COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Brar v. British Columbia (Securities Commission),* 2024 BCCA 265

Date: 20240716
Dockets: CA49235; CA49234

Docket: CA49235

Between:

Ranvir Brar

Appellant
(Respondent)

And

British Columbia Securities Commission

Respondent
(Petitioner)

And

Attorney General of British Columbia

Respondent

- and -

Docket: CA49234

Between:

Harjit Gahunia

Appellant
(Respondent)

And

British Columbia Securities Commission

Respondent
(Petitioner)

And

Attorney General of British Columbia

Respondent

Before: The Honourable Mr. Justice Fitch
The Honourable Justice Skolrood
The Honourable Justice Winteringham

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On appeal from: An order of the Supreme Court of British Columbia, dated June 29, 2023 (*British Columbia (Securities Commission) v. Brar*, 2023 BCSC 1122, Vancouver Docket S216267).

Counsel for the Appellants, Ranvir Brar and Harjit Gahunia:	M. Magaril
Counsel for the Respondent, British Columbia Securities Commission:	L.L. Bevan S.B. Hannigan
Counsel for the Respondent, Attorney General of British Columbia:	S. Ortega K. Kotliarsky
Place and Date of Hearing:	Vancouver, British Columbia April 19, 2024
Place and Date of Judgment:	Vancouver, British Columbia July 16, 2024

Written Reasons by:
The Honourable Justice Winteringham

Concurred in by:
The Honourable Mr. Justice Fitch
The Honourable Justice Skolrood

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Summary:

The appellants appeal from orders dismissing their applications (1) challenging the constitutionality of s. 144 of the Securities Act; and (2) seeking Stinchcombe-like disclosure of a BC Securities Commission investigation in which they had been summoned to provide information as witnesses. Held: Appeal dismissed. A very similar provision of the Securities Act withstood constitutional scrutiny and the chambers judge was correct when she decided that she was bound by the Supreme Court of Canada precedent. The chambers judge made no error in dismissing the disclosure application.

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Reasons for Judgment of the Honourable Justice Winteringham:

Overview

[1] The *Securities Act,* R.S.B.C. 1996, c. 418 [the "*Act*"] grants broad powers to the British Columbia Securities Commission (the "Commission") to investigate contraventions and includes a mechanism empowering investigators to compel evidence from witnesses. Over three years ago, an investigator appointed by the Commission to conduct a *Securities Act* investigation, issued a summons to each of the appellants under s. 144(1) of the *Act*. The investigator sought information from the appellants about the trading activities of others. The appellants acknowledge and admit the summonses were validly issued; however, they refused to attend the interview as compelled by the summonses.

[2] Section 144(2) of the *Act* permits the Commission to seek assistance from the Court to enforce compliance when a witness fails to respond to a summons. Relying on this enforcement mechanism, the Commission petitioned the Supreme Court of British Columbia for an order requiring the appellants to comply with the summonses under the threat of committing them in contempt. In response, and in addition to other constitutional relief, the appellants sought a declaration that s. 144(2) of the *Act* violated ss. 7 and 11(d) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, *1982*, being schedule B to the *Canada Act 1982* (UK), 1982, c. 11 [*Charter*]. The appellants submitted that the provision violated the *Charter* because the Court would merely be "rubber stamping" an investigator's decision to seek contempt and the provision thereby "trampled on judicial independence".

[3] The appellants also asserted a disclosure right comparable to the disclosure available to an accused in a criminal proceeding. The appellants suggested the same rights to disclosure existed for them in the *Securities Act* investigation, even in their capacity as witnesses, not suspects.

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[4] The chambers judge dismissed the appellants' constitutional challenge and their application for disclosure. The appellants appeal the chambers judge's decision.

[5] The Commission and the Attorney General of British Columbia take the position that the same provision, or one very close to it, survived a similar constitutional challenge many years ago, in *British Columbia (Securities Commission) v. Branch*, [1995] 2 S.C.R. 3, 1995 CanLII 142. As for the other arguments raised by the appellants, the respondents submit that each argument has been heard and determined by the Supreme Court of Canada. The respondents assert that the chambers judge was correct when she dismissed the petition.

[6] For the reasons that follow, I would dismiss the appeal. A very similar provision of the *Act* withstood constitutional scrutiny in *Branch*. The chambers judge was correct when she decided that she was bound by the Supreme Court of Canada precedent. The chambers judge made no error in dismissing the disclosure application.

Background

[7] On October 10, 2018, the Commission issued an investigation order under s. 142 of the *Act*. The appellants were not the subjects of the investigation order nor did the Commission allege that they had contravened the *Act*. Pursuant to the investigation order, on October 1, 2020, the appellants were each issued a summons under s. 144(1) of the *Act* to attend an interview as witnesses. With the agreement of the investigator, the appellants rescheduled the time indicated for the interview and a new summons was issued to each of them reflecting the new date for the interview. On January 7, 2021, Ranvir Brar failed to attend before the

investigator in response to the summons. On January 29, 2021, Harjit Gahunia failed to attend before the investigator in response to the summons.

[8] On June 29, 2021, the Commission commenced petition proceedings against the appellants, seeking, among other orders, declarations that the appellants were in contempt of court for failing to attend before the investigator in response to the summonses, and orders compelling the appellants to attend interviews before the investigator (the "Contempt Proceedings"). The Commission sought an order:

> … [i]mposing a term of committal, or alternatively a fine, arising from the [appellants'] contempt, to be suspended for a reasonable period to permit the [appellants] to purge their contempt …

[9] In June 2022, the appellants filed notices of application in the Contempt Proceedings seeking a declaration that s. 144(2) of the *Act* was unconstitutional and of no force and effect. The appellants also filed a notice of application seeking "*Stinchcombe* disclosure" under s. 24 of the *Charter*. The appellants requested from the Commission "… all documents and materials in its possession that were created, or reviewed, or relied upon …" by the investigator before issuing the summons.

