BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1985, c. 418

Citation: Re Posen, 2025 BCSECCOM 505 Date: 20251117

Shimshon Refoel (Shimmy) Posen

Panel	Gordon Johnson, Vice Chair Karen Keilty, Commissioner Douglas Seppala, Commissioner
Submissions completed	October 15, 2025
Ruling date	November 17, 2025
Appearances	
Matthew S. Smith Elizabeth Allan	For the Executive Director
Joven Narwal, KC Jenny Musyj	For Shimshon Posen

Ruling and Reasons for Ruling

I. Introduction

[1] By a Notice of Hearing dated March 26, 2025, the executive director alleges that on January 26, 2024, the respondent, Shimshon Posen, who is the applicant in this ruling (Applicant) 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 the Applicant's wife, but the Applicant held trading authority over the account.

[2] On September 17, 2025, the Applicant filed an application (Application) seeking "disclosure of all material in possession of the Commission related to" Market Analysis Platform (MAP), a trading data repository developed by the Canadian Securities Administrators (CSA) Information Technology Systems Office (ITSO).

[3] On October 3, 2025, the executive director filed his response to the Application, stating that the Application should be dismissed and, if any part of the Application is granted, then he should be granted an opportunity to make further submissions on the legal basis for withholding those documents.

[4] On October 10, 2025, the Applicant filed his reply submissions.

[5] Oral submissions were heard on October 15, 2025.

II. Factual background

[6] On January 30, 2024, the Commission's trading unit manager received an email from the Canadian Securities Exchange (CSE). The email highlighted an unusual trade of 50,000 shares of an issuer at a price of $0.005 per share. That share price was much lower than the average

price of the issuer over the prior 20 trading days and it impacted the minimum price at which the issuer could price a financing.

[7] The trading unit manager was concerned that the trade might have been conducted in order to create an artificially lower price for the issuer's shares.

[8] The trading unit manager asked his staff to conduct a review of the trade. As a part of the review, staff accessed trading data from a trading data repository referred to as that market analysis platform, or MAP. Staff accessed MAP data, which provided the names of the brokerage firms through which the trades were made and which identified the buyer's account name as Shimshon Posen and the seller's account name as Shimcity Inc.

[9] Trading unit staff then sent Orders to Provide Information or Produce Records, under section 141 of the *Securities Act*, RSBC 1996, c. 418 (Act) to the buyer's and seller's brokers for the account information of the buyer and the seller.

[10] As noted above, the Notice of Hearing was issued on March 26, 2025. In the normal course, disclosure is made in accordance with the Commission's normal practices concurrently with or shortly after the issuance of a notice of hearing.

[11] On April 2, 2025, counsel for the Applicant sent a letter to counsel for the executive director requesting documents related to how the Commission deals with investigations relating to the involvement of a practicing member of the legal profession, such as:

a) internal policies, guidelines or memoranda governing the investigation of legal counsel;

b) documents related to escalating this investigation to the attention of the enforcement director or senior members of the Commission;

c) documents relating to an underlying awareness of the Applicant's professional status such as an enforcement document tracking sheet, together with any internal notes of briefings prepared by enforcement management;

d) the investigation order and underlying memorandum in this matter, if any;

e) all communications between the Commission and the CSE pertaining to this matter including any material exchanged in support of an Ontario Securities Commission (OSC) investigation and the OSC investigative file; and

f) a "Laporte List" or inventory of undisclosed items, along with accompanying justifications.

[12] We have not seen the full scope of disclosure which was provided to the Applicant, and we have not seen the materials which would explain the request for the OSC investigative file.

[13] On April 7, 2025, counsel for the executive director sent a letter providing the executive director's position on the Applicant's counsel's requests including a general description of "BCSC's internal trading information software" with a screenshot of the MAP data on the trade.

[14] On April 8, 2025, counsel for the Applicant sent another letter to counsel for the executive director requesting:

a) the name and full technical description of the software, platform(s), or tool(s) used by the Commission to obtain real-time or near real-time trading data;

b) the protocols governing access, retention, and use of this information, including internal policy documents or memoranda of understanding with third-party providers or other regulators;

c) any internal or external audits or assessments of the Commission's use of this surveillance data over the past five years;

d) a list of all individuals within the Commission who had access to this data in relation to the Applicant and the timeline of that access; and

e) the legal authority relied upon by the Commission to obtain and use this information, including the specific provision(s) of the Act or other enabling legislation or regulation.

