

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

Citation: Core Capital Partners Inc., 2026 BCSECCOM 324

Date: 20260928

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

Panel	Gordon Johnson Judith Downes Jason Milne	Vice Chair Commissioner Commissioner
Hearing date	June 22 and 23, 2026	
Date of ruling	September 28, 2026	
Appearing		
Joven Narwal, KC	For Core Capital partners Inc., Amandeep Thindal and Kamaldeep Thindal	
Deborah Flood Derek Chapman Amir Ghorbani	For the Executive Director	
Kyle Thompson Laesha Smith	For Yazan Al Homsy	
Patrick Sullivan Pegah Kenarsari	Aarun Kumar	

Ruling

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I. Introduction

- [1] This decision addresses whether we should admit, at the sanctions phase of this proceeding, interview transcripts of two witnesses who did not testify at the liability phase of this proceeding. If we admit the evidence we are asked to order that the two witnesses attend for cross-examination, although that portion of the application is now moot because the executive director has agreed to produce the two new witnesses so they can be cross-examined. In addition, we are asked to compel the executive director to produce certain records in advance of the cross-examination of the two new witnesses.
- [2] Aarun Kumar (Kumar) has tendered affidavit evidence from a group of witnesses and has agreed to produce for cross-examination by the executive director those witnesses whose presence was requested by the executive director. We are asked to provide rulings to define or limit the scope of permitted cross-examinations and regarding the need for parties conducting cross-examinations to provide advance notice of the topics to be addressed in cross-examination.
- [3] The executive director has asked to defer delivery of reply submissions until after the cross-examinations of certain witnesses whose affidavit and opinion evidence was tendered on behalf of Kumar.
- [4] Our first conclusion is that the transcript evidence of the two new witnesses should be admitted. In addition, at this phase we will not order the executive director to produce further documents which have been requested for the purpose of informing the cross-examination of the two new witnesses. Depending on what the witnesses say while being cross-examined, it may become appropriate during the course of their testimony to order the production of further records from the executive director.
- [5] The substantive basis of the application for production of further records is to assist the respondents conducting the cross-examinations to establish that the evidence of the two new witnesses is unreliable because those witnesses were offered an incentive or were subjected to pressure to provide evidence favorable to the executive director. However, at this stage we have no evidence to support an inference that any reward was offered or pressure applied regarding the substance of what the witnesses would say. Based on all of the circumstances the two new witnesses would logically have felt considerable pressure to testify and the witnesses would benefit from the removal of that pressure. This is true of most witnesses who testify under compulsion. Based on the evidence before us to date it is at best speculative to conclude more than that the witnesses would have felt pressure to testify. As a result, at this time we are not ordering the executive director to produce new categories of documents related to discussions with the two new witnesses and their counsel.
- [6] We conclude that the evidence of the two new witnesses will be admitted only for the purpose of a decision regarding what sanction is in the public interest. Neither their evidence, nor any evidence admitted for the first time at the sanctions phase, forms a part of the record upon which we made liability findings.
- [7] The cross-examination of the two new witnesses may be broad ranging and may include a focus on why the witnesses chose to provide their evidence. General requirements of relevance will apply. We will not attempt to pre-define the full scope of what is relevant. Conclusions regarding relevance should be decided in the context of what answers the witnesses give to questions which are relevant.

- [8] With respect to scope of the cross-examination by the executive director of the witnesses whose affidavits were tendered by Kumar, we conclude that there are no circumstances here which justify going beyond the guidance set out in BC Policy 15-601 *Hearings* (15-601) to the effect that generally, cross-examinations on affidavits are limited to the subject matters of the affidavits. Questions relating to subjects raised in affidavits can include questions regarding credibility, for example regarding whether the witness personally benefits from the evidence given. We will not allow cross-examination questions on topics which are not put in issue by the affidavits sworn or affirmed by the witnesses.
- [9] We will not mandate delivery of a list of specific questions to be asked of witnesses under cross-examination. We have provided the parties with general guidance. Beyond that we should listen to the questions and, as appropriate, answers from the witnesses before deciding issues of relevance or addressing other potential objections.
- [10] We grant permission to the executive director to defer delivery of reply evidence until one week after the executive director cross-examines the witnesses tendered on behalf of Kumar. We do not discuss this topic below. We think it is sufficient to say, here, that all parties will be free to provide oral submissions during the oral hearing regarding the implications of the evidence which emerges during the cross-examinations. The executive director is being given the opportunity to incorporate that content into their reply, which has not yet been delivered. This provides the respondents with an opportunity to consider the content in advance of the oral hearing.

II. Background

- [11] In the paragraphs which follow, we set out the context for our decision, summaries of the submissions of the parties, and our more detailed analysis.
- [12] On January 19, 2026, the panel published its decision on liability in this matter, *Core Capital Partners Inc.*, 2026 BCSECCOM 16. The panel found that Core Capital Partners Inc. (Core Capital), Kamaldeep Thindal (K. Thindal), Amandeep Thindal (A. Thindal), Yazan Al Homsy (Al Homsy), and Kumar breached section 57(a) of the *Securities Act*, RSBC 1996, c. 418 (Act) and K. Thindal, A. Thindal, and Al Homsy authorized, permitted, or acquiesced in Core Capital's breach of section 57(a) and, by operation of section 168.2 of the Act, also contravened that section of the Act.
- [13] The liability decision directed the executive director to deliver submissions on sanctions by February 25, 2026, and the respondents to deliver their submissions on sanctions by March 25, 2026. Those dates were subsequently changed to March 4, 2026, and April 1, 2026, respectively.
- [14] On March 4, 2026, counsel for the executive director provided their submissions on sanctions with an affidavit that attached transcripts from two compelled interviews (Transcripts) that took place on January 21 and 22, 2026.
- [15] On April 20, 2026, Core Capital, A. Thindal and K. Thindal (the Core Capital Respondents) applied to the Commission for an order to exclude the Transcripts from the sanctions proceedings in this matter.
- [16] On April 20, 2026, the respondents filed their written submissions on sanctions. Kumar also filed four affidavits, one from himself, and an expert opinion report.

