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

Citation: Re Posen, 2026 BCSECCOM 159 Date: 20260508

Shimshon Refoel (Shimmy) Posen

Panel	Gordon Johnson	Vice Chair
	Karen Keilty	Commissioner
	Douglas Seppala	Commissioner

Hearing date April 10, 2026

Submissions completed April 10, 2026

Ruling date May 8, 2026

Appearing
Joven Narwal, KC For Shimshon Posen

Elizabeth Allan For the Executive Director
Setareh Khasha

Ruling and Reasons for Ruling

Table of Contents

I. Introduction ... 1
II. Factual background ... 2
III. Position of Posen in his application ... 2
IV. Response position of the executive director ... 4
V. Position of Posen in reply and in oral argument ... 6
VI. Position of the executive director in his sur reply and in oral argument ... 7
VII. Statutory context ... 7
A. Ontario *Evidence Act*, *SPPA*, and *Securities Act* provisions ... 7
B. Alberta Evidence Act and Alberta Securities Act provisions ... 9
C. British Columbia *Evidence Act* and *Securities Act* provisions ... 10
VIII. Analysis and conclusions ... 13

I. Introduction

[1] By a Notice of Hearing, 2025 BCSECCOM 124, the executive director alleges that the respondent, Shimshon Posen (Posen) “directed a wash trade to artificially lower the share price of a Canadian Securities Exchange (CSE) listed company (Company)” and that this conduct "contravened section 57(1)(a)” of the *Securities Act*, RSBC 1996, 418” (Act). The Notice of Hearing alleges that on January 26, 2024, Posen placed an order to buy 50,000 shares of an issuer at a price of $0.005 in an online investment account in his name and, the same day,

directed a matching sell order by instructing a registered representative to sell the same number of shares at the same price in an account in the name of a holding company. The holding company was owned by Posen's wife, but Posen held trading authority over the account.

[2] The Notice of Hearing was issued on March 26, 2025. The Notice of Hearing followed an investigation during which investigators from the British Columbia Securities Commission (Commission) conducted a compelled interview of Posen on July 14, 2024.

[3] On October 14, 2025, Posen filed this application seeking "a declaration that no portion of the transcript from the Applicant's July 15, 2024 compelled interview is admissible at any hearing before the Commission in respect of" Posen's alleged breaches of the Act.

[4] On November 12, 2025, the executive director filed his response to this application.

[5] On December 10, 2025, Posen filed his reply submissions.

[6] On December 19, 2025, the executive director filed his sur reply.

[7] Oral submissions were heard on April 10, 2026.

[8] For the reasons below, we dismiss Posen's application to exclude the admission of his transcript.

II. Factual background

[9] Additional context for this application is provided in our prior decision issued on November 17, 2025, *Re Posen*, 2025 BCSECCOM 505.

[10] The July 15, 2024, interview of Posen was conducted in Ontario at the offices of the Ontario Securities Commission. The interview began with some discussion between Posen's then counsel and representatives of the Ontario Securities Commission, after which investigators from the British Columbia Securities Commission asked questions of Posen. A transcript of the interview was made. We have not been informed of what substantive questions Posen was asked or what answers he gave.

[11] This application was supported by affidavit evidence which establishes that at Posen's interview, then counsel for Posen stated:

> I will clarify as this is a compelled examination, Mr. Posen will be availing himself of his use and derivative use protections under section 18 of the Ontario Securities Act and section 9 of the Ontario Evidence Act, and that applies to the course of the examination.

[12] As is noted above, this application was filed on October 14, 2025. The hearing date for the liability phase of the Notice of Hearing is set for May 29, 2026.

III. Position of Posen in his application

[13] Posen's submissions begin with a reference to the statement at paragraph 21 in *R v Noël*, 2002 SCC 67, that "when a witness who is compelled to give evidence in a court proceeding is exposed to the risk of self-incrimination, the state offers protection against the subsequent use of that evidence against the witness in exchange for his or her full and frank testimony".

[14] Posen's submissions discuss the recent decision of the Ontario Capital Markets Tribunal in *TeknoScan Systems Inc (Re),* 2024 ONCMT 32 [*TeknoScan*], which overturned that tribunal's prior decisions in *Sextant Capital Management (Re)*, 2010 ONSEC 25 [*Sextant*], and *Eda Marie Agueci et al. (Re)*, 2013 ONSEC 45 [*Agueci*], and ruled that transcripts of compelled interviews are not admissible against a respondent who had invoked section 9 of the Ontario *Evidence Act*, RSO 1990, c E.23. Posen submitted that section 9 of the Ontario *Evidence Act* and section 4 of the British Columbia *Evidence Act,* RSBC 1996, c 124, are "materially identical".

