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

Citation: Re Application 20251030, 2026 BCSECCOM 9 Date: 20260109

Re Application 20251030

and

Re Application 20251031

and

Re Application 20251032

Panel	Gordon Johnson	Vice Chair
	Jason Milne	Commissioner
	Douglas Seppala	Commissioner
Submissions completed	November 28, 2025	

Counsel

Joven Narwal, KC Jenny Musyj	For the Applicants
Jillian Dean	For the Executive Director

Decision

I. Background

[1] On October 30, 2025, three applicants (A in Application 20251030, B in Application 20251031 and C in Application 20251032, respectively, collectively the Applicants) made substantially the same applications to the Commission seeking the following orders:

a) the Applicants' identities be anonymized;

b) a constitutional exemption pursuant to s.13 of the *Charter* from complying with a June 13, 2025 or a June 24, 2025 Summons to Attend, as the case may be (the Summonses), on the basis that the Applicants face criminal culpability in the United States of America (USA);

c) in the alternative, an assurance that the contents of any interview will not be provided to USA authorities; and

d) a stay of the compelled interview for October 31, 2025 (Applicant A), December 9, 2025 (Applicant B), and December 10, 2025 (Applicant C) pending the outcome of the application.

[2] The Applicants requested that the matters be anonymized and the executive director consented to those applications. We heard these applications *in camera* and grant the orders that these

matters be anonymized.

[3] On November 7, 2025, the hearing panel advised the parties of its then current view that these three matters should proceed in writing and that if the parties require an oral hearing they should so advise in their response or reply, as appropriate. The executive director delivered a response on November 24, 2025 and took the position that no oral hearing is required in these proceedings. The Applicants delivered a reply on November 28, 2025 but did not take a position regarding the need for or benefit of an oral hearing.

[4] On December 8, 2025, the hearing panel confirmed its decision that these proceedings will be heard in writing. Later on December 8, 2025, counsel for the Applicants delivered an email to the hearing office stating, without elaboration, that the Applicants "take the position that the application should proceed by way of an oral hearing." The hearing panel then re-confirmed that this matter will proceed in writing.

[5] The parties in these three matters were represented by the same counsel. The Applicants made almost identical submissions in each application. The executive director responded with substantially similar submissions on all three matters, with the exception of some factual differences and submissions on whether application 20251030 is moot. The Applicants filed almost identical submissions in reply, and did not address the mootness issue. As such, we heard the three applications together and provide our reasons below.

II. Position of the Parties

A. The Applicants' submissions and supporting evidence

[6] Relying on *R v. Jarvis*, 2002 SCC 73 (CanLII) and other authorities, the Applicants submit that the principle against self-incrimination has been described as an elemental cannon of the Canadian Justice system.

[7] The Applicants submit that they should be exempt from complying with the Summonses because compliance would create an unacceptable risk that US authorities would use such evidence in a criminal prosecution. It is submitted that such use would violate the Applicants' right against self-incrimination under sections 7 and 13 of the *Charter*.

[8] The Applicants reference several sections of the *Securities Act*, RSBC 1996, c. 418 (Act) which authorize the Commission to share information with authorities in other jurisdictions.

[9] Section 7 of the *Charter* reads as follows:

> **7** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[10] Section 13 of the *Charter* reads as follows:

> **13** A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

[11] The Applicants expand on Section 13 of the *Charter* as follows:

> 7. Section 13 is unique among *Charter* rights as being contingent in its operation. It is the only *Charter* provision whose promise arises out of the relationship between two or more

> separate proceedings occurring at two or more separate points in time: first, "any proceedings" in which a witness testifies; second, "any other proceedings" in which incriminating testimony "so given" may be used to incriminate the same witness. The constitutional concerns attaching to the later proceedings (and/or availability of remedies) necessarily rests on the fact of the earlier proceedings; equally, the court's ability to, for example, order a witness to testify flows from the assurance that any court overseeing later proceedings will itself uphold s.13's protections.