[10] In June 2022, the appellants commenced separate petition proceedings seeking orders in the nature of *certiorari*, under the *Judicial Review Procedure Act,* R.S.B.C. 1996, c. 241, to review the decision of the investigator to summon them under s. 144 of the *Act* (the "JR Proceedings"). In response, the Commission filed an application to strike the JR Proceedings, without leave to amend, pursuant to R. 9-5(1) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*]. On October 4, 2022, Justice Murray granted the Commission's application to strike the JR Proceedings: reasons indexed as 2022 BCSC 1726. The appellants appealed Justice Murray's order, but the appeal was dismissed by this Court on November 27, 2023: reasons indexed as 2023 BCCA 432.

[11] The hearing of the constitutional challenge and disclosure application in the Contempt Proceedings occurred on October 12–13, 2022 and continued for three days commencing February 21, 2023. The chambers judge dismissed the

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constitutional challenge and the disclosure application on June 29, 2023: reasons indexed as 2023 BCSC 1122.

Statutory Framework—*Securities Act*

[12] Among other things, the Commission is tasked with investigating contraventions of the *Act*. In order to fulfil this mandate, the legislature, through the *Act*, gives Commission staff enhanced powers of investigation in certain circumstances. These powers include the power to compel evidence from witnesses under s. 144(1). Section 144(2) of the *Act* makes a witness who fails or refuses to attend in response to a summons, take an oath, answer questions, or produce records, liable on application to the Supreme Court of British Columbia to be committed for contempt as if in breach of an order or judgment of the court.

[13] There was an amendment to s. 144 after the Supreme Court of Canada released its decision in *Branch*. The former section, s. 128, was written as one section. The current iteration separates the provision compelling evidence (s. 144(1)) from the contempt provision (s. 144(2)). In the current provision, there is now an additional statutory power authorizing the investigator to compel documents. That statutory power is not an issue on this appeal. The terminology in the previous s. 128 and the current s. 144(1) and (2) is otherwise virtually identical.

Branch

[14] *Branch* was one of four cases considering s. 7 of the *Charter*, the right to silence and self-incrimination: *R. v. S. (R.J.)*, [1995] 1 S.C.R. 451, 1995 CanLII 121 [*S.* (*R.J.*)], *R. v. Primeau*, [1995] 2 S.C.R. 60, 1995 CanLII 143, and *R. v. Jobin*, [1995] 2 S.C.R. 78, 1995 CanLII 144. In particular, the cases discussed s. 7 of the *Charter* and "derivative use immunity." Derivative use immunity requires evidence to be excluded if it could not have been obtained if not for the compellability of the witness, or the significance of the evidence could not have been appreciated but for the testimony (*S.* (*R.J.*), at para. 196; *Branch*, at paras. 7–9). The focus of these four cases was whether the provisions at issue violated s. 7 of the *Charter* and the privilege against self-incrimination.

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[15] In *Branch*, the Supreme Court of Canada was asked whether individuals who might subsequently be charged with a criminal or quasi-criminal offence can be compelled to give evidence and produce documents. Unlike the other appeals, *Branch* raised questions about compellability outside of the criminal justice system.

[16] As it assessed the statutory provisions at issue, the Supreme Court of Canada in *Branch* considered context and the significance of securities legislation and its operation. The Court made clear that the primary goal of the *Act* is to protect the investing public and to promote public confidence in the system. The Court referred to the Commission's mandate as a "goal of paramount importance". Recognizing the "… [pre-eminence] of securities regulation in our economic system …", Justices Sopinka and Iacobucci (writing for the majority), cited *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, 1994 CanLII 103:

> 72. This protective role, common to all securities commissions, gives a special character to such bodies which must be recognized when assessing the way in which their functions are carried out under their Acts.
>
> …
>
> 74. The breadth of the [Commission's] expertise and specialization is reflected in the provisions of the [*Act*]. Section 4 of the [*Act*] identifies the Commission as being responsible for the administration of the [*Act*]. The Commission also has broad powers with respect to investigations, audits, hearings and orders.
>
> …
>
> 75. In reading these powerful provisions, it is clear that it was the legislature's intention to give the Commission a very broad discretion to determine what is in the public's interest.
>
> 76. It must also be noted that the definitions in the [*Act*] exist in a factual or regulatory context. They are part of the larger regulatory framework discussed above. They are not to be analysed in isolation but rather in their regulatory context.

[17] It was within that context that Justices Sopinka and Iacobucci stated the following about the purpose of securities legislation:

> 35 Clearly, this purpose of the Act justifies inquiries of limited scope. The Act aims to protect the public from unscrupulous trading practices which may result in investors being defrauded. It is designed to ensure that the public may rely on honest traders of good repute able

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> to carry out their business in a manner that does not harm the market or society generally. An inquiry of this kind legitimately compels testimony as the Act is concerned with the furtherance of a goal which is of substantial public importance, namely, obtaining evidence to regulate the securities industry. Often such inquiries result in proceedings which are essentially of a civil nature. The inquiry is of the type permitted by our law as it serves an obvious social utility. Hence, the predominant purpose of the inquiry is to obtain the relevant evidence for the purpose of the instant proceedings, and not to incriminate [Branch]...

[Emphasis added.]

[18] The Supreme Court of Canada upheld the provision compelling witnesses to give evidence or produce documents. I will say more about the precedential value of this decision shortly.

Decision of the Chambers Judge

[19] The chambers judge commenced her reasons by stating the appellants brought two applications: (1) a challenge to the constitutionality of s. 144(2) of the *Act*; and (2) disclosure of documents from the Commission. With respect to s. 144(2), she stated the appellant challenged the constitutionality of s. 144 on three grounds: (1) it offended s. 96 of the *Constitution Act;* (2) it offended ss. 7 and 11(d) of the *Charter;* and (3) it conflicted with s. 9 of the *Criminal Code*.

[20] The chambers judge then set out the legal framework (at paras. 7–9) before setting out the background.

[21] The chambers judge rejected all three grounds of the constitutional challenge. She started the constitutional analysis with reference to *T.L. v. British Columbia (Attorney General)*, 2023 BCCA 167, noting the “first step” in assessing the constitutionality of legislation is interpretation (at para. 41). The chambers judge referred to *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, and Justice Iacobucci’s discussion about the appropriate approach to statutory interpretation, quoting para. 26 where Justice Iacobucci cited Elmer A. Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983), at 87:

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> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

[22] After citing principles of statutory interpretation, the chambers judge turned to the grounds raised by the appellants.