[15] Posen submitted that we should follow *TeknoScan* not merely because it was then the latest statement of the law, but also because the reasoning in *TeknoScan* is compelling.

[16] It was submitted to the *TeknoScan* panel that the Ontario Capital Markets Tribunal had recently been constituted as a separate tribunal, which was not the case at the time *Sextant* and *Agueci* had been decided. As a result, it was submitted, the panel should not follow the conclusions in those prior decisions that section 9 of the Ontario *Evidence Act* only applied to proceedings subsequent to the interview proceeding and that a Commission hearing was not a separate proceeding from the underlying investigation. Some of the specific language from *TeknoScan* which Posen relied upon included:

> [61] Without ruling on the TSI respondents' argument that the advent of the Tribunal in its current form would be determinative of the applicability of s. 9(2) in the circumstances, we concluded that *Sextant* and *Agueci* were simply wrongly decided on this issue. While the Divisional Court heard and dismissed an appeal from *Agueci* on a separate issue, the Court was not called upon to rule on the applicability of s. 9(2) of the *Evidence Act* to the transcript evidence at issue in that case. Part VI of the *Act* has, at all material times, prescribed a standalone extraordinary power conferred on the Commission to conduct confidential investigations and examinations in furtherance of the Commission's mandate to protect investors and preserve the integrity of the capital markets.
>
> [62] Investigations under Part VI of the *Act* are initiated by order of the Commission pursuant to which one or more persons are appointed to investigate, with power to summons witnesses to testify under oath. Possible outcomes of an investigation include:
>
> a. the initiation of an administrative proceeding under s. 127 of the *Act;*
>
> b. the commencement of an application under s. 128 of the Act before the Superior Court of Justice for declaratory and other ancillary relief;
>
> c. the initiation of a prosecution under the Provincial Offences Act in respect of one or more alleged breaches of s. 122 of the Act; and
>
> d. the delivery of a privileged report to the Chair of the Commission or member of the Commission as provided for in s. 15 of the Act.
>
> [63] The *Act* contains no support for the suggestion that an investigation under Part VI either initiates or is part of a subsequent administrative proceeding brought under s. 127. The fact that a person appointed to make an investigation under Part VI may (or in some cases must) disclose as part of a s. 127 proceeding evidence, including transcripts of witnesses, gathered during the investigation does not, in our view, alter this finding. Similarly, that fact does not render a compelled examination transcript tantamount to a discovery transcript in a civil proceeding, where a party is entitled, in certain circumstances, to read it in as part its case. A

Part VI investigation is not a s. 127 proceeding, nor is it a part of a s. 127 proceeding even if that proceeding is commenced as a result of the investigation.[

[64] Given that the rulings in *Sextant* and *Agueci* were, in our view, predicated on the erroneous premise that a Part VI investigation is part of, or one and the same as, an administrative enforcement proceeding under s. 127 of the *Act*, we decline to follow the rulings in those cases respecting the applicability of s. 9 of the *Evidence Act* when properly invoked by a witness on a compelled examination during a Part VI investigation.

…

[66] We do not accept that our conclusion weakens the Commission's enforcement powers. Those powers remain unchanged. Our conclusion simply means that where a respondent has properly invoked the protections of s. 9 of the *Evidence Act* and makes the election not to testify in their defence at a s. 127 proceeding, the Commission may have to present its case in a different way. For example, the Commission may consider summonsing the respondent to testify as part of the Commission's case, an option that the Commission acknowledged is available to it under s. 12 of the *SPPA*.

[17] Posen also referenced paragraphs 6 to 13 and 85 from the British Columbia Court of Appeal's decision in *Morabito v. British Columbia (Securities Commission),* 2022 BCCA 279 [*Morabito*], and submitted that because an investigation order is not final and may or may not have legal consequences for the subject if or when a hearing is ordered, there is strong support in British Columbia for the proposition that an investigation is a separate proceeding from a hearing initiated by a notice of hearing.

IV. Response position of the executive director

[18] The executive director's submissions focused on both the development of the law both before the *TeknoScan* decision and after it.