[12] The Applicants refer to some authorities regarding the applicability of Section 7 of the *Charter*, including *British Columbia Securities Commission v. Branch*, [1995] 2 SCR 3 [*Branch*] and *Tak v. British Columbia (Securities Commission)*, 2023 BCCA 76 [*Tak*], and, with respect to *Tak*, the Applicants state the following:

> 14.The court further stated at paragraph 74 that, "section 7 of the *Charter* places limitations on the Commission to compel testimony that may be shared with a foreign government authority only where the witness establishes on a balance of probabilities a real and substantial risk of (a) criminal prosecution in a foreign state, and (b) reasonably comparable protection from the derivative use of the compelled testimony being unavailable."

[13] The Applicants then refer to a number of online news sources which state that [REDACTED] is under investigation by US authorities for an alleged fraudulent investment scheme. An affidavit from a legal administrative assistant and filed with all three applications exhibits printouts of the referenced online news articles and content from blog sites. Six of the items were published in 2023. Four were published in 2024. One was published in March of 2025 and another was published in August of 2025.

B. The executive director's submissions and supporting evidence

[14] The executive director submits that there is a well-developed body of law on the protection against self-incrimination provided by the *Charter*. The executive director points out that the law has been recently summarized in *Tak*.

[15] With respect to Section 13 of the *Charter*, the executive director's submissions include the following:

> Although the applicant relies on s. 13 of the *Charter* throughout her submissions, the Court of Appeal in *Tak* accepted that s. 13 has no application in this context. The s. 13 right against self-incrimination inures only at the moment an attempt is made to use previous testimony to incriminate the witness. Given that the applicant's concern is the use of her compelled testimony in an American criminal proceeding, the right would inure only before a foreign court not subject to the *Charter*.
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> The applicant points to various cases pre-existing *Tak* in support of her position that s. 13 must apply, but does not submit the Court of Appeal got it wrong in *Tak*, or why these circumstances are different than those before that court.
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> The facts in *Tak* are nearly identical to those in the case at bar. Absent any distinguishing factors, the Court of Appeal's findings in *Tak* must be taken as the applicable law for this context in this province.

[16] With respect to Section 7 of the *Charter*, the executive director refers extensively to the analysis of the British Columbia Court of Appeal in *Tak*. The executive director summarizes the legal requirements applicable to each Applicant which are most relevant as follows:

> The Court of Appeal has been clear that it is the applicant's burden to establish (a) a real and substantial risk of criminal prosecution in the United States and (b) that derivative use immunity is not available in that jurisdiction. If [the Applicant] does not establish both of those prongs on a balance of probabilities, this application must be dismissed.

[17] The executive director then addresses the issues of whether a real and substantial risk of criminal prosecution in the US has been established by the Applicants and, if so, whether it has been established that there is a real and substantial risk of derivative use immunity being unavailable in a possible future proceeding in the US.

[18] With respect to the risk of a US prosecution, the executive director emphasizes that the evidence relied upon by the Applicants amounts to little more than blog posts in which sources are not cited. The executive director also acknowledges that a temporary order was obtained against each Applicant, and the executive director continues in respect of each Applicant as follows:

> In reasons released in connection with a temporary order issued against [REDACTED] and the applicant, amongst others, a Commission panel found that there was evidence that [REDACTED] was a corporate entity that promoted an investment product called [REDACTED] through an extensive international multi-level marketing network of promoters. There was evidence that the applicant and [the other Applicants] were British Columbia-based promoters.
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> The applicant provides no evidence that [REDACTED]was involved in promotional activities in Alabama or in any other American state.
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> Even conclusive evidence of a criminal proceeding against [REDACTED] in Alabama (or elsewhere) would not be evidence of a criminal proceeding against [the Applicant] personally. [REDACTED] apparently relies on an extensive international network of promoters. Presumably, Alabamian authorities have no jurisdiction over promotional activities carried on in this province and would be more interested in their own Alabama-based promoters of [REDACTED] than the three British Columbia-based promoters identified by the Commission.

[19] With respect to the suggested lack of derivative use immunity in the US, the executive director submits that this is a question of foreign law which, if alleged, must be proven by opinion evidence. The executive director refers to other cases, including *Tak*, in which it was determined based on sometimes conflicting opinion evidence that the Fifth Amendment protection which exists in the US would be available for parties such as the Applicants and that such protection is comparable to the protection which would exist under the *Charter*.

