

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

Citation: Re Application 20251027, 2025 BCSECCOM 481

Date: 20251030

**Re Application 20251027**

**and**

**Re Application 20251028**

|                                 |                                                  |                                            |
|---------------------------------|--------------------------------------------------|--------------------------------------------|
| <b>Panel</b>                    | Gordon Johnson<br>Jason Milne<br>Douglas Seppala | Vice Chair<br>Commissioner<br>Commissioner |
| <b>Submissions completed</b>    | October 28, 2025                                 |                                            |
| <b>Ruling date</b>              | October 30, 2025                                 |                                            |
| <b>Counsel</b>                  |                                                  |                                            |
| Joven Narwal, KC<br>Jenny Musyj | For Applicants A and B                           |                                            |
| Jillian Dean                    | For the Executive Director                       |                                            |

**Reasons for Ruling**

**I. Background**

- [1] On October 24, 2025, Applicant A and Applicant B made substantially the same applications to the Commission, in Applications 20251028 and 20251027, respectively, for:
- a) An order that the Applicant's identity be anonymized,
  - b) An order that the compelled interview scheduled for October 30 (Applicant B) and October 31 (Applicant A), 2025, be adjourned to December 2025, and
  - c) A stay of the scheduled interviews outlined in subparagraph (b) above.
- [2] The Applicants submitted substantially similar facts in both applications. Given their similarity, we directed that both matters be heard together.
- [3] In particular, the Applicants stated that their counsel advised Commission staff on October 21, 2025 in both matters, that counsel was no longer available for the scheduled interviews due to a "complex in-custody matter in Winnipeg."
- [4] On October 23, 2025, the Applicants followed up with Commission staff, and were advised that day that their adjournment requests were denied.

- [5] Later on October 23, 2025, the Applicants reiterated their requests, and followed up again on October 24, 2025. Later that day, Commission staff again denied their adjournment requests.
- [6] The executive director submits that the interviews at issue in both matters were scheduled against a “backdrop of significant administrative effort,” as outlined below.

#### **A. Applicant A**

- [7] The investigation order relating to Applicant A was issued on December 27, 2023.
- [8] On March 17, 2025, Commission staff sent Applicant A's former counsel a summons setting down an interview for June 13, 2025, after engaging in communications regarding scheduling.
- [9] On June 4, 2025 former counsel for Applicant A advised Commission staff that he was no longer acting for applicant A.
- [10] The June 13, 2025 interview was adjourned to allow Applicant A to find new counsel and, on June 24, 2025 Applicant A's current counsel advised he had been retained.
- [11] On June 27, 2025, Commission staff emailed Applicant A's counsel to inquire about availability to attend a rescheduled interview before September 24, 2025. Commission staff requested that he respond by July 4, 2025. On July 4, 2025, Applicant A's office requested an extension to July 11, 2025 to provide his availability.
- [12] On July 10, 2025, Applicant A's counsel provided availability between October 27-31 or else November 10, 2025. The parties agreed that the interview would be scheduled for October 31, 2025.

#### **B. Applicant B**

- [13] On March 13, 2025, Applicant B agreed to a voluntary interview to take place on March 28, 2025.
- [14] On March 25, 2025, counsel for Applicant B advised Commission staff that he had been appointed, and further advised that he was not available for the interview as scheduled, requesting that it be postponed. Commission staff agreed to the adjournment to accommodate counsel's schedule.
- [15] Commission staff sent correspondence to counsel for Applicant B on March 31, April 7, April 14, April 15, and April 16, 2025 requesting his availability for a new interview date. In the final correspondence, Commission staff requested a response by April 22, 2025. April 22, 2025 came and went without a response from counsel for Applicant B to any of the communications from Commission staff.
- [16] On May 6, 2025, counsel for Applicant B responded, stating that due to a combination of other commitments and the fact that he was away between April 23, 2025 and May 2, 2025 he had not been in a position to respond sooner and that his current schedule was encumbered with other matters which would make scheduling difficult. He requested that a list of questions be provided in advance of the voluntary interview in an effort to expedite the process.
- [17] On June 25, 2025 the Commission issued an investigation order naming Applicant B.

- [18] On July 9, 2025 Commission staff advised counsel for Applicant B of the investigation order and provided a time period ending August 15, 2025 to set down a compelled interview. When advised that Applicant B's counsel had no availability prior to August 15, 2025, but was available on October 30 or November 1, 2025, the investigator offered to accommodate that schedule and expedite the process by conducting the interview, estimated to take less than two hours, after business hours including mornings, evenings, or on a weekend. After the investigator followed up on this offer twice, Applicant B's counsel responded that he had no other availability outside of office hours. On September 8, 2025, Applicant B was served with a summons compelling his attendance at an interview on October 30, 2025, the earlier of the two dates his counsel previously offered as available.

