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

Citation: Re Lamarche, 2026 BCSECCOM 66 Date: 20260226

Jean Andre Lamarche

Panel	Marion Shaw	Commissioner
	Deborah Armour, KC	Commissioner[1]
	Karen Keilty	Commissioner
Submissions completed	February 9, 2026	
Counsel		
Joven Narwal, KC Joseph Wandler	For Jean Andre Lamarche	
Stephen Zolnay Beverly Ma	For the executive director	

Ruling

I. Introduction

[1] Jean Andre Lamarche aka John Lamarche (Lamarche) has made a series of preliminary applications in this matter, for certain orders, including:

a) disclosure of certain records;

b) an order that the Commission "give notice to all individuals whose private communications and solicitor-client privileged communications have been seized by the Commission";

c) an order 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

d) an order that counsel for Lamarche be granted leave to conduct cross-examinations of three affiants of the executive director.

[2] We have had significant submissions from the parties on these applications. In this ruling, we set out our decisions on those applications and the reasons for them, as well as our directions to the parties on next steps.

II. Background

[3] On December 18, 2022, the executive director issued a notice of hearing against Lamarche alleging that he contravened sections 34(a) and (b) of the *Securities Act*, RSBC 1996, c. 418 (Act) by trading and advising without being registered (2022 BCSECCOM 481).

[1] Commissioner Armour, KC, was absent and did not participate in this Ruling.

[4] In the course of its investigation, the executive director relied on section 144 of the Act to compel the production of emails by Lamarche's internet service provider.

[5] On June 21, 2023, Lamarche filed a notice of application in the Supreme Court of British Columbia Criminal Registry that sought a declaration that section 144 of the Act was unconstitutional, arguing that it creates a risk that solicitor-client privileged communications could be gathered by the Commission.

[6] On September 27, 2023, after concerns were raised by counsel for the Commission and the Attorney General of British Columbia (AGBC), Lamarche abandoned his notice of application.

[7] On September 28, 2023, Lamarche filed a notice of civil claim with the British Columbia Supreme Court which raised the same allegations as the June 21, 2023 notice of application and added a complaint under the *Privacy Act*, RSBC 1996, c. 373 and claims for damages. The Commission brought an application to stay and strike portions of the notice of civil claim.

[8] On June 28, 2024, the Court issued its reasons for judgment (*Lamarche v British Columbia (Securities Commission)*, 2024 BCSC 1137), staying Lamarche's constitutional claims until he had exhausted the Commission's administrative process and striking his claims under the *Privacy Act*. Lamarche appealed.

[9] On May 5, 2025, the British Columbia Court of Appeal issued its reasons for judgment (*Lamarche v British Columbia (Securities Commission)*, 2025 BCCA 146), finding that there was no error in staying the constitutional claims, but that the chambers judge erred in striking the *Privacy Act* claims. The Court ordered the *Privacy Act* claims also be stayed until the Commission's process was complete.

[10] On June 5, 2025, Lamarche applied to adjourn the July 29 and 31 and August 1, 2025, hearing dates that the Commission had previously set to hear Lamarche's constitutional argument.

[11] On June 10, 2025, the executive director responded, opposing the application for adjournment.

[12] On June 12, 2025, the hearing office sent an email on behalf of the panel to the parties advising that the July 29 and 31 and August 1, 2025, hearing dates were adjourned and directing the constitutional application to commence on September 8, 2025. On June 17, 2025, a hearing notice was issued (*Re Lamarche*, 2025 BCSECCOM 274).

[13] On June 26, 2025, the parties attended a hearing management meeting where they agreed to the hearing of the constitutional application in the following framework and stages:

Stage 1:	Whether the investigative technique used by the Commission was authorized by section 144 of the Act.
Stage 2:	If the technique was authorized by the Act, is section 144 constitutional,
Stage 3:	If section 144 is constitutional, then did the Commission have the proper processes in place and were those processes followed in this case.
Stage 4:	If applicable, any remedy.

[14] On July 15, 2025, we issued our reasons for ruling for the adjournment ordered on June 12, 2025 (*Re Lamarche*, 2025 BCSECCOM 313).

[15] On July 17, 2025, Lamarche filed the outline of applicant's argument on the constitutional application, stages 1 and 2, as described above.

[16] On July 28, 2025, Lamarche applied for leave to appeal the British Columbia Court of Appeal's decision in *Lamarche v British Columbia (Securities Commission)* 2025 BCCA 146 to the Supreme Court of Canada. Lamarche then brought an application before the British Columbia Court of Appeal to stay its order, and as a consequence the Commission proceedings, until his appeal is determined.

[17] On August 7, 2025, the Court of Appeal issued its judgment (*Lamarche v British Columbia (Securities Commission)*, 2025 BCCA 291) dismissing the application to stay its order.

[18] On August 19, 2025, the executive director filed his written submissions for stages 1 and 2.

[19] On August 20, 2025, the AGBC filed its written submissions for stages 1 and 2.

[20] On September 6, 2025, counsel for Lamarche provided the hearing office a copy of a letter from counsel for the executive director to counsel for Lamarche. In the letter, counsel for the executive director stated he had inadvertently partially reviewed one email "which I identified as privileged" and that he "immediately closed the document and took steps to ensure the entire category was no longer accessible". In his email to the hearing office, counsel for Lamarche stated that this development "goes directly to the core of my constitutional challenge" and sought the entire file to be sealed and "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".

[21] On September 8, 2025, the hearing commenced with counsel for the executive director advising the panel that he had inadvertently reviewed a document that was protected by solicitor-client privilege and requesting that he be permitted to withdraw as counsel. We allowed him to withdraw. Another counsel for the executive director then applied to have the hearing adjourned in order to have new counsel appointed to the file. Lamarche requested that the potentially privileged records be sealed and that the panel issue a direction that the records be removed from the executive director's custody and placed either with the Supreme Court registry or with another independent party.

[22] We ordered that the hearing was adjourned, the entire enforcement file was to be sealed, and the executive director and staff of the Commission were prohibited from reviewing any records gathered during the course of the investigation of Lamarche until further order of the panel. The executive director undertook to conduct a thorough investigation and to provide the panel with affidavit evidence regarding the cause and magnitude of the breach of solicitor-client privilege and confirmation that the problem has been remedied.

[23] In letters to the executive director dated September 9 and 10, 2025, Lamarche made additional very comprehensive requests for disclosure of technical information related to the evidence and disclosure company software used by the executive director (the Software or the Software Company) and for information relating to third parties unrelated to the investigation of Lamarche.

[24] On September 16, 2025, we issued reasons for our September 8, 2025 ruling (*Re Lamarche*, 2025 BCSECCOM 412). As outlined in those reasons, the parties agreed that stages 1 and 2 could be considered despite the executive director not having access to the investigative records.

[25] On September 17, 2025, Lamarche filed an application for:

a) disclosure of various documents in the possession of the executive director requested in a letter dated September 9, 2025, that could be used "to assess the legality and adequacy of the methods employed by the" executive director; and

b) an order that the Commission "give notice to all individuals whose private communications and solicitor-client privileged communications have been seized by the Commission and for the disclosure requested by letter dated September 10, 2025".

[26] On September 29, 2025, Lamarche provided supplemental written submissions to his September 8, 2025 application "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". Counsel for Lamarche submitted that his September 8 and September 17 applications could be heard in writing.

[27] On October 6, 2025, after a hearing management meeting, the panel chair directed the executive director to provide affidavit evidence with respect to the breach of solicitor-client privilege by October 31, 2025, and submissions on Lamarche's September 8 and 17 applications by November 28, 2025.

