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

Citation: Core Capital Partners Inc., 2026 BCSECCOM 354 Date: 20261020

Core Capital Partners Inc., Amandeep Thindal, Kamaldeep Thindal, Yazan Al Homsi and Aarun Kumar

Panel	Gordon Johnson	Vice Chair
	Judith Downes	Commissioner
	Jason Milne	Commissioner
Hearing date	June 22 and 23, 2026	
Submissions completed	September 10, 2026	
Ruling date	October 20, 2026	

Appearing

Joven Narwal, KC Kamaldeep Thindal	For Core Capital Partners Inc., Amandeep Thindal and
Deborah Flood Derek Chapman Amir Ghorbani	For the Executive Director
Kyle Thompson Laesha Smith	For Yazan Al Homsi
Patrick Sullivan Pegah Kenarsari	For Aarun Kumar

Ruling

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I. Background

[1] On January 19, 2026, the liability decision in this proceeding was issued: *Core Capital Partners Inc.*, 2026 BCSECCOM 16 (Liability Decision).

[2] On February 27, 2026, a notice of application was filed on behalf of Core Capital Partners Inc., Kamaldeep Thindal and Amandeep Thindal (collectively the Core Capital Respondents) requesting the following orders:

a) an order pursuant to section 171 of the *Securities Act*, RSBC 1996, c 418 (Act), revoking and setting aside the Liability Decision;

b) an order that all demands for production of private email communications be set aside as having taken place without legal authority;

c) an order that the Commission decline to apply section 144 of the Act on the basis that the provision is of no force and effect, being contrary to sections 7 and 8 of the *Canadian Charter of Rights and Freedoms* [*Charter*];

d) in the alternative, an order pursuant to section 24(1) of the *Charter* that the Demand be set aside as violating sections 7 and 8 of the *Charter*; and

e) a stay of proceedings against the applicants.

(Section 171 Application)

[3] On March 30, 2026, the executive director provided his response. On April 8, 2026, the Core Capital Respondents provided their reply submissions.

[4] On May 19, 2026, counsel for Aarun Kumar sent an email to the Hearing Office advising that he would not be bringing a separate application seeking the same relief being sought by the Core Capital Respondents because the relief sought in that application "would apply generally".

[5] On May 22, 2026, Yazan Al Homsi (Al Homsi) submitted an application seeking the same orders which are sought in this Application.

[6] On June 22 and 23, 2026, the panel heard the Section 171 Application.

[7] On July 31, 2026, the panel requested further brief submissions from the parties with respect to the pending application, given the findings by this Commission in *Re Birdsall*, 2026 BCSECCOM 224 [*Birdsall*]. Those submissions were subsequently received.

II. Outcome

[8] For the reasons set out below, we dismiss this application. The application raises issues that are not new as contemplated under section 171 and the positions advanced in the application are not compelling.

III. Positions of the parties

A. Section 171 Application

Core Capital Respondents and Al Homsi applications

[9] The Core Capital Respondents' primary submission in their application is that the email communications collected in the course of the underlying investigation and entered as exhibits during the liability hearing "were obtained without legal authority and in breach of the Applicants' ss. 7 and 8 *Charter* rights". The Core Capital Respondents also submit that the collection of the evidence under the Act exceeded the jurisdiction of the investigator and that the Ontario Court of Appeal in *Binance Holdings Limited v Ontario Securities Commission*, 2025 ONCA 751 [*Binance*] has created a new, *Charter* based approach to relevance which the Commission did not comply with.

[10] The Core Capital Respondents submit that the executive director bears the onus of proving that revoking the Liability Decision is not in the public interest because the demand for the email communications from the investigator was issued without notice and in breach of the Core Capital Respondents' *Charter* rights. They rely on *Party A v British Columbia (Securities Commission),* 2021 BCCA 358 [*Party A*], and *Morabito v British Columbia (Securities Commission),* 2022 BCCA 279 [*Morabito*].

[11] Alternatively, the Core Capital Respondents say that if the onus lies on them, then the test for revocation and variation is met.

[12] BC Policy 15-601 *Hearings* [15-601], part 9.10(a) *Discretion to Revoke or Vary*, states that a party seeking revocation or variance "must show the Commission new and compelling evidence that was not before the original decision maker, or a significant change in the circumstances since the original decision was made". The Core Capital Respondents say that new evidence does not need to have been discovered since the hearing occurred. It can mean evidence that was not previously before the panel provided the evidence is compelling. They rely on *Re Deyrmenjian*, 2019 BCSECCOM 93 [*Deyrmenjian*], and *Re Wong,* 2017 BCSECCOM 57.

[13] In addition to their submissions regarding how we should interpret section 171 of the Act, the Core Capital Respondents rely on the approach taken in civil trials and they cite *Carpino v Carpino*, 2023 BCSC 1518, as authority for the principles to consider in an application to reopen a matter:

> [37] Regarding the principles applicable on an application to reopen, the Court in *Hansra* referenced *Moradkhan v. Mofidi*, 2013 BCCA 132:
>
> > 54 This Court remitted the matter for a new trial because the process followed by the trial judge was flawed and unfair. In summarizing the principles applicable on an application to reopen, Garson J.A. stated (at para. 31):
> >
> > - it is generally speaking in the interests of justice to consider that a trial is complete when each side has closed their case and the judge has delivered his or her judgment;
>
> a judge's unfettered discretion to reopen a trial should be exercised with restraint;
>
> - a party may not use the rule to re-argue, re-cast, or re-state his or her case, rather the rule is available to remedy what might otherwise be a substantial injustice;
> - it is not intended that a party should be able to lead substantial new evidence, nor does the rule generally permit the leading of new expert evidence;

- the reasons that the evidence was not led or submissions not made in the first place may be relevant to the exercise of the judge's discretion, particularly where the failure to do so in the first place was a considered or pragmatic decision; and

- the discretion should only be exercised if the reception of the new evidence would probably change the result of the trial.