- [17] On April 28, 2026, counsel for the executive director sent an email to the Hearing Office and the other parties advising that they were seeking to cross-examine three of Kumar's affiants and that they were objecting to the admissibility of Kumar's expert report. Counsel further requested that the executive director's reply submissions on sanctions be postponed until after the cross-examinations.
- [18] On April 28, 2026, counsel for Kumar sent an email to the Hearing Office and the parties advising that he did not anticipate objecting to the cross-examination of the affiants but wanted the scope of the cross-examinations to be "clearly delineated in advance". Regarding the expert report, he requested a basis for the executive director's objection to its admissibility. Counsel for Kumar objected to the postponement of the executive director's reply submissions on the basis the postponement was "unfair to the process, the public interest, the parties, and the witnesses for the Executive Director".
- [19] On April 29, 2026, counsel for the executive director replied to Kumar's counsel's email advising:
- a) The only rule for limitation of cross-examination should be relevance.
 - b) The expert report did not include a *curriculum vitae* to help assess the expert's credentials and there was concern as to whether the expert's report was necessary or helpful to the panel.
 - c) The executive director's reply submissions are in reply to the respondents' sanctions submissions which include the affidavits and the expert report. As such, the executive director should be able to refer to his cross-examinations in his reply submissions".
- [20] On April 30, 2026, counsel for Kumar and Al Homsy requested a hearing management meeting. The hearing management meeting took place on May 13, 2026.
- [21] On May 11, 2026, the executive director provided his responding submissions to the application to exclude the Transcripts with an affidavit.
- [22] On May 19, 2026, the Core Capital Respondents provided their reply submissions regarding their application to exclude the Transcripts.
- [23] On May 22, 2026, the panel chair sent a request for submissions to the parties regarding which factors a panel should consider when the panel orders a witness to attend for cross-examination.
- [24] On May 29, 2026, the executive director provided his submissions regarding the May 22, 2026, request for submissions on cross-examination.
- [25] On June 8, 2026, the respondents provided their submissions regarding the May 22, 2026, request for submissions on cross-examination.
- [26] On June 18, 2026, counsel for the executive director submitted a sur-reply to the Core Capital Respondents' reply submissions. That same day, counsel for the Core Capital Respondents sent an email to the Hearing Office advising that if the panel allowed the sur-reply submissions

to be admitted, then he requested an opportunity to speak to those submissions at the oral hearing.

- [27] On June 19, 2026, counsel for the Core Capital Respondents submitted further reply submissions.
- [28] On June 22 and 23, 2026, the panel heard oral submissions from the parties.
- [29] On June 30, 2026, counsel for the Core Capital Respondents emailed the Hearing Office and the parties seeking leave to bring *Edmonton (Police Service) v McKee*, 2026 SCC 24 [McKee], to the attention of the panel.
- [30] On June 30, 2026, counsel for the executive director emailed the Hearing Office and the parties with their response to McKee.
- [31] On July 14, 2026, counsel for the Core Capital Respondents emailed the Hearing Office and the parties seeking leave to bring *United States of America v Mulholland*, 2026 BCSC 1298 [Mulholland], to the attention of the panel.

III. Positions of the parties

A. Application to exclude the Transcripts

Core Capital Respondents

- [32] The Core Capital Respondents argue that the Transcripts should be excluded from the sanctions hearing because:
 - a) The executive director is improperly splitting its case by attempting to introduce new evidence at the sanctions stage of the proceeding.
 - b) The executive director “improperly used its compelled interview powers, together with the coercive threat of imprisonment for contempt, in a manner that constitutes witness intimidation and an abuse of power”.
 - c) The evidence of the two witnesses in the Transcripts is hearsay that is “tendered without any opportunity for the Core Capital Respondents to cross-examine those witnesses” and that that evidence was “obtained in circumstances that would render their statements involuntary”. They rely on *R v Oickle*, 2000 SCC 38.
- [33] The Core Capital Respondents demand broad disclosure of all communications between the Transcripts’ witnesses and Commission staff regarding compelled interviews as well as all “internal Staff communications relating to the decision to schedule and conduct the compelled interviews after the conclusion of the liability hearing”.
- [34] The Core Capital Respondents say that the grounds for their application are:
 - a) The compelled interviews that resulted in the Transcripts were conducted after the liability hearing had concluded and after the two witnesses had been subject to contempt proceedings by the Commission.
 - b) The executive director is splitting its case by introducing material evidence “at a subsequent phase of the proceedings and then introducing it at a subsequent phase of proceedings as though it were new or previously unavailable”. They rely on *Allcock*

Laight & Westwood Ltd. v Patten, Bernard and Dynamic Displays Ltd., 1966 CanLII 282. The Core Capital Respondents say that the compelled interviews of the witnesses “were deliberately scheduled and conducted only after the hearing ended”.

- c) The respondents have been “materially prejudiced by the introduction of this evidence at the sanction stage” because:
- i. They have “had no opportunity to challenge, object to, cross-examine, or otherwise respond” to the evidence of the two witnesses.
 - ii. Cross-examination of the witnesses may produce evidence favourable to the Core Capital Respondents.
 - iii. The Core Capital Respondents were unable to “set their litigation strategy in accordance with the evidence disclosed by the Executive Director”.
 - iv. “The sanction phase is not intended to re-litigate or supplement liability findings... The evidentiary record for sanction purposes should be the record that existed at the close of the liability hearing”.
 - v. “Any threats, promises, or inducements” that were made to the witnesses in order to get them to attend their interviews are undisclosed and could be “relevant to the credibility and reliability” of the witnesses’ evidence.
 - vi. The evidence of the witnesses “is central to the disgorgement orders sought” which could be significant. “The evidentiary basis for orders of that magnitude must be procedurally sound and untainted”.
 - vii. The introduction of new evidence at the sanctions portion of a hearing undermines procedural fairness.