[19] With reference to the historical interpretation of statutory provisions similar to section 4 of the British Columbia *Evidence Act*, the executive director submitted:

> Although not directly considered in British Columbia, the language in s. 4(3) above (that "the answer given must not be used or receivable in evidence against that witness in any… proceeding under any Act) has repeatedly been found by Canadian courts and tribunals to protect against *subsequent* or *derivative* use of compelled evidence in *other* proceedings. [emphasis in original]

[20] The executive director relied upon both *Sextant* and *Agueci* in support of his submission, as well as *Alberta Securities Commission v. Brost*, 2008 ABCA 326 [*Brost*]. The Alberta Court of Appeal in *Brost* found that the interviews from which the transcripts were taken were used in the same regulatory proceedings in which they were obtained, and in reaching that conclusion the Court stated that the use in question "was not outside of the scope of the very regulatory proceedings for which the authority to investigate was enacted". The Court in *Brost* also relied upon the analysis of the Supreme Court of Canada decision in *British Columbia Securities Commission v. Branch*, 1995 CanLII 142 (SCC) [*Branch*], to the effect that individuals operating in the securities market "do not have a reasonable expectation that the content of their investigative interviews will not be used for the purposes of the Act".

[21] Seeming to anticipate arguments that *Brost* was decided in a different statutory context from the current context, the executive director submitted that *Brost* has been interpreted as an application of broad principles by the Alberta Court of Appeal rather than being confined to the specific statutory language which existed in Alberta. The executive director submitted:

> In *Yazdanfar v. The College of Physicians and Surgeons* [2013 ONSC 6420 [*Yazdanfar*]], an appellant argued that the panel had erred in permitting the use of his interview transcript during the hearing. The Ontario Superior Court of Justice rejected this argument on the same basis as *Brost*:
>
> > [65] …Interviews, and even "compelled" interviews conducted by regulators, do not constitute separate proceedings from the resulting regulatory proceedings: see *Alberta (Securities Commission) v. Brost*… The Committee was therefore correct that the protection of s. 33(6) of the *Public Inquiries Act*, 2009 does not apply for the purposes of the disciplinary hearing that may result from the investigation.
> >
> > …
> >
> > [67] In this case, treating the Committee hearing as a separate or other proceeding would effectively undermine the purpose of the regulatory framework and the onerous obligation placed on self-regulating bodies to protect the public. As the Supreme Court of Canada held in *Pharmascience Inc. v. Binet*… legislation governing self-regulating professions must be interpreted broadly in the context of its statutory duty to protect and serve the public interest.
> >
> > [68] Taking these considerations into account then, I conclude that the appellant's interviews with Dr. Fielding form part of the same regulatory proceeding initiated with the same ultimate regulatory purpose, that is, the protection of the public…

[22] Turning to the most recent development in the law on this subject, the executive director submitted that we should rely on the decision of the Ontario Superior Court of Justice in *Hogg v. Chief Executive Officer*, 2025 ONSC 6214 [*Hogg*]. That decision directly addresses the reasoning of the panel in *TeknoScan* and finds that it is neither binding nor persuasive. The executive director submitted:

> In considering *TeknoScan* and the line of cases before it, the Court in *Hogg* took issue with the *TeknoScan* decision on the following grounds:
>
> (a) the decision stands alone even in relation to other Capital Markets Tribunal decisions – citing *Sextant* and *Agueci*;
>
> (b) the panel in *TeknoScan* overemphasized the significance of the different remedies available to the OSC after the completion of an investigation – the existence of various separate remedies does not impart the character of separate proceedings for the purposes of the *Evidence Act*; and
>
> (c) the panel in *TeknoScan* did not deal with any of the judicial cases such as *Brost* or *Yazdanfar*, "which, if not binding, certainly merited their careful attention."

[23] The executive director went on the express several reasons why the reasoning in cases such as *Hogg* is consistent with the public interest. The executive director also noted that this is not a

case in which admitting the transcript in question would cause any unfairness which is specific to Posen, who attended his interview with counsel.

V. Position of Posen in reply and in oral argument

[24] In his reply, Posen modified his position to take a much broader interpretation to Section 4 of the British Columbia *Evidence Act* than he had initially taken. Posen noted that the section refers to answers not being receivable in evidence against that witness "in any civil proceeding or in any proceeding under any Act". The word "other" is not present in the section, and the word should not be read into the section.