[15] On April 22, 2025, counsel for the executive director sent a letter to the Applicant's counsel responding to certain issues but advising that he was "not yet in a position to provide a fulsome written response" regarding the requested production.

[16] On May 9, 2025, counsel for the executive director sent a letter to the Applicant's counsel regarding MAP. He advised that the information in MAP would not be relied on by the executive director in the hearing but that the data collected from the brokers would be. He stated that Commission staff collect and use information in MAP for:

a) investigations of market manipulation and insider trading;

b) compliance purposes; and

c) market research and risk analysis, to assist in policy development and compliance.

[17] With respect to broker client information (BCI data) contained within MAP, counsel for the executive director stated:

> BCI data is not systematically collected. Commission enforcement staff may request information from brokers via "service bureaus," which are subcontractors retained by broker dealers to manage information sharing. The CSA ITSO has set up a data request and import process in MAP — through which Commission enforcement staff may request the brokerage data.

[18] On May 9, 2025, counsel for the Applicant sent a letter to counsel for the executive director requesting additional information on MAP.

[19] On May 12, 2025, counsel for the executive director sent a letter to the Applicant's counsel advising that he did "not agree that the information you have requested is relevant within the meaning of the Commission's disclosure obligation".

[20] As is noted above, this application was filed on September 17, 2025.

III. Position of the Applicant

[21] In his Application, the Applicant applied for an order for the disclosure of all material in possession of the Commission related to MAP, including but not limited to:

> (a) All governance documents, protocols, policies, and terms of reference governing the creation, operation, and oversight of MAP by the Commission, CSA ITSO, or any related CSA bodies or committees.
>
> (b) Any internal guidelines, standard operating procedures, or criteria used by enforcement staff in initiating MAP-related requests, including applicable thresholds, approvals, or decision-making rubrics.
>
> (c) All records, documents, and communications associated with the MAP request concerning Mr. Posen, including internal correspondence, notes, access logs, and any record setting out the purpose or rationale for the request.
>
> (d) A complete technical description of MAP's infrastructure and functionality, including how it receives, stores, integrates, and queries market data and broker client information, and how such data is accessed by Commission staff.
>
> (e) Any manuals, interpretive aids, training materials, or analytical frameworks used by Commission staff or CSA personnel in interpreting, analyzing, or drawing conclusions from MAP data.
>
> (f) A list of all authorized third-party service bureaus or contractors who respond to MAP-related data requests on behalf of dealers, including any governing contracts, policies, or accountability mechanisms.
>
> (g) All memoranda of understanding, agreements, or inter-jurisdictional arrangements governing data sharing, collaboration, or reciprocal access to MAP or its contents with other securities regulators or government bodies.

[22] The Applicant provided written submissions. Paragraph 11 of that submission, which described the perceived shortfalls of the written explanations which the executive director had already provided in writing, reveals the main focus of the Applicant's position:

> The May 9, 2025 letter does not, however, describe the actual nature or capabilities of the software, including how it imports, organizes, integrates and generates information; in other words, the letter does not actually make clear *what the software does or how it functions*. Nor does it describe how the MAP software is actually used by investigators, what limits (if any) attend its use, who has access to its program-generated information, or what statutory powers (if any) authorize the software's creation and administration. [emphasis in original]

[23] The Applicant then went on to reference a number of authorities regarding when technical information relating to software programs should be produced to applicants. Reference was made to *May v. Ferndale Institution*, where a computerized system used a scoring tabulation method to generate a classification score which was used by staff in making transfer decisions. There, the Supreme Court of Canada stated:

> **116** Based on the evidence, we cannot accept the respondents' argument that the SRS was only a preliminary assessment tool. Although it is true that an individual

> assessment of each inmate's security classification is made subsequently to the SRS assessment, in our view, the SRS presumptively classifies inmates and constitutes an important aspect of the classification process.

[24] We draw from the *May* decision that if a computerized system is used to make or influence a decision and that decision is relevant, then information which explains the relevant features of how that system works should be produced.

[25] One of the other cases referenced by the Applicant is *R. v. Kuny*, in which the court ordered disclosure related to the maintenance and operation of a speed camera system. The Court stated:

> [65] The manual for the equipment, in my respectful view, would clearly be of assistance in challenging, or at least understanding, whether the equipment was used properly by the operator or tested properly, or whether it was susceptible to malfunctions in particular situations such as inclement weather.

[26] The Applicant also referenced academic articles, including an article criticizing "witness-washing", regarding the possibility that law enforcement will use computerized facial recognition systems, which might not be reliable, to make actual identifications, but then have a person who can make an "eye witness" identification, and afterwards conceal the role played by the electronic system.