[28] On October 22, 2025, Lamarche filed a notice of application to adjourn the hearing dates in January 2026 that had previously been set by agreement of the parties for the hearing of stages 1 and 2.

[29] On October 31, 2025, the executive director provided two affidavits regarding the breach of solicitor-client privileged records. One, which was affirmed on October 30, 2025, was from an eDiscovery specialist at the Commission who explained how 16 documents had moved from a quarantine folder into the main database folder during an update to the Commission's digital evidence and case management software. The other, which was affirmed on October 31, 2025, was from former counsel for the executive director who affirmed that he had partially reviewed a document that "may be privileged" in preparation for the hearing that was to commence on September 8, 2025.

[30] On November 5, 2025, the executive director responded, opposing Lamarche's October 22, 2025, adjournment application. Lamarche provided a reply the same day.

[31] On November 13, 2025, we issued a ruling with reasons to follow adjourning the January 2026 hearing dates (*Re Lamarche,* 2025 BCSECCOM 499).

[32] On November 28, 2025, the executive director provided responses to Lamarche's September 17, 2025, disclosure application and his application to deposit records in the court registry along with three additional affidavits, including an affidavit from an information officer at the Commission.

[33] On December 1, 2025, we provided the reasons for our ruling adjourning the January 2026 hearing dates (*Re Lamarche*, 2025 BCSECCOM 521), stating in part:

> [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.

[34] On December 16, 2025, at a hearing management meeting, the panel chair noted that she wished to hear oral submissions on stages 1, 2, and 3 on March 19 and 20, 2026 (dates previously set aside by the parties for the hearing of this matter), and set January 30, 2026, as the deadline for Lamarche to file his application for stage 3 and any other preliminary applications.

[35] On December 19, 2025, Lamarche provided his reply submissions on his disclosure application and his application to deposit records in the court registry.

[36] On December 23, 2025, the panel requested that the executive director provide "any legal authority to clarify why documents that have been identified by all parties as privileged should continue to be held by the Commission even if those documents are segregated from Enforcement".

[37] On January 19, 2026, Lamarche filed a notice of application to cross-examine three of the executive director's affiants: former counsel, the eDiscovery specialist, and the information officer.

[38] On January 23, 2026, counsel for the executive director emailed a response to our December 23, 2025, request. He asserted that documents that have been identified by all parties as privileged should not continue to be held by the Commission, but that there are currently no such documents, since Lamarche has not identified any particular documents as privileged. Lamarche then requested an opportunity to respond to the executive director's email.

[39] On January 27, 2026, counsel for Lamarche emailed the hearing office seeking an extension of the January 30, 2026 deadline to file his stage 3 application and any other preliminary application in this matter.

[40] On January 30, 2026, the hearing office sent an email to the parties stating that the panel granted Lamarche's extension of time and that the panel chair would follow up with the parties regarding that deadline after receipt of the responding materials for the application to cross-examine.

[41] On January 30, 2026, the panel granted Lamarche an opportunity to respond to the executive director's January 23, 2026, email by February 13, 2026. The panel specifically requested that Lamarche both:

- address the executive director's submission that all potentially privileged documents were provided to Lamarche on March 6, 2023, and
- identify those documents over which he was claiming privilege and the nature of that privilege.

[42] On February 2, 2026, the executive director filed a response to the application to cross-examine.

[43] On February 9, 2026, Lamarche filed a reply to the application to cross-examine.

[44] On February 12, 2026, Lamarche provided his response to counsel for the executive director's January 23, 2026, email. Lamarche claimed "privilege over all of the material," without identifying the records over which he is claiming privilege or the nature of the privilege asserted. Lamarche further disputed the panel's jurisdiction to adjudicate claims of privilege, and requested an oral hearing.

[45] On February 20, 2026, the executive director responded to Lamarche's February 12, 2026 email. Noting that Lamarche has had ample opportunity to either respond to or make submissions regarding the request by the executive director and subsequently by the panel that he identify the specific documents over which he is claiming privilege and properly assert privilege over them, the executive director argued that there is no need for an oral hearing, Lamarche responded the same day to reiterate his view that time should be set for an oral hearing.

III. Disclosure and notice to third parties

Position of the parties

Lamarche's application

[46] As outlined above, on September 17, 2025, Lamarche filed a notice of application seeking an order for disclosure. He attached as appendices to the application two letters from his counsel addressed to counsel for the executive director. The letters were not included in an affidavit. The September 9, 2025, letter demands:

> a) Complete and unredacted audit logs showing every access, attempted access, or system interaction with [Lamarche's] seized communications since the date of seizure that identify all individual user accounts … that accessed or could have accessed the materials, including names, positions, dates, and purposes of access. Additionally, there should be timestamps, IP addresses, geo-location identifiers, device identifiers, and user roles associated with each access event;

b) [The Software]'s architecture, including but not limited to any data flow diagrams, architecture descriptions, and details of firewall and network protections. Please also disclose all AWS regions ever used by the Commission for [the Software], including any replication, back-up, or failover systems and provide confirmation of whether the data associated to my client's communications was ever stored, cached, accessible or transmitted outside Canada/BC…;

a) Full and unredacted service contracts with [the Software Company], including all schedules, addenda, data-processing and hosting terms. If there are any other governing subcontracting arrangements, data residency terms, information security schedules, audit rights, service-level agreements, uptime guarantees, breach notification protocols, please also disclose them along with all records of due diligence conducted before adopting [the Software], including but not limited to any privacy impact and data sensitivity/risk assessments, minutes/memoranda/approvals authorizing the use of [the Software], and other records relating to the diligence and approval process;

b) All communications between the Commission and [the Software Company] (or affiliates) about my client's data, including but not limited to the breach event, support tickets, incident responses, etc. With regard to the breach event more specifically, all Commission internal reports/memoranda, all communications between staff and [the Software Company] regarding the event, any system generated reports regarding the "software update" such as details of configuration changes, and full technical description of the update that purportedly triggered the breach, including whether it led to re-indexing or reprocessing of the data, and

c) All Commission training and governance documents that reveal whether staff were competent and instructed to respect privilege as well as all internal policies for access control and breach notification.

[47] Lamarche also seeks an order "that the Commission give notice to all individuals whose private communications and solicitor-client privileged communications have been seized by the Commission" and, in the September 10, 2025, letter, demands the following:

a) The date on which the Commission first commenced mass seizure of private communications without notice and without Lavallee compliance;

b) The total number of individuals whose private communications have been intercepted, seized, and/or stored;

c) The categories of communications obtained (emails, text messages, cloud-based data, etc.);

d) The names and positions of all Commission staff, contractors, or vendors who have had access to seized private communications;

e) The number of instances in which solicitor–client privileged communications were retained and/or reviewed;

f) The Commission's policies and practices governing retention of seized communications, including the duration for which materials are kept and the purposes for which they are maintained;

g) Details of the extent to which seized communications have been relied upon in hearings/enforcement actions versus simply collected and reviewed and retained, and

h) Details of the extent to which seized communications are disseminated to third-parties including other regulators, law enforcement, or foreign authorities, and if so, the identity of those entities, the dates of transmission; and the scope of materials shared.

[48] In support of his information demands, Lamarche cites *Re Core Capital Partners Inc.*, 2024 BCSECCOM 349 [*Core Capital*], for the principle that a document will be relevant "if it directly or indirectly may enable a party to advance their own case or destroy that of their adversary or may fairly lead the party to a train of inquiry or disclose evidence which may have either of those consequences".