[25] Posen cites several authorities in support of the propositions that it is not the role of courts to modify legislation by reading in words which are not present, including *R v McIntosh*, [1995] 1 SCR 686, and *Mitchinson v The Owners, Strata Plan VR 1120*, 2024 BCCA 89. We would add that *Wang v British Columbia (Securities Commission)*, 2023 BCCA 101, includes an analysis generally consistent with the general state of the law as submitted by Posen.

[26] Posen made several submissions in support of the propositions that the legislative context is different in British Columbia from the legislative context in either Alberta or Ontario, and that as a result the precedents from those other jurisdictions should not be applied here. Specifically, Posen submits that the following elements of certain legislation are important to our analysis:

- Section 6(2) of the *Alberta Evidence Act* includes the words "other proceedings" to identify the situations in which evidence is not receivable, which is distinct from the language found in the British Columbia *Evidence Act*.

- Section 215 of the Alberta *Securities Act* appears to explicitly permit the use of transcripts of compelled interviews at hearings regardless of whether the interview was a part of the same proceeding or not.

- Section 17 of the Ontario *Securities Act* allows the Ontario Capital Markets Tribunal to authorize the disclosure of testimony given under compulsion, which was interpreted in *Sextant* as permitting the use of compelled testimony at hearings.

- Although there is a provision in the Act which allows the Commission or a minister to request a transcript of evidence given under compulsion, there is no provision which authorizes the use of such a transcript at a hearing.

[27] Posen also submits that, unlike in other provinces, under the Act, investigations and proceedings commenced by notice of hearing are separate proceedings. In support of that submission, Posen references section 146.16 of the Act, which states that a "document that an individual is required to prepare may not be used or received in evidence against the individual in a proceeding relating to a contravention of this Act or the regulations that is subsequently instituted against the individual".

[28] Posen also submits that the distinctions made between the nature of an investigative process and an enforcement process under the Act, as described in cases such as *Morabito*, *Brar v British Columbia (Securities Commission)*, 2023 BCCA 432, and *British Columbia (Attorney General) v BridgeMark Financial Corp.*, 2021 BCSC 1459, and the resulting differences in rights and obligations of the parties, establish that an enforcement proceeding and the investigative process which preceded it are not the same proceeding.

[29] Posen similarly notes that the Act itself, for example in sections 164.01, 164.04, and 168.04, includes many provisions which establish different rights and obligations with respect to investigations as opposed to respondents after a notice of hearing have been issued.

[30] Posen submits that investigations and proceedings are commenced by different individuals within the Commission using different documents and in the context of different procedural protections and degrees of procedural fairness. Posen submits that as a result, the current proceeding is a subsequent proceeding from the investigation during which the Posen interview was conducted.

VI. Position of the executive director in his sur reply and in oral argument

[31] The substance of the executive director's submission in sur reply and in oral argument is that the issues raised by Posen have already been authoritatively answered in Canada and that we should follow the authorities which have considered the cases.

[32] The executive director submits that in the current context the Act provides a far more broad authority than the Ontario *Securities Act* with respect to receiving evidence. The Ontario Capital Markets Tribunal is bound by the Ontario *Statutory Powers Procedure Act*, RSO 1990, c S.22 [*SPPA*], which, subject to express provisions to the contrary, establishes that "nothing is admissible in evidence at a hearing…that is inadmissible by…any other statute." In contrast, the Act states that we are not bound by the rules of evidence, we "must receive" relevant evidence from a party in a position such as Posen and we "may receive" relevant evidence from any person.

[33] The executive director concludes with the following submission:

> This Panel should reject the Applicant's positions in each of his Notice of Application and Reply to exclude the transcript of the Applicant's compelled interview. The reasoning in *TeknoScan* should not be adopted in this province, under our Act and BC Policy 15-601, nor should this Panel engage in a tortured interpretation of legislation. *Branch* and *Hogg* provide a sound analysis for the admissibility of the transcript.