I would add to this list that a judge may reasonably exercise such discretion where a relatively discreet error in math or some mechanical consideration of the evidence is clearly in error. Finally, the overarching consideration is whether it is in the interests of justice that the court reopen the case. (See also *Brown v. Douglas*, 2011 BCCA 521, 314 B.C.A.C. 143.)

[Emphasis in original cite from *Moradkhan v. Mofidi, supra*.]

[14] The Core Capital Respondents also refer to the approach taken by courts in the context of criminal law, arguing that the retention of new counsel weighs in favour of reopening this matter, relying on the Ontario criminal law case *R v AV,* 2022 ONCJ 437.

[15] The Core Capital Respondents state that appellate courts will allow *Charter* arguments on appeal in exceptional circumstances, quoting *R v Alfred,* 2020 BCCA 384.

[16] The Core Capital Respondents submit that the fundamental consideration is whether refusing to allow the new issue to be raised would risk an injustice. They say that there would be no prejudice to the executive director and that the public interest "is clearly served by the clarification of the permissible scope of investigators' powers in light of their governing statute and the Charter".

[17] The Core Capital Respondents say that the investigator's power to compel evidence under section 144 of the Act has no application in this matter because section 144 applies to witnesses and natural persons, not third party communication providers.

[18] The Core Capital Respondents submit that the lack of protection against seizure of communications is unconstitutional because there is "virtually limitless potential to infringe solicitor-client privilege". They say that protecting solicitor-client privilege is of primary importance, relying on *Lavallee, Rackel & Heintz v Canada (Attorney General)*, [2002] 3 SCR 209 [*Lavallee*], *Solicitor-Client Privilege of Things Seized (Re),* 2019 BCSC 91 [*Re Solicitor-Client Privilege*], *Alberta (Information and Privacy Commissioner) v University of Calgary,* 2016 SCC 53, and *Canada (Privacy Commissioner) v Blood Tribe Department of Health,* 2008 SCC 44.

[19] The Core Capital Respondents say that Commission investigators' powers of compulsion are overbroad and breach section 8 of the *Charter*, relying on *Binance*.

[20] The Core Capital Respondents seek a stay of these proceedings based on the arguments above, or, in the alternative, the email communications should be excluded from consideration, the Notice of Hearing dismissed, and the Liability Decision set aside.

[21] Al Homsi "adopts the ground for application set out in the Core Capital Application, and seeks the same orders sought in that application on a parallel basis".

The executive director's response

[22] In his responding submissions to the Section 171 Application, the executive director argues that:

a) The Section 171 Application should be dismissed because, when the investigator issued the demand for production under section 144 of the Act, it was not "a decision the commission, the executive director or the designated organization" made under the Act as required under section 171 of the Act and not subject to review.

b) The executive director relies on section 1 of the Act which defines "decision" as:

> **"decision",** in relation to the commission, the executive director or a designated organization, means a direction, decision, order, ruling or requirement made under a power or right conferred by this Act or the regulations.

c) The executive director cites *Binance*, where the Ontario Court of Appeal stated at paragraphs 49 and 50:

> The fact that the investigation is done in aid of the Commission's work and the Commission ultimately controls the fruits of the investigation does not make the decision to issue a summons a Commission decision. As I have indicated, the plain meaning of the provisions indicates otherwise.
>
> In my view, the only sensible explanation for a provision authorizing the Commission to appoint an investigator or investigators is that the legislators sought to create a separation between those who investigate, on the one hand, and the Commission, the body with regulatory authority over the matter investigated, on the other. I therefore disagree with Binance. In my view, an investigator does not conduct the investigation "as the Commission"

d) Alternatively, the executive director submits that if section 171 can be used, the Section 171 Application should be dismissed "as the applicants have failed to discharge their onus of demonstrating that it would not be prejudicial to the public interest" to revoke or vary the Liability Decision.

e) The executive director cites 15-601, part 9.10(a) (and *Deyrmenjian,* which discusses it), which states in part:

> Before the Commission varies or revokes a decision, it must consider that it would not be prejudicial to the public interest to vary or revoke the decision. This usually means that the party applying for variation or revocation must show the Commission new and compelling evidence that was not before the original decision maker, or a significant change in the circumstances since the original decision was made.

f) The applicants have not brought "any new or compelling evidence" to support their application and there is no significant change in circumstance that warrants revocation or variation of the Liability Decision.

g) The Core Capital Respondents retained their current counsel in 2021 and brought an application "to challenge the constitutionality of the investigator's ability to obtain their work emails under section 144, but they abandoned that challenge". That application was not advanced further. When the Core Capital Respondents retained different counsel to represent them at the liability hearing, they did not object to the emails in question being tendered into evidence and used some of those emails as part of their defence. The executive director argues:

> Now that this panel has issued its Findings against the applicants, and relied in part upon their work emails, the applicants are seeking a second chance to defend the allegations under the guise of an application under section 171. In fact, this application is an attempt to litigate by instalments and is contrary to the public interest.

h) The Core Capital Respondents did not provide the requisite notice provisions in the *Constitutional Question Act*, RSBC 1996, c. 68, sections 8(2), 8(4) and 8(5), which state:

> (2) If in a cause, matter or other proceeding
> (a) the constitutional validity or constitutional applicability of any law is challenged, or
> (b) an application is made for a constitutional remedy,
> the law must not be held to be invalid or inapplicable and the remedy must not be granted until after notice of the challenge or application has been served on the Attorney General of Canada and the Attorney General of British Columbia in accordance with this section.
> …
> (4) The notice must
> (a) be headed in the cause, matter or other proceeding,
> (b) state
> (i) the law in question, or
> (ii) the right or freedom alleged to be infringed or denied,
> (c) (c) state the day on which the challenge or application under subsection (2) or (3) is to be argued, and
> (d) (d) give particulars necessary to show the point to be argued.
>
> (5) The notice must be served at least 14 days before the day of argument unless the court authorizes a shorter notice.

i) The executive director notes that 15-601, part 3.8, requires the party who raises a constitutional question to give notice in compliance with section 8 of the *Constitutional Question Act*.

j) The executive director also submits that this application should be dismissed for the same reasons the panel stated in *Re Birdsall*, 2026 BCSECCOM 79: The Core Capital Respondents could have challenged how the investigator obtained the emails in question during the liability hearing but chose not to. Therefore there is no basis for the panel to consider the current application.

Core Capital Respondents' reply

[23] In their reply submissions, the Core Capital Respondents say:

a) The executive director's jurisdictional argument that the "investigator's demand for production is not a "decision" of the Commission subject to s. 171 review, relying on *Binance*" does not take into account the decision being challenged which is the Liability Decision. In that decision, the panel relied on the evidence obtained by the investigator's demand for production. Moreover, the Core Capital Respondents' application claims relief under section 24(1) of the *Charter*.

b) The onus of proof should be shifted to the executive director because the basis of their application is that the investigator's use of statutory powers was without legal authority and breached the *Charter*. They cite *Party A* and *Morabito*.

c) The Core Capital Respondents' previous abandonment of a constitutional challenge to section 144 of the Act does not preclude raising the same argument at this stage.

B. Submissions regarding Birdsall

Core Capital Respondents' submissions

[24] The Core Capital Respondents argue:

a) *Birdsall* should be distinguished on its facts because the investigator's demand in *Birdsall* was "considerably narrower, more "tailored"" whereas the demand for emails in this matter was "extremely broad".

b) The panel in *Birdsall* affirmed *Binance*'s application of "*Charter* principles to the exercise of an investigator's powers".

c) The "Panel in *Birdsall* erred in its holding that *Binance* did not, in fact meaningfully alter the standard of relevance applicable to a s. 144 Demand". The Core Capital Respondents say that the investigation order being the previous standard of relevance has been changed to also include the investigator's subjective belief "that the records sought relate to the purpose of the investigation itself". They say that "the former standard is insufficient to protect individuals' s. 8 [*Charter*] rights".

d) *Democracy Watch v Canada (Attorney General)*, 2026 SCC 28, "signals a new paradigm in Canadian law" where "every exercise of executive power is, in fact, subject to review for its legality".

The executive director's response

[25] The executive director argues:

a) The panel in *Birdsall* correctly considered *Binance* by examining the pre-existing legal context in British Columbia from *Party A*, *British Columbia (Securities Commission) v Stallwood,* 1995 CanLII 1515 [*Stallwood*], and *Re Ward,* 2022 ABASC 139. That context meant:

i. the terms of an investigation order had to be sufficiently clear to define the scope of the investigation,

ii. the scope of the investigation order determines what is relevant for investigatory purposes, including the use of compulsion powers in the Act,

iii. an investigator must have flexibility enough to pursue inquiries that are related or relevant to that scope, and

iv. investigation orders can be amended to extend the scope of the compulsion power.

b) The *Birdsall* panel was correct that "if the justices of the Ontario Court of Appeal intended to create an entirely new legal test, they would have done so explicitly".

c) The Court in *Binance* did not refer to a subjective/objective standard and stated that it "is trite law that the criminal law standards for a reasonable search or seizure identified in *Hunter et al v Southam Inc.*, [[1984] 2 SCR 145], will not usually be the appropriate standard for a determination made in an administrative or regulatory context", quoting *British Columbia Securities Commission v Branch*, [1995] 2 SCR 3 [*Branch*].

Core Capital Respondents' reply

[26] In reply related to *Birdsall* the Core Capital Respondents argue:

a) *Binance* incorporates a heightened expectation of privacy over an individual's emails that engages *Charter* section 8 protections and makes an investigator's demand powers "contingent on the records being relevant to the investigation itself".

b) The objective/subjective standard does not come solely from the criminal law but directly from *Binance* which stated, at paragraph 84: "In *McKinlay Transport Ltd.* [[1990] 1 S.C.R. 627], Wilson J. therefore endorsed the "rough model of reasonableness employed in production of documents in civil cases", where "what is reasonable 'depends upon consideration of what is sought, from whom, for what purpose, by whom, and in what circumstances."