[49] He states that the onus is on the party resisting disclosure to justify the non-disclosure, citing *R v Stinchcombe*, 1991 CanLII 45 (SCC), [1991] 3 SCR 326 [*Stinchcombe*].

[50] Lamarche submits that a party "cannot simply assert privilege or irrelevance without further justification", citing *Hu v British Columbia Securities Commission*, 2010 BCCA 306 [*Hu*].

[51] Lamarche cites *May v Ferndale Institution*, 2005 SCC 82 [*Ferndale Institution*], as an example of a government agency being required to disclose information about a computerized system's scoring matrix that was used to determine a prisoner's security rating.

[52] Similar cases where software disclosure was considered relevant were also cited by Lamarche:

a) *R v Siddiqui*, 2022 ONCJ 62 [*Siddiqui*], where the court affirmed that facial recognition software that was used to identify the accused from surveillance footage was relevant;

b) *R v Hughes*, 2022 ONSC 2164 [*Hughes*], where an automated software user manual and changelogs that had been used to identify the defendant were relevant and subject to disclosure; and

c) *R v Kuny,* 2021 MBQB 96 [*Kuny*], where a traffic violation conviction was set aside because the defendant was not provided with the manuals for a photo radar system.

[53] Lamarche also draws our attention to two academic papers: Gideon Christian, "Legal Framework for the Use of Artificial Intelligence (AI) Technology in the Canadian Criminal Justice System" (2024) 21:2 CJLT 109, and Nathan Rouse, "Witness-Washing Facial Recognition Technology", 102 Denv. L. Rev. 715 (2025).

[54] Lamarche submits:

> Knowledge of the scope of the technique—how many individuals were affected, the categories of data seized, and the duration of retention—enables both the Panel and the parties to evaluate whether the Commission's actions amount to a systemic abuse. Without disclosure, the true scale and impact of the Commission's conduct remain obscured, frustrating any meaningful assessment of whether the investigative methods themselves, or their application, violate constitutional standards.

[55] He cites *R v Brunelle*, 2024 SCC 3, as authority for the proposition that an abuse of process that undermines the integrity of the justice system warrants a stay and *R v Gill*, 2024 BCCA 63, as similar authority.

[56] Lamarche submits that the Commission's seizure of communications, indefinite retention, absence of notice, and failure to follow protocols undermine the integrity of the justice system and that the seized material should be excluded and notice provided to all individuals affected.

Executive director's response

[57] On November 28, 2025, the executive director provided his response to the disclosure application along with two affidavits in support. In his response, he states that the executive director "has provided much of the requested information but opposes some of the Applicant's disclosure requests on the basis of relevance".

[58] In response to the disclosure demands listed in the September 9, 2025, letter, the executive director submits:

> a) On October 31, 2025, the Executive Director disclosed the audit logs for the 16 documents that escaped the quarantine folder during the migration to [the Software] version 11, and were returned to the quarantine folder on September 5, 2025…
>
> With the filing of these submissions, the Executive Director has also disclosed the audit logs for all 54 quarantined documents…
>
> b) Commission staff do not possess information about [the Software]'s architecture. This information is solely in the possession of [the Software Company].
>
> In any event, information regarding [the Software]'s architecture is not relevant to the issues in this case. There is no evidence of an external cybersecurity breach or any other event suggesting that the [Software] system is not generally secure. The one-time inadvertent release from quarantine during migration while using a since discontinued [Software] functionality does not justify a fishing expedition into [the Software]'s architecture, which is irrelevant to the issues at hand and would jeopardize the security of [the Software]'s system…
>
> However, the Executive Director has provided a letter from [the Software Company] dated November 20, 2025 (the [Software Company] **Letter**).
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> The [Software Company] Letter states that the design of [the Software]'s system architecture is certified against international standards and subject to multiple external annual audits.
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> The [Software Company] Letter also provides an overview of [the Software]'s firewall and network protections, encryption protocols, and security controls.
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> The [Software Company] letter states that disclosing details of [the Software]'s system architecture and data flow diagrams or details of [the Software]'s firewall and encryption protocols would create a risk of security breaches and compromise the security of BCSC's data.
>
> [The Software] is the Commission's evidence management software. It is not a system unique to the Commission but is used by other organizations and agencies. Any disclosure of [the Software]'s proprietary system architecture, encryption protocols, data flow diagrams would also compromise the security of [the Software Company]'s other clients.
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> The [Software Company] Letter confirms that the Commission's data is not stored outside of Canada.

c) The Executive Director opposes the disclosure of the Commission's service contracts with [the Software Company]. These contracts are not relevant to the issues in this case. There is no evidence of an external cybersecurity or privacy breach suggesting that the [Software] system is not secure. The one time inadvertent release from quarantine during migration while using a since discontinued [Software] functionality does not justify a fishing expedition into [the Software Company]'s service contracts with the BCSC, which are irrelevant to the issues at hand and that would create a security risk to the Commission's data.

However, the Executive Director has disclosed the [the Software Company] Letter, which provides an overview of some of [the Software Company]'s obligations under the various service agreements with the BCSC. The [Software Company] Letter states that the agreements contain confidential and proprietary information, and providing them to third parties would create a security risk to the Commission's data…

d) It is not clear why the Applicant requires further disclosure regarding the September 5, 2025 incident (the **Incident)** beyond what has already been disclosed to him. The fact that the Incident occurred is admitted by the Executive Director, and the Incident is explained in detail in the [eDiscovery specialist] Affidavit. The [eDiscovery specialist] Affidavit also attaches and explains the relevant audit logs.

The Incident is also explained in the [Software Company] Incident Report…

The Executive Director has disclosed emails between [the Software Company] and Commission staff regarding the Incident. The communications between [the Software Company] and Commission staff are also described and quoted in the [Software Company] Incident Report.

There are no "system generated reports regarding the software update" or any document that provides a further "technical description of the update that purportedly triggered the breach…

The Executive Director asserts privilege over one memo prepared by Commission staff given that it was prepared for the purpose of obtaining legal advice from counsel. That memo is discussed in submissions set out below.

e) …Access to a case in [the Software] is restricted to Commission staff who require access to that case.

All potentially privileged documents identified through the Commission's screening process in this case were segregated and placed in a quarantine folder. A quarantine folder cannot be accessed by staff (except for the Administrators, as defined in the [eDiscovery specialist] Affidavit).

There is no indication in this case that Commission staff were not trained to respect privilege. There was a single incident where a Commission litigation counsel inadvertently viewed a potentially privileged document. The Incident is explained in detail in the [eDiscovery specialist] Affidavit.

The Incident did not arise because of any lack of awareness regarding privilege, and there is no suggestion that staff failed to act appropriately when the Incident occurred. Counsel who accessed the document notified TEC [Technology and Evidence Control] staff, and TEC staff immediately returned the document to the quarantine folder. Counsel also promptly notified Mr. Lamarche's counsel and withdrew as counsel of record.

Commissions staff's internal training and governance documents are not relevant to the issues in this case.

However, the Executive Director has disclosed staff training materials…

All new investigators receive training on legal advice privilege and litigation privilege.

f) …There is no basis in this case for any concern about the "EDT environment".

In any event, Commission staff cannot "preserve the [the Software] environment in its current state". Only [the Software Company] could do that as the owner of the infrastructure.

The Applicant, through his counsel, already has copies of the Shaw emails, and knows that the quarantined documents are in a quarantine folder in the [the Software] file for his case. The Applicant has also been provided with audit logs for the quarantined documents.