## **II. Position of the Parties**

- [19] The Applicants requested the matters be anonymized and the executive director consented to those applications.
- [20] Regarding the adjournment requests, the Applicants submit that there are no limitation concerns or prejudice to adjourning the interviews for a little over a month. Further, they submit, there is no evidence that either Applicant is uncooperative – the issue giving rise to the requests has nothing to do with the parties but with a matter involving counsel that takes precedence because it is a criminal matter involving an in custody accused.
- [21] The executive director submits that the minimal materials provided by the Applicants do not include any evidence, law, or explanation of the legal basis for the applications. The executive director acknowledges that there likely is a legal basis for the panel to provide the requested relief, and the executive director has pointed us to some precedents and statutory authority. However, the executive director submits that when a hearing panel considers granting an adjournment, even one of a compelled interview and not a hearing as is usually before a panel, the hearing panel should consider that the duty of fairness is lower at the investigative stage, the right to counsel is not absolute, and that co-counsel or another lawyer from the Applicants' counsels' office could attend the interviews.
- [22] The executive director points to the history of accommodating the Applicants and their counsel, and the total time that has elapsed, with resources dedicated during that time to prepare for interviews which did not proceed.
- [23] The executive director also notes that the Applicants have not provided any information about when their counsel learned of the scheduling problem which has led to the adjournment application.
- [24] In reply, the Applicants submit that there is nothing in the record to demonstrate how an adjournment would prejudice the underlying investigations. The Applicants submit that their right to counsel is a fundamental one. Further, the Applicants submit that while procedural fairness at the investigative stage may be lower, it is not extinguished. They submit that a brief adjournment in both matters would not result in an unreasonable delay or non-compliance.

## **III. Analysis and Ruling**

### **A. Preliminary Points**

- [25] We issued our rulings on October 29, 2025. We denied the adjournments. We granted the anonymization applications, given the submissions of the Applicants and the consent of the executive director, and ordered that these matters be heard *in camera*.

[26] With respect to the request to anonymize these proceedings, we note that a notice of hearing has not been issued in either matter, and indeed may never be issued. We take it as trite that naming individuals subject to investigation by the Commission's enforcement division has an adverse impact on them. If a notice of hearing is not issued, and a matter does not proceed to a hearing, a named party subject to an investigation may never have the opportunity to refute the suspicion that attaches to them by being investigated. From a fairness perspective, there is no reason for the Applicants to be in a worse position by bringing the Applications and having their names published, than they would be had they not brought the Applications and remained anonymous during the investigation.

[27] Relating to the adjournment and stay applications, the starting point is an applicant must comply with the requirements of Hearing Policy BCP 15-601 which states at section 3.4:

The Commission expects that a party applying for an order will provide, with its application, all materials in support of its application, including:

- complete submissions, including the grounds for the order being sought
- all affidavits, documents, other evidence, and case law intended to be relied upon
- a draft of the order sought that includes the section(s) relied upon.

[28] While the Commission has the ability to be flexible in its approach to applying its procedural requirements, especially where timelines require a matter to be heard expeditiously, or where a party requires accommodations to ensure that a matter is heard fairly, the requirements outlined in the Hearing Policy are not arbitrary or an academic exercise. They are published to allow a panel presiding to have fulsome, complete submissions, with appropriate consideration of the facts and relevant law – not the least of which is the jurisdiction to both hear the application and grant the requested remedy.

[29] In this matter, it may have been appropriate for the Applicants to bring this matter before us as a Review under section 165 of the Act. As that issue was not raised before us, and has not been properly argued, we need address it only if our intervention is required.

[30] The executive director submits that there is “no evidence” in support of the Applications. While we agree that the materials filed by the Applicants are scant, we do not agree that there is nothing before us. Generally, as it relates to the way a proceeding has unfolded, panels have and should be willing to accept the representations of counsel before them. In this matter, we have no reason to disbelieve the representations of counsel before us.

#### **B. Standard of Review**

[31] The standard of review relating to the decision of the executive director to proceed with the scheduled interviews was not argued before us.

[32] An investigator appointed under the Act has the same power under section 144(1) of the Act to compel a witness to attend an interview under oath as the Supreme Court for the trial of civil actions. This is a very important and consequential power, especially in light of the consequences for non-compliance.

[33] A reasonable person would expect that an investigator exercising this power would do so in the public interest. There are a long list of factors which might be relevant in any particular public interest analysis. These would include the need for the Commission to move investigations

forward at a reasonable pace. Given the nature and complexity of investigations under the Act, investigators must expedite them where possible. However, that does not mean investigators can be blind to a broad range of factors that will require flexibility in scheduling. Reasonable accommodations should and are made for instances of pre-existing travel plans, health issues, and at times, the availability of preferred counsel.

- [34] Granting an adjournment to an interview is a highly discretionary decision on the part of the investigator. A hearing panel, even where the issue of jurisdiction is properly established before them, should not intervene if the exercise of discretion is a reasonable one.