[27] The Applicant submits that the executive director is witness-washing here, because the executive director has replied to the requests for production, in part, by stating that at the hearing on the merits it will rely upon the evidence collected from the investment dealers and not the information obtained from MAP.

IV. Position of the executive director

[28] The executive director takes the position that the MAP documents, if they exist, are not relevant to the allegations in the notice of hearing. He says that the Application "is one step removed from even a "fishing expedition" as it asserts entitlement to broad, theoretical categories of documents with no suggestion that they even exist, are in the Executive Director's possession and without any real identification of even a possible train of inquiry."

[29] The executive director distinguishes the authorities relied on by the Applicant. He states that in the authorities, most of which are criminal cases, "it was the technology itself which created the evidence that the Crown's case rested upon" and that, the MAP data "is not evidence relied upon by the Executive Director".

[30] Similarly, he distinguishes the academic paper relied on by the Applicant that criticized the use of algorithmic technology such as facial recognition. The executive director states that algorithmic technology "is not at issue here" as it was a person at the CSE that first brought the market activity in question to the attention of the Commission. This was not a situation where an algorithm within MAP identified the relevant trading.

[31] The executive director's counsel delivered an affidavit from the trading unit manager. That affidavit included the following paragraphs:

> In order to determine the parties to the January 26, 2024 trade in [redacted] shares, I assigned Trading Unit staff to conduct a review, which included in part using the Market Analysis Platform (MAP). MAP is a trading data repository for trades on public

> marketplaces, created for and managed by the Information and Technology Systems Office (ITSO) of the Canadian Securities Administrators (CSA). The Commission uses MAP to enhance enforcement effectiveness for oversight of market activity, including for investigations into market misconduct, compliance purposes, and market research.
>
> There are two categories of information which certain Commission staff may obtain from MAP: market data and broker client information (BCI) data.
>
> Market data is information required to be maintained by marketplaces like the CSE, and is provided to the Canadian Investment Regulatory Organization (CIRO). CIRO regularly updates MAP with market data obtained from marketplaces.
>
> BCI data is maintained by "service bureaus," which are data processing firms retained by investment dealers to manage their client and trading records. The CSA ITSO has set up a data request and import process through MAP, where certain Commission staff may submit a request for BCI data and that information is then provided through MAP by the relevant service bureau.

[32] The executive director further argues that counsel for the Applicant should not be permitted to make further legal or factual arguments in reply or orally as he has prepared a response to the Application as submitted.

V. Position of the Applicant in reply and in oral submissions

[33] The Applicant's reply was quite critical of the positions taken by the executive director.

[34] The Applicant submits that instead of meeting the onus to prove conclusively that the materials requested are irrelevant, the executive director is seeking to reverse the applicable onus such that the Applicant must prove that the documents and information requested are relevant.

[35] As to the test which applies, the Applicant references *R v. Latimer*, 2020 BCSC 697, where the court held:

> [61] In [R v McNeil, 2009 SCC 3], Charron J. noted at para. 17 that relevant information in the first party production context includes not only information related to those matters the Crown intends to adduce in evidence against the accused, but also <u>any information in respect of which there is a reasonable possibility that it may assist the accused in the exercise of the right to make full answer and defence</u>. This edict has been interpreted to mean relevance is not limited to relevance to meeting the merits of the Crown's case. Relevance is wider and includes the potential usefulness of the information to the defence in advancing a defence, or the reasonable possibility that the information could be used by the defence to make a decision which could affect the conduct of the defence: *R. v. Basi*, 2007 BCSC 788 at paras. 19-25; *R. v. Pickton*, 2005 BCSC 1240 at paras 9-12; *R. v. Belcourt*, 2012 BCSC 737 at para. 12. [emphasis in original]

[36] Some other key paragraphs of the reply submissions are the following:

> In short, the ball is in the Executive Director's court to prove that information regarding the function and capabilities of this software is, in fact, "clearly irrelevant"—not merely to the substantive <u>facts</u> he seeks to prove in relation to the Notice of Hearing, but to any matter that may be relevant to the applicant's ability to advance his case: which, as noted, may here include questions of institutional jurisdiction, technological reliability, and procedural fairness in the use of technologically driven