The overbreadth of the Applicant's disclosure application becomes evident when one considers the analogy of quarantined emails to hard copy documents.

The Executive Director has provided copies of the hard copy documents to the Applicant, and informed the Applicant that the originals are in a specified file folder (the quarantine folder) in a cabinet (the [the Software] case) in a room ([the Software]). The Executive Director has also provided the Applicant with logs showing who accessed those documents in the folder.

The Applicant seeks even more information: the construction of the filing cabinet (all system configurations of the [the Software] infrastructure), all the other case folders in the cabinet (all storage volumes and [the Software] Cases), all the other rooms in the office ([the Software] cloud infrastructure system component), the building which the offices are in (AWS [Software] infrastructure) the building permit of the rooms, and all the visitors to the building (full chain of custody and user [Software] accounts).

The one time inadvertent release from quarantine during migration while using a since discontinued [Software] functionality does not justify a fishing expedition into how the Executive Director handled Shaw emails that are not potentially privileged.

g) [Lamarche's counsel] already has copies of all the seized data. The Executive Director disclosed all the email records obtained from Shaw Communications Inc. to [Lamarche's counsel] in early 2023.

Any potentially privileged records were segregated and placed in a quarantine folder.

The [eDiscovery specialist] Affidavit attaches and discusses the audit logs, which show the activity relating to the 16 documents that escaped quarantine during the migration to [the Software] version 11.

The Executive Director has also disclosed the audit logs for the other 38 quarantined documents (the 54 less the16 escapees) which did not escape quarantine…

h) The [Software Company] Letter states that [the Software Company] would <u>not</u> consent to an independent examiner retained by the Applicant or his counsel to examine the technical cooperation between [the Software Company] and AWS given the proprietary nature of the information.

[59] In response to the September 10, 2025, demand letter, the executive director submits:

a) The Executive Director opposes the Applicant's request for notice to third parties and his requests for information relating to third parties that are unrelated to this investigation.

The requested disclosure is plainly not relevant to the allegations in the Notice of Hearing, and any issues relating to the rights of third parties in other unrelated investigations are not before this panel.

The issue before the panel is whether there has been a breach of the Applicant's *Charter* rights given the facts of this case and, if so, what remedy, if any, should be ordered for that breach.

Although the Applicant complains that Commission staff seized "private" communications, the Applicant used the email account … for business purposes and to correspond with his investor clients.

The Commission's lawyer communication screening process was effective in this case as all potentially privileged Shaw emails and email attachments were located, segregated, and placed in a quarantine folder.

…

The functionality that caused the quarantined documents to move out of the segregated folder (during the data migration to [the Software] version 11) was eliminated on January 11, 2025.

b) The Executive Director opposes this request for the "the date on which the Commission first commenced mass seizure of private communications".

The issue before the panel is whether there has been a breach of the Applicant's *Charter* rights given the facts of this case and, if so, what remedy, if any, should be ordered for that breach.

In this case, Commission staff obtained email records from Shaw in December 2020 for an email account that the Applicant used for business purposes and to correspond with his investor clients.

Any potentially privileged Shaw emails and email attachments were located, segregated and placed in a quarantine folder.

Commission staff disclosed all the Shaw emails to [Lamarche's counsel] in January 2023 and March 2023. He had ample opportunity to identify any privileged emails or attachments and to assert privilege over them. He has not done so.

c) The Enforcement Investigations Branch very rarely obtains email from service providers.

There was only one case in 2022 where Commission staff obtained email records from a service provider, and there were zero such cases in 2023, 2024 or 2025.

The last time Commission staff obtained email records from a service provider was August 2022, and there have been no such cases since then.

d) In this case, Commission staff obtained email records from Shaw for an email account that the Applicant used for business purposes and to correspond with his investor clients.

The Applicant knows what documents were obtained from Shaw. His counsel received full disclosure of all the Shaw emails in early 2023.

e) …the [eDiscovery specialist] Affidavit contains audit logs showing access to the 16 documents that moved out of the quarantine folder during the migration to [the Software] version 11.

…the [information officer] Affidavit contains audit logs for all 54 quarantined documents.

…

f) Any solicitor-client communications were segregated during the lawyer communications screening process and placed in a quarantine folder.

…

g) In this case, all potentially privileged documents were segregated and placed in a quarantine folder. The quarantined documents are also covered under the panel's broad sealing order dated September 8, 2025.

The lawyer communication screening process will identify and quarantine documents that contain a lawyer's name, domain name or email address even if they are not related to the provision of legal advice. In this case, 49 of the quarantined documents were segregated because they contain the email address of an investor/client ... These emails were segregated, out of an abundance of caution, only because the investigator knew that this investor also happened to be a lawyer.

…

When the Applicant identifies the documents in the quarantine folder that are subject to his privilege claim – and provides a brief explanation of the basis for his claim – the Executive Director will delete these documents.

The Executive Director may, however, deposit the documents that are subject to the privilege claim with an independent solicitor or request an undertaking from [Lamarche's counsel] that he will hold them until the conclusion of any and all proceedings before the Commission or the courts involving Mr. Lamarche.

h) The Executive Director opposes this request on the basis of relevance. The frequency with which emails seized from an internet service provider are tendered into evidence in other hearings is of no import to this hearing and completely irrelevant. In any event, it has been disclosed that the seizure of such records is very rare having only occurred once since 2022 so the request is moot.

i) There was no dissemination of the Shaw emails to any other regulators, law enforcement agencies, or foreign authorities.

[60] The executive director asserts solicitor-client and litigation privilege over a September 16, 2025, memorandum prepared by the director of Enforcement and the manager of Technology and Evidence Control (TEC) at the Commission and addressed to the Commission's general counsel and the executive director. The executive director describes the memorandum as a summary of the investigation the director of Enforcement conducted regarding the incident, prepared and provided for the purpose of obtaining legal advice and marked "Privileged and Confidential".

[61] The executive director cites *Solosky v The Queen,* [1980] 1 SCR 821, *Blank v Canada (Minister of Justice),* 2006 SCC 39, *Camp Development Corporation v South Coast Greater Vancouver Transportation Authority,* 2011 BCSC 88, *Singh v Edmonton (City),* 1994 ABCA 378, *Royal Bank of Canada v Societe General (Canada),* 2005 CanLII 36727, [2005] OJ No 4383 (Ont. SCJ), as authority for solicitor-client/legal advice privilege:

> Communications that are (a) between solicitor and client; (b) for the purpose of seeking or giving legal advice; and (c) intended to be confidential, are protected from disclosure by solicitor-client privilege.

[62] The executive director cites *Re Gokturk,* 2025 BCSECCOM 485 [*Gokturk*], and *R v McNeil,* 2009 SCC 3 [*McNeil*], as authority for the principle that an applicant is not entitled to proprietary, non-relevant information. He distinguishes *Ferndale Institution*, *Siddiqui*, and *Kuny* on the basis that the "technical information ordered to be disclosed in those cases was relevant to clearly defined issues in those proceedings and discrete in nature". He argues that the technical information in those cases "relate to how a tool is used, rather than the blueprint of how the tool itself functions" and that the technical information in those cases was required "to test the evidence".

[63] The executive director notes that in *Hughes*, although the manuals were ordered disclosed, the court "declined to order disclosure of source codes or Ontario Provincial Police training materials" and stated: "I have not been offered an explanation as to why a granular dissection of the software used by investigative law enforcement is likely relevant to any live issue in this proceeding".