VII. Statutory context

A. Ontario *Evidence Act*, *SPPA*, and *Securities Act* provisions

[34] These are the most relevant provisions in the Acts:

> ***Evidence Act*, RSO 1990, c E.23, s. 9**
> **Witness not excused from answering questions tending to criminate**
> **9** (1) A witness shall not be excused from answering any question upon the ground that the answer may tend to criminate the witness or may tend to establish his or her liability to a civil proceeding at the instance of the Crown or of any person or to a prosecution under any Act of the Legislature. R.S.O. 1990, c. E.23, s. 9 (1).
>
> **Answer not to be used in evidence against witness**
> (2) If, with respect to a question, a witness objects to answer upon any of the grounds mentioned in subsection (1) and if, but for this section or any Act of the Parliament of Canada, he or she would therefore be excused from answering such question, then, although the witness is by reason of this section or by reason of any Act of the Parliament of Canada compelled to answer, the answer so given shall not be used or receivable in evidence against him or her in any civil proceeding or in any proceeding under any Act of the Legislature. R.S.O. 1990, c. E.23, s. 9 (2).

Statutory Powers Procedure Act, RSO 1990, c S.22
Evidence
What is admissible in evidence at a hearing
15 (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

(a) any oral testimony; and

(b) any document or other thing,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

What is inadmissible in evidence at a hearing
(2) Nothing is admissible in evidence at a hearing,

(a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or

(b) that is inadmissible by the statute under which the proceeding arises or any other statute.

Conflicts
(3) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding.

***Securities Act*, RSO 1990, c S.5, ss. 12(1) and 13**
Financial examination order
12 (1) The Commission may, by order, appoint one or more persons to make such examination of the financial affairs of a market participant as it considers expedient,

(a) for the due administration of Ontario securities law or the regulation of the capital markets in Ontario; or

(b) to assist in the due administration of the securities or derivatives laws or the regulation of the capital markets in another jurisdiction. 1994, c. 11, s. 358; 2010, c. 26, Sched. 18, s. 5.

…

Power of investigator or examiner
13 (1) A person making an investigation or examination under section 11 or 12 has the same power to summon and enforce the attendance of any person and to compel him or her to testify on oath or otherwise, and to summon and compel any person or company to produce documents and other things, as is vested in the Superior Court of Justice for the trial of civil actions, and the refusal of a person to attend or to answer questions or of a person or company to produce such documents or other things as are in his, her or its custody or possession makes the person or company liable to be committed for contempt by the Superior Court of Justice as if in breach of an order of that court. 1994, c. 11, s. 358; 2006, c. 19, Sched. C, s. 1 (1).

Rights of witness
(2) A person or company giving evidence under subsection (1) may be represented by counsel and may claim any privilege to which the person or company is entitled. 1994, c. 11, s. 358.

Inspection
(3) A person making an investigation or examination under section 11 or 12 may, on production of the order appointing him or her, enter the business premises of any person or company named in the order during business hours and inspect any documents or other things that are used in the business of that person or company and that relate to the matters specified in the order, except those maintained by a lawyer in respect of his or her client's affairs. 1994, c. 11, s. 358.

Authorization to search
(4) A person making an investigation or examination under section 11 or 12 may apply to a judge of the Ontario Court of Justice in the absence of the public and without notice for an order authorizing the person or persons named in the order to enter and search any building, receptacle or place specified and to seize anything described in the authorization that is found in the building, receptacle or place and to bring it before the judge granting the authorization or another judge to be dealt with by him or her according to law. 1994, c. 11, s. 358; 2006, c. 19, Sched. C, s. 1 (2).

Grounds
(5) No authorization shall be granted under subsection (4) unless the judge to whom the application is made is satisfied on information under oath that there are reasonable and probable grounds to believe that there may be in the building, receptacle or place to be searched anything that may reasonably relate to the order made under section 11 or 12. 1994, c. 11, s. 358.

Power to enter, search and seize
(6) A person named in an order under subsection (4) may, on production of the order, enter any building, receptacle or place specified in the order between 6 a.m. and 9 p.m., search for and seize anything specified in the order, and use as much force as is reasonably necessary for that purpose. 1994, c. 11, s. 358.

Expiration
(7) Every order under subsection (4) shall name the date that it expires, and the date shall be not later than fifteen days after the order is granted. 1994, c. 11, s. 358.

Application
(8) Sections 159 and 160 of the *Provincial Offences Act* apply to searches and seizures under this section with such modifications as the circumstances require. 1994, c. 11, s. 358.

Private residences
(9) For the purpose of subsections (4), (5) and (6),

"building, receptacle or place" does not include a private residence. 1994, c. 11, s. 358.