> processes. It is trite administrative law, moreover, that a party may mount a defence based on procedural fairness or jurisdictional considerations.
>
> The Executive Director's view of these cases is unduly narrow. The cases provided are, broadly speaking, illustrative of various contexts in which information regarding technological tools used in investigation is considered relevant for disclosure purposes, whether to assess the tools' reliability, function, or otherwise. Given the ever-increasing capabilities of, and reliance on, algorithmic data analysis and automated decision-making in countless walks of life, the applicant's concerns regarding the use of such technologies in the realm of securities enforcement are neither far-fetched nor alarmist. [emphasis in original]

[37] In oral argument counsel for the Applicant adopted the submissions which had already been made in writing and added many comments to emphasize that the information and documents sought are relevant to applications which might be brought, and that the executive director was behaving improperly by resisting production. The most relevant extracts from the Applicant's oral argument are quoted below, although these extracts are from an informal transcript which does not do justice to the quality of counsel's grammar:

> So just to step back for a moment. We received disclosure. Disclosure contains the details of the investigation. And where this particular disclosure began is in essence with demands that were focused and directed to my client, which is prompted in my mind a significant question, why. Having raised that question, what I became aware of was to my respectful submission rather astonishing in so far as I was informed that my client was identified through what was characterized as the investigator's review of the BCSC's internal trading information software.
>
> And so what the Supreme Court of Canada said in *Stinchcombe* is that the right to disclosure is never tied to admissibility at trial. Relevance is always measured by usefulness to the defence. Is there a reasonable possible that information might advance, might assist in advancing a defence meeting the crown's case or otherwise making a decision that may affect the conduct of a defence.
>
> …information regarding the functions and capabilities of the software and its statutory architecture…
>
> You'll see reflected in my correspondence on this that I ask questions about sort of what is the basis of this particular arrangement, what statute governs it. And I think we just need to step back for a moment and consider something. The Executive Director's powers to demand information are all based on statute and there was no statutory demand for this information at all. And so the fact that there is a framework available through this MAP's program where this Executive Director outside of its statutory powers can demand information and then not tell a respondent that they use that power until some counsel says wait a second, this doesn't make any sense; why did you target my client at first instance.
>
> …
>
> And there's an element of deliberation in all of this. I say that the failure to produce that disclosure to me at first instance knowing full well, knowing full well that that's why they targeted my client. Knowing full well that they were going to do this little masquerade, which is we already have this information but we're going to go and ask for it anyway in attempt to sanitize that process. Which I think is the antithesis of the spirit of Stinchcombe and also just generally the spirit of transparency that should apply to all regulatory bodies. We have the information and now we're going to seek

a demand for the same information and not tell the defence about it and by the way when the dense asks for it it's not relevant. That's absurd. It really is. And I think it's extremely important that this panel send a message to the Executive Director about what its obligations are.

…

He simply reiterates that MAP is a trading data repository created for and managed by an office within the Canadian securities administrator, CSA and commission uses MAP to enhance enforcement effectiveness in pursuing its statutory mandate. Let's pause for a second. What is the CSA. It's not a statutory body. It's just an organization. What statutory power, what act provides the architect -- the legal architecture for them to maintain this. Which privacy act applies to those circumstances. Interestingly he says in pursuing its statutory mandate. Interesting. Because you didn't rely on any of the statutory powers that parliament -- sorry, the legislature said you must rely upon in obtaining information.

…

This is a circumstance in which the state, being the securities commission, I suppose along with other securities commissions has created a process where they can obtain individuals' trading information not disclose it, not refer to it in the context of investigations, hide it entirely deliberately, not rely on any statutory power to obtain the information, the information is maintained through processes that are completely opaque in order to pursue their statutory man date. That in my submission is also absurd to say.

…

I'm asking this panel to ask the hard question: why wasn't this disclosed at first instance if not to deliberately hide it. Why was it that they turned around and obtained statutory demands for the same information other than to hide the use of that technique.

…

So let's pause here for a second. That in essence is the very problem that I'm seeking to expose here. They sought to sanitize the initial investigator step by obtaining the information directly.

…

Just to foreshadow that if this particular process is unlawful in the sense that it's untethered to a statutory process that they did deliberately seek to hide this information, then that could give rise to charter remedies, other kinds of remedies including abuse of process.

VI. Statutory context

[38] These are the relevant provisions in the Act:

Commission is an agent of the government

5 (1) The commission is an agent of the government.

(2) The commission has the power and capacity of a natural person of full capacity.

