

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

Citation: Re Lamarche, 2026 BCSECCOM 141

Date: 20260429

Jean Andre Lamarche

Panel	Marion Shaw Deborah Armour, KC Karen Keilty	Commissioner Commissioner Commissioner
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Date of Ruling April 17, 2026

Counsel

Joven Narwal, KC Joseph Wandler	For Jean Andre Lamarche
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Stephen Zolnay Beverly Ma	For the executive director
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Reasons for Ruling

I. Introduction

- [1] On March 27, 2026, the executive director applied (Application) under section 171 of the *Securities Act*, RSBC 1996, c. 418 (Act) to vary the Commission panel's sealing order issued on September 8, 2025 (Sealing Order).
- [2] On April 17, 2026, having considered the submissions of the parties, we issued our ruling in *Re Lamarche*, 2026 BCSECCOM 123, in which we granted the Application and ordered the Sealing Order to be varied so that it applies only to the 39 documents that are in the quarantine folder of the investigation file. These are the reasons for our ruling.

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 Act, by trading and advising without being registered (2022 BCSECCOM 481).
- [4] In his investigation, the executive director relied on section 144 of the Act to compel the production of emails by Lamarche's internet service provider.
- [5] At a June 26, 2025, hearing management meeting, the parties agreed to hear a preliminary constitutional application made by Lamarche in the following stages:

Stage 1:	Whether the investigative technique used by the Commission was authorized by section 144 of the Act.
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Stage 2:	If the technique was authorized by the Act, is section 144 constitutional.
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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.

[6] September 8, 2025, was supposed to be the first day of the hearing of Stages 1 and 2 of Lamarche's constitutional application. On September 5, 2025, while preparing for hearing, former counsel inadvertently viewed one document in the Lamarche investigative file that he identified as privileged (the Incident). He promptly notified an eDiscovery specialist in the Technology and Evidence Control branch of the Commission (eDiscovery Specialist), who discovered that 16 documents in the main database for the Lamarche file had erroneously been moved out of the quarantine folder that is intended to segregate potentially privileged documents.

[7] On September 8, 2025, former counsel for the executive director advised the panel of the Incident and requested that he be allowed to withdraw as counsel. We granted his request. Another counsel for the executive director then requested that the hearing be adjourned. We made oral orders that day adjourning the hearing and sealing the enforcement file 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 had been remedied.

[8] On September 16, 2025, we issued *Re Lamarche*, 2025 BCSECCOM 412, which provided reasons for our orders, including the Sealing Order. Regarding the Incident, we stated:

...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 nonprivileged 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.

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.

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

[9] On October 31, 2025, the executive director submitted two affidavits regarding the Incident. One was from the eDiscovery Specialist and the other from the executive director's former counsel. The executive director relies on both of those affidavits in his Application.

[10] In his affidavit, the eDiscovery Specialist explained that when sets of documents are received by the Commission, those documents are screened for keywords that could be associated with solicitor-client privileged communications. He swore that 54 documents in one document set had been segregated into a quarantine folder and that those 54 documents had been sent to counsel for Lamarche in March 2023.

- [11] The eDiscovery Specialist advised that the evidence and disclosure company software (Software or Software Company) used by the executive director had been updated to a new version. That update involved the migration of documents from the old version of the Software to the new cloud-based version. He stated that during the migration process, 16 documents had moved from a quarantine folder into the main database folder. The eDiscovery Specialist advised that he moved the 16 documents back into the quarantine folder when he was advised of the Incident on September 5, 2025.
- [12] On February 26, 2026, we issued *Re Lamarche*, 2026 BCSECCOM 66 (February Decision), dismissing a number of preliminary applications from Lamarche. In that decision, we dismissed Lamarche's application to have any solicitor-client privileged documents deposited into the court registry on the basis that Lamarche had failed to identify any such records. However, we concluded that the document that former counsel for the executive director viewed on September 5, 2025 was likely to be privileged and stated:
- ...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.
- [13] In the February Decision, we also set deadlines for the parties to provide their submissions for Stage 3 of Lamarche's constitutional application. Lamarche filed his materials on March 30, 2026. The executive director has until April 30, 2026 to provide his response.
- [14] On March 2, 2026, counsel for the executive director sent an email to the Hearing Office and Lamarche's counsel stating that they were "unable to identify the specific document" that was viewed by former counsel but knew "that it is one of the 12 documents listed in the audit logs". Counsel for the executive director advised that they had deleted all 12 of those documents and their attachments.