IV. Analysis

A. *Proper approach under section 171 of the Act*

[27] The Core Capital Respondents reference a number of sources of authority for us to vary the Liability Decision in this proceeding or to reopen the liability phase and consider the new submissions that have been advanced. For example, it is submitted that:

a) under section 24 of the *Charter* every court or tribunal of competent jurisdiction has authority to remedy a *Charter* breach,

b) a court might reopen a case if presented with the current circumstances,

c) appellate courts sometimes permit *Charter* arguments which are raised for the first time at that level, and

d) the application of our own hearing policy 15-601 to section 171 of the Act should lead to the result they advocate for.

[28] There are many reasons why we should apply our usual section 171 framework for analysis. Firstly, that framework for analysis is fair both in general and in its application here. In brief, and ignoring the branch of the test which addresses changed circumstances, the approach focuses both on when new evidence and new submissions are raised and the likelihood that the evidence or submission would have led to a different outcome. Where the proposed evidence or

submission is compelling, the significance of that factor becomes elevated. This is a good framework which allows for the fair and flexible review of prior decisions in a manner which also supports the efficiency of the hearing process.

[29] Other factors which favour us applying a traditional approach to section 171, despite the submissions that we consider approaches used in other contexts, are that we are not a trial court or an appellate court, and this is not a civil case or a criminal case. This is an administrative law proceeding with its own fair and effective rules.

[30] We now turn to the application of the section 171 framework.

[31] Section 171 of the Act provides:

> **Discretion to revoke or vary decision**
> **171** If the commission, the executive director or a designated organization considers that to do so would not be prejudicial to the public interest, the commission, executive director or designated organization, as the case may be, may make an order revoking in whole or in part or varying a decision the commission, the executive director or the designated organization, as the case may be, has made under this Act, another enactment or a former enactment, whether or not the decision has been filed under section 163.

[32] The Commission's hearing policy 15-601, part 9.10(a) *Discretion to Revoke or Vary* states:

> Under section 171 of the Act, the Commission may revoke or vary a decision it has made, or that was made by a single commissioner, if to do so would not be prejudicial to the public interest. A party that is subject to a decision may apply to the Commission for an order revoking or varying the decision. Generally, the Commission conducts these hearings in writing; it considers written submissions and makes its decision.
>
> Section 171 is intended to allow the Commission to consider the ongoing appropriateness of an order made by a Commission panel, or by a single commissioner under delegated authority. It is not intended to be used to apply for review of an initial decision made by a single commissioner. Those applications are properly brought under sections 165 and 166, as outlined above in **Part 7 Reviews**.
>
> Before the Commission varies or revokes a decision, it must consider that it would not be prejudicial to the public interest to vary or revoke the decision. This usually means that the party applying for variation or revocation must show the Commission new and compelling evidence that was not before the original decision maker, or a significant change in the circumstances since the original decision was made.
>
> A party must apply to the Commission in advance of the hearing and demonstrate why the evidence that was not before the original decision maker is new and compelling, and should be admitted. The Commission will hear submissions from all parties. In some circumstances, the Commission may hear the application to introduce new evidence as part of the hearing to revoke or vary a decision. In that case, it will receive the evidence for the purposes of determining if it meets the test to be admitted.
>
> …
>
> [Emphasis in original]

[33] Section 171 and 15-601, part 9.10, were discussed in *Birdsall*:

[57] BCP 15-601 also outlines that an applicant under section 171 must show the Commission new and compelling evidence that was not before the original decision maker, or a significant change in circumstances since the original decision.

[58] This Commission has considered the requirement for “new and compelling” evidence in numerous decisions, oft citing *Re Deyrmenjian*, 2019 BCSECCOM 93 [*Deyrmenjian*]. In that decision, the panel reviewed the previous decisions and consolidated the factors an applicant must establish as follows, at para. 28:

a) the additional evidence must be

   i. relevant to the allegations in the notice of hearing;

   ii. "new" in that it was not reasonably available for use by the applicants at the time of the hearing;

   iii. "compelling" in that if the panel had been provided with the evidence at the time of the hearing, it would have decided differently; and

b) it would not be prejudicial to the public interest for the panel to revoke their findings.

[59] The panel in *Deyrmenjian* goes on to elaborate that:

- The “compelling” aspect of the test is more important as it can be determinative of the outcome – because if the “new” evidence is not compelling, there is no need to carry on with the analysis of whether it is new.

- Evidence is “new” if it was not reasonably available at the time of the liability hearing. A determination of what “reasonably available” means may include an examination of whether the party seeking to rely on it deliberately chose to withhold the evidence at first instance. Further, a determination of whether the evidence is “new” is not necessarily determinative of the issue, and a panel may find that there are circumstances where evidence that is not new may still be compelling.

- Even if the additional evidence is “new”, the panel must still consider whether it is not prejudicial to the public interest to vary or revoke a decision.

  (see *Deyrmenjian* at paras. 29-36)

[60] The test from *Deyrmenjian* has subsequently been applied in other Commission decisions, including *Re Enna M. Keller*, 2022 BCSECCOM 29, and *Re Dunn*, 2024 BCSECCOM 279.