Section 96 of the *Constitution Act*

[23] The appellants took the position that the contempt provision in s. 144(2) offended s. 96 because it conferred the powers of a superior court to a provincial tribunal. The appellants submitted that the "… underlying directive [of] s. 144(2) casts the court as a 'rubber stamp' for the enforcement of a wholly executive power and fails to meet the constitutional standard for judicial independence". The appellants submitted that because s. 144(2) empowers a "non-executive" actor (a *Securities Act* investigator), decisions such as *United Nurses of Alberta v. Alberta (Attorney General),* [1992] 1 S.C.R. 901, 1992 CanLII 99, can be distinguished.

[24] The parties agreed that the framework established by the Supreme Court of Canada in *Re Residential Tenancies Act,* [1981] 1 S.C.R. 714, 1981 CanLII 24 [*Residential Tenancies*] should be used to determine this aspect of the constitutional challenge:

1. Does the power conferred "broadly conform" to a power or jurisdiction exercised by a superior, district, or country court at the time of Confederation?
2. If so, is it a judicial power?
3. If so, is the power either subsidiary or ancillary to a predominantly administrative function or necessarily incidental to such a function?

[25] The judge agreed that s. 144(2), which makes a witness liable to be committed for contempt, elevates a summons under s. 144(1) to the level of a court order. However, the judge found this was a valid exercise of the province's legislative power under s. 92 of the *Constitution Act.* The province has the power

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to regulate securities under s. 92(13) (property and civil rights), as well as the power to impose "… [p]unishment by [f]ine, [p]enalty, or [i]mprisonment …" to enforce valid provincial statutes under s. 92(15).

[26] Further, in *United Nurses*, the Supreme Court of Canada held that a directive of a provincial board filed with the Court could give rise to contempt. The Court held that a statutory provision permitting the enforcement of an administrative order as if it were a court order did not offend s. 96, but rather expanded the power of the Court by granting it "additional powers": *United Nurses,* at 936. The chambers judge therefore found the *United Nurses* decision to be a "complete answer" to the appellants' argument (at para. 69).

[27] Turning to the scope of powers conferred by s. 144(2), the chambers judge relied on *Branch*. While *Branch* was decided under s. 128 of the earlier *Securities Act,* the Court considered the constitutionality of the same testimonial and documentary compulsion provided for in the current (and virtually identical) s. 144(1), and found them to be *intra vires* of the province.

[28] The chambers judge concluded:

> [88] In my view, the legislators have clearly delineated in s. 144(2), between the powers of the investigator to seek a finding of contempt, and the powers of the BC Supreme Court to make a finding of contempt. Thus, it cannot be said that the power of the investigator as contained in s. 144(2), "broadly conforms" to a power or jurisdiction exercised by the superior courts.
>
> [89] The applicants have failed to meet the first part of the *Residential Tenancies* test. Consequently, the application seeking a finding that s. 144(2) violates s. 96 of the *Constitution*, must fail.
>
> [Emphasis in original.]

[29] While the judge concluded that the appellants' argument failed on the first step of the *Residential Tenancies* analysis, she continued through steps 2 and 3. She found that s. 144(2) did not confer any power on the Commission to make a finding of contempt, and that the power granted under s. 144(2) was ancillary to the power granted under s. 144(1). She went on to conclude that s. 144(2) did not have the impact of creating a parallel court, and could not offend s. 96.

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Sections 7 and 11(d) of the *Charter*

[30] The appellants' second argument was that s. 144(2) violated their s. 7 right to life, liberty, and security of the person, as well as their s. 11(d) right to be presumed innocent until proven guilty. Regarding s. 7, the appellants argued that s. 144(2) offended the principle of fundamental justice of judicial independence, and that the provision suffered from overbreadth and vagueness.

[31] The chambers judge found that these arguments bore a "striking similarity" to those advanced and rejected by the Supreme Court of Canada in *Branch* (at para. 121). In *Branch,* the Supreme Court of Canada considered the summons provision and the penal consequences which flowed from a failure to comply with it, and held it did not violate s. 7. As for s. 11(d), the chambers judge concluded that those rights were only invoked in cases of criminal prosecution. Here, the potential for criminal prosecution was merely "speculative" and there was no "real and substantial risk" this would occur (at para. 140). The chambers judge also rejected the appellant's arguments on judicial independence because there was "no basis" to conclude that a court hearing a contempt application would act as a "rubber stamp" (at para. 141).

[32] With respect to vagueness and overbreadth, the judge cited *United Nurses* in which the Supreme Court of Canada held the offence of criminal contempt was not vague. Further, the judge found that s. 144(2) "… clearly sets out the consequences that flow from a failure to comply… such that the witness can 'predict in advance' whether their conduct could attract penal consequences" (at para. 143). Finally, on an application for a finding of contempt, the Supreme Court is governed by the "stringent conditions" for its use at common law (at para. 150). The judge therefore concluded the law was neither vague nor overbroad. The chambers judge concluded that the appellants failed to establish that s. 144(2) of the *Act* violated s. 7 or s. 11(d) of the *Charter* (at para. 153).

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Conflict with s. 9 of the *Criminal Code*

[33] The final ground for the chambers judge was whether the provision conflicted with s. 9 of the *Criminal Code*. Section 9 of the *Criminal Code* provides that no person can be convicted of an offence at common law, subject to the power, jurisdiction, or authority that a court had immediately before April 1, 1955. Here, the appellant argued that s. 144 created an offence through the common law of contempt which violated the notion that only the common law of contempt *as it existed prior to 1955* could be prosecuted.

[34] The chambers judge relied on *United Nurses,* where the Supreme Court of Canada found that the legislature was *engaging* the criminal law, not *creating* it (at para. 168, citing *United Nurses* at 937–938). Based on "… the reasoning of the Court in *United Nurses* and other authorities …", the judge concluded that s. 144(2) did not conflict with s. 9 of the *Criminal Code.* She noted s. 144(2) "… recognizes the inherent jurisdiction of the Supreme Court to impose punishment for contempt, and engages the [C]ourt's power to ensure that protection and promotion of the administration of justice" (at para. 170).

