

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

Citation: Re Rafal, 2026 BCSECCOM 344

Date: 20261009

Rona-Joanne Galeon Rafal

Panel	Gordon Johnson Warren Funt Jason Milne	Vice Chair Commissioner Commissioner
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Submissions completed September 8, 2026

Ruling date October 9, 2026

Counsel	
Mikhael Magaril	For Rona-Joanne Galeon Rafal
Mila Pivnenko Jillian Dean	For the Executive Director

Ruling and Reasons for Ruling

I. Background

- [1] The notice of hearing in this proceeding was issued April 17, 2024 (2024 BCSECCOM 142). At the early stages of the proceeding, the respondent Rona-Joanne Galeon Rafal (Rafal) raised a constitutional issue relating to whether sections 161(6.1) and 162(3) of the *Securities Act*, RSBC 1996, c. 418 (Act) are contrary to section 96 of the *Constitution Act*, 1867 because they create a contempt power which is only available to section 96 judges.
- [2] Rafal and the executive director agreed that the resolution of the constitutional issue should not be determined until after the panel reached its findings regarding the allegations in the notice of hearing. The panel released its liability findings on October 9, 2025 in *Re Rafal*, 2025 BCSECCOM 461 (Findings).
- [3] In its Findings, the panel defined the relevant investigation order, demand for production, and summons to attend before an investigator as the Demand, the Summons and the IO, respectively. We adopt those defined terms in these reasons.
- [4] After the panel released its Findings, the parties began to deliver submissions regarding the substance of both the section 96 constitutional issue and a second constitutional issue regarding the scope of the Summons and Demand with which Rafal had failed to comply.
- [5] On January 7, 2026, Rafal filed a Notice of Application to Determine Constitutional Validity and Application for Constitutional Remedies pursuant to section 8 of the *Constitutional Question Act*, RSBC 1996, c. 68 (Constitutional Application).
- [6] Rafal also sought to conduct a cross-examination of the investigator (Investigator R) who collected evidence before the hearing and who testified at the liability hearing. This decision relates to Rafal's application for a right to cross-examine Investigator R.

- [7] Further context is provided in an earlier procedural ruling at 2026 BCSECCOM 183.
- [8] On March 2, 2026, the executive director took the position that a *viva voce* examination of Investigator R on the constitutional question is unnecessary because his evidence will be irrelevant.
- [9] Rafal's submissions on the cross-examination application were received April 23, 2026. The executive director's response was received May 22, 2026. Rafal's reply submissions were received May 29, 2026. Upon the application of the executive director, a right of sur-reply was granted on June 23, 2026, and the executive director's sur-reply was received on June 26, 2026.
- [10] Much of the focus of the submissions related to what topics Rafal might address in a cross-examination, and whether any of it would be relevant.
- [11] On July 31, 2026, the panel invited the parties to provide further submissions on *Re Birdsal*, 2026 BCSECCOM 224 [*Birdsal*]. We also gave the parties leave to provide submissions regarding *Democracy Watch v Canada (Attorney General)*, 2026 SCC 28 [*Democracy Watch*]. Those submissions have now been received and considered.
- [12] For the reasons below, we have determined that the examination of Investigator R should not be ordered at this time. The hearing into the merits of the constitutional issues should proceed, as previously communicated to the parties, on November 26 and 27, 2026. If further evidence will be helpful after the completion of that hearing, then we will schedule a cross-examination of Investigator R.

II. Positions of the Parties

A. Position of Rafal

- [13] Rafal submits that Investigator R's evidence is required because he can address:
- Whether he is of the view, as an investigator, that a witness has any reasonable expectation of privacy in any business records, including email correspondence.
 - Whether he is aware of any legal restriction on the scope of what records an investigator may demand from a witness.
 - His interpretation of the scope of the Demand with reference to its direction to produce "all documents ... related to: [companies named in the IO]".
 - The source of the Demand's wording (was the Demand a standard Commission template, or did he tailor the Demand according to the specific circumstances of the case including his knowledge of what records already exist from other sources).
 - Whether he had first sought the same records from the subjects of the IO.
 - Whether he had successfully obtained copies of the records from any subject of the IO, or any other witness or source.

- The scope of his knowledge, when he issued the Summons and Demand, of Rafal's employment, personal circumstances, and relationship(s) with any subject(s) of the investigation, and of Rafal's active involvement, if any, in the companies in question.
- The rationale, if any, for his belief that the records in question were possessed by Rafal, or were still in her possession at the time of the Summons and Demand.
- Whether he was aware of legal authorities that affirm the necessity of stating the purpose and scope of a compelled examination.
- Whether he was aware of whether the IO remained active at the time of the Summons and Demand.
- His rationale for not attaching the IO to the Summons and Demand.
- His rationale for not attaching any other stated basis of materiality to the Summons.
- Whether he was aware of the scope and effect of sections 161(6.1) and 162(3) at the time he issued the Summons and Demand.
- His awareness of the extent, if any, of adjudicative supervision or oversight of an investigator's conduct of an investigation, including issuing Summons and Demands.