[20] With respect to the alternative relief sought by the Applicants for assurances about how information obtained by the Commission will be used, the executive director submits that such relief should only be available in circumstances where a constitutional exemption should be ordered, which does not include this proceeding.

[21] With respect to the stay which the Applicants have sought, the executive director submits that with respect to:

a) Applicant A, the interview was scheduled for June 13, 2025, and then reset for October 31, 2025, having been adjourned twice. Applicant A did not appear at

the October 31, 2025 interview;

b) Applicant B, the interview was scheduled on June 10, 2025 and then reset on December 9, 2025, and has been adjourned three times; and

c) Applicant C, the interview was scheduled for June 11, 2025 and then rescheduled to December 10, 2025, having been adjourned three times.

[22] The executive director submits that the Applicants mentioned the issues raised by these applications many months ago. The affidavits in support of the executive director's position exhibits the first letter from current counsel for the Applicants, dated June 24, 2025. Counsel writes on behalf of all three Applicants relating to the compelled interviews at issue. That letter includes the following paragraph:

> We also request clarity and confirmation that there is no ongoing domestic criminal investigation, nor any parallel U.S.-based criminal investigation, that would engage our client's constitutional protections, whether in Canada or in the United States.

[23] The executive director submits that the constitutional issues raised in these applications could have been resolved long before the scheduled interview dates. As a result, the applications for a stay would never have become necessary but for the choice of the Applicants to defer bringing the applications.

[24] The executive director also submits that in the 20251030 matter the application is moot, as the scheduled date for the interview had come and gone by the time the panel could hear the matter.

C. The Applicants' reply

[25] The Applicants submit that the executive director's submissions acknowledge that there is a coordinated US and Canada investigative effort involving a number of American state securities regulators. The Applicants tie this acknowledgement together with the fact that the executive director obtained a temporary order against the Applicants based in part on their alleged participation in a multi-level marketing scheme seeking to promote the very scheme which is the subject of the US investigations.

[26] The Applicants take no comfort from suggestions by the executive director that US regulatory authorities will naturally focus on individuals who promoted a fraudulent scheme in their own jurisdiction rather than individuals in foreign jurisdictions such as British Columbia who might have connected investors here to the scheme.

[27] The Applicants strongly disagree with submissions of the executive director to the effect that the Applicants should be able to provide evidence which would satisfy their onus to establish a real and substantial risk of a criminal prosecution in the US, if such a risk exists. The Applicants submit that this creates a "self-incrimination loop" in that the Applicants can only demonstrate the risk of a US prosecution by disclosing information which could itself be incriminating.

[28] The Applicants did not address the submissions made by the executive director regarding the absence of any evidence from an expert on US law. Nor did the Applicants address the appropriateness of the stay when the application for a constitutional exemption as well as the stay applications were left until very shortly before the agreed dates for the interviews. As

outlined above, the Applicant in 20251030 did not address the executive director's submissions on whether the application is moot.

III. Analysis and Ruling

A. Section 13 of the *Charter*

[29] We agree with the executive director that, based upon *Dubois v. the Queen*, 1985 CanLII 10 (SCC), [1985] 2 SCR 350 [*Dubois*], the right against self-incrimination inures at the moment an attempt is made to use previous testimony to incriminate a witness. None of the British Columbia Court of Appeal's analysis in *Tak* limits the application of *Dubois*.

[30] Section 13 of the *Charter* does not provide a basis for the relief sought by the Applicants.

B. The elements of the test in *Tak*

[31] *Tak* is a recent decision of our Court of Appeal which carefully analyzes the issues which are before us and which provides the tests and standards which we are obligated to apply in this context.

[32] *Tak* was initiated by an application by Tak to the Supreme Court of British Columbia, in chambers, for a constitutional exemption from complying with a summons issued against him by Commission staff in relation to an ongoing investigation.