***Stinchcombe* Disclosure**

[35] Finally, the appellants sought an order, based on either *R. v. Stinchcombe,* [1991] 3 S.C.R. 326, 1991 CanLII 45 or s. 24(1) of the *Charter,* for the disclosure of the Commission's investigation materials on the basis that they faced incarceration as a result of the allegation of statutory contempt.

[36] The judge agreed that the appellants' *Charter* rights were engaged because they would face incarceration upon a finding of contempt. However, the Commission's duty to disclose would be limited to information that was not privileged and relevant to the appellants. Considering the status of the appellants as witnesses and taking into account s. 11 of the *Act*, the chambers judge concluded that the only documents to be disclosed were those relevant to the Contempt Proceedings and the appellants already had those (at paras. 219–220). The appellants were not the

subject of the main investigation. The chambers judge dismissed the application for disclosure.

Grounds of Appeal

[37] The grounds of appeal can be stated as follows:

a) Did the chambers judge err when she dismissed the constitutional challenge to s. 144(2):

(1) in her interpretation of ss. 144(1) and (2);

(2) in her determination that s. 144(2) of the *Act* did not violate s. 7 of the *Charter* in a manner that is inconsistent with the principles of fundamental justice, including judicial independence; or

(3) in her interpretation of s. 9 of the Criminal Code.

b) Did the chambers judge err in her decision to dismiss the disclosure application?

Analysis

Standard of Review

[38] The standard of review on a question of law is correctness. The parties agree that this standard applies to the chambers judge's determination of the constitutional challenge to s. 144(2) of the *Act*. The Court owes no deference to the chambers judge on the interpretation of legislation: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8.

Did the chambers judge err when she dismissed the constitutional challenge to s. 144(2) of the *Securities Act*?

[39] The appellants submit the chambers judge made a number of errors in her assessment of their constitutional challenge. The first ground of appeal raises the following issues: (1) the interpretation of s. 144 of the *Securities Act*; (2) the s. 7

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Charter challenge to s. 144(2); and (3) whether s. 144(2) conflicts with s. 9 of the *Criminal Code* and thus offends the principle of federal paramountcy.

[40] The appellants submit *Branch* does not govern for essentially two reasons. First, s. 144(2) (the contempt provision) was not at issue in *Branch*. Second, the appellants do not raise issues of self-incrimination. Rather, the appellants rely on different principles of fundamental justice including: judicial independence, overbreadth, and vagueness. Because the Supreme Court of Canada did not consider those principles of fundamental justice in *Branch*, the provisions remain vulnerable to constitutional attack. The appellants submit there is a risk of deprivation of liberty by s. 144(2) because it removes judicial independence from the decision-making process (transferring the decision-making power to an investigator), and thus contravenes a principle of fundamental justice. In sum, the appellants submit they have framed the s. 7 challenge differently than that in *Branch* and therefore *Branch* can be distinguished.

Interpretation of ss. 144 (1) and 144(2) of the Securities Act

[41] The appellants submit the chambers judge erred “because she conflated the nature and effect” of ss. 144(1) and 144(2), both in her characterization of the appellant’s position, and in her analysis. Related to this submission, the appellants suggest the chambers judge incorrectly treated the Supreme Court of Canada’s decision in *Branch* as dispositive. In so doing, the appellants submit, the chambers judge ignored their submission regarding judicial independence.

[42] A constitutional challenge to a piece of legislation requires, as a first step, interpretation. As stated by the majority of the Supreme Court of Canada in *R. v. J.J.*, 2022 SCC 28 [J.J.]:

> [17] Before determining the constitutionality of the impugned provisions, it is first necessary to interpret them. The modern principle of statutory interpretation assists us in this exercise: “. . . the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (E. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87, quoted in *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21).

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> [18] As a rule, "[c]ourts must presume that Parliament intended to enact constitutional, [*Charter*-compliant] legislation and strive, where possible, to give effect to this intention" (*Mills*, at para. 56; see also R. Sullivan, *Statutory Interpretation* (3rd ed. 2016), at pp. 307-8; *R. v. Ahmad*, 2011 SCC 6, [2011] 1 S.C.R. 110, at paras. 28-29). Furthermore, this Court stated in *Mills* that "if legislation is amenable to two interpretations, a court should choose the interpretation that upholds the legislation as constitutional" (para. 56, referring to *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC), [1989] 1 S.C.R. 1038, at p. 1078).

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[43] As can be seen from a review of the *Act*, Commission investigators do not have decision-making authority. The investigators are empowered to investigate and report their findings to the Commission. Section 144(1) confers on a Commission investigator the same power that the Supreme Court has for the trial of civil actions to:

a) summon the attendance of witnesses;

b) compel witnesses to give evidence on oath or in any other manner;

c) compel witnesses to preserve records or things; and

d) compel witnesses to provide information or to produce records and things.

[44] Section 144(2) authorizes the Commission to apply to court for an order that a witness who fails to attend an interview, after being served with a summons, is in contempt of court. In other words, s. 144(2) authorizes the Commission to apply to court for assistance to enforce the summons. By the express language of s. 144(2), it is the Court (and not the Commission or an investigator) who is responsible for determining whether a witness be found in contempt. The chambers judge noted the distinction between the Commission's power to issue a summons and the Court's power to punish for contempt. The chambers judge addressed the appellants' submission about the distinction between s. 144(1) and 144(2) in this way:

> [54] Rather than challenging the constitutionality of s. 144(1), they have framed the Constitutional Challenge as an attack "on the liability for contempt that attaches to the exercise of this expressly 'court-like' grant of powers" under s. 144(2) … However, as will be seen later, this is largely an exercise in semantics. Though the Respondents frame their application as a challenge to s. 144(2), it is clear from the arguments advanced by the Respondents,

> that their real concern is with the issuance of the summons under s. 144(1). For example, they take issue with what they say is a lack of judicial oversight in the decision to issue a summons; lack of transparency in the reasons which are given for why the summons was issued; the concern that they are being summoned to determine if they have committed an offence, or for some other collateral purpose; and the absence of published rules to challenge the validity of the issuance of the summons.
>
> [Internal reference omitted.]

[45] The appellants went to great lengths to distinguish and separate s. 144(1) from s. 144(2). The above paragraph demonstrate that the chambers judge was mindful of the appellants' efforts to distinguish the provisions. Indeed, this distinction was important to the chambers judge's analysis. For the reasons set out more fully below, I do not accept the appellants' submission that the chambers judge conflated the provisions in her analysis.