Lamarche's reply

[64] On December 19, 2025, Lamarche submitted a reply which did not reply to any of the specific issues raised in the executive director's response but instead sought to cross-examine three of the executive director's affiants. In an email to the parties dated December 23, 2025, the panel advised the parties that if Lamarche wished to cross-examine the executive director's affiants, then he must make an application to do so by January 15, 2026.

Analysis

[65] The panel in *Core Capital*, cited by Lamarche, summarized the applicable law regarding disclosure at Commission hearings:

> [19] Section 3.6(b) of BC Policy 15-601 *Hearings* provides that in an enforcement hearing "the executive director must disclose to each respondent all relevant information that is not privileged".
>
> [20] The disclosure standard which applies to Commission proceedings is based broadly on the standard established in *R v. Stinchcombe* 1991 CanLII 45 (SCC), [1991] 3 SCR 326. Under this standard, the Crown must disclose all relevant information, whether inculpatory or exculpatory, except evidence that is beyond the control of the Crown or is clearly irrelevant or privileged. [citation deleted]
>
> [21] The Stinchcombe standard was developed in the context of criminal proceedings and does not automatically apply to proceedings before the Commission. In *Re Canaco Resources Inc.*, 2012 BCSECCOM 493, the panel said at paragraph 9:

> ...it is worth nothing that *Stinchcombe* was articulated as a disclosure standard for criminal proceedings. Although a Stinchcombe-like standard has been applied in administrative proceedings before securities tribunals, it does not follow that every evolution of the *Stinchcombe* standard in the criminal courts or indeed the *Stinchcombe* standard itself, automatically applies to proceedings before the Commission. As the Supreme Court of Canada has made clear (see, for example, *May v. Ferndale Institution* 2005 SCC 82 (CanLII), [2005] 3 SCR 809), the standard of disclosure for administrative tribunals is not *Stinchcombe*. The issue is whether the hearing process as a whole satisfied the requirements of procedural fairness in the context of proceeding before the tribunal concerned.
>
> [22] A document will be considered relevant if it directly or indirectly may enable a party to advance their own case or destroy that of their adversary or may fairly lead the party to a train of inquiry or disclose evidence which may have either of those consequences. [citation deleted]
>
> [23] Generally, in an application challenging disclosure of existing documents, the onus is on the party subject to the challenge to justify non-disclosure. [citation deleted]
>
> [24] The BC Court of Appeal in *Hu v. British Columbia (Securities Commission)*, 2010 BCCA 306, at paragraph 12, stated that the Commission cannot wholly delegate the determination of relevancy to its staff and, if the staff's determination of relevancy is challenged, the Commission itself must determine whether the documents in question are relevant or irrelevant…

[66] As noted above, the criminal law standard for disclosure set out in *Stinchcombe* does not automatically apply to administrative tribunals. Our concern "is whether the hearing process as a whole satisfies the requirements of procedural fairness in the context of proceeding before the tribunal concerned" [emphasis added].

[67] Obviously, the context of this proceeding encompasses the allegations in the notice of hearing. However, it also includes Lamarche's challenges of the executive director's use, and the constitutionality, of section 144 of the Act.

[68] Lamarche did not specifically challenge the executive director's responses to his application for disclosure, but instead said that he "does not accept the curated and selective narrative advanced". This may be so, but a generalized statement of dissatisfaction does not assist the panel in determining whether the executive director has properly responded to the disclosure application. Given the submissions of the parties, we find that the executive director's response to Lamarche's application was detailed, and included significant affidavit evidence. If there were specific issues with the executive director's response, then we would expect those to be brought to our attention. No issues were.

[69] We accept the positions advanced by the executive director in his response that provided detailed, unchallenged responses to the demands made in the September 9, 2025, letter. The executive director:

a) disclosed emails between a Commission investigator and a TEC specialist from 2020, 2021, and 2023;

b) disclosed requested audit logs;

c) provided affidavit evidence addressing the specific questions asked by Lamarche;

d) provided a letter from the Software Company that explained generally its protocols and protections;

e) disclosed emails between the Software Company and Commission staff regarding the incident; and

f) disclosed Investigations Branch Standard Operating Procedure and documents relating to it along with the Software Company Lawyer Communication Screening protocol.

[70] We also accept the executive director's position that Lamarche is not entitled to the Software's proprietary architecture. First, the executive director stated that he does not have any information about the Software's architecture in his possession. The Court in *McNeil* was clear that the "*Stinchcombe* regime of disclosure extends only to material in the possession or control of the Crown". Second, the executive director disclosed in the affidavit of the information officer a letter that the Software Company sent explaining "firewall and network protections, encryption protocols, and security controls" and confirming that the Software's "system security architecture is subject to multiple external annual audits" Third, the executive director's affidavit evidence is that no other parties "have accessed the Commission's data in [the Software]". We find the unchallenged affidavit evidence provided by the executive director to be responsive to the application as it relates to the incident. We find Lamarche's remaining demands for the Software's architecture and the Software Company's service contracts to be overbroad. Like the Court in *Hughes*, we "have not been offered an explanation as to why a granular dissection of the software used by investigative law enforcement is likely relevant to any live issue in this proceeding".

[71] On the second portion of the disclosure application, we accept the positions advanced by the executive director with regard to the demands made in the September 10, 2025, letter. In particular:

a) There is no basis for third parties to this matter to be given notice as it is beyond the scope of the proceedings before us. This application for records does not relate to the allegations in the notice of hearing, any possible defences, or the constitutional challenge to section 144 of the Act;

b) The executive director advised that December 2020 is the date that staff obtained Lamarche's email records and that those records were disclosed to Lamarche in 2023. The request for "the date on which the Commission first commenced mass seizure of private communications" and the "total number of individuals whose private communications have been" demanded is overly broad and does not relate to the allegations in the notice of hearing. Similarly, the use of documents received through a demand in other hearings is irrelevant to the matter before us. Moreover,

the executive director disclosed that since 2022 there has only been one matter where email records were obtained from a service provider.

c) The executive director stated that Lamarche's emails have not been provided to any other regulator or law enforcement agency.

[72] The executive director asserts privilege in respect of a September 16, 2025, memorandum. As required by the Court in *Hu*, the executive director asserted that the document is privileged and explained that it was created after the incident occurred for the purpose of obtaining legal advice from the Commission's general counsel and that it was marked privileged and confidential. This claim of legal-advice privilege was not challenged by Lamarche. We find that the memorandum does not have to be disclosed.

[73] We find that the executive director has met his burden of disclosing to Lamarche the documents in the executive director's possession or control that could reasonably be found to "advance [Lamarche's] own case or destroy that of their adversary or may fairly lead the party to a train of inquiry or disclose evidence which may have either of those consequences". The executive director has justified the non-disclosure of the remaining documents demanded by Lamarche on the basis that they are not relevant to the issues at hand or are not in the possession or control of the executive director. We find that the executive director has fulfilled his disclosure requirements as articulated in *Core Capital*. He has provided detailed responses to Lamarche's inquiries where appropriate and sufficient explanation for not providing, or being able to provide, the Software's internal architecture and the Software Company's external contracts. We find that the requirements for procedural fairness are satisfied and dismiss Lamarche's application for disclosure.

IV. Deposit Records in the Court Registry

[74] In our reasons for ruling in *Re Lamarche*, 2025 BCSECCOM 412, we stated:

> [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.