[35] The Core Capital Respondents argue that the introduction of new evidence at the sanctions stage “throws the administration of justice into disrepute” because the executive director could have, but did not, call the two witnesses as witnesses during the liability hearing. They rely on *R v Haevischer*, 2023 SCC 11, for the principle that the respondents are entitled to challenge whether there is “systemic misconduct in the manner in which the Executive Director’s investigative branch secured the attendance” of the witnesses.

[36] The Core Capital Respondents argue that they made decisions on how to defend themselves at the liability hearing based on the evidence available and that new evidence at the sanctions hearing prejudices them.

[37] The Core Capital Respondents include for the first time in their reply the argument that the two witnesses are “incentivized cooperators with a direct, traceable, and state-conferred interest in providing evidence aligned with the Executive Director’s theory of the case”. They cite the criminal law cases *R v Vetrovec*, [1982] 1 SCR 811 [*Vetrovec*], *R v Johnston*, 2019 BCCA 107 [*Johnston*], *R v Brooks*, 2000 SCC 11, *R v Khela*, 2009 SCC 4, *R v Vallee*, 2018 BCSC 892, *R v Rojas*, 2003 BCSC 1064, *R v Rojas*, 2003 BCSC 1066, *R v Rojas*, 2003 BCSC 777, *R v Snow*, [2004] 73 OR (3d) 40, *R v Sipes*, 2011 BCSC 150, *R v Perovic*, 2013 BCSC 2339, as well as *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*].

- [38] In their further reply submissions, the Core Capital Respondents argue that *Vetrovec* witnesses are not limited to criminal law and cite *British Columbia (Director of Civil Forfeiture) v Angel Acres Recreation and Festival Property Ltd.*, 2020 BCSC 880, *Simon (Guardian ad litem of) v Portsmouth*, 2010 BCSC 134, and *Faryna v Chorny*, 1951 CanLII 252, [1952] 2 D.L.R. 354 (BC CA).
- [39] The Core Capital Respondents say that the two witnesses were incentivized *Vetrovec* witnesses because the Commission agreed to waive costs and not pursue contempt proceedings if the two witnesses testified. The Core Capital Respondents say that the executive director admits to the existence of materials that relate to the contempt settlement because he has asserted privilege over those documents and that they are entitled to all correspondence that leads up to the settlement. They cite *United States of America v Mulholland*, 2026 BCSC 937.
- [40] Subsequently, the Core Capital Respondents submitted *McKee* and *Mulholland* [*supra*] for the panel's consideration.
- [41] Al Homsy submitted during the June 2026 hearing that he will suffer actual prejudice if the Transcripts are admitted because there were certain findings in the liability decision which were not properly supported by the evidence and the new witnesses provide evidence which relate to those same findings. As a result, admitting the new evidence now will unfairly prejudice the ability of Al Homsy to bring an appeal on the basis of insufficient evidence on the specific point.
- [42] The executive director argues:
- a) The findings on liability have been made and the new evidence is tendered only regarding what sanctions are appropriate and not for the purpose of influencing the liability findings.
 - b) "Tendering new evidence at the sanction hearing is not case-splitting", relying on *Michaels v British Columbia Securities Commission*, 2016 BCCA 144 [*Michaels*], as precedent for an enforcement hearing being two distinct phases: liability and sanctions. The executive director notes that Kumar is also introducing new evidence at the sanctions hearing to address what orders should be made against him and that this is not case splitting.
 - c) Section 173 of the Act states that panels must receive evidence from "a person to whom notice has been given" and "may receive relevant evidence submitted by any person". Panels are "not bound by the rules of evidence" but will generally admit "all relevant evidence", citing *Corporate Express Inc. (Re)*, 2004 BCSECCOM 680.
 - d) The Core Capital Respondents' argument that the witnesses' interviews constitute intimidation is a "bald assertion", "baseless and entirely without merit". The executive director refers us to the various Supreme Court and Court of Appeal cases that the witnesses brought against the Commission to prevent their interviews.
 - e) The respondents should be given the opportunity to cross-examine the witnesses on their Transcripts.
- [43] In their sur-reply, the executive director notes that the Core Capital Respondents raised their argument about *Vetrovec* witnesses for the first time in their reply. Nonetheless, the executive director argues:

- a) Commission panels are capable of weighing the evidence of witnesses without importing the criminal law concept of a *Vetrovec* warning.
- b) *Vetrovec* warnings require objective factors supporting a doubt about a witness's credibility such as involvement in criminal activities, a motive to lie, an unexplained delay in coming forward with their story, changing accounts of their story, and lies under oath.
- c) There is supporting evidence already in the record which is consistent with the evidence in the Transcripts. The executive director "has tendered compelling circumstantial documentary evidence that corroborates [the witnesses'] evidence at their investigative interviews".
- d) Imprisonment for contempt is rare without "evidence of active public defiance", citing *Langford (City) v dos Reis*, 2016 BCCA 460.
- e) The executive director cannot disclose "material the existence of which it is unaware or denies" and the respondent that alleges such material "must establish a basis which could enable the court to conclude that there is in existence further evidence which is potentially relevant". He cites *R v Chaplain*, 1995 CanLI 126 (SCC), [1995] 1 SCR 727, and says that the Core Capital Respondents "have failed to meet the test in *Chaplain* to establish a basis which could enable this panel to conclude the documents being sought exist".
- f) Any settlement discussions with the witnesses are subject to settlement privilege and for there to be an exception to that privilege, "a respondent must show on balance that "a competing public interest outweighs the public interest in encouraging settlement"". The executive director cites *Sable Offshore Energy Inc. v Ameron International Corp.*, 2013 SCC 37, and says that settlement privilege exists for the negotiations between the two witnesses and the Commission in the contempt proceeding.