[46] At this point, it is useful to address *Branch* in more detail. The underlying premise of the appellants' submission is that the Supreme Court of Canada decided the constitutionality of s. 144(1) but did not turn their minds to s. 144(2). I disagree.

[47] In *Branch*, the Supreme Court of Canada considered the constitutionality of s. 128(1) of the *Act* (now s. 144). The appellants' position is that the Supreme Court of Canada dealt solely with the equivalent of 144(1) but not 144(2), as is challenged here. The appellants submit that "… liability for contempt was not at issue before the Court in *Branch*; more importantly, the Court was neither asked to consider, nor ruled on, the validity of the contempt provision in light of the principle of judicial independence".

[48] I address first the appellants' submission that s. 144(2) was not before the Supreme Court of Canada in *Branch*. I will then address the appellants' submission that they raise a different constitutional provision not previously considered.

[49] With respect to the appellants' first point, the amendment to the legislation does not eradicate the Supreme Court of Canada's determination that s. 144(2) is constitutionally compliant.

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[50] The constitutional question was stated by the majority of the Supreme Court of Canada in *Branch* as:

> "[Does] s. 128(1) of the *Securities Act*, S.B.C. 1985, c. 83, infringe[] ss. 7 or 8 of the Canadian Charter of Rights and Freedoms?": at para. 30.

[51] At the time, the *Act* provided as follows:

> 128. (1) An investigator appointed under section 126 or 131 has the same power
>
> (a) to summon and enforce the attendance of witnesses,
>
> (b) to compel witnesses to give evidence on oath or in any other manner, and
>
> (c) to compel witnesses to produce records and things
>
> <u>as the Supreme Court has for the trial of civil actions, and the failure or refusal of a witness</u>
>
> (d) <u>to attend</u>,
>
> (e) <u>to take an oath</u>,
>
> (f) <u>to answer questions</u>, or
>
> (g) <u>to produce the records and things in his custody or possession</u>
>
> <u>makes the witness, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court</u>.
>
> [Emphasis added.]

[52] On comparison, s. 128(1) and the current ss. 144(1) and (2) are virtually identical. In *Branch*, the witnesses brought their constitutional challenge only after the Commission petitioned the Court for an order of contempt for failing to answer questions at an interview to which they had been summonsed.

[53] The Supreme Court of Canada posed the constitutional question it was required to answer—and answered it. Contrary to the appellants' position, the Supreme Court of Canada did not narrow its inquiry. The whole of s. 128 was considered by the Court, including the contempt provision. Indeed, the Court noted that the *Charter* provisions were engaged because of the risk to liberty. I reject the appellants' submission that the Supreme Court of Canada did not

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consider what is now s. 144(2) and that the chambers judge erred when she determined that the court was bound to follow *Branch*.

[54] In my view, the chambers judge was correct that the Supreme Court of Canada had already determined the constitutional issue. The chambers judge was required to apply *Branch*, and did so.

[55] In answer to the appellants' second point, a finding of *Charter* compliance does not forever insulate a statutory provision. In *Canada (Attorney General) v. Bedford*, 2013 SCC 72 and *Carter v. Canada (Attorney General)*, 2015 SCC 5, the Supreme Court of Canada affirmed that in two circumstances lower courts may not be bound to follow the decisions of higher courts, including those of the Supreme Court of Canada. The Court in *Carter* wrote:

> [43] Canada and Ontario argue that the trial judge was bound by *Rodriguez* and not entitled to revisit the constitutionality of the legislation prohibiting assisted suicide. Ontario goes so far as to argue that "vertical *stare decisis*" is a *constitutional* principle that requires all lower courts to rigidly follow this Court's *Charter* precedents unless and until this Court sets them aside.
>
> [44] The doctrine that lower courts must follow the decisions of higher courts is fundamental to our legal system. It provides certainty while permitting the orderly development of the law in incremental steps. However, *stare decisis* is not a straitjacket that condemns the law to stasis. Trial courts may reconsider settled rulings of higher courts in two situations: (1) where a new legal issue is raised; and (2) where there is a change in the circumstances or evidence that "fundamentally shifts the parameters of the debate" (*Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101, at para. 42).
>
> [Italics in original.]

[56] In *Bedford* at para. 42, Chief Justice McLachlin stated that "… a trial judge can consider and decide arguments based on *Charter* provisions that were not raised in the earlier case; this constitutes a new legal issue". However, she went on to note the limitations when assessing a new legal issue. She stated:

> [44] …however, a lower court is not entitled to ignore binding precedent, and the threshold for revisiting a matter is not an easy one to reach. In my view, as discussed above, this threshold is met when a new legal issue is raised, or if there is a significant change in the circumstances or evidence. This balances the need for finality and stability with the

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> recognition that when an appropriate case arises for revisiting precedent, a lower court must be able to perform its full role.

[57] The Court's decisions in *Carter* and *Bedford* underscore the important principles that lower courts must bear in mind when asked to depart from otherwise binding authority in deciding constitutional issues. A lower court is not strictly precluded by *stare decisis* from revisiting an issue previously decided by a higher court. However, the threshold for doing so is a high one and is met only if:

> a) new legal issues, including arguments on *Charter* provisions not previously addressed, or arising as a consequence of significant developments in the law, are raised; or
>
> b) there is a significant change in the circumstances or evidence upon which the earlier decision was based which "fundamentally shifts the parameters of the debate".

[58] I make these observations in light of the appellants' invitation to consider afresh the constitutionality of a provision that has withstood an earlier challenge.

Section 7 of the Charter and judicial independence

[59] The appellants contend the chambers judge erred by failing to properly consider judicial independence, as a principle of fundamental justice, in her analysis of the validity of s. 144(2).

[60] In my view, more was required by the appellants to establish a breach of s. 7 of the *Charter*. To establish a breach of s. 7 of the *Charter*, the appellants must demonstrate that, on a balance of probabilities:

> a) a deprivation of one of the three protected interests—life, liberty, or security of the person; and,
>
> b) the deprivation is not in accordance with the principles of fundamental justice.