B. Alberta Evidence Act and Alberta Securities Act provisions

[35] The most relevant provisions are:

***Alberta Evidence Act*, RSA 2000, c A-18**
Incriminating questions
6(1) A witness shall not be excused from answering any question on the ground that the answer may tend to incriminate the witness or may tend to establish the witness's liability to prosecution under an Act of the Legislature.

(2) 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. RSA 1980 cA-21 s6;1985 c15 s1

***Securities Act*, RSA 2000, c S-4**
Self-incrimination
215(1) A person questioned under this Act under oath, affirmation or by solemn declaration may be questioned on all matters relevant to the matter for which the person is being questioned and shall not be excused from answering any question on the ground that the answer might

(a) tend to incriminate that person,

(b) subject that person to punishment under this Act, or

(c) tend to establish that person's liability

(i) to a civil proceeding at the instance of the Crown or of any other person, or

(ii) to prosecution under any Act or regulations under any Act.

(2) Where a person gives testimony pursuant to questioning referred to in subsection (1), that testimony shall not be admitted in evidence against that person in a prosecution of an offence under section 194 or any other prosecution of an offence under an enactment of Alberta.

(3) With respect to testimony given pursuant to questioning referred to in subsection (1), subsection (2) is not to be construed so as to prohibit or restrict the use of that testimony against any person in a prosecution for perjury or the giving of contradictory evidence. RSA 2000 cS-4 s215;2003 c32 s34;2009 c53 s169.

C. British Columbia *Evidence Act* and *Securities Act* provisions

[36] The most relevant provisions are:

***Evidence Act*, RSBC 1996, c 124**
Privilege
4 (1) In this section, **"witness"** includes any person who testifies in the course of any proceedings authorized by law.

(2) A witness must not be excused from answering a question or producing a document on the ground that the answer or the document may tend to incriminate the witness or any other person, or may tend to establish his or her liability to a civil proceeding at the instance of the Crown or of any person or to a prosecution under any Act.

(3) If a witness objects to answering a question on any of the grounds referred to in subsection (2), and if, but for this section or any Act of Canada, the witness would have

been excused from answering the question, then, although the witness is by reason of this section or by reason of any Act of Canada compelled to answer, the answer given must not be used or receivable in evidence against that witness in any civil proceeding or in any proceeding under any Act.

***Securities Act*, RSBC 1996, c 418**
Part 18.1 — Preservation Orders and Additional Collection Remedies
Definitions
164.01 In this Part:

…

"person that is subject to an investigation or proceeding" means a person referred to in section 164.04 (2) or (3);

Preservation orders
164.04 (2) The commission may make an order under subsection (4) in respect of a person if any of the following apply:

(a) the commission proposes to order an investigation under section 142 in respect of the person;

(b) an investigation under section 142 or 147 has been ordered in respect of the person;

(c) the commission or the executive director proposes to make or has made an order under section 161, 162 or 162.04 in respect of the person;

(d) the executive director has given a notice under section 162.01 to the person;

(e) criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been commenced against the person, and the commission considers the proceedings to relate to a security or derivative or a matter relating to trading in securities or derivatives, or to relate to any business conducted by the person relating to securities or derivatives;

(f) the person fails or neglects to comply with financial conditions applicable to the person under this Act;

(g) the commission proposes to apply or has applied to the court for an order under section 157 in respect of the person, or the court has made an order under section 155.1 or 157 in respect of the person.

(3) The commission may make an order under subsection (4) in respect of a family member or third-party recipient that received claimable property from a person if any of the following apply:

(a) the commission proposes to order an investigation under section 142 in respect of the person;

(b) an investigation under section 142 or 147 has been ordered in respect of the person;

(c) the commission or the executive director proposes to make or has made an order under 161 (1) (g) in respect of the person;

(d) the commission proposes to apply or has applied to the court for an order under section 157 in respect of the person, or the court has made an order under section 155.1 or 157 in respect of the person.

…

(5) In an order under this section in respect of property of a third-party recipient, with respect to the conduct or omission that is the subject of the proposed investigation, investigation or proceeding, the commission must specify,

(a) in the case of conduct, the date the conduct first occurred or is suspected to have first occurred, or

(b) in the case of an omission, the date the person failed to act or is suspected to have failed to act.