B. Submissions on cross-examination

[44] On May 22, 2026, the panel chair requested submissions from the parties on the following questions:

- a) Should the approach in a sanctions hearing differ from a liability hearing or an application?
- b) Should the approach differ depending on whether a witness has filed an affidavit compared to other situations, for example where some of the witnesses evidence is introduced by transcript?
- c) Should the approach differ pending on whether some of the witness's evidence is directly contradicted by other evidence in comparison to situations where it is alleged that the evidence is incomplete or generally not reliable?
- d) Should the approach differ if the potential evidence relates only to issues in an application?

- e) If an examination is ordered, what factors should limit the scope of the examination?
- f) If an examination is ordered, what notice should the examining party provide to the witness and potentially to his counsel regarding the topics to be covered and the documents which might be referred to?

Executive Director

[45] The executive director submits that there “is no principled basis for the Commission’s approach to cross-examination to be materially different from the Supreme Court’s approach to cross-examination in a civil proceeding” because the goals of each are similar: to conduct proceedings fairly, flexibly, and efficiently. The courts and Commission panels consider the factors from *Cowichan Valley (Regional District) v Cobble Hill Holdings Ltd.*, 2015 BCSC 1995 [*Cowichan Valley*], as confirmed by the Court of Appeal in *Jury v Rogodzinski*, 2021 BCCA 395 [*Jury*]. Those factors are whether:

- a) there are material facts at issue;
- b) the desired cross-examination is relevant to an issue that may affect the outcome of the application in respect of the cross-examination order is sought;
- c) the cross-examination will serve a useful purpose by yielding evidence that would help determine an issue on the application;
- d) the information sought is available through other means; and
- e) cross-examination will produce unreasonable delay or generate unreasonable expense.

[46] The executive director answered the questions from the panel chair above as follows:

- a) “The Commission’s approach to affidavit evidence at a liability or sanction hearing should be the same.... Neither the executive director nor the respondents should be allowed to shield witnesses from cross-examination at a liability or sanction hearing by choosing to introduce affidavit evidence instead of having them testify orally, absent exceptional circumstances”. The executive director relies on *R v Lyttle*, 2004 SCC 5, *R v Shearing*, 2002 SCC 58, and *R v RV*, 2019 SCC 41, for the principle that a right to cross-examination is “a fundamental feature of a fair trial and is the ultimate means of demonstrating truth and testing veracity”.

The executive director notes that applications are treated differently than hearings where section 4.1(a) of 15-601 states that the Commission generally does not allow cross-examination of affidavit evidence. If cross-examination is allowed in the application after consideration of the *Cowichan Valley* and *Jury* factors, then “it will generally be restricted to the facts in issue in the tendered affidavits”. The executive director cites *Re Dhala*, 2024 BCSECCOM 379, *Re Morabito*, 2023 BCSECCOM 457, and *Party A (Re)*, 2024 BCSECCOM 69 [*Party A*].

- b) The “approach to ordering cross-examination of a witness who “testifies” by way of an affidavit or investigative interview transcript should be the same” as they are “similar in that they are both witness evidence sworn or affirmed outside the hearing room”. If there is no cross-examination then the evidence should carry “little to no weight on

material issues, with the exception of documents attached as exhibits, unless they can be corroborated by other evidence before the panel”.

Investigative interviews “should generally be given more weight than an affidavit” because “witnesses do not know the questions in advance of an interview and cannot tailor their evidence with the assistance of a lawyer”.

- c) “The approach should only differ depending on what stage the enforcement proceeding is at”. If it is a pre-hearing application then 15-601, section 4.1(a), and the *Cowichan Valley/Jury* factors should apply but if the application is made during a liability or sanctions hearing, then “cross-examination should not be confined to matters in the affidavit”.
- d) The same answer as provided in “a” above.
- e) In pre-hearing applications, cross-examination should be limited to “the facts in issue in the tendered affidavits”. Cross-examination in hearings “should only be restricted by relevance and privilege”, citing *R v Clayton*, 2021 BCCA 24, and *R v Burgar*, 2010 ABCA 318.
- f) There is no principled basis for providing advance notice “of the topics to be covered and the documents which might be referred to during cross-examination”, citing *Re Zhang*, 2023 BCSECCOM 315, and *Cahoon v Brideaux*, 2010 BCCA 228.
- g) “The witness’s affidavit or investigative interview transcript should be considered to be their direct examination. The tendering party should be limited in their direct examination of the witness to introductory questions such as confirming who they are, that they gave affidavit evidence or attended an investigative interview and that they swore or affirmed to tell the truth when they did so. The tendering party should not be permitted to introduce new facts outside of their affidavit or interview transcript on direct examination. The tendering party will have the right to re-examine the witness on matters arising on their cross-examination.” The executive director cites *Singh v Saragoca*, 2004 BCSC 1327, citing *R v Moore*, 1984 CanLII 3542 (ON CA).

Core Capital Respondents

- [47] The Core Capital Respondents do not “concede that the compelled-interview transcripts of [the two witnesses] are admissible in this proceeding”. However, generally, they “adopt the general frameworks advanced in the submissions of Kumar and Al-Homsi”.

Al Homsi

- [48] Al Homsi addressed “the panel’s questions (a), (b), and (e)” and says that he should have the right “as a matter of procedural fairness and the principles of natural justice, to have an opportunity to test the evidence of any person whose evidence is tendered against him in the sanctions hearing”.
- [49] Al Homsi says that because substantial financial penalties and lengthy market bans are being proposed, a “high standard of justice is required when the right to continue in one’s profession or employment is at stake”. He cites *Re Application 20210107*, 2021 BCSECCOM 394 [20210107], *Baker*, and *Kane v Bd. of Governors of UBC*, [1980] 1 SCR 1105.