[14] In her initial request to cross-examine Investigator R, Rafal framed the primary basis for relevance as follows: "the Ontario Court of Appeal, in *Binance v Ontario (Securities Commission)*, 2025 ONCA 75[1], has significantly clarified and developed the law governing the constitutionally permissible scope of securities investigators' power to compel evidence: in particular, that securities investigators' powers of compulsion are limited to relevant evidence, as determined by the scope of the investigation." [emphasis in original]

[15] Rafal submits that the answers given by Investigator R might also be relevant in connection to selecting an appropriate constitutional remedy as there is a stark difference between a state actor that acts in good faith and one who deliberately flouts the constitutional rights of an individual.

[16] Rafal later provided submissions related to *Birdsall* and *Democracy Watch*. She provided a helpful summary of those submissions:

The Applicant maintains that *Binance Holdings Limited v Ontario Securities Commission*, 2025 ONCA 751 has significantly altered the allowable scope of a Demand issued pursuant to s. 144 of the *Securities Act*. She further asserts that the Supreme Court of Canada's recent, highly consequential decision in *Democracy Watch v Canada (Attorney General)*, 2026 SCC 28 is directly applicable the Panel's determination of liability in these proceedings. The immediate, practical implications for these proceedings are as follows:

- i. There is a clear need for *viva voce* evidence from [Investigator R] regarding his role, belief, and purpose in the issuance of the Summons and Demand, both in light of the Charter principles at work and—given *Democracy Watch*—the need for the Executive Director to establish the legality of [Investigator R]'s exercise of powers;

- ii. As a result of the decision in *Democracy Watch*, the Applicant will be bringing a separate application for the panel to reopen its liability decision to assess the legality of the Demand and Summons in light of the principles affirmed in *Democracy Watch*, including the fact that s. 170 of the *Securities Act* must now be treated as constitutionally invalid. This is buttressed by the fact that the Applicant was not allowed to pursue this avenue of questioning in her cross-examination of [Investigator R].
- iii. As a further result of *Democracy Watch* and its consequence of invalidating s. 170 of the *Securities Act*, the B.C. Court of Appeal's previous recent decision in *Brar v British Columbia (Securities Commission)*, 2023 BCCA 432 has been overturned. The Applicant will be seeking judicial review of the original Demand and Summons. If the B.C. Supreme Court quashes the original Demand and Summons through judicial review, then there is no jurisdiction to continue this hearing.
- iv. In light of the proposed steps to re-open the liability decision, and seek judicial review the Applicant requests a case planning meeting to determine the logical next steps in these proceedings, including sequencing.
- v. Finally, given the expanding scope of these submissions with respect to the impact of *Binance*, *Democracy Watch*, and *Birdsall*, the Applicant now believes that a half day oral hearing for oral submissions should be ordered.

B. Position of the executive director

- [17] The executive director submits that Investigator R gave evidence at the liability hearing and was cross-examined then, including regarding the content of the Summons and the Demand, the service of those documents, and his role in the process. His evidence forms a part of the record regarding the constitutional issues.
- [18] The executive director submits that the proposed cross-examination questions are irrelevant. Investigator R is not a lawyer, and the executive director submits that his lay opinions about the legal landscape as well as his personal views or reasoning have no bearing on the constitutionality of the provisions of the Act which are challenged.
- [19] With respect to the suggestion that the cross-examination questions might be relevant to the issue of what Charter remedy is appropriate, the executive director submits that the authority relied upon by Rafal, *R. v Beaver*, 2022 SCC 54 [*Beaver*], does not support the submission made. In *Beaver* there had been extremely serious police misconduct and that was a factor in excluding ill-gotten evidence in a criminal trial. Here, there is no evidence to exclude.
- [20] With respect to Rafal's interpretation of the *Binance* decision, the executive director submits, in part, that the Court in *Binance* did not refer to any evidence of the investigator's subjective understanding of the status of the underlying investigation. The executive director rejects the interpretation of *Binance* as creating a completely new test for relevance in a securities investigation.
- [21] The executive director submits that the question before the panel is not whether the Demand or the Summons were truly necessary, or if the information or records could have been obtained from some other source. The question is whether the Demand itself was so overbroad that it constituted an unreasonable seizure contrary to section 8 of the Charter, and whether the Summons itself was so without foundation that it contravened the Respondent's liberty interests

under section 7 of the Charter. The executive director submits that these must be answered on the face of the Demand and the Summons, as was the case in *Binance*.