Position of the parties

Lamarche's application

[75] In his submissions at the September 8, 2025, hearing, Lamarche requested that the entire Commission file related to this matter "be immediately sealed with no further review or access and that all solicitor-client privilege material be removed from the commission's custody, deposited at the Supreme Court registry and then permanently deleted from the commission's system". Lamarche relied on *Re Parhar*, 2017 BCSECCOM 286, *Lavallee, Rackel & Heintz v Canada (Attorney General),* 2002 SCC 61, and *Solicitor-Client Privilege of Things Seized (Re)*, 2019 BCSC 91.

[76] Lamarche provided supplemental written submissions on September 29, 2025. In them, he relied on *British Columbia Securities Commission v BDS and CWM,* 2000 BCSC 1549 [*BDS*], for the principle that only a court can adjudicate privilege claims. He cites *Alberta (Information and Privacy Commissioner) v University of Calgary,* 2016 SCC 53, *Canada (Privacy*

Commissioner) v Blood Tribe Department of Health, 2008 SCC 44, and *British Columbia (Children and Family Development) v British Columbia (Information and Privacy Commissioner),* 2024 BCCA 190, for the principle that solicitor-client privilege cannot be set aside or encroached upon by inference, but only through legislative language that is "clear, explicit and unequivocal"" and that the Act does not expressly state that a panel has the "power to adjudicate questions of privilege".

[77] Lamarche submits that the Commission cannot decide questions of privilege and that any privileged records "must be sealed and deposited with the Supreme Court for judicial determination before any investigative use can be made of them".

Executive director's response

[78] In his November 28, 2025, submissions on the application to deposit records in the court registry, the executive director stated:

> a) All of the emails obtained from an email provider were sent to Lamarche's counsel in early 2023, including 54 documents that had been segregated by TEC. Of those 54 documents, 49 contained the email address of an investor/client who happens to be a lawyer. The remaining five (three emails and two email attachments) were segregated after appearing on a list of lawyer names, domain names, and email addresses. One of those five documents contained the keyword that is the administrative email address of Lamarche's counsel.
>
> b) In a March 6, 2023, letter, counsel for the executive director asked counsel for Lamarche to advise if he was asserting privilege over any of the documents that were not segregated.
>
> c) On November 14, 2025, counsel for the executive director sent a letter to counsel for Lamarche asking if he was asserting privilege over any of the 54 segregated emails and, if he was, to "identify each document … and provide a brief explanation of the basis for the privilege claim".
>
> d) On November 21, 2025, counsel for Lamarche advised via letter that he was explicitly and implicitly asserting privilege over the 54 segregated emails but that he would "not be responding any further until the balance of issues arising from that assertion are resolved and the appropriate forum for determining the privilege issues has been conclusively established".

[79] The executive director argues that counsel for Lamarche should identify the potentially privileged documents and assert any privilege that may attach to them.

[80] He submits that none of the non-segregated documents should be removed from the Commission's custody because, despite having received them in January 2023, Lamarche has not specifically asserted privilege over any of them.

[81] The executive director states that it is unlikely that all of the 54 documents segregated in a quarantine folder are privileged because 49 of them are from an investor who happens to be a lawyer. The executive director submits that the remaining five documents may also "not be related to the provision of legal advice".

[82] The executive director says that he "will remove potentially privileged documents from the Commission's custody" once they are identified and the claim for privilege is described.

> At that time, the Executive Director will either: (a) deposit these documents with an independent solicitor; or (b) leave the documents with [Lamarche's counsel] subject to his undertaking not to delete or alter them, and to securely store them, until the final resolution of all proceedings relating to Mr. Lamarche.

[83] In the alternative, the executive director says that if Lamarche "refuses to identify the relevant documents, and the panel does not direct him to do so, the Executive Director may take the steps outlined above… with respect to all 54 quarantined documents".

[84] The executive director relies on *Gardner v Viridis Energy Inc.,* 2013 BCSC 580, and *Supreme Court Civil Rules,* BC Reg 169/2009, rule 7-1(6) and 7-1(7), for the principle that a "party asserting solicitor-client privilege must establish that each document is in fact privileged".

[85] The executive director distinguishes *BDS* on the facts:

> The issue of solicitor-client privilege was before the B.C. Supreme Court in that case because Commission staff filed an application in that Court for an order requiring a lawyer to comply with a demand for production and a summons. The lawyer acted for the subjects of an investigation. He refused to comply with the demand and summons on the basis of solicitor client privilege.
>
> Justice Macaulay concluded that the documents listed in certain paragraphs of the demand for production "may well contain privileged documents", and he therefore provided directions that would provide the clients or their lawyers an opportunity to "properly assert solicitor-client privilege when necessary to do so". [emphasis in original]

[86] The executive director cites *British Columbia (Minister of Finance) v British v Columbia (Information and Privacy Commissioner),* 2021 BCSC 26, as authority for the practice of asserting privilege being through "affidavit evidence setting out the information that is the basis for privilege" and *Alberta (Information and Privacy Commissioner) v University of Calgary,* 2016 SCC 53, as authority for establishing privilege by counsel providing a letter stating that the confidential communications were for the purpose of giving or seeking legal advice.

[87] The executive director states that the application should be dismissed as Lamarche has not properly asserted privilege. He says that if the privilege is properly described, the executive director "does not expect that he will challenge the privilege claim" [emphasis in original].

[88] Citing *Hu*, the executive director says that if there is a need for the panel to assess the privilege claim, the panel could do so without reviewing the documents themselves on the basis of the description of the privilege provided by counsel.

[89] The executive director distinguishes the cases provided by Lamarche regarding the jurisdiction of this panel to determine privilege claims. He says that those cases dealt with administrative bodies that carry out both investigative and adjudicative functions and could become adverse to a party, unlike at an impartial hearing under the Act. The executive director cites *689799 Alberta Ltd. v Edmonton (City),* 2018 ABCA 212 (leave to appeal to the Supreme Court of Canada

dismissed: 2018 CanLII 105398 (SCC)), where the majority of the Alberta Court of Appeal stated that the Alberta Land Compensation Board had the jurisdiction to rule on privilege claims.

[90] The executive director states that even tribunals that do not have the authority to rule on privilege claims can "conduct a preliminary assessment of privilege without inspecting the documents", citing *Canada (Attorney General) v Quadrini,* 2011 FCA 115 [*Quadrini*]. In *Quadrini*, the Federal Court of Appeal stated:

> Whether or not a tribunal has the legal authority to determine if documents are subject to claims of solicitor-client privilege, it may conduct a preliminary screening, without inspecting them or issuing an order that would breach the privilege if validly claimed. A bare assertion of privilege should not be allowed to automatically derail the conduct of a proceeding if the tribunal has no authority to decide the validity of the claim, any more than a tribunal with authority to decide a privilege claim should inspect the document the moment a party challenges the validity of the claim.

Lamarche's reply

[91] Lamarche states that the executive director's former counsel admitted that he had identified one email as privileged and therefore privilege is engaged. He says that he "has claimed privilege before the Commission, and in his pleadings before the BC Supreme Court". Lamarche "submits any outcome other than directing the removal of these privileged materials from the Commission's custody would require the Commission to assume jurisdiction over solicitor-client privilege".

Question from the panel

[92] On December 23, 2025, we requested the following:

> Regarding the application to deposit records in the court registry, the panel requests that counsel for the executive director provide any legal authority to clarify why documents that have been identified by all parties as privileged should continue to be held by the Commission even if those documents are segregated from Enforcement.

[93] On January 23, 2026, counsel for the executive director responded. He stated that any documents identified by all parties as privileged "should not continue to be held by the Commission, but at this point there are no such documents as [Lamarche's counsel] has refused to state which documents he is claiming privilege over and why despite having all potentially privileged documents since March 2023" [emphasis in original].