…

Protection of employee from reprisals
168.04 (1) A person must not take any of the following measures of reprisal against another person, or counsel or direct that any of the following measures of reprisal be taken against the other person, solely by reason that the other person has, in good faith, sought advice about making a disclosure, expressed an intent to make a disclosure or made a disclosure to the commission, a recognized self-regulatory body or a law enforcement agency, gave evidence at a hearing or similar proceeding, or cooperated with a review, investigation, examination or inspection under this Act, in relation to criminal law relating to securities or derivatives or under the bylaws or similar instruments of a recognized self-regulatory body:

(a) a disciplinary measure;

(b) a demotion;

(c) a termination of employment or a contract;

(d) any measure that adversely affects the other person's employment or working conditions;

(e) a threat to take any of the measures referred to in paragraphs (a) to (d).

(2) In a proceeding relating to a contravention of subsection (1), it is not necessary to prove that the other person

(a) made, may have made or intended to make a disclosure, or

(b) cooperated with a review, investigation, examination or inspection.

…

Authority of persons presiding at hearings
173 The person presiding at a hearing required or permitted under this Act

(a) has the same power that an investigator appointed under section 142 or 147 has under section 144,

(b) must receive all relevant evidence submitted by a person to whom notice has been given and may receive relevant evidence submitted by any person, and

(c) is not bound by the rules of evidence.

VIII. Analysis and conclusions

[37] Counsel for both Posen and the executive director have presented their arguments with a high degree of expertise and professionalism.

[38] All parties agreed that this dispute is primarily about statutory interpretation. Although the parties disagree as to the proper outcome, and although no counsel referred us to *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27, it is clear from the nature of their submissions that both parties are highly familiar with that particular authority.

[39] One of the key issues which we face is whether the precedents regarding the interpretation of similar legislation are applicable. Posen argues that they are distinct. The executive director argues that they are directly on point. We have focused on the context of the key precedents and some of the language used in them to help us resolve the issue.

[40] Some of the key language from *Hogg* is in the following paragraphs:

> [61] First, the regulatory context of the *Securities Act* involves the protection of the public from unscrupulous market trading practices which justifies inquiries of a limited scope to empower the regulator to obtain evidence to regulate the securities industry: *British Columbia Securities Commission v. Branch*, 1995 CanLII 142 (SCC), [1995] 2 S.C.R. 3, at para. 35.
>
> [62] It is not contested that the predominant purpose of the compulsion of Mr. Hogg's evidence was to further this regulatory purpose. Thus the admissibility of his compelled testimony did not depend upon rules regarding residual evidentiary immunity under s. 7 of the *Canadian Charter of Rights and Freedoms: R. v. S.(R.J.)*, 1995 CanLII 121 (SCC), [1995] 1 S.C.R. 451, at pp. 558-564.

[41] What we draw from the above language is that one of the purposes of Securities Acts is to permit the collection of evidence for regulatory purposes, including for use in hearings. The identification of that purpose is not dependant on any of the features of the Ontario Act which are distinct from the Act.

> [68] The reasoning in *Brost* was adopted by this Court in *College of Physicians and Surgeons of Ontario v. Yazdanfar*, 2013 ONSC 6420, 317 O.A.C. 53, (Div. Ct.), at paras. 65-68. At Dr. Yazdanfar's discipline hearing over a failed liposuction operation, the College sought to introduce the transcripts of interviews conducted by a College investigator with Dr. Yazdanfar. Those interviews were deemed by the governing health professions legislation to have the protections found in s. 33 of the *Public Inquiries Act*, 2009, S.O. 2009, c. 33, Sched. 6, which are effectively the equivalent of s. 9 of the *Evidence Act*. In finding the transcripts admissible, Harvison-Young J. (as she then was) followed *Brost* and held that Dr. Yazdanfar's interviews formed a part of the same regulatory proceeding initiated with the same ultimate regulatory purpose, that is, the protection of the public. Accordingly, the restriction found in s. 33 on the use of answers given in other proceedings was not applicable.
>
> [69] In coming to this conclusion, Harvison-Young J. noted at para. 67 that "treating the Committee hearing as a separate or other proceeding would effectively undermine

> the purpose of the regulatory framework and the onerous obligation placed on self-regulating bodies to protect the public."

[42] What we draw from the above paragraphs from *Hogg* is that although the *Brost* analysis originated in the context of the language of the Alberta *Securities Act*, it has been treated by the courts as establishing more general principles, both in the context of a case under the Ontario *Securities Act* and in the context of a case under the Ontario *Public Inquiries Act*, 2009, SO 2009, c 33, Sch 6.