### **C. Evidence**

- [35] In this instance, while no specific prejudice has been identified by the executive director, it is clear from the history outlined above that in the investigations underlying both Applications, the executive director has been attempting to secure dates for an interview for months. Applicant A has had one compelled interview adjourned already, and at one time the executive director sent five consecutive letters to Applicant B's counsel to secure potential dates for a future interview.
- [36] Although it will often be reasonable and appropriate for the executive director to accommodate requests to reschedule interviews, compelled or otherwise, we would expect that the executive director's assessment of reasonableness will shift as time passes. Absent some unusual factor creating urgency, in the initial weeks of efforts to secure dates cooperatively, all reasonable requests to reschedule will be viewed with a degree of flexibility and cooperativeness, especially if sensible explanations are given for each request and if prompt alternative dates are offered along with the adjournment request. However, as the months pass it becomes the responsibility of the executive director to approach the process with heightened urgency. Regardless of the reasons, a process to go from a decision to interview someone to the interview itself should almost never take 8 or 10 months. If that degree of delay is accepted as the pre-cursor to a significant number of interviews the investigatory process will lose effectiveness. After several weeks of effort have passed to complete an interview which the investigator has determined is important to an investigation, the public interest favors the executive director relying more and more on compulsion and less and less on cooperation.
- [37] Requests for adjournments which should quickly be agreed to during the early phase of arranging an interview must be much more strongly justified during later phases.
- [38] It is obvious to say that the October interview dates took some time to secure. It was only a little over a week prior to the interviews that the executive director was made aware that the Applicants' counsel was no longer available and sought to have them rescheduled. However, the executive director points out that there is no evidence before us as to when the complex in-custody matter in Winnipeg was scheduled, or when the Applicants' counsel became aware of it. While the Applicants took the time to reply to many of the submissions of the executive director, they were silent on this issue.
- [39] There are no specific words or arguments which an applicant is compelled to say when seeking an adjournment. However, there are some facts which, if they exist, a decision maker would expect to hear as almost the first words spoken in support of an application. In this case, it is notable that counsel for the Applicants has not said when he first learned of the conflicting dates, has not said that immediately upon learning of the conflicting dates he informed staff of the Commission that a scheduling conflict had been imposed on him by a court in a criminal

proceeding, and has not said that no one else in his office, including co-counsel, can attend the interviews scheduled for October 30 and 31, 2025.

[40] To summarize some of the key circumstances present here, when the executive director decided to conduct the relevant interviews he did not immediately demand that either Applicant attend at a specific date once he had the power to do so under the Act. There was significant effort invested to find mutually agreeable dates. Given the passage of time and the cooperative acceptance by the executive director of dates offered by the Applicants which were then far in the future, even if the interviews proceed as scheduled on October 30 and 31 there is an argument that it should not have taken so long to complete those interviews. It has been over 7 months in each case. It is then reasonable for the executive director to resort to relying on the compulsion powers granted to him under the Act. The executive director often faces scrutiny from parties, the public and Commission panels when investigations take years to unfold. One of the ways for the executive director to ensure investigations continue to move forward is to unilaterally set and enforce dates to compel evidence from parties if a more cooperative method is not achieving results.

[41] Systemically, the incentive which is then created for counsel who are representing parties at interviews will become clear. There will be an advantage to arrange relatively early interviews, because those will be easier to reschedule should an unexpected crisis arise. In contrast, once the schedule has already been pushed to or even beyond its reasonable limit, there should be an expectation that the Commission's compulsion power will be used more frequently.

#### **IV. Conclusion**

[42] There are legitimate issues to be considered about the proper section of the Act under which applications of this type should be brought before the Commission. We recognize that there were time pressures faced by counsel for the Applicants, and we mean no criticism when we state that we did not receive full submissions on that issue. As outlined above, it appears that the proper method to bring this type of application would be as a Review under section 165 of the Act on the narrow decision to deny the request for an adjournment. The basis for such jurisdiction would appear to be that the issuance of the relevant summonses was a decision which was then reviewable. But this theory has not been tested by full, adversarial submissions, so we leave it to a future panel to express a firm conclusion. In addition, we note, the argument would not be available with respect to most steps taken in the course of an investigation, because often investigatory steps do not meet the definition of a "decision" within the Act. We need not reach a firm conclusion given that, in any event, the circumstances present here do not justify our intervention.

[43] When staff must exercise their discretion regarding whether or not to grant an adjournment, consideration must be given to the facts and circumstances before them. There may be more than one reasonable decision in any given set of circumstances, and it is not the purpose of this panel to substitute what it may have considered reasonable at the time for the discretion exercised by the investigator. Rather, we must determine if the decision of the investigator was a reasonable exercise of the discretion granted to them under the Act at the time it was made. In this instance, we conclude that it was reasonable for the executive director to say no to the rescheduling of the compelled interviews.

[44] Based on the above factors, on October 29, 2025 we dismissed the applications to adjourn and to stay the compelled interviews.

October 30, 2025

**For the Commission**

Gordon Johnson  
Vice Chair

Jason Milne  
Commissioner

Douglas Seppala  
Commissioner