III. Positions of the Parties

The Application

- [15] In the Application, counsel for the executive director advised that they need access to the enforcement file to prepare their response submissions regarding Stage 3, since it could contain evidence relevant to the constitutional issues, and will ultimately need access to the file to prepare for the liability hearing. They requested that the Sealing Order be varied so that it applies only to the 39 records that remain in the quarantine folder.
- [16] The executive director submits that it is in the public interest to vary the Sealing Order in that manner because:
- a) The Sealing Order was put in place to prohibit Commission staff from accessing records in the enforcement file while the executive director investigated the cause and scope of the Incident. In issuing the Sealing Order, the panel expressly contemplated that it could be varied on evidence that an appropriate remedy had been implemented.

- b) The eDiscovery Specialist's affidavit filed on October 31, 2025, explained the Incident's cause, "the unique circumstances that resulted in the Incident", and the remedial steps taken to ensure that it could not happen again.
- c) The document that the panel found was likely privileged has been deleted, together with 11 other documents and their attachments in order to be sure that that particular document has been deleted.
- d) If the email records contained any other privileged documents, they have been either quarantined or deleted.
- e) Lamarche has not identified any record outside of the quarantine folder as potentially privileged, despite the fact that:
 - i. he has had those records since 2023:
 - ii. at that time, he was asked by the executive director to identify any privileged documents; and
 - iii. the panel, in the February Decision asked him to identify any privileged documents.

[17] In sum, the executive director argues that there is no further need to maintain the Sealing Order in its present form, and it is impeding counsel's ability to prepare for the Stage 3 hearing and the eventual liability hearing.

Lamarche's response

[18] Lamarche submits that the Application is premature because:

- a) "The evidentiary record ... contains material inconsistencies that go to the very question the sealing order was designed to protect against, namely whether Commission staff reviewed privileged documents".
- b) "The Panel is ... presented with three accounts that do not align: a contemporaneous letter saying one privileged document was identified and closed; an affidavit saying one document "may" have been privileged; and audit data showing access to 12 documents over 26 minutes with no explanation of what occurred during that time in respect of the other 11".
- c) The sealing order should be varied "only upon the Executive Director demonstrating that the cause of the incident had been identified and that an appropriate remedy had been implemented", neither of which has been met.
- d) The Stage 3 hearing of Lamarche's constitutional application is the appropriate time to assess "whether the Commission's digital evidence management system was constitutionally adequate for the purpose of protecting privileged materials".
- e) "The Executive Director's submission that no privileged document remains at risk because the quarantined records cannot be accessed by litigation counsel is not a basis for lifting the seal over the remainder of the file. The quarantine system was represented to be secure before September 5, 2025. It was not. The Panel is being

asked to take on faith that the same system, now in its cloud-based [sic], will perform as designed”.

- f) “The wholesale lifting of the sealing order, or even its reduction to cover only the quarantine folder, gives Commission staff general access to a file that contains the totality of the Commission’s investigative record in circumstances where the constitutional validity of that investigation has not yet been determined”.
- g) The public interest in upholding solicitor-client privilege overrides the public interest in allowing the executive director to fully prepare for the Stage 3 hearing.

The executive director’s reply

[19] In its entirety, the executive director’s reply reads (with footnotes omitted):

- a) The Executive Director requests that the Sealing Order be varied so that it applies only to the 39 records that are currently in the quarantine folder.
- b) Mr. Lamarche’s counsel received copies of all the email records obtained from [a third party] more than three years ago. He has not claimed privilege over any document outside the quarantine folder although he was asked in March 2023 to identify any privileged records.
- c) The purpose of the Sealing Order is to ensure that staff do not have access to any privileged records, and it should be varied given that there are no such records outside the quarantine folder.

IV. Analysis

[20] Under section 171 of the Act, a panel is granted the discretion to revoke or vary a decision:

If the commission, the executive director or a designated organization considers that to do so would not be prejudicial to the public interest, the commission, executive director or designated organization, as the case may be, may make an order revoking in whole or in part or varying a decision the commission, the executive director or the designated organization, as the case may be, has made under this Act, another enactment or a former enactment, whether or not the decision has been filed under section 163.

[21] BC Policy 15-601 *Hearings* (15-601) explains how a panel is to consider a section 171 application:

9.10 Post Hearing Applications - Applications to Vary and Appeals of Decisions

(a) Discretion to Revoke or Vary

Under section 171 of the Act, the Commission may revoke or vary a decision it has made, or that was made by a single commissioner, if to do so would not be prejudicial to the public interest. A party that is subject to a decision may apply to the Commission for an order revoking or varying the decision. Generally, the Commission conducts these hearings in writing; it considers written submissions and makes its decision.

Section 171 is intended to allow the Commission to consider the ongoing appropriateness of an order made by a Commission panel, or by a single commissioner under delegated authority. It is 27 not intended to be used to apply for review of an initial decision made by a single commissioner. Those applications are properly brought under sections 165 and 166, as outlined above in **Part 7 Reviews**.