[61] As was established in *Morabito v. British Columbia (Securities Commission)*, 2022 BCCA 279, the onus under a section 171 application is, except in limited circumstances, on the applicant. Birdsall submits that his is one of those limited circumstances where the onus shifts to the executive director, but we see no basis for that.

[34] While we are discussing the proper approach to take to this application, we take this opportunity to address the issue of who has the onus under section 171.

[35] The Court of Appeal in *Morabito* confirmed the general rule that the onus in a section 171 application is on an applicant. There can be exceptions. In a situation such as *Party A*, where an extraordinary power was exercised to freeze the assets of citizens on an *ex parte* basis, the onus under section 171 was found to lie with the executive director, although that onus could be satisfied by meeting a defined test which largely focused on the strength of the evidence against the applicant of a breach of the Act.

[36] The Core Capital Respondents seek to apply the exception recognized in *Party A* to this context by noting that evidence in investigations is gathered on an *ex parte* basis. With respect, this comparison trivializes the situation faced by parties whose property, sometimes totaling many millions of dollars, is frozen, often for years at a time. A business or individual about whom the Commission is collecting information is not at all in a comparable situation. Being required to provide records to the provincial regulator in a highly regulated industry as part of an investigation authorized under the Act is far afield from having personal property frozen until the outcome of a hearing.

[37] If the submission of the Core Capital Respondents were accepted, then investigators demanding records from a third party should either:

a) provide notice to the subjects of investigations before documents are obtained from third parties, or at least promptly after the documents are collected, or

b) upon application, be prepared to satisfy the onus of issuing every demand while the investigation is ongoing.

[38] Both of these outcomes would significantly hamper the ability of the executive director to conduct investigations, which, as outlined by the Supreme Court of Canada in *Branch,* are important to the functioning of capital markets and are an objective of the Act.

[39] Another reason that the Core Capital Respondents submit the onus here should lie on the executive director is that the demand violated the Respondents' *Charter* rights. That is not a compelling argument. The Core Capital Respondents might choose to express their submission regarding the alleged breach of their *Charter* rights as a binding conclusion. Asserting the position does not relieve an applicant of the onus to establish it.

[40] While the Court of Appeal in *Morabito* stated that there may be other circumstances where the onus shifts in a section 171 application, this is not such a case. We conclude that there is no proper basis in this matter to diverge from the general rule that the onus on section 171 applications is on the applicants.

B. *Is the application new?*

[41] The Core Capital Respondents raise three distinct submissions. First, they submit that the collection of evidence by investigators without sufficient safeguards to protect against violation of solicitor-client privilege breaches sections 7 and 8 of the *Charter*. Secondly, they submit that after the Ontario Court of Appeal in *Binance* there is a new standard of relevance that applies to investigations under the Securities Acts in Canada and the demand which was issued here under section 144 of the Act was overly broad. Finally, it is submitted that section 144 of the Act does not in any event authorize the collection of documents from third party corporations. We address in turn whether those are new submissions, beginning with the important issue of safeguarding against violations of solicitor-client privilege.

[42] It is beyond dispute, and not disputed, that the submissions being made now regarding the possibility that the Commission's practices for collecting evidence which might include documents which are privileged were considered by the Core Capital Respondents several years ago and not advanced until after the Liability Decision was issued. As this proceeding was being commenced the Core Capital Respondents informed enforcement counsel of the Commission that they were then considering raising the issues which they seek to raise now, more than two years later.

[43] The Core Capital Respondents submit that they now have new counsel. The executive director submits that counsel for the Core Capital Respondents during the liability hearing was respected and competent counsel, which is not disputed. In any event the reality is that the Core Capital Respondents had the opportunity to raise the relevant issues in the course of the liability phase of the proceeding and they chose not to.

[44] The Core Capital Respondents urge us to overlook the delay issue because *Charter* rights are inherently of significance and their *Charter* rights have been violated. The importance of *Charter* rights is beyond dispute and is not disputed. However, the repeated submission that *Charter* rights have been violated is disputed. We discuss the merits of the *Charter* argument later in this decision. For the purpose of assessing whether the issue could have been raised earlier, we need not assume that the *Charter* argument would succeed.

[45] Regarding the submissions which the Core Capital Respondents assert based on the *Binance* decision, that decision was released by the Ontario Court of Appeal on November 6, 2025. At that time all submissions regarding liability in this proceeding had been received. Our decision on liability was issued on January 19, 2026. If, as the Core Capital Respondents assert, *Binance* represents a significant change in the law, they could have applied to draw that case to our attention during the more than ten week period between its publication and the issuance of the Liability Decision. Indeed, in that period the Core Capital Respondents brought more than one authority to our attention. They have demonstrated that they are aware of their ability to draw to our attention new authorities outside of the time set for submissions. They did not communicate their intention to rely upon *Binance* until after the Liability Decision had been issued.

[46] Turning to their submissions regarding the limited scope of section 144 of the Act, those submissions are based on the wording of the Act which has not changed at any time relevant to this proceeding.

[47] Our conclusion is that the issues raised in this application could have been and should have been raised before we issued our Liability Decision.

C. Is the application compelling?

[48] Once again, we address in turn each of the three distinct submissions advanced in this application, beginning with the submission that the lack of statutory protections for solicitor-client privilege regarding evidence collected under section 144 of the Act renders that provision unconstitutional.