[94] Counsel for the executive director provided cases "that support the proposition that a state agency may in some circumstances continue to store privileged materials gathered during a criminal investigation". He cited *R v. Zampino*, 2023 QCCA 1299, and *R v. Lee*, 2023 ONSC 1899.

[95] Counsel for Lamarche requested an opportunity to reply. We permitted a reply and requested that counsel for Lamarche:

- address the executive director's submission that the executive director provided all of the potentially privileged documents to him on March 6, 2023, and

- from those potentially privileged documents, identify those over which he is claiming privilege and the nature of the privilege claimed.

[96] In his reply, counsel for Lamarche attached a letter addressed to counsel for the executive director on February 28, 2023, in which he stated that "email communications subject to solicitor-client privilege" were seized in the investigation with a demand that Commission staff "immediately refrain from any further examination of the seized records" and produce the seized records, along with other demands about how Commission staff screen and segregate potentially privileged records. He also attached a copy of his June 21, 2023, Notice of Application and Constitutional Question filed in the British Columbia Supreme Court.

[97] Counsel for Lamarche states that "the positions now advanced below suggest that the claim of privilege is being contested and the executive director is seeking to retain the privileged material" and that none of the authorities cited by counsel for the executive director are applicable.

[98] Regarding the two questions we asked, counsel for Lamarche states that the privileged materials were disclosed and that he is claiming privilege over all of the material. In answer to the second question, he states:

> I dispute that the Commission has the jurisdiction to adjudicate claims of privilege and I also dispute the Commission's jurisdiction to make an order abrogating the privilege by ordering that the privileged documents be identified and the nature of claims be identified.

[99] He concluded that the executive director and the Commission's "record to date demonstrates that they are not an appropriate custodian of privileged material". He requested an oral hearing, after previously agreeing this matter could be heard in writing.

Analysis

[100] Both parties agree that the executive director should not have in his possession privileged records from another party. The question is which of the 54 segregated documents are privileged, and what to do with them.

[101] The principal disagreement between the parties is whether a panel of the Commission is permitted to decide questions of privilege. Lamarche contends that we cannot and that all of the segregated documents should be transferred to the Supreme Court registry. The executive director argues that we have authority to determine privilege but that this is premature because, although Lamarche is claiming a blanket privilege over all of the segregated documents, he has not identified the basis for his claim of privilege.

[102] The British Columbia Court of Appeal in *Hu* is clear: a Commission panel can make a finding that a document is relevant or privileged:

> [16] In making determinations of whether undisclosed documents need to be produced for review, the B.C. Commission is in the same position as a chambers judge making similar determinations in criminal and civil proceedings in the courts. The B.C.

> Commission must make determinations of relevancy or privilege when there is a disagreement between counsel but, like a chambers judge, the B.C. Commission has a discretion to decide whether it can make the required determination on the basis of a description of the documents provided by counsel, coupled with an assurance from counsel that the documents have been reviewed and either contain nothing relevant or are privileged, or whether the B.C. Commission should itself review some or all of the documents. When the number of documents in question is few, it may be an easy task for the adjudicator to review the documents, but it becomes more likely that the adjudicator will rely, at least initially, on the description of the documents and the assurance from counsel as the number of documents grows.

[103] Although we "must make determinations of relevancy or privilege when there is a disagreement between counsel", we currently find ourselves in the position of not being able to make any determination of privilege because this step, as the Court stated in *BDS* at paragraph 20, has been frustrated by Lamarche "raising a blanket claim of privilege" but not, as the Court stated at paragraph 57, describing the document "in a way that will enable the Commission to assess the claim of privilege".

[104] Currently all of the documents, segregated and non-segregated, are sealed from the executive director. Although Lamarche, who has access to all of these documents as they were disclosed to him in 2023, claims that the segregated documents are all privileged, he has not provided any description of those documents despite being asked specifically to do so by this panel. Although the Court of Appeal in *Hu* says that the Commission "must make determinations of… privilege", Lamarche maintains that we do not have the jurisdiction to do so.

[105] Lamarche says that if he identified documents that he claims are privileged and generally described the nature of that privilege, he would be "abrogating the privilege". With respect, this is clearly contrary to the instructions from the courts in *Hu* and *BDS* which both require that counsel provide descriptions of privilege-claimed documents (without disclosing privileged information) that would allow a Commission panel to assess the claim of privilege. It is also contrary to Lamarche's submissions in his disclosure application where he stated that a party "cannot simply assert privilege or irrelevance without further justification".

[106] Lamarche has unilaterally claimed privilege over the segregated documents without providing a description. This has left us in the position of attempting to determine whether these documents should be removed from Commission custody on the basis of nothing beyond bare assertions. This lack of information is not sufficient.

[107] However, we do have some information about the one record inadvertently reviewed by former counsel for the executive director that he identified as privileged in a letter and as potentially privileged in a subsequent affidavit. As both the executive director and Lamarche agree, the executive director should not have in his possession privileged records from another party. Given the representations by former counsel and Lamarche's counsel, we find that it is more likely than not that this document was, in fact, privileged. Accordingly, we direct the executive director to forthwith delete any copy of that record within his possession and confirm completion of that deletion to Lamarche and the hearing office. We temporarily permit the executive director access to the sealed investigation file for the sole purpose of complying with this direction. Upon completion, the sealing order will remain in effect to protect from being disclosed any documents that Lamarche claims are privileged but has not identified. Lamarche

currently has access to his copies of the executive director's disclosure. The executive director may bring an application to unseal his investigation file if he considers it necessary.

[108] We considered Lamarche's request to provide oral submissions on this issue. However, given the considerable back-and-forth on this point and the substance of the submissions filed and described above, we do not need to hear further from the parties on this issue. We dismiss Lamarche's application to have the documents deposited at the Supreme Court registry.

V. Cross-examination

Position of the parties

Lamarche application

[109] Lamarche seeks to cross-examine:

a) an eDiscovery specialist at the Commission on his affidavit affirmed on October 30, 2025;

b) the executive director's former counsel on this matter on his affidavit affirmed on October 31, 2025; and

c) an information officer with the Commission's Technology and Project Services division on her affidavit sworn on November 27, 2025.

[110] Lamarche seeks to cross-examine the eDiscovery specialist for the following reasons:

a) He provided "insufficient detail about the initial segregation process".

b) He did not provide an adequate explanation for how the new version of the Software "moved the privileged documents to the main folder when replacing the native files".

c) Lamarche wants to test the specialist's claim that minimizing the viewer in the Software eliminates the chance of seeing a privileged document.

[111] Lamarche seeks to cross-examine the executive director's former counsel for the following reasons:

a) His initial letter to Lamarche's counsel indicated that he identified a privileged document but his affidavit stated that the document "may be privileged".

b) His claim that he partially reviewed one document contradicts the eDiscovery specialist's affidavit which states that former counsel "accessed some documents that were supposed to be in the Lamarch Quarantine Folder but had moved to the main database folder during the Migration Project".

[112] Lamarche seeks to cross-examine the information officer to "assess the reliability of the report prepared by the Software Company with respect to a failure in their own software".

[113] Lamarche submits that an applicant "is entitled to test the evidentiary record… in response to a disclosure application" and relies on *R v Latimer,* 2020 BCSC 2183, which dealt with criminal law disclosure applications.

Executive director's response

[114] The executive director notes BC Policy 15-601, section 4.1, which states that "the Commission generally does not permit a party to cross-examine witnesses on their affidavit evidence" on an application in writing.