[50] Al Homsy says that a respondent must be given “a real opportunity to test” any evidence tendered against him and that “untested evidence should be given little or no weight”. He cites *British Columbia (Securities Commission) v Alexander*, 2013 BCCA 111, *Re BLOK Technologies Inc.*, 2024 BCSECCOM 55, *Re Barker*, 2005 BCSECCOM 146, *Morabito v British Columbia (Securities Commission)*, 2024 BCCA 377, and *Re Blackmont Capital Inc.*, 2011 BCSECCOM 490.

[51] Al Homsy argues that cross-examination in the sanctions phase of a hearing should be limited to sanctions issues, not liability, and cites on *Re Core Capital Partners Inc.*, 2026 BCSECCOM 16, 20210107, and *Re Birdsall*, 2026 BCSECCOM 120 [*Birdsall*].

[52] Al Homsy says that relevance sets the scope of the cross-examination and that it should be limited to possible sanctions and not re-open liability.

Kumar

[53] Kumar notes that there are a number of reasons why sanctions hearings “are distinct from liability proceedings”:

- a) “Efficiencies are realized by requiring evidence and submissions on sanctions and costs in only those cases in which allegations of misconduct have been proved”: *Ontario Securities Commission v MRS Sciences Inc. et al.*, 2015 ONSC (dissent) [*MRS*], and *Greenway (Re)*, 2011 BCSECCOM 518 [*Greenway*].
- b) “Parties participating in a separate Sanctions Hearing get the benefit of knowing what factual findings have been made and what allegations have been proven”: *MRS* and *Greenway*.
- c) “Parties are not allowed to reopen the liability case at a sanctions hearing or rely on or refer to evidence that might challenge or conflict with the liability findings”: *MRS Sciences Inc. (Morningside Capital Corp.) et al.*, 2011 ONSEC 3, and *Xu v Yang*, 2023 BCSC 743.
- d) “Evidence that would be admissible at a Sanctions Hearing may not be admissible at the Merits Hearing”: *Factorcorp Inc. et al.*, 2013 ONSEC 34, *Re Spangenberg*, 2016 BCSECCOM 180, and *Re HRG Healthcare (Re)*, 2016 BCSECCOM 5.
- e) “At the sanctions phase, the respondents have the benefit of the Executive Director’s sanction submissions in writing, in advance of the oral hearing”: *Birdsall*.

[54] Kumar argues that at the liability stage of a hearing, “all issues, and the primary identification of the case which a respondent must meet, are anchored to the notice of hearing, including what evidence will be relevant” whereas at the sanctions stage, the primary identification of the proceeding are the liability findings and the consideration of sanctions that are protective, preventative and proportionate”. He cites *Birdsall*.

[55] Kumar cautions that case splitting “always should be kept in mind when considering the scope of cross-examination in a sanctions proceeding”. He says that the “rule against case splitting exists to” ensure fairness, eliminate prejudice and confusion, reduce inefficiency, reduce expense and delay, and prevent the executive director from “filling gaps in its case”. He cites *Factorcorp Inc. et al.*, 2013 ONSEC 34, *Tietz v Cryptobloc Technologies Corp.*, 2021 BCSC 186

[Tietz], *Commercial Electronics Ltd. v Savics – Cavitt Ruling*, 2011 BCSC 162, *Pollack v Advanced Medical Optics, Inc.*, 2011 ONSC 850, and *HMTQ v Wilder*, 2003 BCSC 1526.

- [56] Kumar argues that there is no difference in the test for allowing cross-examination in applications, liability hearings, or sanctions hearings but that “the test is and must be sensitive to the context or proceeding in which the request for cross-examination is made”. He cites *Stephens v Altira Group, Inc.*, 2021 BCCA 396.
- [57] He says that section 4.1 of 15-601 does not reflect the *Cowichan Valley* and *Jury* test and should consider what material facts are at issue, what issue(s) are relevant to the outcome of the proceeding, whether “the information sought is available through other means”, and “whether cross-examination will produce unreasonable delay or generate unreasonable expense”. He cites *Cowichan Valley, Jury*, and *Re Dhala*, 2024 BCSECCOM 379.
- [58] Kumar argues that “there is no automatic right to cross-examine on an affidavit” and that the executive director should demonstrate what material facts are at issue, that “cross-examination will be relevant to matters in issue”, or that “cross-examination will assist the Panel in assessing the issue in front of it”. He cites *Party A*.
- [59] Kumar says that sanctions hearings are different than interlocutory applications and liability hearings in that in sanctions hearings it is common that no additional evidence is called, the issues are narrower than at a liability hearing, the findings of fact made at a liability hearing should not be challenged, and the primary issue is “what protective, preventative and proportionate sanctions should be imposed to address the conduct made out at the liability phase”. He cites *Michaels*.
- [60] Kumar concedes that “cross-examination might assist the panel in determining sanctions that are protective, preventative and proportionate in relation to the findings made against Mr. Kumar” but that the panel should “impose clear ground rules for the scope of the cross-examinations”. He says that the scope of the cross-examination “should be limited to matters which have a potential relevance to the issues at hand in the proceedings which the affidavit supports”. He cites *Tietz, Doig v Muir*, 1997 CanLII 2029 (BC SC), and *R v Fox*, 2022 BCCA 403.
- [61] Kumar argues that the scope of cross-examination in a sanctions hearing will be narrower because the issues are determined by what has already been found at the liability hearing and what sanctions should be imposed that are protective, preventative, and proportionate. He says that cross-examination of his affiant and expert could aid the panel “in determining what sanctions would serve a preventative and protective role while also being proportionate”. However, Kumar argues that cross-examination should not be allowed regarding:
- a) Reliq Health Technologies Inc. because no liability was found against the respondents for that company.
 - b) Integrated Cannabis Company, Inc. because Kumar was not found to be liable to those allegations.
 - c) The other respondents because Kumar’s evidence is solely limited to his personal life, not the other respondents.
 - d) The executive director’s unspecified “collateral topics” because they are unidentified and could revisit liability issues.