[49] A leading case regarding the centrality of solicitor-client privilege in our legal system, and the need to protect that privilege, is *Lavallee*. That case arose in relation to materials seized by the police from law offices pursuant to warrants. Solicitor-client privilege was asserted and it was

submitted that the protections of what was then section 448.1 of the *Criminal Code of Canada* were challenged as being inadequate.

[50] Section 448.1 of the *Criminal Code* related to documents in the possession of a lawyer which an officer was about to "examine, copy or seize". If the lawyer claimed that a named client had solicitor-client privilege in respect of the document, the section required the officer, without examining or making copies of the document, to seal it in a package and place it in the custody of a sheriff or specified custodian. The section also permitted the Attorney General, the client or the lawyer acting on behalf of the client to apply for a determination by a judge regarding whether the document ought to be disclosed. If no application was brought within the timelines established in the section, the custodian would return the documents to the officer who seized them.

[51] Section 448.1 of the *Criminal Code* was intended to protect solicitor-client privilege, but the Supreme Court of Canada found that it fell short and unconstitutionally jeopardized solicitor-client privilege. The court ruled that proper protection is ensured by labeling as unreasonable any legislative provision that interferes with solicitor-client privilege more than is absolutely necessary. In the context of searches of law offices, this created a requirement for minimum impairment of solicitor-client privilege.

[52] The court then pointed out the specifics of how section 488.1 fell short, and called on Parliament to "legislate anew". In the interim, the court articulated 10 general principles which applied to the searches of law firms. These principles are:

1. No search warrant can be issued with regards to documents that are known to be protected by solicitor-client privilege.

2. Before searching a law office, the investigative authorities must satisfy the issuing justice that there exists no other reasonable alternative to the search.

3. When allowing a law office to be searched, the issuing justice must be rigorously demanding so to afford maximum protection of solicitor-client confidentiality.

4. Except when the warrant specifically authorizes the immediate examination, copying and seizure of an identified document, all documents in possession of a lawyer must be sealed before being examined or removed from the lawyer's possession.

5. Every effort must be made to contact the lawyer and the client at the time of the execution of the search warrant. Where the lawyer or the client cannot be contacted, a representative of the Bar should be allowed to oversee the sealing and seizure of documents.

6. The investigative officer executing the warrant should report to the justice of the peace the efforts made to contact all potential privilege holders, who should then be given a reasonable opportunity to assert a claim of privilege and, if that claim is contested, to have the issue judicially decided.

7. If notification of potential privilege holders is not possible, the lawyer who had custody of the documents seized, or another lawyer appointed either by the Law Society or by the court, should examine the documents to determine whether a claim of privilege should be asserted, and should be given a reasonable opportunity to do so.

8. The Attorney General may make submissions on the issue of privilege, but should not be permitted to inspect the documents beforehand. The prosecuting authority can only inspect the documents if and when it is determined by a judge that the documents are not privileged.

9. Where sealed documents are found not to be privileged, they may be used in the normal course of the investigation.

10. Where documents are found to be privileged, they are to be returned immediately to the holder of the privilege, or to a person designated by the court.

[53] Other cases have discussed *Lavallee* and clarified that its general principles apply beyond searches of law offices, including at the offices of notaries (*Canada (Attorney General) v Chambre des notaires du Quebec*, 2016 SCC 20) and other places where privileged documents might be expected to be located, such as, for example, a lawyers home or storage offices where lawyers files are kept (*Festing v Canada (Attorney General)*, 2023 BCCA 112). In *Re Solicitor-Client Privilege* the court made it clear that the *Lavallee* principles can be triggered when a reasonable expectation is formed that privileged documents may be found, even if that expectation develops in the course of collecting documents.

[54] The Core Capital Respondents note that section 144 of the Act, which is set out below, permits the collection of documents by investigators who issue a demand, and the section includes no safeguard to ensure that documents which are subject to solicitor-client privilege are protected. The Core Capital Respondents note that safeguards are built into the comparable legislation in Nova Scotia and in Newfoundland and Labrador.

[55] The Core Capital Respondents also reference the Court's comments in *Lamarche v British Columbia (Securities Commission)*, 2024 BCSC 1137 [*Lamarche*], at paras 48 and 49:

> Central to the plaintiff's allegations is the matter of SCP [solicitor-client privilege], which is of supreme importance to the Canadian justice system: *Canada (Attorney General) v. Chambre des notaires du Québec*, 2016 SCC 20 at para. 5. The prospect of one or more breaches of the *Charter* is similarly important. Without deciding the issue, I am satisfied that there may be merit to the plaintiff's claims. The record before me in this respect, however, is limited. I acknowledge that, at this stage in the proceedings and in light of the December 5, 2023 decision of Associate Judge Harper, certain steps may not had occurred at the time this application was argued.
>
> In view of s. 144, the plaintiff has established a *prima facie* case that the *Securities Act* provides no protective measures similar to those set out in the *Income Tax Act,* R.S.C., 1985, c. 1 (5th Supp.), a body with quasi-criminal powers akin to the Commission: *Solicitor-Client Privilege of Things Seized (Re)*, 2019 BCSC 91 at para. 58. Nor, in the record before me, has the Commission established a protocol for assessing claims of privilege aimed at protecting the rights holder. There is merit to the claims given that SCP cannot be abrogated by inference: *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44 at para. 11. Privilege must "remain as close to absolute as possible": *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 at para. 43.