…

Duty to regulate, conduct and provide information
26 (1) Subject to this Act, the regulations and any decision made by the commission, a self-regulatory body, an exchange or a quotation and trade reporting system must regulate the operations, standards of practice and business conduct of its members or participants, and the representatives of its members or participants, in accordance with its bylaws, rules or other regulatory instruments.

(2) A benchmark administrator, clearing agency, exchange, information processor, quotation and trade reporting system, self-regulatory body or trade repository must provide to the commission or the executive director, at the request of the commission or the executive director,

(a)in the case of an exchange or a self-regulatory body, a copy, or a partial copy as specified in the request, of the charter, as defined in section 1 of the *Financial Institutions Act*, or
(b)any information or record in the possession of the benchmark administrator, clearing agency, exchange, information processor, quotation and trade reporting system, self-regulatory body or trade repository relating to

(i)a registrant or former registrant,
(ii)a client or former client of a registrant or of a former registrant,
(iii)an issuer,
(iv)trading in securities or derivatives,
(v)the bylaws, rules, other regulatory instruments or policies of the benchmark administrator, clearing agency, exchange, information processor, quotation and trade reporting system, self-regulatory body or trade repository,
(vi)the directions, decisions or similar determinations made by the benchmark administrator, clearing agency, exchange, information processor, quotation and trade reporting system, self-regulatory body or trade repository,
(vii)the charter, as defined in section 1 of the *Financial Institutions Act*, of the clearing agency, exchange, quotation and trade reporting system, self-regulatory body or trade repository, or
(viii)this Act or the regulations.

Records of transactions
30 (1) An exchange or a quotation and trade reporting system must keep a record showing the time and date when each transaction on the exchange or quotation and trade reporting system was recorded.

(2) If a client of a member or participant produces to an exchange or a quotation and trade reporting system a written confirmation of a transaction on the exchange or quotation and trade reporting system, the exchange or quotation and trade reporting system must supply to the client

(a) particulars of the time at which the transaction was recorded, and
(b) verification or otherwise of the matters set out in the confirmation.

Information collection and sharing
169.1 (1)For the purposes of administering this Act or assisting in the administration of the securities laws of another jurisdiction, the commission may, directly or indirectly, collect information from, and use information collected from,

(a) an exchange, quotation and trade reporting system or clearing agency,

(a.1) a credit rating organization,
(a.2) a benchmark administrator,
(a.3) a benchmark contributor,
(a.4) an information processor,
(a.5) a trade repository,
(b) a self-regulatory body,
(c) a registrant or issuer, or
(d) a law enforcement agency, government, governmental authority, securities regulatory authority or financial regulatory authority,

in British Columbia or elsewhere.

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.

VII. Relevant precedents

A. Disclosure in a criminal context

[39] The leading case on criminal law disclosure requirements is *R. v. Stinchcombe*, [1991] 3 SCR 326, where the Court, quoting *R. v. C.(M.H.)*, [1991] 1 SCR 763, stated that there is a general duty "to disclose to the defence all material evidence whether favourable to the accused or not". The Court continued:

> If the information is of no use then presumably it is irrelevant and will be excluded in the exercise of the discretion of the Crown. If the information is of some use then it is relevant and the determination as to whether it is sufficiently useful to put into evidence should be made by the defence and not the prosecutor.

[40] In addition to Stinchcombe, the Applicant relies on the criminal law cases, *R. v. Siddiqui*, 2022 ONCJ 62, *R. v. Hughes*, 2022 ONSC 2164, and *R. v. Kuny*, 2021 MBQB 96.

[41] *R. v. Siddiqui* is a ruling on an adjournment application due to missing disclosure. The missing disclosure is details on how the results from facial recognition software are generated. The court found that the outstanding disclosure was "clearly relevant" but that the trial could start with the evidence of the complainant and a detective constable. Once the outstanding disclosure regarding the facial recognition software was disclosed, the court would allow the detective constable recalled as a witness.

[42] *R. v. Hughes* is also a ruling on the defendant's disclosure application. The defendant was charged with possessing and distributing child pornography after automated law enforcement software flagged an internet protocol address associated with him. He wanted "an order that he be provided with certain technical information about the digital tools used by law enforcement to investigate his IP address, his digital devices and his online activities", in particular the software, the source codes of that software, and all user manuals. The defendant wished to "challenge the admissibility of evidence obtained by the police through the use of automated software and through the execution of the search warrant".

[43] The Crown opposed the application, arguing that "it has already made meaningful disclosure relating to the use of the software", that the disclosure sought "is not relevant to any live issue in the proceeding", not "within the possession or control of the Crown or the OPP", and is "protected by either investigative privilege or public interest privilege".