The second step may be broken down into two parts, where it is necessary to (a) identify the relevant principle or principles of fundamental justice; and then

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(b) determine whether the deprivation has occurred in accordance with such principles: *R. v. Malmo-Levine*, 2003 SCC 74 at para. 83; *R. v. White*, [1999] 2 S.C.R. 417, 1999 CanLII 689 at para. 38; *S. (R.J.)* at 479.

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[61] Here, the appellants assert that their liberty is at risk (because of the risk of a contempt finding) and that this deprivation of liberty is not in accordance with the principles of fundamental justice of judicial independence, overbreadth and vagueness.

[62] I deal first with the judicial independence submission.

[63] The appellants contend it is the investigator, not an inferior court or tribunal, that wields the power to find contempt. The risk to liberty is made out because the investigator has stepped into the shoes of a judge when seeking the summons, thus violating the principle of judicial independence. However, this submission ignores the statutory language and case law describing the procedural protections integral to the operation of s. 144(2).

[64] Section 144(2) requires the Commission to apply to the Court for a contempt finding. It is therefore a judge of the Supreme Court, not the Commission or an investigator, who will determine contempt. The statute allows for the issuance of a summons compelling a witness to attend for an interview (or carry out some other prescribed obligation). The *Act* does not allow for the Commission or the investigator to step into the role of a superior court judge to make a contempt finding. The jurisprudence about contempt proceedings and the obligations on the court are well known.

[65] In *Carey v. Laiken*, 2015 SCC 17 at paras. 32–35, the Supreme Court of Canada made clear that a party seeking an order of contempt must prove beyond a reasonable doubt that:

a) the order is clear and unequivocal;

b) the party alleged to have breached it had actual knowledge of it; and

c) the party alleged to have breached it intentionally failed to do the act the order compels.

[66] The decision-making role of the Court is further revealed in a review of the jurisprudence showing the application of s. 144(2) and its predecessor, s. 128. For example, the decision-making role of the Court is evident in the following cases:

a) The Court retains a discretion about whether to issue an order for contempt or to determine whether a lesser remedy (such as ordering compliance with the summons), will suffice. The witness could be held in contempt but the punishment suspended until a further application by the Commission, to allow for the witness to purge their contempt: *Branch, British Columbia (Securities Commission) v. Imbeault*, [1998] B.C.J. No. 1544, 1998 CanLII 1716 (B.C.S.C.).

b) Though a witness cannot challenge the validity of the summons within the contempt hearing, they can apply to set aside the summons under R. 12-5(39) of the *Rules* if compliance is unnecessary or would work a hardship on them: *Imbeault*, at paras. 13, 16.

[67] The structure of s. 144(2) is not unusual. The Supreme Court of Canada has long recognized the essential role of administrative bodies. To compel compliance with their orders and directives, effective enforcement is required. Justice McLachlin, writing for the majority in *United Nurses*, stated at 934–935:

> This type of sharing arrangement is very common. A plethora of legal decisions in our society are made by inferior tribunals, both provincial and federal. Often the legislation provides that they may be registered with a s. 96 court for purposes of enforcement. Sometimes the legislation gives the court the discretion to decline to enforce the order. Sometimes, as here, it does not.

[68] In *United Nurses*, the Supreme Court of Canada considered a case where the Alberta Labour Relations Board issued a directive prohibiting a union from striking. The union publicly disobeyed that directive. The Board, as expressly allowed by its home statute, filed its directive in the Alberta Court of Queen's

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Bench and applied for a criminal contempt finding. The Court rejected the union's argument that the enforcement mechanism infringed on s. 96 of the *Constitution Act*. The Court held that the impugned provision took nothing away from a superior court's powers, or from its responsibility to determine if the respondent union was guilty of contempt beyond a reasonable doubt. The policy rationale for superior courts enforcing tribunal decisions was set out at 939:

> This argument is not one of jurisdiction, but of policy. It questions whether the legislature should enact that breach of a tribunal order is subject to the same consequences as breach of a court order. The power of the legislature to do this cannot be questioned; legislatures routinely make changes in the law which empower or require federally appointed judges to impose certain remedies. Thus the question is one of policy; policy moreover, which can be debated. Against the argument that the contempt power is so serious that it should only be available for breaches of orders actually made by s. 96 judges, can be raised the argument that in reality important portions of our law are administered not by s. 96 judges but by inferior tribunals, and that these decisions, like court decisions, form part of the law and deserve respect and consequently the support of the contempt power.
>
> [Emphasis added.]

[69] In *R. v. Caron*, 2011 SCC 5 at paras. 26, 28, the Supreme Court of Canada noted that superior courts have the inherent power to enforce an administrative body's orders, including by making findings of contempt.

[70] Here, the chambers judge examined the appellants' submission about judicial independence in the context of s. 96 of the *Constitution Act* as well as s. 11(d) of the *Charter*. The chambers judge found that the Supreme Court of Canada's decision in *United Nurses* disposed of that submission because, as in that case, the impugned provision did not confer on the Commission any powers or responsibilities of a superior court. Rather, s. 144(2) allowed the Commission to apply to a superior court for contempt. The court's powers to decide contempt are thus not compromised. With respect to s. 11(d) of the *Charter*, the chambers judge similarly dismissed the appellants' submission, stating:

> [141] Insofar as the Respondents rely on s. 11(d) of the *Charter* within the context of penal liability for contempt, I dismiss the notion that judicial independence and impartiality are compromised by the contempt petition brought under s. 144(2). There is simply no basis to find that the court

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> hearing the contempt petition acts only as a "rubber stamp", or that there is an appearance of lack of judicial independence because the court is enforcing the summons issued by an administrative tribunal as if it were an order of the Court. The SCC in *United Nurses* addresses this very issue at 934– 936 (excerpted above at para. 68).

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[71] In my view, the chambers judge was correct to dispose of the appellants' judicial independence arguments when she found nothing in s. 144(2):

a) compromised the courts' ability to independently exercise their contempt powers;

b) rendered the courts a "rubber stamp" of the investigator's decision to obtain a summons; or

c) created an appearance of a lack of judicial independence.