- e) Questions of law, such as the factors relevant to sanctions identified in *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22.
- f) Specific harm to individual investors because the affiants and expert have not given evidence on this topic.
- g) The evidence of the two witnesses' Transcripts because the executive director has indicated that he would not be relying on the Transcripts for sanctions against Kumar.

[62] Kumar also argues that cross-examination on disgorgement should be limited in scope and not used "as an opportunity to fill factual and evidentiary gaps".

[63] Kumar says that "the specific areas that are within and outside of scope of any cross-examination should be defined in advance" to be fair to the witnesses and to protect the "integrity of the process".

IV. Analysis and Ruling

A. Exclusion of evidence from *witnesses submitted by the executive director*

[64] The substance of the objections to the evidence from the two new witnesses can be divided into two main categories. First, and most importantly, it is alleged that the executive director is splitting his case and thereby causing prejudice to the respondents. Secondly, it is alleged that the two witnesses are incentivized *Vetrovec* witnesses because, in order to obtain their agreement to be interviewed, the executive director agreed to not proceed with a contempt application which was nearing its potentially final hearing and the executive director agreed not to seek recovery from the two witnesses of the potentially significant costs of certain legal proceedings

[65] With respect to the case splitting allegation we start with the proposition that the executive director must treat the respondents fairly and the panel is also obligated to treat the respondents fairly. For respondents facing serious allegations in an administrative proceeding, fairness includes the right to know the case against them and an opportunity to present their own case in answer to what is alleged.

[66] The normal processes of the Commission after issuance of a notice of hearing, with which we are very familiar, are fair. Under those processes enforcement staff who have decided to complete an investigation and to bring certain allegations will provide a notice of hearing setting out the allegations as well as production of records at a standard which is very similar to the *Stinchcombe* standard in criminal cases. The obligation to produce records is a continuing obligation, so in addition to initial production, the executive director is obligated to produce further relevant materials as they are discovered. The expectation is that the initial production should include all materials relevant to liability and all materials related to sanctions, although supplemental disclosure in relation to sanctions is occasionally made by the executive director after liability is established. It is only at that point that certain issues relating to sanctions are focused upon, and in general no unfairness results if some sanctions documents are delivered after liability is established because before that time respondents are not called upon to respond to evidence related to sanctions.

[67] It is not uncommon that panels conducting a liability hearing will identify issues which will eventually need to be resolved but which need not necessarily be addressed at that time in order to determine whether or not the alleged breaches of the Act have been proven. Panels sometimes note that they are deferring consideration of such issues even when the issues were

the subject of evidence during the liability phase and even when the issues were in whole or part argued at that phase. Again, in general, this causes no unfairness to respondents, who retain a full opportunity to present their cases.

[68] It is not unusual for respondents to bring forward new evidence at the sanctions phase.

[69] In the present case the panel concluded that it had sufficient evidence to come to the conclusions which it expressed in its liability decision. The panel deferred making certain findings, stating at paragraphs 636 and 637:

[636] We did not need to calculate the gains made by Respondents in order to reach our conclusions about liability. However, we acknowledge that in many cases what are described as net trading proceeds in the summaries prepared by the investigator represent instead selling prices. We have not analyzed the issue in detail, or considered its implications regarding what sanctions are appropriate. We expect that we will eventually have to consider those issues very carefully, and so we ask that in addressing sanctions the executive director be very clear to distinguish between whatever different concepts should apply.

[637] We have also left to the sanctions phase the issue of whether certain accounts, likely accounts which were frozen by order of the Commission, are nominee accounts, or beneficially owned by one or more of the Respondents. We hope that this decision, and the reasons for it, allow the parties to focus on such issues and then to provide us with helpful submissions.

[70] While this proceeding was unfolding, the executive director was taking steps to obtain further evidence from two witnesses. The executive director asserts that it was not at fault for the evidence only becoming available when it did, referencing the following timeline:

- They were first summonsed to be interviewed in December 2020. The purpose of their summonses was to investigate possible contraventions of the Act by others. They did not attend.
- The Commission brought contempt proceedings against them in June 2021 for their failure to attend. They brought their own petition in July 2022, days before the first contempt hearing date, seeking judicial review of the investigator's decision to summons them.
- They were represented by counsel throughout the contempt proceedings and their judicial review proceeding. The Commission was represented by external counsel throughout both proceedings.
- Their judicial review proceeding was dismissed by the Supreme Court. The Court of Appeal dismissed their appeal of that dismissal in November 2023.
- They brought a constitutional challenge to section 144 and a disclosure application in the contempt proceeding. Their constitutional challenge and disclosure application were dismissed by the Supreme Court. The Court of Appeal dismissed their appeal of that dismissal in July 2024.
- Their contempt hearing was reset for December 6, 2024.
- On the eve of the contempt hearing, the Commission offered to adjourn the hearing if [redacted] and [redacted] agreed to attend interviews pursuant to section 144 on dates

suggested by their counsel (January 21 and 22, 2025). The Commission also agreed to waive the costs [redacted] and [redacted] were ordered to pay to the Commission in their judicial review proceeding. [redacted] and [redacted] accepted the Commission's offer.

- By that point in time, all that remained in the liability hearing were oral submissions set for January 7 and 10, 2025. After oral submissions began, it became necessary to add a third day on January 20, 2025.

[71] The executive director had the opportunity to apply to re-open the liability hearing and seek to introduce the new evidence from the two witnesses. Instead, the executive director provided disclosure to the respondents and left the evidence to be tendered only with respect to sanctions, should the panel find that liability was established.