Before the Commission varies or revokes a decision, it must consider that it would not be prejudicial to the public interest to vary or revoke the decision. This usually means that the party

applying for variation or revocation must show the Commission new and compelling evidence that was not before the original decision maker, or a significant change in the circumstances since the original decision was made.

A party must apply to the Commission in advance of the hearing and demonstrate why the evidence that was not before the original decision maker is new and compelling, and should be admitted. The Commission will hear submissions from all parties. In some circumstances, the Commission may hear the application to introduce new evidence as part of the hearing to revoke or vary a decision. In that case, it will receive the evidence for the purposes of determining if it meets the test to be admitted.

If the Commission is considering a decision made by a single commissioner, the Commission may consider other factors. [emphasis in original]

- [22] In order for an application under section 171 to succeed, the applicant should demonstrate that the circumstances that were in place when the original order was made have changed and that it is not prejudicial to the public interest for the panel to change the order.
- [23] When we made the Sealing Order, we did so to prevent any further breach of solicitor-client privilege while the executive director investigated the Incident and provided evidence of an appropriate remedy. As we stated in our September 16, 2025 decision, once that evidence was provided, we would consider varying the Sealing Order on application from the executive director.
- [24] The executive director provided that evidence in the affidavits that were filed on October 31, 2025. Lamarche states that the Sealing Order should remain in place until after Stage 3 is heard because of inconsistencies between the affidavits filed by the executive director, the letter from former counsel for the executive director about the Incident, and the audit logs that were deleted.
- [25] This was already addressed in the February Decision, where we stated:
- 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.
- ...
- 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.
- [26] As was noted in the February Decision, the parties previously agreed that Stage 3 of this proceeding would require evidence. The executive director has brought an application to vary the Sealing Order so that he can access evidence. In the Application, the executive director says that he requires "access to the enforcement file to prepare the response submissions" and "to prepare for the hearing on liability" and that the Sealing Order "impedes counsel's ability to prepare for the Stage 3 hearing and the liability hearing." The only specific example provided is that the executive director may want to rely on evidence showing that Lamarche used the email account to conduct business with clients. While it would have been helpful to have more detailed reasons, we are persuaded that the executive director needs access to the enforcement file to access the evidence.

- [27] Now Lamarche says that the executive director should not have access to that information and the Sealing Order should remain until Stage 3 is determined because he is not satisfied with the explanations given by the executive director's affiants. He says that he is not satisfied that the quarantined documents will remain quarantined and that we are being asked to take on faith the explanations by the executive director's affiants that the issue has been identified and resolved.
- [28] The processes used by the executive director for the collection, identification, segregation and use of records will be squarely before the panel at Stage 3. In the meantime, we have before us a detailed explanation from the eDiscovery Specialist that explained what happened to cause the Incident and the steps taken to ensure that something like the Incident cannot occur again. Lamarche has not identified any documents in the enforcement file that are privileged. Lamarche claims blanket privilege over all of the documents in the quarantine file. Despite having been invited by the executive director and requested by this panel to do so, he has failed to identify specific documents as privileged or to describe the basis for the claim of privilege. As we stated in the February Decision, the law is clear that the bare assertion of privilege is not sufficient.
- [29] 15-601 states that our general principles are to "conduct our proceedings fairly, flexibly and efficiently". To do so, we consider "the rules of natural justice set by the courts and the public interest in having matters heard fully and fairly, and decided promptly". Lamarche dismisses the executive director's application for access to the investigative file as a matter of "convenience", but it is clearly more than that. Currently, the executive director is at a disadvantage to Lamarche, who has access to all of the evidence and has not identified any issues with any of the documents in the enforcement file. It is in the public interest for us to be provided with fulsome submissions from both parties with equal access to the record in the upcoming hearings in this matter.
- [30] We have already found that the executive director sufficiently explained how the Incident occurred. The executive director's affiants provided the new and compelling information that was not before us when we made the Sealing Order. Indeed, we demanded that the executive director provide that information. Additionally, we note that when we required that the one document that we determined was likely privileged be deleted and the executive director could not specifically identify which record that was, the executive director took a proactive approach and deleted all 12 possible documents for the sake of certainty.
- [31] We are satisfied that no records that have been identified as privileged are currently in the enforcement file (apart from the quarantine folder) and since the Sealing Order remains in effect for the quarantine folder, counsel for the executive director does not have access to the potentially privileged documents in the quarantine folder.
- [32] We find the executive director has met the test required to vary the Sealing Order and that it is in the public interest to grant the Application.

V. Ruling

[33] We order the Sealing Order to be varied so that it applies only to the 39 documents that are in the quarantine folder of the investigation file.

April 29, 2026

For the Commission

Marion Shaw
Commissioner

Deborah Armour, KC
Commissioner

Karen Keilty
Commissioner