[33] The chambers judge relied heavily on *Branch*, which she interpreted as permitting a constitutional exemption only where the predominant purpose of compelling testimony is to incriminate the witness. She also weighed the opinion evidence which was before her regarding whether the self-incrimination clause in the Fifth Amendment to the US Constitution bars US prosecutors from using a foreign compelled self-incriminating statement in US criminal proceedings. Favoring the opinion of one particular expert witness, the chambers judge accepted that *United States v. Allen*, 864 F.3d 63 (2nd Cir. 2017) supported a clear line of authority establishing a near absolute degree of protection against compelled self-incrimination, even where the evidence was compelled by foreign government officials.

[34] The chambers judge also found that Tak's concerns about facing a US prosecution were speculative.

[35] The Court of Appeal began its own analysis with some general comments about the ability of witnesses to refuse to answer questions and the protections which exist against compelled self-incrimination. The Court of Appeal's comments included:

> [16] Protection against self-incrimination is one of the principles of fundamental justice protected by s. 7 of the *Charter*. In addition to the "use immunity" guaranteed by s. 13 of the *Charter*, persons compelled to testify must also be provided with subsequent "derivative use immunity" under s. 7: *R. v. S. (R.J.)*, 1995 CanLII 121 (SCC), [1995] 1 S.C.R. 451.

[36] The Court of Appeal then provided a detailed review of *Branch*. *Branch* arose in the course of a Commission investigation during which certain directors of a public company had been served a summons. The witnesses attended at interviews but asserted a right to remain silent and demanded further particulars and disclosure.

[37] The Court of Appeal continued its review of *Branch* as follows:

[22] In making a distinction about the purpose for which the testimony is sought, the majority considered the difficulty of showing a predominant purpose to incriminate and how the burden of proof would operate:

> [9] It would be rare indeed that the evidence sought cannot be shown to have some relevance other than to incriminate the witness. In a prosecution, such evidence would simply be irrelevant. There may, however, be inquiries of this type and it would be difficult to justify compellability in such a case. In the vast majority of cases, including this case, the evidence has other relevance. In such cases, if it is established that the predominant purpose is not to obtain the relevant evidence for the purpose of the instant proceeding, but rather to incriminate the witness, the party seeking to compel the witness must justify the potential prejudice to the right of the witness against self-incrimination. If it is shown that the only prejudice is the possible subsequent derivative use of the testimony then the compulsion to testify will occasion no prejudice for that witness. The witness will be protected against such use. Further, if the witness can show any other significant prejudice that may arise from the testimony such that his right to a fair trial will be jeopardized, then the witness should not be compellable.
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> …
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> [11] As in the case of any breach of *Charter* rights, the burden of establishing a breach is on the party alleging it. In this context, the burden of proof with respect to the predominant purpose of the compelled testimony will be on the witness who asserts that it is not sought for a legitimate purpose. If this is established, the witness should not be compelled unless the party seeking to compel the witness justifies the compulsion as referred to above.

[23] Mr. Tak submits that *Branch* establishes a two-stage test, accurately described by the chambers judge as follows:

> [16] … First, the court must look at whether the witness will receive effective use and derivative use immunity. If not, they are not compelled to testify. The predominant purpose test only comes into play at the second stage, in the event that the witness will receive effective use and derivative use immunity. In these circumstances, even where use and derivative use immunity is provided for, the witness will still be exempt from testifying if the predominant purpose of seeking the witness's evidence is to incriminate them.

…

[25] In my view, the test formulated in *Branch* does not necessarily restrict consideration of an exemption from compulsion to circumstances where the predominant purpose is to incriminate the witness. Justice Cory, writing for himself and Justices Iacobucci and Major, provided further commentary on the test in *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, 1995 CanLII 86 (SCC), [1995] 2 S.C.R. 97. In that case the Court was considering whether a stay of the public inquiry into the Westray mine explosion should be maintained, and whether two respondents who were facing criminal charges arising from the same facts were compellable as witnesses at the inquiry.