[44] The court concluded that software manuals and the actual software was likely relevant and ordered the disclosure hearing to proceed to the next stage where the Crown would argue privilege. The court dismissed the remainder of the application.

[45] *R. v. Kuny* is an appeal of a judicial justice of the peace's (JJP) decision to convict the appellant of exceeding the speed limit. The appellant sought disclosure regarding an enforcement officer's operation of a photo radar machine which was denied. The appellant argued "that the JJP erred when he failed to require production" amongst other concerns.

[46] The court reviewed Manitoba statutes that related to the operation of the photo radar by the third party company that had been contracted to operate the machines. The court stated that "there is an obligation on the part of the Crown to at least inquire of the enforcement division, whether it be a police department or a private contractor, regarding the existence of" an operation manual and that the decision of the JJP was an error. The court ordered the conviction set aside and a new trial.

[47] The Applicant also relied on the administrative law decisions *Hu v. BC Securities Commission,* 2010 BCCA 306, *Re Core Capital Partners Inc.,* 2024 BCSECCOM 349, and *May v. Ferndale Institution,* 2005 SCC 82, as well as two academic papers.

B. Disclosure in Commission proceedings

[48] The executive director noted that his obligations for disclosure in enforcement hearings is set out in BC Policy 15-601, *Hearings*, section 3.6(b) which states: "In an enforcement hearing, the executive director must disclose to each respondent all relevant information that is not privileged".

[49] The executive director cited *Core Capital* (*supra*), for the principle that the *Stinchcombe* standard of disclosure "was developed in the criminal context, and does not automatically apply to administrative proceedings before the Commission". He noted that the panel in *Canaco Resources Inc. (Re),* 2012 BCSECCOM 493, stated that "the standard of disclosure for administrative tribunals is not *Stinchcombe*. The issue is whether the hearing process as a whole satisfied the requirements of procedural fairness".

[50] The executive director stated, citing *R. v. Wood,* 2022 ONCA 87:

> [60] Relevance is not an inherent characteristic of any item of evidence. Rather, it exists as a relation between an item of evidence and a proposition of fact that its proponent seeks to establish by its introduction. Relevance is a matter of everyday experience and common sense. The threshold for relevance is not high. Evidence is relevant if it renders the fact it seeks to establish slightly more or less probable than that fact would be without the evidence.

[51] He concluded that the test for disclosure is whether it "will meet procedural fairness requirements considering the hearing process in its entirety" and urged us to "somewhat" distinguish criminal law cases that apply the *Stinchcombe* disclosure principle.

C. Powers of the Commission, Privacy

[52] In *British Columbia Securities Commission v. Branch*, [1995] 2 SCR 3, the appellants claimed that the compulsion powers in the Act infringed section 8 of the *Canadian Charter of Rights and Freedoms*, which states that "[e]veryone has the right to be secure against unreasonable search or seizure".

[53] The Supreme Court of Canada noted that "the primary goal of securities regulation is the protection of the investing public. The importance of this goal, as against the reasonable expectation of privacy of securities traders, is what we are considering here."

[54] The Court held:

> [58] In our opinion, persons involved in the business of trading securities do not have a high expectation of privacy with respect to regulatory needs that have been generally expressed in securities legislation. It is widely known and accepted that the industry is well regulated. Similarly, it is well known why the industry is so regulated.

[55] *Branch* was followed by the British Columbia Supreme Court in *British Columbia (Attorney General) v. BridgeMark Financial Corp.*, 2021 BCSC 1459, where Justice Jackson stated:

> [67] Persons who enter the highly regulated securities market—those that issue, sell, and buy—are taken to, or are deemed to, know and accept the nature of the regulated state action and "the rules of the game" and as such may be found to have a low expectation of privacy in the information and Property covered by such regulation

VIII. Analysis and conclusions

[56] We begin by expanding very slightly on what panels have ruled in *Canaco Resources* and in *Core Capital*. This is an administrative proceeding. It is not a criminal proceeding. The ruling in *Stinchcombe* and in the cases which interpret it are intended to achieve fairness in a criminal setting. To a large extent the substantive principles of fairness which apply in a criminal context apply as well in the context of an administrative disciplinary hearing. But there can be differences, and ultimately the test in the administrative context is whether the respondent is treated fairly, not whether *Stinchcombe* has been strictly adhered to.

