

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

Citation: Re Rafal, 2026 BCSECCOM 183

Date: 20260601

Rona-Joanne Galeon Rafal

Panel	Gordon Johnson Warren Funt Jason Milne	Vice Chair Commissioner Commissioner
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Submissions completed April 29, 2026

Ruling date June 1, 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 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. 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 findings on October 9, 2026 in *Re Rafal*, 2025 BCSECCOM 461.
- [2] On December 10, 2025, the Commission issued its decision in *Re Birdsall*, 2025 BCSECCOM 533 [*Birdsall*]. *Birdsall* addresses many of the issues which are raised in Rafal's current application. Two of the panel members of this panel, Vice Chair Johnson and Commissioner Milne, were members of the panel in *Birdsall*.
- [3] On January 7, 2026, Rafal filed her current application, which was described as a Notice of Application to Determine Constitutional Validity and Application for Constitutional Remedies (Constitutional Application). The Constitutional Application addresses the issues Rafal had originally expressed an intention to address and some additional issues.
- [4] By a notice of application dated March 25, 2026, Rafal seeks the appointment of a five-member panel. The specific wording of the order sought is:

An order that the Commission chair appoint a five-member panel to hear the Applicant's Notice of Application regarding the constitutionality of ss. 161(6.1) and 162(3), as well as a remedy for breaches of the Applicant's rights under ss. 7 and 8 of the Charter, which was filed January 7, 2026.

- [5] Subsequently, Rafal has clarified that although she is seeking the appointment of a five-member panel she does not take the position that the decision should be made by the Commission Chair

(as opposed to by the existing panel) and she does not take the position that the five-member panel must exclude Vice Chair Johnson and Commissioner Milne. Rafal is not suggesting that a reasonable apprehension of bias exists.

- [6] On March 31, 2026, the hearing office sent an email to the parties seeking submissions on the Commission's decision in *Re New Point Exploration*, 2023 BCSECCOM 170 [*New Point*]. Submissions on that topic were received.
- [7] We have determined that this panel is the appropriate body to decide the issue in this application: whether a five-member panel is necessary to allow Rafal to advance her arguments fairly and to have them considered fairly. This panel is most familiar with the issues in this proceeding, and our deciding this application is consistent with the goals of holding a hearing that is fair, flexible and efficient as contemplated by BC Policy 15-601 - *Hearings* and, in particular, sections 1.2 and 2.1 of that policy.
- [8] For the reasons below, we have determined that a five-member panel is not necessary. Accordingly, we need not comment on any procedural steps that would be required for the appointment of a five-member panel by the Commission Chair and we do not do so.

II. Positions of the Parties

A. Position of the Applicant Rafal

- [9] The primary submissions of Rafal are:
- Although the Commission is free to overrule its recent decision, the Commission must follow the well-established principle of maintaining consistency among like decisions. This applies all the more so in a case such as this case where the constitutional validity of a statutory provision is under review and the standard of review is correctness.
 - Appellate courts take the approach of appointing a five-member panel when considering whether to overturn an existing decision of the same court.
 - The guidelines for when an appellate court may overrule its own previous decisions are established in cases such as *British Columbia v Worthington (Canada) Inc.*, 1988 CanLII 175 (BCCA) and *Nathanson, Schachter and Thompson v Inmet Mining Corp.*, 2009 BCCA 385. These authorities establish that an appellate panel of three should only reverse a prior decision when specific criteria are met, such as when the previous decision is manifestly wrong.
 - Where it appears that it will be challenging to convince a panel of three to reverse a prior decision, the appointment of a panel of five may foster confidence in the administration of justice by ensuring that justice is appearing to be done.
 - The Commission's decision in *New Point* was distinct because here Rafal is seeking a procedural safeguard in her own proceeding, while the applicant in *New Point* was seeking to intervene in a proceeding where the common issue had not been decided.
 - Appointing a panel of five in this proceeding will not create a precedent in other proceedings.

B. Position of the executive director

[10] The primary submissions of the executive director are:

- The appointment of a panel of five is not required by the Act.
- The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII) [Vavilov] expressly stated that administrative decision makers are not bound by internal precedents, and that departure from established internal decisions will be reasonable if that decision is justified.
- *New Point* confirms that although panels look to the Commission's own precedents for guidance, all panels must also consider all alternative legal arguments raised and reach what they consider to be correct legal conclusions in light of *Vavilov*. This applies whether the panel has three members or five.
- The Commission is not a court.
- Changing the composition of the panel will cause delay and administrative burden.

III. Analysis and Ruling

- [11] Our analysis begins with the proposition that the tribunal of the Commission is not a court. Administrative law both permits and requires us to follow procedures which allow the parties to fairly present their cases. We must be fair, and we should be aware that in general the practices and procedures of courts have developed for the purpose of achieving fairness. But this does not mean that their practices and procedures apply to us. We can create our own practices and procedures, so long as they are fair.
- [12] Although, as Rafal accurately submits, *New Point* was decided in a different context, *New Point* supports the conclusion that all panels are obligated to reach what they consider to be correct legal conclusions. This means that if a panel reaches a conclusion regarding a legal issue such as the constitutionality of a statutory provision, the panel must apply the legal conclusions which it considers to be correct. This is true whether the panel has three members or five members.
- [13] As the parties all agree, and as the case authorities cited by the parties demonstrate, panels are not bound by prior decisions.
- [14] The question then becomes whether a five-member panel must be appointed in order to ensure fairness.
- [15] This panel can and will fairly consider all of Rafal's arguments about the constitutional issues raised by Rafal.
- [16] We understand Rafal's submission to the effect that it may appear more fair if a panel of five is appointed. Although Rafal is explicitly not submitting that a reasonable apprehension of bias exists, this particular submission appears to engage some of the issues which would arise in an application for recusal for bias. Given that, it seems appropriate that we should consider Rafal's submission about how the situation appears from the perspective which a reasonable and informed observer would hold. There is no reason for a reasonable and informed observer to conclude that a panel of three members will not consider the legal issues and come to its own conclusions.

[17] It is appropriate for us to consider the administrative burden which would be created if a panel of five members were to be appointed in these circumstances. Although we do not agree with the executive director that delay in this proceeding would necessarily result, we also disagree with Rafal that the appointment of a panel of five members would not create a precedent. It is very common that the same legal issues arise before panels in proceeding after proceeding, year after year. Often a party will submit that an existing interpretation made by a prior panel is incorrect, or at least overly broad or otherwise requiring a modification. If such proceedings should be interrupted each time a party develops a perception that a panel of five would be more open to the arguments made, the result will be a pattern of delay and disruption to our hearing processes.

[18] The application for the appointment of a panel of five members is dismissed.

June 1, 2026

For the Commission

Gordon Johnson
Vice Chair

Warren Funt
Commissioner

Jason Milne
Commission