[43] In addition, the same "purposive" reasoning which is being applied to the question of how to interpret the *Evidence Act* issue also applies to the question of whether, in an administrative process, a hearing is "separate" from the investigation out of which the hearing resulted.

> [74] Respectfully, the panel in *Teknoscan Systems Inc*. overemphasized the significance of the different remedies available to the Commission after the completion of a Part VI investigation. The various separate remedies that could arise from an investigation does not impart to them the character of separate proceedings for the purposes of s. 9. This interpretation is in keeping with the following comment set out in *Wilder v. Ontario Securities Commission* (2001), 2001 CanLII 24072 (ON CA), 53 O.R. (3d) 519, at para. 23, about the nature of the overall *Securities Act*:
>
> > …the overwhelming message (of the scheme) is one of remedial variety and flexibility, rather than one that creates hived-off areas of remedial exclusivity. A court should be loath to prefer a rigidly narrow and literal interpretation over one that recognizes and reflects the purposes of the *Act*.
>
> Regardless of any amendments to the *Securities Act* since *Wilder*, the force of that principle remains.

[44] What we draw from the above paragraph from *Hogg* is that, according to the most relevant precedents, we should give significant weight to the purpose of the Act.

[45] More generally, what we see from the case authorities is that with *TeknoScan* overturned the leading cases all interpret the interaction between Securities Acts and Evidence Acts in a manner which permits the use of compelled transcripts in hearings. We have concluded that we should follow the existing precedents and dismiss Posen's application.

[46] With respect to the most compelling arguments raised by Posen, our conclusions are as follows:

a) Regarding the distinctions between the legislation in Alberta and in British Columbia and the suggestion that we should therefore not rely on *Brost*, we conclude that subsequent decisions have treated *Brost* as having a broad application.

b) Regarding the various elements in the Act and in common language which distinguish between an investigation and an enforcement proceeding, we agree that there are significant differences. However, as has been noted, the question is whether a hearing which arose out of an investigation is distinct from the investigation given the shared purpose served and the common origin of both. The precedents confirm that, in this context, they should be treated as one proceeding.

c) Regarding the suggestion that the Ontario precedents are distinct because there are stronger indicia in the Ontario *Securities Act* of a legislative intention to permit the use of

compelled transcripts in hearings than exists in the Act. We agree with the position of the executive director that the strongest indicia of a legislative intention to permit compelled transcripts is found in section 173 of the Act, which states that the Commission may receive " relevant evidence" and "is not bound by the rules of evidence". The Act is not limited in the same manner as the Ontario *Securities Act* which is bound through the Ontario *SPPA* to not admit evidence that is inadmissible "under any other statute". Similar limiting language to Ontario's *SPPA* appears in the *Administrative Tribunals Act*, RSBC 1996, c. 418 [ATA] at section 40, information admissible in tribunal proceedings. However, section 4.1 of the Act provides the sections of the ATA that apply to the Commission and section 40 is not included.

d) Regarding the submission that the interaction of Section 4 of the British Columbia *Evidence Act* and the Act which Posen asserts was intended by the legislature, we conclude otherwise. Posen agrees that the Act allows compelled interviews, and submits that resulting interview transcripts are useful even if they can't be used at a hearing. For example, Posen asserts, the conduct of a compelled interview might provide insights which enable the collection of other evidence, or the creation of a transcript might put Commission staff in a position to call a respondent as a witness with the knowledge that surprising answers might possibly, with leave, be impeached using the transcript. That very limited degree of benefit would not support the objectives of the Act. The limited utility identified, the potential for delay, and the risk that the evidence gathered would be of no practical use makes no sense. An interpretation that the power to compel an interview to gather evidence implies the ability to use the evidence is the interpretation consistent with the Act.

e) Regarding the limitations on the ability of any court or tribunal to "read in" language into a statute, we note that we are not approaching this particular exercise of statutory interpretation in a vacuum. Several courts and tribunals have dealt with the issue in the past. We are comfortable following the *Brost*, *Hogg*, *Yazdanfar*, *Sextant* and *Agueci* precedents, in part because of their persuasive precedential value but also because we agree that those cases reflect the purposive interpretation of the Act which is consistent with *Branch*.

[47] Posen's application to exclude the admission of his transcript is dismissed.

May 8, 2026

For the Commission

Gordon Johnson
Vice Chair

Karen Keilty
Commissioner

Douglas Seppala
Commissioner