[57] The Applicant seeks a strict application of *Stinchcombe* principles not just to questions of what should be produced, but also to the process for production. The Applicant has very strong objections to any form of iterative process in production, and to any divergence from criminal procedure. These objections are inconsistent with the nature of an administrative process, which is intended to be flexible and to take into account considerations of efficiency.

[58] Respondents are entitled to a fair hearing, and hearing panels should be vigilant to prevent unfairness. But that does not imply that issues of disclosure have to be dealt with as they would be dealt with in a criminal court.

[59] Although the Applicant cites and relies on authorities such as *Latimer* which expressly state that production is necessary for "information in respect of which there is a reasonable possibility that it might assist the accused in the exercise of the right to make full answer and defence…", the Applicant then makes submissions which do not include the "reasonable possibility" qualifier. For example, as is noted above, the Applicant submits in his reply that "information regarding technological tools used in investigations" must be produced. If that submission is accepted in full, the result would be that because the internet is used in

investigations, when the executive director issues a Notice of Hearing he should make full disclosure regarding how the internet works.

[60] The executive director asserts that the information and documents which are the subject of this Application are not relevant to the issues alleged in the Notice of Hearing, and that the Applicant's potential applications regarding one or more of jurisdiction, technological reliability and procedural fairness are not, at this stage, well enough defined to justify disclosure in accordance with the principles articulated in *Latimer* and other cases. The Applicant does not assert that the materials which are the subject of this application are relevant to the issues alleged in the Notice of Hearing, but submits that the information and documents being sought are important for other purposes important to the defense.

[61] The Applicant submits that "It is trite administrative law, moreover, that a party may mount a defence based on procedural fairness or jurisdictional considerations." The Applicant is quite correct about that. The executive director agrees, and so do we.

[62] The Applicant is quite critical of the executive director for asking the Applicant to explain some theory of relevance. The Applicant says that this is an effort to reverse the onus which is on the executive director to show that the information and documents are not relevant. We do not agree. We interpret the executive director's position to be that he cannot think of a basis to connect what information and documents are sought to any topic which the Applicant might reasonably assert in the proceeding, whether as a substantive defense or anything else which will help the Applicant in the course of the proceeding. If that is correct, then it does meet the executive director's onus to demonstrate a lack of relevance of the materials in question. Of course, sometimes an explanation will clarify the relevance of materials which initially appear irrelevant. In this case, the executive director has suggested that as this proceeding unfolds some relevance might emerge regarding at least some of the Applicant's requests.

[63] The Applicant submits in his reply that his efforts to advance his case "may" include raising questions of "institutional jurisdiction, technological reliability, and procedural fairness in the use of technologically driven processes". The Applicant provides few details of what those questions might be, although he expands on the arguments to some extent in his reply and in the oral submissions made by his counsel. We will address the potential arguments in turn, with a view to assessing whether there is a reasonable possibility that the information being sought may assist the Applicant in making those arguments.

A. Jurisdiction

[64] Regarding institutional jurisdiction, Applicant's counsel suggested during oral submissions that there might not be a statutory basis for the Commission to collect or use trading data. This proposition was somewhat startling to the panel. Our very quick scan of the Act afterwards revealed the broad range of authority which is set out above under the heading "Powers of the Commission, Privacy".

[65] The authority of the Commission to collect trading data seems, on initial impression, to be very extensive. In addition, statutory language which provides an entity with the status and capacity of a natural person is generally read to allow that entity to do whatever it is not prohibited from doing.

[66] From our review, we do not see a reasonable basis to order the disclosure sought in connection with a hypothetical argument that the Commission lacks the jurisdiction to collect and use the types of data which is in MAP. To put the point in the language used in the *Latimer*

case, looking at the type of argument which the Applicant asserts he may make, we do not see a reasonable possibility this requested evidence will assist him.

B. Technological reliability

[67] Turning to the argument of technological reliability, we think the Applicant has made some very good points about the dangers that can arise when decisions which are relevant to a proceeding are made by a program or an algorithm, even if only as a recommendation to a human decision maker. However, we don't see how any such danger arises here. Subject to very specific exceptions, trades in investment dealer accounts are initiated by a client. Sometimes a person other than the client has an appropriate form of trading authority over the account, and that person might initiate a trade. The primary records and source documents regarding the trade are held by the investment dealer. The trades themselves are not processed on MAP, and the records within MAP regarding trades are sourced from original records which are created and maintained elsewhere. This point about needing to go to investment dealer records to obtain the information necessary to understand trading activity is illustrated in the present proceeding, because it is not evident from the MAP data who directed the sale of shares by Shimcity Inc. The information and records related to the trade needed to be requested from the relevant investment dealer.