[56] We note that although the Core Capital Respondents describe *Lamarche* as having a factual genesis "essentially identical to the present case", in *Lamarche* the factual context regarding

how Commission investigators deal with potentially privileged documents was reasonably developed in the court proceeding at least by the pleadings and by evidence at subsequent proceedings before a Commission panel. The same is not true here. In this proceeding the applicants' submissions are silent on all of the following questions:

a) When and to whom were production orders served?

b) Were any potentially privileged materials delivered to the executive director as a result of the production orders?

c) If so, were the privileged materials effectively "sealed" as contemplated in *Lavallee*, and were the parties whose potential interest in asserting privilege informed and given a chance to assert privilege?

d) Did any of the Core Capital Respondents assert that any privileged documents had been seized, and if so was the claim of privilege accepted, or at least did the documents over which privilege was asserted remain sealed?

e) Did a reasonable expectation develop that the demand might result in the delivery of privileged documents to the investigator at any point before the documents were received by the investigator?

f) What specific safeguard identified in *Lavallee* was not available to any of the Respondents?

[57] In the absence of significant context about the *Charter* breach which is alleged here, we are left with the proposition that regardless of what protections for solicitor-client privilege exist by administrative practice at the Commission, and regardless of how effective they are generally or were in this proceeding, section 144 of the Act is inconsistent with sections 7 and 8 of the *Charter* unless those safeguards are incorporated into the Act.

[58] Our view is that the protection of solicitor-client privilege is of fundamental importance. Systems which are inconsistent with the required level of protection, such as the system created by section 448.1 of the *Criminal Code* as discussed in *Lavallee*, violate the *Charter*. However, we do not accept that the wording of the relevant statute solely determines the degree of protection which is offered to citizens whose rights are protected by the *Charter*. In our view, the practices followed when evidence is collected and their actual effect of the collection processes on potentially privileged materials are relevant. The primary question is not whether a complete and adequate code for protecting privilege is contained within the legislation. What matters most fundamentally is whether solicitor-client privilege is adequately protected. In this case the Core Capital Respondents have not established otherwise. There is no evidence that communications or documents over which solicitor-client privileged existed or was asserted or might have been asserted was viewed by anyone within the Commission. There is no evidence that the Commission failed to design a system to adequately protect them from that happening.

[59] We conclude that this submission is not compelling in that it was not likely to have changed the outcome of the liability phase of the proceeding.

[60] We turn to the second of the three submissions made by the Core Capital Respondents. They submit that the Ontario Court of Appeal's decision in *Binance* represents a significant evolution in the law because it both applies a *Charter* analysis to the question of what is relevant in a

securities investigation authorized by statute and creates a new standard of relevance. Historically, it was accepted that relevance was determined by the scope of the investigation order. According to the Core Capital Respondents, after *Binance* the scope of what is relevant in Canadian securities investigations is determined by "the scope of the investigation".

[61] We disagree that *Binance* has created a new standard of relevance in British Columbia. We come to that conclusion for several reasons.

[62] The first reason is that it is not clear from *Binance* whether the Ontario Court of Appeal was intending to create a new standard or was merely using a shorthand to capture the pre-existing concept of "relevant in an investigation under a Securities Act". The situation in *Binance* was that a subpoena had been issued which captured an exceptionally large group of documents and which did not include language limiting the scope of the documents sought by any form of relevance. The court was not focused on defining which particular documents were relevant and which were not. When we look at some specific paragraphs where the Court discusses the concept of relevance, we see the following:

> [80] I am persuaded that the power of an appointed investigator to issue a production order under s. 13 is limited to documents that may be relevant to an inquiry that is properly undertaken pursuant to the *Securities Act*. A seizure that purports to compel the production of documents in the absence of a reasonable foundation to believe they may be relevant is therefore overbroad and unreasonable, contrary to s. 8 of the *Charter*.
>
> [81] In this case, the inquiry that was being undertaken was described by the Commission in commendable detail in the Investigation Order, which set out both the events of interest and the Commission's concerns about Binance's regulatory non-compliance. However, the Summons demanded production, without limitation, of all communications between virtually anyone that may have managed, been employed by, or done work for either Binance or its related entities over a two-and-a-half-year period relating not only to Ontario but to all of Canada, regardless of the subject matter of those communications. This demand, enforceable by the threat of contempt proceedings, is staggering in its breadth and in my view was made without apparent concern about the relevance of what was being demanded, beyond mere speculation that there could be something relevant that would otherwise be missed. I am therefore persuaded that the s. 13 Summons issued in this case is unconstitutionally overbroad.
>
> [emphasis added]

[63] These paragraphs demonstrate that production orders must be relevant to an inquiry under the Act, which is in turn tied by the Court to the investigation order.

