

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

Citation: Re William Birdsall, 2025 BCSECCOM 127

Date: 20250327

William Gareth Birdsall

Revocation Order

Background

- [1] The executive director applies to revoke an order for substituted service on William Gareth Birdsall (Birdsall) identified as COR #2024/057 (Substituted Service Order).
- [2] On June 19, 2024, the Commission Chair issued the Substituted Service Order. The Substituted Service Order stated that the executive director applied for the order because investigators had attempted to serve Birdsall in 2023 and 2024 and had reason to believe that he was evading service. The executive director provided submissions and affidavits to support his position.
- [3] On June 21, 2024, a Commission investigator issued a summons to attend before an investigator and a demand for production under section 144 of the *Securities Act*, RSBC 1996, c. 418 (Act) that relied on the Substituted Service Order for service.
- [4] On December 12, 2024, the executive director issued a notice of hearing alleging that Birdsall failed to comply with the summons contrary to section 57.5 of the Act, and that he was also liable under sections 161(6.1) and 162(3) of the Act. The notice of hearing stated that the Substituted Service Order was the basis for service of the summons.
- [5] On February 28, 2025, the executive director discontinued the proceedings against Birdsall (2025 BCSECCOM 77). Counsel for the executive director also sent a letter to the Hearing Office advising that Commission staff had “identified some issues with the materials that were put before the Chair when obtaining” the Substituted Service Order. The letter requested that the panel revoke the Substituted Service Order.
- [6] On March 19, 2025, counsel for Birdsall sent an email to the Hearing Office advising that Birdsall “agrees that the substitutional service order should be revoked.”

Applicable law and analysis

- [7] We are treating the executive director’s letter as an application under section 171 of the Act to revoke the Substituted Service Order (Application). The executive director did not submit any affidavit evidence.
- [8] Section 171 of the Act gives a Commission panel the discretion to make an order revoking or varying a decision made by it or by a single commissioner if it considers that to do so would not be prejudicial to the public interest. Section 171 reads:

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.

- [9] British Columbia Policy 15-601 *Hearings* provides further explanation about a panel's discretion to revoke a decision:

9.10 Post Hearing Applications - applications to vary and appeals of decisions

(a) Discretion to revoke or vary – 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. 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.

Before the Commission changes a decision, it must consider that it would not be prejudicial to the public interest to do so. If a panel of the Commission is considering its own decision, this usually means that the party 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. If the Commission is considering a decision made by a single commissioner, the Commission may consider other factors.

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.

- [10] Section 144(1.1) of the Act requires that demands "be served personally". Section 144(1.2)(a) states that if a person is evading service, then the Commission may make a substituted service order.
- [11] As noted by the panel in *Re Application 20240726*, 2024 BCSECCOM 459, the "ordinary meaning of the word 'evading' includes some level of awareness and avoidance."
- [12] In the Application, the executive director advised that in an affidavit of a Commission investigator that was provided to the Chair on the application for the Substituted Service Order, the investigator swore that Birdsall's British Columbia driver's licence records indicated that Birdsall had resided at two different addresses in British Columbia for particular periods. The Application stated that it had since been determined that that statement was inaccurate in that it omitted an intervening address for Birdsall. Further, the affidavits provided to the Chair included evidence of attempts to serve Birdsall at an additional address used by the process server in error.
- [13] In the Application, counsel for the executive director stated that the executive director's submissions when he sought the order for substituted service relied solely on the service attempts made at only the correct then-current address for Birdsall indicated by the driver's licence registry to establish that Birdsall was evading service, but that "nevertheless it is possible the Chair relied on all service attempts to determine that Mr. Birdsall was evading service."
- [14] In the Application, counsel for the executive director concluded:

Since the evidence regarding service was unclear, the Executive Director submits that it would not be prejudicial to the public interest for the panel to revoke the substituted service order.

- [15] We find that the Application has provided new and compelling information that was not before the Commission Chair when she made the Substituted Service Order, which information casts doubt on whether Birdsall was evading service and, therefore, on the legitimacy of the Substituted Service Order.

Order

- [16] Under section 171 of the Act, we may revoke or vary the Substituted Service Order if we consider that to do so "would not be prejudicial to the public interest". For the reasons summarized above, and noting the consent of the parties, we find that it is in the public interest to revoke the Substituted Service Order and, accordingly, order it revoked.

March 27, 2025

For the Commission

Marion Shaw
Commissioner

Deborah Armour, KC
Commissioner

Warren Funt
Commissioner