[72] I agree, in addition, with the chambers judge's dismissal of the appellants' s. 96 argument that s. 144(2) is invalid because of its procedural limits on a challenge that may be brought to the summons. That is, the appellants submit, s. 144(2) is invalid because:

a) their ability to challenge the summons is not set out within the four walls of the provision; and,

b) the challenge must be brought separately from the contempt hearing.

[73] In my view, the chambers judge was correct when she concluded that this submission was contrary to *United Nurses* where the Supreme Court of Canada made clear that the fact the Court could not go behind the underlying order in the contempt proceeding did not remove any of the Court's powers because other options (such as judicial review) were available. At paras. 69–72, the chambers judge recognized that the appellants could challenge the summons by having them reviewed for bad faith and by applying to set them aside under R. 12-5(39) of the *Rules* if compliance was unnecessary or would work a hardship on them.

[74] In addition, regard must be had to the Supreme Court of Canada's recognition of the importance of securities legislation and the protection of the public. In *Branch* (at para. 79), Justice L'Heureux-Dubé recognized that the Commission's investigatory powers are "… the primary vehicle for the effective investigation and deterrence of insider trading, stock manipulation, and other trading practices contrary to the public interest …". The Commission's power to enforce compliance with its investigations is essential to the effectiveness of its investigatory powers.

[75] On this point, I agree with the Attorney General's submission about the risk of delay. Citing *Morabito v. British Columbia (Securities Commission)*, 2022 BCCA 279 at para. 89 and *Branch* at para. 86, the Attorney General put it this way:

> The Commission requires efficient access to contempt proceedings because time is of the essence in securities investigations. In *Morabito*, Newbury J. [A.] warned that if the Commission had to justify its investigations in court before completing them: "Many investigations would grind to a halt or bog down into 'pre-hearings' that would delay and distract the Commission from completing the investigation". That same concern arises here, where the appellants are asking this Court to decide that the Commission should first apply to justify each summons in court and only then be allowed to apply for contempt for non-compliance.

[76] In sum, on the issue of judicial independence, the chambers judge carefully examined the various submissions advanced and dismissed them. She was correct to do so.

[77] I turn next to the remaining s. 7 *Charter* submissions that s. 144 is unconstitutionally vague and overly broad.

[78] Overbreadth deals with laws that are rational *in part* but overreach and capture *some* conduct that bears no relation to the legislative objective: *Bedford*, at paras. 112–113. An appropriate statement of the legislative objective is critical to a proper overbreadth analysis. The objective must be taken at face value—there is no evaluation of the appropriateness of the objective. The articulation of the objective should focus on the ends of the legislation rather than on the means, be at an appropriate level of generality and capture the main thrust of the law in precise

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and succinct terms: *R. v. Moriarity*, 2015 SCC 55 at paras. 26–30. Determining legislative purpose involves consideration of legislative statements of purpose, as well as the text, context, and scheme of the legislation. Regard may also be had to extrinsic evidence such as legislative history, and where legislation is enacted in the context of international commitments, international law: *R. v. Appulonappa*, 2015 SCC 59 at para. 33.

[79] The appellants submit that s. 144(2) is overbroad because it allows the Commission to apply for contempt without first applying for a compliance order. However, this submission fails to engage with the legal elements required to establish that a law is overly broad. The appellants have failed to set out the purpose of the impugned provision and have not advanced any evidence of situations where the effects of the impugned provision are not connected to its purpose.

[80] Further, the suggestion that 144(2) "appears to muddle different forms of contempt" was an argument rejected by the Supreme Court of Canada in *United Nurses*. The appellants have not met their burden of establishing that s. 144(2) breaches s. 7 of the *Charter* because of overbreadth.

[81] The appellants also allege s. 144 suffers because it is vague. Vagueness offends the principles of fundamental justice where the law, considered in its full interpretative context, is so lacking in precision that it does not provide sufficient guidance for legal debate as to the scope of prohibited conduct or of an "area of risk" (*R. v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606, 1992 CanLII 72 at 626–627, 643*; Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031, 1995 CanLII 112 at 1070). The doctrine of vagueness is directed at ensuring fair notice to citizens and limiting the enforcement discretion of officials: *Nova Scotia Pharmaceutical Society* at 626.

[82] The appellants suggest that s. 144 is vague because "on a plain reading" it may be susceptible to different interpretations. This does not meet the threshold for vagueness under s. 7 of the *Charter*.

[83] The chambers judge determined that s. 144(2) "… clearly sets out the consequences that flow from a failure to comply with a summons issued under s. 144(1), such that the witness can 'predict in advance' whether their conduct could attract penal consequences" (at para. 143).

[84] In my view, the chambers judge's conclusion that s. 144 was not vague was correct. As the Supreme Court of Canada held in *United Nurses*, courts are well versed on the relevant legal principles that apply to a contempt application. This is evident in British Columbia; see for example: *Palm, Bunt,* and *British Columbia (Securities Commission) v. Branch* (1990), 68 D.L.R. (4th) 347, 1990 CanLII 996 (B.C.S.C.).

[85] In conclusion, no error being shown, I would not interfere with the chambers judge's decision dismissing the s. 7 challenge to s. 144(2) of the *Act*.

Section 9 of the Criminal Code

[86] In its federal paramountcy argument, the appellants submit that s. 144(2) should be declared inoperative to the extent it conflicts with s. 9 of the *Criminal Code*. The appellants suggest that s. 144(2) of the *Act* creates a new common law offence because it imposes liability for contempt for failing to comply with a summons. The appellants submit that only the common law of contempt as it existed before 1955 may be prosecuted, and that insofar as this "new common law offence" conflicts with s. 9 of the *Code*, s. 144(2) is rendered inoperative.

[87] Section 9 of the *Criminal Code* provides as follows:

> **Criminal offences to be under law of Canada**
>
> 9 Notwithstanding anything in this Act or any other Act, no person shall be convicted or discharged under section 730

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> (a) of an offence at common law,
>
> (b) of an offence under an Act of the Parliament of England, or of Great Britain, or of the United Kingdom of Great Britain and Ireland, or
>
> (c) of an offence under an Act or ordinance in force in any province, territory or place before that province, territory or place became a province of Canada,
>
> but nothing in this section affects the power, jurisdiction or authority that a court, judge, justice or provincial court judge had, immediately before April 1, 1955, to impose punishment for contempt of court.