[26] Justice Cory did not consider the test in S. (R.J.) and Branch to be so restricted:

> [82] In S. (R.J.) and Branch, this Court recognized the need to strike an appropriate balance between the state's interest in obtaining the evidence for a valid public purpose

> and the individual's right to remain silent and to have a fair trial. To that end, a two-stage analysis has been developed to ascertain whether a witness is compellable in particular proceedings. First, the court must consider the importance to the state of obtaining compelled testimony from the witness. As noted in Branch, at p. 15, "the crucial question is whether the predominant purpose for seeking the evidence is to obtain incriminating evidence against the person compelled to testify or rather some legitimate public purpose." Second, even where the purpose of compelling testimony is valid, it is necessary to assess the prejudicial effect of such compulsion upon the witness.
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> [Emphasis added.]
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> …
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> [32] In finding that the *Securities Act* legitimately compels testimony because the legislation is concerned with the furtherance of a goal of substantial public importance—to obtain evidence to regulate the securities industry—the majority in *Branch* held that the proposed testimony was governed by the general rule applicable under the *Charter* "pursuant to which a witness is compelled to testify, yet receives evidentiary immunity in return": at para. 35. This principle is reflected in broader terms earlier in the reasons:
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> > [7] … any test to determine compellability must take into account that if the witness is compelled, he or she will be entitled to claim effective subsequent derivative use immunity with respect to the compelled testimony or other appropriate protection.

[38] The Court of Appeal then reviewed a number of other significant authorities regarding the right against self-incrimination and concluded:

> [42] Thus, it is my view that the two-stage test formulated in *Branch* does not foreclose an argument under the second stage of the analysis, that the prejudicial effect of the absence of derivative use immunity in a future foreign criminal proceeding outweighs the legitimate interests of the Commission in receiving compelled testimony.

[39] The Court of Appeal continued its analysis, including:

> [49] Here, the interests of the Commission in receiving compelled testimony are significant. Obtaining evidence to regulate the securities industry is a goal of substantial public importance. The securities market has long been recognized as an international one and effective regulation requires cooperation and reciprocal assistance between securities regulators in different jurisdictions: see *Branch* at para. 35; *Global Securities Corp. v. British Columbia (Securities Commission)*, 2000 SCC 21 at paras. 27–28.
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> [50] As for Mr. Tak's rights, the residual protection against self-incrimination under s. 7 of the *Charter* "is context-dependent and does not provide 'absolute protection' against 'all uses of information that has been compelled by statute or otherwise'": *R. v. J.J.*, 2022 SCC 28 at para. 146, citing *R. v. White*, 1999 CanLII 689 (SCC), [1999] 2 S.C.R. 417 at para. 45 and *Thomson Newspapers Ltd. v. Canada*, 1990 CanLII 135 (SCC), [1990] 1 S.C.R. 425 at 538; *R. v. Jarvis*, 2002 SCC 73 at para. 68.
> …
>
> [54] Given the nature of the prejudice asserted by Mr. Tak, it is my view that s. 7 of the *Charter* places limitations on the Commission to compel testimony that may be shared

> with a foreign government authority only where the witness establishes a real and substantial risk of (a) criminal prosecution in a foreign state, and (b) reasonably comparable protection from the derivative use of the compelled testimony being unavailable.

[40] The Court of Appeal was clear that as the party asserting the breach of *Charter* rights, the burden is on each Applicant to establish that equivalent protection of the right against self-incrimination is not available in the US. The Court of Appeal also concluded:

> [63] The breach asserted in this case is not a prospective breach, in that it is said to occur at the time of testimonial compulsion. However, the nature of the breach necessarily involves an assessment of future risk of two things: (1) the risk to Mr. Tak of a future criminal prosecution in the U.S., and (2) the risk that derivative use immunity will not be available to him if that occurs. In this context, Mr. Tak must establish on a balance of probabilities that these risks are "real and substantial". I see little difference between this standard and the chambers judge's more general requirement for Mr. Tak to prove on "a high degree of probability" that his evidence will be used against him in a future U.S. criminal proceeding if he testifies.

[41] The final issue addressed by the Court of Appeal was the chambers judge's treatment of opinion evidence regarding US law. The Court of Appeal emphasized some of its conclusions in *Friedl v. Friedl*, 2009 BCCA 314, including that a BC court must rely on the evidence of an expert to explain and interpret foreign law, and conclusions on foreign law are findings of fact.