[64] Further, the Court discusses the historical connection between an investigation order and relevance at paragraph 94:

> [94] I have reviewed the authority the Commission relies upon to the contrary. It does not support its position that the power to demand production under s. 13 is not limited by a relevance requirement. *British Columbia (Securities Commission) v. Stallwood*, (1995), 7 B.C.L.R. (3d) 339 (B.C. Sup. Ct), did not involve a production order but instead involved challenges to subpoenas compelling witnesses to testify in an investigation ordered by the securities regulator. The Court did not reject a relevance inquiry when it rejected the petitioners' submissions that the regulator in that case had an obligation to minimize or restrict the investigation it was undertaking. It noted instead that the effect of the "Investigating Order setting out the scope of the investigation" was to define "what is

> relevant": *Smallwood* [sic], at para. 32. In effect, in the context of a subpoena or order to testify, it is sufficient that the regulator identify what is being investigated, and to give direction on the scope of the compelled testimony. But as La Forest J. made clear in *Thomson*, at p. 532, when it comes to the production of documents, there are two components to a necessary relevance inquiry. The first component is that "the subpoena must be sufficiently clear and specific to inform the subpoenaed party of precisely what documents are being demanded" and the second component is that "the subpoena must only be as broad as is necessary for the purposes of the inquiry in progress." This case, of course, involves a challenge to the breadth of a production order made by way of a Summons that makes wholesale demands for documents, whether there is any reason to believe they may be necessary for the purpose of the inquiry in progress or not. The *Smallwood* [sic] case is not instructive.

[65] Although the Ontario Court of Appeal declines to follow *Stallwood* it was not because it rejected the connection between relevance and the underlying investigation order, but because the *Binance* case was addressing the need for both relevance and the need for clarity about what documents were being demanded.

[66] We also conclude it is unlikely that an appellate court would develop a test for relevance which is not directly connected to the scope of the investigation order but is instead based on the scope of the investigation. Such a test would not enhance the protection of any party's *Charter* rights, and the test would be practically unworkable. Under the test which the Core Capital Respondents assert was created in *Binance*, the scope of an investigation will change from day to day based on what new evidence an investigator finds and where that points the investigator next. That scope is highly subjective and difficult to review. To the extent that ongoing reviews could be initiated into the course of an investigation, the test would require that investigators reveal what they have discovered at any point in time, and what are considered to be the appropriate next steps in an investigation. Such a review would allow the subjects of investigations to take steps to frustrate the very purpose for which investigations are conducted.

[67] We also note that we are the British Columbia Securities Commission and we are bound by the decision of the British Columbia Court of Appeal in *Stallwood*.

[68] The underlying submissions made here regarding *Binance* were also addressed by a panel of this Commission in *Birdsall*. The Core Capital Respondents have sought to distinguish *Birdsall,* suggested that *Birdsall* was incorrectly decided, and, ask that we reconsider the conclusions in *Birdsall*. We have done so, and our analysis above addresses points which the panel did not make in *Birdsall*. We have concluded that *Birdsall* is correctly decided. We have chosen not to quote from *Birdsall*. It is sufficient to state that we agree with the panel's analysis there and we consider it to be applicable here.

[69] The submissions regarding *Binance* are not compelling.

[70] Finally, we turn to the Core Capital Respondents' analysis of the scope of section 144. The relevant provisions of the Act are:

> **144** (1) An investigator appointed under section 142, 143.1 or 147 has the same power
>
> (a)to summon and enforce the attendance of witnesses,
>
> (b)to compel witnesses to give evidence on oath or in any other manner,

(b.1)to compel witnesses to preserve records and things or classes of records and things, and

(c)to compel witnesses to provide information or to produce records and things and classes of records and things

as the Supreme Court has for the trial of civil actions.

(2) The failure or refusal of a witness

(a)to attend,

(b)to take an oath,

(c)to answer questions,

(c.1)to preserve records and things or classes of records and things in the custody, possession or control of the witness, or

(d)to provide information or to produce the records and things or classes of records and things in the custody, possession or control of the witness

makes the witness, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

(3) Section 34 of the *Evidence Act* does not exempt any financial institution, as defined in that section of that Act, or any officer or employee of the institution from the operation of this section.

(1.1) A summons under subsection (1), or a demand under that subsection to produce records, property, assets or things or a class of records, property, assets or things, must be served personally on the witness or, if the witness cannot be conveniently found, may be left for the witness at the individual's last or usual residence with an occupant of the residence who appears to be at least 16 years of age.

"individual" means a natural person, but does not include

(a)a partnership, unincorporated association, unincorporated syndicate, unincorporated organization or trust, or

(b)a natural person in the person's capacity as a trustee, executor, administrator or personal or other legal representative;

[71] The submission of the Core Capital Respondents is that section 144 only applies to witnesses, and under subsection 1.1 there is language regarding service of a summons or demand to produce specifying that “if the witness cannot be conveniently found, may be left for the witness at the individual’s last or usual residence”. It is submitted that this limits the concept of a “witness” to an individual, and under the Act individuals are only natural persons and not corporations.

[72] We find this interpretation of the section to be impossible to reconcile with subsection 3 of section 144, which makes it abundantly clear that witnesses include financial institutions, which are not natural persons.

[73] In addition, it is logical and consistent with the intention of the Act and the context to interpret subsection 1.1 in light of the fact that corporate entities can always be “found” through their registered address, and so it is only individuals for whom it might be necessary to locate a last or usual residence.

[74] We do not find this submission to be compelling.

V. Outcome

[75] We find that the submissions of the Core Capital Respondents, and also of Al Homsi who adopted them, are neither new nor compelling. As a result, we dismiss this application.

October 20, 2026

For the Commission

Gordon Johnson
Vice Chair

Judith Downes
Commissioner

Jason Milne
Commissioner