[72] The issue of whether or not unfairness results to some or all of the respondents in the present context is best answered by asking, first, whether there was any abusive or otherwise improper conduct by the executive director in the timing of obtaining the evidence, second by asking whether the evidence from the two new witnesses can be limited to sanctions issues as is sought by the executive director and finally by asking whether the respondents now have a fair opportunity to respond.

[73] Regarding the question of why the executive director produced the evidence of the two new witnesses so late in this proceeding, we are keeping in mind the concern raised by some of the respondents that we should not allow a process which creates an incentive for the executive director to hold back certain evidence until the respondents cannot properly respond to it. In the present case, based especially on the judicial decision issued before the two new witnesses chose to provide their evidence, we find this concern about creating improper incentives to be a very faint concern. Here, relevant witnesses were identified in the course of an investigation and their evidence was sought in a timely way which would have made that evidence available to all in advance of the liability hearing. The witnesses took steps to avoid being compelled to provide evidence, and substantial delays resulted. We infer that the pressure of the judicial proceedings brought by the executive director played a significant role in the decision of the witnesses to answer questions, and it is likely that an ability to avoid an award of costs in the judicial proceedings was also a factor that they considered. The types of escalating pressure which the witnesses faced is entirely consistent with what every unco-operative witness might face. The Act allows the Commission and its representatives to compel testimony. The type of escalating pressure which most witnesses face if they choose not to comply with statutory compulsion is consistent with the Act. The pressure likely resulted in the evidence eventually coming available. We find that the executive director cannot be fairly criticized for delays in obtaining the evidence, nor for applying too much pressure to obtain that evidence. Certainly, the executive director cannot be fairly criticized for both at the same time, as some respondents seek to do.

[74] Turning to the question of whether the executive director can limit the evidence from the two new witnesses on the basis that it will form a part of the record in the sanctions phase but not the liability phase, we find that he can. According to our usual processes, in the absence of a decision to reopen the evidentiary phase of the liability hearing, we are not entitled to consider the new evidence in relation to sanctions. We will not do so in this proceeding.

[75] The above conclusion substantially addresses the fairness concern. The evidence from the two new witnesses will be considered only with respect to the question of what sanctions are in the public interest. The respondents have that evidence now, and they have an opportunity to

cross-examine the two new witnesses, to call their own evidence to rebut the witnesses' testimony, and make submissions regarding why the evidence is not reliable. They know the case to be met, and they can present their response. The result is a fair process.

- [76] Al Homsy has raised a more specific concern about whether the Court of Appeal might consider the evidence of the two new witnesses in relation to liability if we admit the evidence in relation to sanctions. We do not presume to provide instructions to the British Columbia Court of Appeal. What we can and should do is be clear that we are not admitting the evidence from the two new witnesses into the record with respect to our liability findings. With that said, we see no prejudice to any respondent from the alleged case splitting by the executive director.
- [77] Turning to the issues of whether the two new witnesses are *Vetrovec* witnesses we begin by concluding that the *Vetrovec* analysis, which related to when and how to warn a jury about the unreliability of certain witnesses in certain circumstances, is unhelpful in this context. The Core Capital Respondents assert that *Vetrovec* has not been strictly limited to the criminal context. That may be so. But it has no application to the present context. It is not our role to instruct any jury. It is our role to assess the credibility of witnesses, and we will consider every reasonable submission regarding witness credibility. For example, we might receive submissions about whether a witness is motivated to testify in a certain manner in order to avoid responsibility for his own conduct, and as a result the witness might choose to falsely cast blame on others. As a further example, where it is submitted that a witness will in some way be incentivized to testify to a specific version of events, we will consider that very carefully.
- [78] In the criminal context the *Vetrovec* analysis appears to be a useful framework. Here we find that it raises a number of technical issues which are time consuming and complex to resolve but which do not assist the panel in considering the reliability of witness evidence, including questions about whether the witness has a motive to mislead.
- [79] To repeat the substance of what we stated in our introduction, at this phase of the proceeding, there is evidence from the general circumstances that the two new witnesses would have perceived an incentive to provide evidence to avoid the consequences of a judicial proceeding and related award of costs . This does not create a basis to suggest that the two new witnesses were incentivized to provide a specific version of events which is different from their sworn testimony.
- [80] A further factor which we have considered are that questions about the reliability of a witness, even serious questions, generally do not result in the automatic exclusion of evidence from that witness. We see no proper basis to exclude the evidence of the two new witnesses.
- [81] The executive director came into possession of evidence after the evidentiary phase of the liability hearing was over. The evidence is relevant to sanctions, the evidence will be considered only in relation to sanctions and the respondents have an opportunity to both challenge the evidence and to rebut it. We will admit the evidence. Doing so will not cause unfairness.

B. Cross-examination of the two new witnesses, its scope, and production of materials in advance of the cross-examinations

- [82] Our analysis under this heading is guided by our more general conclusions, further below, regarding when cross-examinations should be ordered and how they should be limited.
- [83] Counsel conducting a cross-examination regarding credibility should be permitted a broad scope. All witnesses should be protected from unfair ambushes and from harassment. However

tough, direct questions are permitted. The parties who have applied to cross-examine the two new witnesses will be given a broad scope to conduct their cross-examinations, including with respect to credibility generally and specifically whether they perceived that they were offered any incentive or were threatened with any consequence based on what evidence they gave. Relevance to the issue of sanctions will be a limiting factor.