[68] The executive director is not relying on records from MAP regarding who gave the instructions for the relevant buy order and sell order. As a result, it makes no difference in this proceeding whether data in MAP is accurate 100% of the time or 99% of the time or 9% of the time.

[69] This proceeding is not comparable to proceedings where the evidence which an applicant wishes to challenge, or at least to understand, comes from a system such as a speed monitoring camera or a computer which follows an algorithm to make recommendations. What happened here is that MAP was accessed to obtain information about where staff should look to obtain the primary, original records and information related to trading activity.

[70] Again, we do not see a reasonable possibility that the documents and information sought will assist the Applicant.

C. Denial of procedural fairness

[71] Turning to the final potential question specifically identified by the Applicant which he "may" raise with the support of the disclosure sought here, the Applicant mentions procedural fairness in his reply submission and expands on that somewhat in oral submissions made by counsel.

[72] We have quoted, above, extensively from oral submissions made by Applicant's counsel. Our quotes are much more detailed and extensive than we would normally include. We included that level of detail because we want to be fair to the Applicant by being very clear about the basis for our interpretation of the Applicant's position.

[73] Based on what Applicant's counsel submitted, our understanding is that the Applicant might bring an argument regarding procedural fairness, likely in the form of an abuse of process application, on several possible grounds. The application might relate to the Commission's use of MAP in this proceeding, it might relate to the Commission's failure to disclose significant information regarding MAP without being asked, it might relate to the Commission's resistance to the production of the information and documents requested and it might relate to the Commission's intention to rely on evidence about trading which was obtained from investment dealers in order to prove the allegations in the Notice of Hearing.

[74] Here are some of the propositions which we think are at least implicit in the Applicant's submissions:

a) the fact that the Commission has access to a system to review securities trading activity, and which accounts are involved in that activity, is surprising to the public, including to securities lawyers;

b) Applicant's counsel was confused when it appeared to him that somehow the Commission had connected the suspicious trading at issue to his client;

c) it is potentially abusive for the Commission to have access to a system which allows it to view the trading activity of citizens without their knowledge;

d) because MAP is used in investigations, and because its existence is a secret, it is crucial that disclosure be made at the initial phase of a trading case;

e) the failure of the executive director to make that disclosure, and the executive director's subsequent resistance to disclosure, is abusive and could justify a stay of proceedings; and

f) in addition, the executive director's effort to "witness wash" the existence of MAP is an abuse of proceedings and would justify a stay of proceedings.

[75] We have already provided some comments on some aspects of the propositions which we think are inherent in what is being submitted by the Applicant. For example we have mentioned that the records obtained from the investment dealers represent the origin of the relevant trades and provide a level of detail which is not present in the records from MAP. There are reasons why the executive director would choose to rely on records from the investment dealers through which the trades were ordered which have nothing to do with abusive behaviour.

[76] Perhaps most importantly, regardless of the state of mind of counsel for the Applicant, it is simply hard for us, at this point at least, to operate under an assumption that participants in public markets are surprised that the statutory securities regulator can obtain and use trading data. The Applicant's potential argument that he was surprised in that way, and that the executive director was concealing the existence of MAP in an abusive way by not making disclosure which would reveal the existence of MAP, is not reasonable based on the current evidentiary record. Whether such an argument becomes reasonable will depend upon the development of evidence and submissions by the Applicant which do not turn on the nature of MAP. Once again, we do not see a reasonable possibility that the information and documents sought will assist the Applicant.

[77] We recognize that our conclusions in this ruling rely to some extent on sections of the Act and on case authorities which the Applicant did not comment on. We are comfortable to do so because in any event we are not reaching final conclusions on these sections or authorities. We do not see any difficulty in this context with adopting an iterative approach to the issue of production. The result is that if new evidence is introduced by the Applicant which establishes an appropriate level of reasonableness to arguments connected to the information and documents sought, he will have another opportunity to convince us if that is sufficient to order production.

[78] We dismiss this application. However, we dismiss it without prejudice to the ability of the Applicant to renew the application based on a stronger evidentiary foundation, if one exists, and based upon more complete submissions about the apparent jurisdiction created in the Act for the Commission to collect and use trading data to look into suspicious trades which are referred to the Commission.

November 17, 2025

For the Commission

Gordon Johnson
Vice Chair

Karen Keilty
Commissioner

Douglas Seppala
Commissioner