to a schedule for the exchange of materials that would allow the Constitutional Application to proceed on the Summer Dates.

- [18] At that meeting, the Respondent requested that the Summer Dates be “pushed”, without formally applying to adjourn them, based on his intention to appeal the Court of Appeal’s decision to the Supreme Court of Canada. The panel chair advised that a formal application was required.
- [19] On June 5, 2025, the Respondent applied to adjourn the Summer Dates, on the basis that it would be “procedurally unfair” to proceed, given that the previously scheduled dates had been held in abeyance while the matter proceeded through the courts.
- [20] The executive director objected to the adjournment application.

### III. Analysis

- [21] 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.

- [22] In considering the application to adjourn the hearing, we considered the submissions filed in support of the application, the timing of the application, the fairness to both the Respondent and the executive director, the manner in which this matter has unfolded to date, and the public interest in having the matter proceed.
- [23] The Respondent filed no evidence in support of the adjournment application, stating that because of “logistical constraints, including counsel availability, the complexity of preparing a Supreme Court leave application, and the need to bring a separate stay application before the Court of Appeal, it is not feasible to have these matters dealt with in advance of the July hearing dates.” The Respondent also noted that he had said in the course of the hearing management process that if matters went against him in the BC courts, he would consider an appeal to the Supreme Court of Canada. On his adjournment application, he argued that it would be procedurally unfair not to afford him the opportunity to pursue and exhaust all available appellate remedies before hearing the Constitutional Application.
- [24] The executive director objected to the adjournment application, noting that it is over two years since the Constitutional Application was first contemplated by the Respondent, and the Summer Dates were expressly set by agreement of the parties for the purpose of hearing it then if the Court of Appeal upheld the decision of the BC Supreme Court.
- [25] The executive director noted that the Respondent has indicated that he intends to seek a stay of proceedings from the Court of Appeal, but to date the Respondent has neither filed an application for leave to appeal to the Supreme Court of Canada nor sought a stay of proceedings. The executive director says that the BC Supreme Court and the Court of Appeal have confirmed the Commission’s jurisdiction to hear the Constitutional Application at first instance, and the Commission’s public interest mandate requires that it do so both fairly and efficiently.
- [26] Both parties have said that it now appears likely that the three hearing days making up the Summer Dates will not be sufficient for the completion of the Constitutional Application, and it

will be necessary to use some of the September 2025 hearing dates for that purpose. The executive director says that nevertheless, the Constitutional Application should get underway as scheduled.

- [27] We reject the Respondent's characterization that it would be "procedurally unfair" to proceed with the Constitutional Application on the Summer Dates. We are mindful of the manner in which these proceedings have unfolded. While it is true that the parties have consented to multiple adjournments and the matter has been held in abeyance for some time while the Respondent's applications have made their way through the courts, the Summer Dates were set for the purpose of hearing the Constitutional Application if and when the Court of Appeal confirmed the Commission's jurisdiction to hear the matter. It was not reasonable for the Respondent to assume that a further adjournment of the Summer Dates would be forthcoming once the Court of Appeal had done so.
- [28] We note that the Respondent first indicated his intention to bring the Constitutional Application over two years ago. It was a reasonable expectation of this panel that the materials supporting that application would be completed in the 10 or more weeks between the Court of Appeal's decision and the Summer Dates.
- [29] There is a statutory mechanism for a party who intends to appeal a decision of the Court of Appeal to seek a stay of that decision pending the Supreme Court of Canada's decision on leave. To date, the Respondent has not availed himself of that mechanism. We agree with the submissions of the executive director that the timely prosecution of alleged contraventions of securities law is in the public interest. In the absence of a stay, the matter should proceed as expeditiously as is reasonable.
- [30] Parties are expected to respect the dates agreed by the parties and the deadlines set by the Commission.
- [31] All of that said, we acknowledge the submissions of the parties that it is likely that the hearing of the Constitutional Application cannot be completed on the Summer Dates and will spill into the six days in September that were set aside for the liability hearing. We will need time after the completion of the Constitutional Application to reach our decision and provide reasons for it before the next stage of the hearing can commence; accordingly, there is a real risk that the September dates now cannot be used as planned for the liability hearing. That being so, and given that adjourning the Constitutional Application so that it begins instead on September 8, 2025, when the liability portion of the hearing was set to begin, would result in a delay of only six weeks, we have reluctantly concluded that the most practical thing to do in the circumstances is to grant the requested adjournment, and we do so.

July 15, 2025  
**For the Commission**

Marion Shaw  
Commissioner

Deborah Armour, KC  
Commissioner

Karen Keilty  
Commissioner