[115] The executive director cites *Re Morabito,* 2023 BCSCECCOM 457, *Re Party A,* 2024 BCSECCOM 69, and *Re Dhala,* 2024 BCSECCOM 379, as precedents where panels reviewed the relevant caselaw and BC Policy 15-601 and determined the factors to be considered for an application to cross-examine an affiant. Those factors include:

a) whether there are material facts at issue;

b) whether the proposed cross-examination is relevant to an issue that may affect the outcome of the substantive application; and

c) whether the proposed cross-examination will serve a useful purpose by eliciting evidence that would assist in determining the issue.

[116] The executive director submits that Lamarche "has not shown that there are contested material facts at issue in the affidavits, that cross-examining the affiants on their affidavits is relevant to an issue that may affect the outcome of any application before the panel, or that the cross-examination will serve a useful purpose by eliciting evidence that would assist in determining that issue".

[117] Regarding the eDiscovery specialist, the executive director says that his affidavit sufficiently explains the segregation process, the issues from the migration from the Software version 9 to the Software version 11, and that the affiant did not review any segregated documents.

[118] Regarding the affidavit of former counsel for the executive director, the executive director submits that there "is no material inconsistency" between the letter to Lamarche's counsel and his affidavit. The executive director says that his former counsel "concluded that the email likely was privileged when he began to review it, but he was in no position to come to a definitive legal conclusion based on his cursory review of part of the email". The executive director submits that there is "no useful purpose" in cross-examining former counsel on his legal opinion, citing *Keefer Laundry Ltd. v Pellerin Milnor Corp.,* 2006 BCSC 1180.

[119] The executive director also states that there is no inconsistency about former counsel's affidavit evidence that he viewed one email and audit logs showing that he accessed other documents. He states that the affidavit evidence is that former counsel only viewed one document and that there is no evidence that the audit log documents are protected by solicitor-client privilege.

[120] Regarding the affidavit of the information officer, the executive director submits that she "is in no position to provide any useful evidence about the statements in the Software Company Report" as she did not prepare or analyze that report.

Lamarche's reply

[121] Lamarche says that the executive director's submissions "do not address substantial uncertainties with how the system provided by the Software Company operated in the context of the migration process, which cross-examination would help resolve". He also submits that the eDiscovery specialist's affidavit fails to include information about "the training of Commission staff to handle privileged documents".

[122] Lamarche disputes that there is no inconsistency between the letter sent to Lamarche's counsel and former counsel's affidavit. He also states that the audit logs show former counsel clicked on 11 segregated documents and that this inconsistency should be explained "and to also fully reveal the frailties inherent to the system".

[123] Lamarche quotes at length from *Lamarche v British Columbia (Securities Commission)*, 2025 BCCA 146, regarding the claim for damages under the *Privacy Act*, starting at paragraph 50. He submits that we "should take into account the broader range of procedural mechanisms… to get at the heart of what occurred".

Analysis

[124] We look to the factors listed from the caselaw cited by the executive director and the procedures set out in BC Policy 15-601.

[125] In applications, particularly in writing, the Commission generally does not permit cross-examination on affidavits. This is particularly relevant when there is an upcoming oral hearing with significant opportunities to test the evidence, as there will be when stage 3 is heard in this matter.

[126] We find that there is no basis for Lamarche's claims of contested material facts at this stage of the proceedings. Lamarche has not provided any compelling evidence of a discrepancy between the affidavits in question and any other evidence. This in itself is not fatal. As the panel in *Morabito* stated, "contested facts do not need to arise from conflicting affidavits". However, the panel in *Morabito* noted that "gaps" of information in the affidavits are speculation, not material facts.

[127] What is admitted is that certain documents that were segregated on the suspicion of being subject to solicitor-client privilege were brought into the general document category and that one of those documents was inadvertently viewed by former counsel for the executive director.

[128] The executive director is correct when he states that the affidavits filed by the eDiscovery specialist and former counsel were at the behest of the panel as we requested further information about the incident. He is also correct that the third affidavit was filed in support of his response to the disclosure application.

[129] We find that the eDiscovery specialist's affidavit provided sufficient detail to explain the Commission's process of segregating records and how the incident occurred. Similarly, we find that former counsel's affidavit generally explains how the incident occurred from his perspective. We do not view the discrepancy between the letter sent to Lamarche's counsel and the affidavit to be material as we do not require former counsel's opinion as to what is privileged.

[130] The information officer's affidavit is the only affidavit submitted to support an application. She could not "assess the reliability" of the Software Company's report as she was not the author.

[131] Two of the affidavits were requested by the panel and the third was submitted in support of the disclosure application. We find that Lamarche has not met the requirements to warrant cross-examination of affidavits in support of these applications at this time.

[132] However, much of the consideration we have given to these preliminary applications, and their subject matter, is peripheral to the central issue we have yet to consider – that is, stage 3 of the constitutional application: did the executive director have the proper processes in place and were they followed. Those processes – for the collection, identification, segregation and subsequently use of records – are the very issues that should properly form part of the stage 3 submissions. Whether these processes were followed will need to be considered within the context of the admitted breach of privilege.

[133] The parties previously agreed that stage 3 of this proceeding would require evidence and, potentially, cross-examination. The affidavits currently filed in these preliminary applications will likely be relevant at that stage. Lamarche is not precluded from bringing a cross-examination application in the context of the stage 3 proceeding, where these issues will be central before us.

[134] However, it is time for stage 3 to be properly framed and to proceed. Accordingly, we are providing directions below for the timing of filing materials and hearing this matter.

VI. Ruling

[135] In summary:

a) We dismiss the applications for disclosure and notice to third parties.

b) We dismiss the application that the segregated documents that are currently subject to the panel's sealing order made September 8, 2025, be transferred to the Supreme Court registry.

c) We direct the executive director to forthwith delete any copy of the record within his possession that former counsel for the executive director viewed and we found was likely privileged and confirm completion of that deletion to Lamarche and the hearing office. We temporarily permit the executive director access to the sealed investigation file for the sole purpose of complying with this direction. Upon completion, the sealing order will remain in effect.

d) We dismiss the application to cross-examine the three affiants of the executive director. However, we dismiss it without prejudice to Lamarche to renew this application in support of the oral hearing for stages 1, 2, and 3.

[136] BC Policy 15-601 states as a foundational principle that hearings before the Commission are to proceed "fairly, flexibly and efficiently". We find that it is in the public interest that this matter, which commenced with the issuance of a notice of hearing on December 18, 2022, now proceed as expeditiously as possible. We direct the parties to comply with the following schedule for the hearing of stages 1, 2, and 3 commencing on May 11, 2026, on the dates

already set aside for this matter by agreement of the parties. As the hearing stages have been agreed to by the parties since June 2025, and materials for stages 1 and 2 have already been filed, the panel expects the parties to meet these deadlines:

a) Lamarche will file his stage 3 materials and any further evidence by **4:00 pm on March 28, 2026.**

b) The executive director and the AGBC will provide their responding materials and any further evidence by **4:00 pm on April 30, 2026.**

c) Lamarche will file any reply by **4:00 pm on May 7, 2026.**

[137] Further to BC Policy 15-601, section 3.4(b), no party may bring any further application in these proceedings after **4:00 pm on April 21, 2026**, unless leave is applied for and granted.

[138] We adjourn the hearing dates scheduled for March 19 and 20, 2026.

February 26, 2026

For the Commission

Marion Shaw
Commissioner

Karen Keilty
Commissioner