[22] In his specific response to the *Binance* case, the executive director states, among other things:

The Respondent interprets the requirement that documents be relevant to the “inquiry in progress” as a requirement that document relevance be defined by the status of the investigation itself. This theory is unsupported by *Binance* and the principles of relevance. A relevant document will be relevant regardless of what other sources of information are available. [emphasis in original]

III. Analysis and Ruling

[23] The relevance of the questions which Rafal seeks to ask Investigator R is conditional on our agreeing with Rafal that the pre-existing law has been overturned by the Ontario Court of Appeal in *Binance* and relevance should be assessed by the scope of the investigation. This is, in turn, the substance of one of the key constitutional issues which Rafal has raised.

[24] This situation creates some difficulty for the panel. The proposed cross-examination is relevant if we eventually rule in Rafal’s favour on the constitutional issue, but only in that case. Normally when a party seeks to introduce evidence on an issue which might or might not be relevant, we determine the scope of what is relevant and then rule accordingly on the admissibility of the evidence. Here, the constitutional issues are important and deserve careful argument before we determine them.

[25] Our solution is to dismiss the application to conduct the cross-examination at this time, with leave for Rafal to renew the application after we hear oral submissions on the scope of the *Binance* case as well as related submissions. This spares the parties and the hearing process from the need to deal with a cross-examination which might prove to be completely irrelevant.

[26] We recognize that Rafal also seeks evidence of bad faith from Investigator R to support a suggestion that the alleged Charter breach here was intentional, which would have implications regarding what remedy might be important. Again, our solution is to dismiss the application to conduct the cross-examination, with leave granted for Rafal to renew the application if circumstances change. Before we determine that a Charter breach in this case was intentional, we should, in the present circumstances, determine if there has been a breach of the Charter at all.

[27] Rafal asserts that she will bring a separate application to reopen the liability decision in this case in light of Rafal’s position that section 170 of the Act must now, after the *Democracy Watch* decision, be treated as constitutionally invalid.

[28] Rafal also asserts that the British Columbia Court of Appeal’s decision in *Brar v British Columbia (Securities Commission)*, 2023 BCCA 432, has been overturned by *Democracy Watch* and as a result Rafal will be applying for judicial review at the British Columbia Supreme Court. Again, the issues which will be addressed by the British Columbia Supreme Court are not before us.

[29] Rafal suggests that we should allow further oral submissions and consider re-ordering the sequence of our planned steps. We agree, although not to the new sequencing which Rafal has in mind. We order that the hearing on the merits of the constitutional issues proceed as set out below. Depending on our analysis of submissions at that hearing, we might require further, oral

submissions regarding the collection of new evidence or regarding other issues. But there is no advantage to delay.

IV. Scheduling Order

[30] Prior to a hearing management meeting on May 5, 2026, dates had been set for the parties to file materials relating to the Constitutional Application. Those dates were:

- a) May 7, 2026: Rafal to deliver any affidavit evidence for use in the Constitutional Application together with her written submissions,
- b) May 29, 2026: the executive director to deliver any evidence in response to the Constitutional Application, together with his written submissions, and
- c) June 5, 2026: Rafal to deliver reply materials, if any.

[31] After hearing from the parties at a May 5, 2026 hearing management meeting, the panel chair made directions relieving the parties from the dates for filing materials in the Constitutional Application. A letter to the parties summarizing that hearing management meeting stated, in part:

We discussed what the parties see as the best path forward. It was agreed, and I directed, that Ms. Rafal be relieved of the current deadline of May 7, 2026... The follow-on deadlines for the response and reply are similarly set aside. The panel will include a scheduling order in either its ruling on the examination of [Investigator R], or the 5-member panel, which will set out the timing for the response and reply as well as separate dates for sanction submissions.

[32] After communicating with the parties about mutually-agreeable hearing dates, the hearing office wrote to the parties on May 11, 2026 to advise:

The parties should plan for the evidentiary hearing, if one is ordered, to take place on November 6 and 12, 2026. The parties should plan for the oral hearing regarding the constitutional question to occur on November 26 and 27, 2026. A hearing notice will follow. It is likely that a formal scheduling order will be issued when the hearing panel next rules on one of more of the procedural issues before it.

[33] We order as follows:

- a) the hearing regarding the Constitutional Application will proceed on November 26 and 27, 2026;
- b) no later than October 26, 2026, Rafal will deliver any affidavit evidence for use in the Constitutional Application together with her written submissions;
- c) no later than November 10, 2026, the executive director will deliver any evidence in response to the Constitutional Application, together with his written submissions;
- d) no later than November 18, 2026, Rafal will deliver reply materials, if any; and
- e) after the hearing panel has considered the submissions of the parties at the hearing, the hearing panel may re-consider this application to cross-examine Investigator R and issue

a new scheduling order to permit that cross-examination to take place and be considered before a final decision is reached on the Constitutional Application.

- [34] We will address the delivery of sanctions submissions in respect of the conclusions in the panel's Findings in a subsequent order, likely after we have resolved the issues raised in the Constitutional Application.

October 9, 2026

For the Commission

Gordon Johnson
Vice Chair

Warren Funt
Commissioner

Jason Milne
Commission