- [84] We are not applying the *Vetrovec* test. That test is technical and tailored to the criminal context. Addressing how to adapt the test and apply it in the administrative law context is an unhelpful distraction. It is more important to understand the underlying basis for the test, which is to ensure that the decisionmaker carefully considers the sources of bias which might impact witnesses, and to recognize that the potential biases can be acute in some situations. The need to consider factors such as witness motivation and reliability as discussed in *Vetrovec* and related cases is fundamental even in the absence of strict application of *Vetrovec*.
- [85] In this proceeding we have decided to allow those respondents who have applied to cross-examine the two new witnesses to explore whether an incentive was offered or a threat was perceived, but we have not, at this point, ordered the executive director to produce various requested categories of documents which might relate to the same topic. We did so, in part, because it is critical to be conscious of the perspective of the witness in assessing whether that witness perceived an incentive or a threat. This view was expressed by the British Columbia Court of Appeal *Johnston*:

Management of Crown witnesses by police investigators, including the promise of any benefits or special treatment pre-trial, can bear on the witnesses' motives and states of mind during trial testimony, and whether those inducements influenced them to shape their testimony: *Palmer* at para. 32. Benefits received by a witness may provide fodder for the defence to challenge the independence, reliability and credibility of the witness

- [86] The above passage is significant in this context because it establishes that we should focus on what the two new witnesses perceived. Their evidence about their perception is an appropriate starting point for any inquiry into whether they perceived an offer of an inducement or the threat of a consequence which might relate to the reliability of their evidence. The answers from the two new witnesses might convert what is currently a speculative, bare allegation that they perceived an incentive or a threat which might influence the substance of their testimony into a topic which justifies further inquiry.
- [87] The general circumstance support conclusions that the two new witnesses would likely have perceived pressure, and incentives, to provide testimony. As we have stated, this is distinct from perceiving pressure or incentives to provide specific testimony favorable to the executive director's position.

C. Scope of cross-examination of witnesses whose affidavits were tendered on behalf of Kumar

- [88] Before we address the permitted scope of the cross-examinations of the affiants whose evidence was tendered on behalf of Kumar, we offer some general conclusions about cross-examinations. In this regard we offer our thanks to all counsel for their thoughtful and helpful submissions.
- [89] We were here faced with a situation where witnesses provided affidavits on behalf of Kumar which the executive director would like to challenge. The executive director would have been able to cross-examine those witnesses as of right if the witnesses appeared in person at the

sanctions hearing. Kumar's counsel worried that the executive director would seek to cross-examine the witnesses on a broad range of topics, including regarding the conduct of other respondents, in order to conduct what would effectively consist of an interview of the witnesses which sought evidence to reinforce the findings of this panel regarding liability. To perhaps oversimplify Kumar's objections, this approach would bring the liability issues forward into the sanctions phase. In addition, counsel for Kumar expressed concerns about his ability to prepare witnesses for an open-ended series of topics given the scope of issues raised by the large and complex fact pattern present here.

[90] At the same time, the Core Capital Respondents brought an alternative application for an order to permit cross-examination of the two new witnesses. In contrast to the application of Kumar, which asserted that parties conducting cross-examinations should provide cross-examination questions, or at least cross-examination topics, in advance, the Core Capital Respondents offered no advanced warning of questions to be asked and sought advanced production of records from the party who tendered the evidence of the witnesses. We did not fault the Core Capital Respondents for their approach. However, we wanted to achieve appropriate coherence in our own response. As a result, we asked a number of general questions of counsel regarding cross-examinations and we received useful responses.

[91] We will not attempt to analyze and comment on all of the submissions received. We have concluded that we cannot go too far towards setting out a single, consistent approach, because each proceeding will involve its own set of factors. But we will set out some general conclusions which assisted us in reaching this decision:

- a) The same general approach to cross-examinations applies to all parties.
- b) There can be significant advantages to admitting evidence in affidavit form. As just one example, affidavit evidence which establishes facts which are essentially uncontested can speed up a hearing and avoid inconveniencing witnesses.
- c) Cross-examinations on affidavits are not available as of right.
- d) Some of the factors relevant to whether a cross-examination should be ordered are the existence and extent of the factual dispute, the importance of the issue being addressed, the degree of relevance of the issue being addressed, and whether the witness whose attendance at a cross-examination is sought is the only potential source of the evidence.
- e) The factors immediately above collectively imply that, for example, where a respondent speculates that some aspect of the conduct of Commission staff might result in a procedural challenge, a cross-examination will not usually be ordered. In contrast, where an application has been brought which establishes a serious issue which relates to the substance of the allegations against a respondent or whether a proceeding should continue, and where evidence to address the issue is uniquely in the control of the executive director, then a cross-examination of a witness from the Commission is likely to be appropriate.
- f) If affidavit evidence is admitted in a liability or sanctions hearing at which viva voce evidence is permitted and the right to cross-examine is essentially automatic, that is a factor which makes it more appropriate to order a cross-examination than would be

the case in a procedural application where affidavit evidence is the default form of evidence.

- g) Where cross-examination is ordered, its scope will be generally limited to the subject matters raised in the affidavit. In general, credibility is always a topic that can be explored by cross-examination.

[92] Our conclusions above with respect to the cross-examinations of the two new witnesses reflect the general approach which we described.

[93] With respect to the cross-examinations of the witnesses whose affidavits were tendered by Kumar, most of the concerns expressed are resolved by our conclusion that those cross-examinations should be limited to the topics addressed in the affidavits, plus credibility. Witnesses and parties cannot object to questions on topics which they have put at issue. Further, if the witnesses had attended the hearing and provided evidence orally rather than in affidavit form, then they would have been subject to cross-examination.

[94] Given the breadth and complexity of the entire proceeding, and given the relatively limited issues raised in a sanctions hearing compared to the liability hearing, it is appropriate that the limits that we have expressed should apply. However, further limits should not be imposed. In particular we conclude that there is no basis present to compel counsel for any of the parties to reveal their questions in advance of the cross-examinations.

September 28, 2026

For the Commission

Gordon Johnson
Vice Chair

Judith Downes
Commissioner

Jason Milne
Commissioner