[42] The Court of Appeal found that the chambers judge made no palpable and overriding error in accepting the evidence which she did regarding US law, and the Court of Appeal added that under US law Tak "would have comparable protection for derivative use immunity were he to be tried in a US criminal court."

[43] The appeal in *Tak* was dismissed.

C. Application of Tak in this proceeding

[44] These applications raise some interesting questions. For example, the executive director's submissions suggest that the Applicants are under investigation in British Columbia for conduct which occurred here, and the Applicants submit that this is strongly indicative of a risk that they will be criminally prosecuted in the US. In addition, notwithstanding the very recent conclusion of the Court of Appeal in *Tak* that applicants in British Columbia have the onus of establishing a real and substantial risk that they would be subject to a criminal prosecution in the US, the Applicants submit that we should not apply such an onus because of the risk that the Applicants can only meet the onus by providing evidence which might create the very self-incrimination which they seek to avoid.

[45] As interesting as those questions are, it is not necessary for us to engage with them because the other elements which an applicant must satisfy in a successful constitutional exemption application are not satisfied. In fact, it is clear the Applicants have not made any effort to satisfy their onus to establish that, should they be prosecuted in the USA, no equivalent protection against the derivative use of compelled testimony would be available.

[46] The Court of Appeal could not have been more clear in *Tak*, and it has long been established law in British Columbia, that foreign law is a question of fact which must be proven by expert evidence. It is therefore axiomatic that an application such as this one, which is not supported

by any evidence of any kind which would suggest that the legal system in the United States lacks appropriate protection against derivative use of compelled testimony, would fail. This is a fatal defect in the Applications.

[47] These applications are without merit, and they have suffered from that lack of merit from the moment the applications were filed.

D. Stay of proceedings

[48] The evidence provided by the executive director includes a detailed review of the communications with counsel for the Applicants directed towards finding a convenient date for each of the Applicants' interviews. The record shows that those efforts began in February and March of 2025 and that many extensions, adjournments, and accommodations were given by the executive director to the Applicants and their counsel before the dates at issue were set.

[49] The record also shows that from the date of the June 24, 2025 letter from counsel which is quoted from above, sent on behalf of all three Applicants, they had the option to bring these applications. Had the applications been brought at an earlier date they could have been easily completed before a stay of proceedings was necessary.

[50] The Applicants do not rely on any evidence which did not exist before the end of the summer of 2025, while the subsequent interview dates in each matter were being arranged.

[51] These applications were filed on October 30, 2025 and the Applicants' Replies were delivered on Friday, November 28, 2025. The final communication from the Applicants regarding how the applications should be conducted was delivered on December 8, 2025. If we had granted the stay which was requested the inevitable result would have been a further delay in the interview which was scheduled after a very significant effort by the executive director with considerable deference shown to the Applicants and their counsel.

[52] We conclude that it is appropriate for us, when we are considering an application for a stay, to take into account whether we are creating incentives for parties to hold back on applications until the last moment with the result that applications which could be resolved in advance of scheduled dates will instead disrupt those dates. Given this consideration, unless there is some reasonable explanation offered for the delay, we should incentivize parties to bring applications in a timely way whenever those parties conclude it is in their interests to have their applications adjudicated in advance of an interview. This will also expedite the investigation process, and help ensure that proceedings before the Commission are conducted fairly and efficiently.

[53] This is not to suggest that we are reluctant to grant a stay in an appropriate case. We are merely saying that in cases such as these where a stay application could have been brought earlier and was instead brought, without good explanation, at essentially the last minute, that is a factor against ordering a stay.

[54] Usually we would evaluate an application for a stay pending adjudication of an issue without reference to the merits of the underlying issue. However, when the merits of the constitutional exemption applications are as obvious as this one, that is a factor against ordering a stay.

[55] No stay was appropriate in this proceeding.

E. Is Application 20251030 moot

[56] Given our reasons as outlined above and the dismissal of the application on other grounds, we declined to consider the matter of whether application 20251030 was moot because of the late date that it was filed.

IV. Conclusion

[57] With the exception of the orders for anonymity, these applications are dismissed.

January 9, 2026

For the Commission

Gordon Johnson
Vice Chair

Jason Milne
Commissioner

Douglas Seppala
Commissioner