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[88] In *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39 at para. 64, the Supreme Court of Canada set out the two scenarios in which such a conflict will engage the paramountcy doctrine:

a) impossibility of dual compliance—an operational conflict between federal and provincial laws, where one enactment says “yes” and the other says “no”, such that compliance with one means defiance of the other; and

b) frustration of a federal purpose—a conflict where dual compliance is possible but the provincial law is incompatible with the purpose of the federal legislation.

[89] Courts must presume that Parliament intends its laws to co-exist with provincial laws. The party alleging an operational conflict or frustration of a federal purpose faces a high burden. The Supreme Court of Canada stated it this way in *Murray-Hall v. Quebec (Attorney General),* 2023 SCC 10:

> [85] Indeed, the burden of proof that rests on the party alleging an operational conflict or a conflict of purposes is a high one (*Alberta (Attorney General) v. Moloney*, 2015 SCC 51, [2015] 3 S.C.R. 327, at para. 27; *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, at paras. 21-23). This requirement arises from the cardinal rule of constitutional interpretation that “[w]hen a federal statute can be properly interpreted so as not to interfere with a provincial statute, such an interpretation is to be applied in preference to another applicable construction which would bring about a conflict between the two statutes” (*Attorney General of Canada v. Law Society of British Columbia*, 1982 CanLII 29 (SCC), [1982] 2 S.C.R. 307, at p. 356).

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[90] On this point, I agree with and adopt the Attorney General's submission as set out in paras. 67 and 68 of its factum:

> In this case, the chambers judge dismissed the appellants' argument by holding that s. 144(2) of the *Act* simply engages the court's power to hold someone in contempt [the chambers judge] correctly followed the Supreme Court of Canada's decision in *United Nurses,* where the Supreme Court decided that a provincial legislature does not enact criminal law when it engages the courts' jurisdiction to enforce the orders and directives of an administrative body.
>
> The fact that the appellants allege a specific conflict with s. 9 of the *Criminal Code* does not alter this outcome. *United Nurses* tells us that provisions like s. 144(2) of the *Act* engage the courts' common law power of contempt, they do not create new offences. The courts' power of contempt is expressly preserved in s 9 of the *Criminal Code*. Therefore, nothing in the impugned provision results in an operational conflict or in the frustration of the purpose of s. 9 of the *Criminal Code*. Instead, the impugned provision operates within the boundaries expressly preserved by s. 9 of the *Criminal Code*.

[91] The chambers judge concluded that s. 144(2) did not conflict with s. 9 of the *Criminal Code,* relying on *United Nurses,* where the Supreme Court of Canada found that the legislature was *engaging* the criminal law, not *creating* it (at para. 168, citing *United Nurses* at 937–938).

[92] In my view, the chambers judge committed no error in her determination that s. 144(2) did not conflict with s. 9 of the *Criminal Code*.

[93] I would dismiss this ground of appeal.

Did the chambers judge err when she dismissed the application for *Stinchcombe* disclosure?

[94] The second ground of appeal relates to the disclosure application. In their notice of application, the appellants sought a "disclosure order pursuant to *R. v. Stinchcombe* or [s.] 24(1) of the *Charter …*." The notice of application sought an order requiring the Commission to disclose to them the Commission's entire investigative file in relation to the investigation, including "… all documents and materials in its possession that were created, or reviewed, or relied upon …" by the investigator acting under the investigation order, prior to issuing the summonses, "… except materials that are clearly irrelevant."

[95] The chambers judge dismissed the appellants' application for disclosure. The appellants' argument on this issue is misconceived and devoid of merit. The chambers judge was right to decline to make the broad disclosure order the appellants sought.

[96] The chambers judge decided that the *Stinchcombe* standard of disclosure applied to the contempt application. The appellants received all of the documents relating to the issuance of the summonses and the appellants' failure to comply. The Commission had thus satisfied its disclosure obligations in the circumstances. In support of this decision, the chambers judge relied on this Court's decision in *British Columbia (Securities Commission) v. Wiebe*, 2000 BCCA 89. In *Wiebe*, this court allowed the appeal and set aside a disclosure order similar to the order sought here. Justice Southin determined that the respondent wanted an order that would enable him to review the Commission's files to try to find something on which he could rely to prove that the Commission was not carrying out its statutory mandate but rather was engaged in some sort of "sham or subterfuge" for other purposes. As here, there was no evidence in *Wiebe* to suggest an improper purpose or abuse of office by the Commission.

[97] The chambers judge made no error when she dismissed the documents application. She concluded the appellants' application was the same as that pursued in *Wiebe*—disclosure of investigative materials that would allow the appellants to try to find some evidence on which the validity of the summonses could be challenged, and not to find some evidence that is relevant to the issue of contempt.

[98] In addition, the chambers judge considered s. 11 of the *Act* with respect to the Commission's disclosure obligations. The chambers judge determined that s. 11 authorized the Commission to "… keep confidential, all information, facts and records obtained or provided under the *Act*, except in discrete circumstances …" (at para. 222). The chambers judge accepted the Commission's submission that "… the information sought is protected by privilege, and thus not producible" (at para. 221). The chambers judge weighed the essential factors, including a

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consideration of relevance, and determined no further disclosure was required because:

a) the Commission had already disclosed the material relevant to the appellants in the Contempt Proceedings;

b) the appellants were seeking investigative material from an investigation that was ongoing;

c) the appellants were not the subjects of the investigation; and,

d) Section 11 of the *Act* imposed an obligation of confidentiality on “[e]very person acting under the authority of this Act …”

[99] The chambers judge considered the status of the appellants as witnesses, the state of the investigation (ongoing), that the appellants were not the targets of the investigation, and the obligation of the investigator to maintain confidentiality of an ongoing investigation. Significantly, she considered relevance—the appellants had all of the material relevant to them. There is nothing to the submission that the chambers judge erred in her refusal to grant the vast disclosure order sought.

[100] I would dismiss this ground of appeal.

<u>Disposition</u>

[101] For the foregoing reasons, I would dismiss the appeal.

“The Honourable Justice Winteringham”

I AGREE:

“The Honourable Mr. Justice Fitch”

I AGREE:

“The Honourable Justice Skolrood”

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