

# In the Court of Appeal of Alberta

**Citation:** Levy v Alberta (Securities Commission), 2026 ABCA 149

**Date:** 20260506  
**Docket:** 2601-0066AC  
**Registry:** Calgary

**Between:**

**Marc Evan Levy**

Applicant

- and -

**The Alberta Securities Commission**

Respondent

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**Reasons for Decision of  
The Honourable Justice Jo'Anne Streckfuss**

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Application for Permission to Appeal  
Application for Stay Order

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**Reasons for Decision of  
The Honourable Justice Jo'Anne Streck**

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## **Overview**

[1] The applicant is seeking permission to appeal decisions of the Alberta Securities Commission (ASC) that denied his application for further disclosure, declined to determine constitutional issues raised in his application, and refused to adjourn the proceedings or refer the constitutional issues to the Court of King's Bench for determination. He also seeks a stay of the ASC proceedings pending appeal.

## **Background**

[2] On April 2, 2024, a notice of hearing was issued by the ASC to the applicant and several other individuals alleging that they engaged in conduct resulting in, or contributing to, an artificial price, or causing a false and misleading appearance of trading activity, in the shares of a corporation known as Softlab.

[3] On May 21, 2024, the ASC Hearing Panel (Panel) directed that all prehearing applications were to be heard no later than March 27, 2025.

[4] On January 16, 2025, the applicant requested ASC staff disclose additional materials, including all complaints the ASC received in the matter; all memorandum, notes and reports made by staff; all investigative reports; and unredacted copies of investigator notes.

[5] On January 27, 2025, ASC staff advised the applicant's counsel that they had disclosed all relevant notes that were not subject to privilege. ASC staff refused to provide the investigator's memoranda and report on the basis that they are absolutely privileged and not admissible pursuant to section 44(2) of the *Securities Act*, RSA 2000, c S-4, and added that the redacted portions of the investigator's notes were irrelevant and have no evidentiary value. ASC staff offered to arrange a meeting with the applicant to further discuss his concerns regarding disclosure. The applicant did not respond to this offer.

[6] On September 16, 2025, the hearing was adjourned to commence on February 2, 2026.

[7] On January 28, 2026, the applicant submitted a notice of motion to the ASC for an application to be heard on February 2, 2026, seeking:

- a) An order that ASC staff disclose all investigative reports and investigator's notes regarding the allegations in the notice of hearing in advance of the hearing;

- b) A declaration that section 44 of the *Securities Act* is on no force and effect pursuant to section 52 of the *Constitution Act, 1982*, as it violates sections 7 and 11(d) of the *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*);
- c) A declaration that the applicant's rights under sections 7 and 11(d) of the *Charter* have been infringed by ASC staff; and
- d) Costs associated with the motion.

[8] On January 30, 2026, the applicant provided written notice of his intention to raise a question of constitutional law to the Attorney General of Canada and the Minister of Justice and Attorney General of Alberta. The Attorney General of Canada advised it would not be seeking to intervene. The Minister noted that the notice should have been provided a minimum of 14 days in advance of the hearing pursuant to section 12(1) of the *Administrative Procedures and Jurisdiction Act*, RSA 2000, c A-3 (*APJA*).

[9] On February 2, 2026, the Panel commenced the hearing into the allegations set out in the April 2, 2024 notice of hearing. At the outset of the hearing, the Panel dismissed the applicant's disclosure application for the following reasons:

- a) The application was filed on the eve of the hearing, 10 months after the deadline for prehearing applications to be heard, without any prior notice provided at the intervening hearing management sessions;
- b) Some of the relief sought – a declaration under section 52 of the *Constitution Act* and the payment of costs – cannot be granted by the ASC;
- c) This type of information regarding investigator's notes and their assessment of the evidence was found to be not relevant by an ASC panel in *Re Fauth*, 2017 ABASC 3 as well as by a panel of the Ontario Securities Commission in *Kitmitto (Re)*, 2020 ONSEC 15. The Panel concluded, with reference to these decisions, that the ASC staff's determination of relevance was not in any way unreasonable;
- d) The report provided to the executive director is afforded absolute privilege by virtue of section 44(2) of the *Securities Act*. Additionally, the Panel noted that even if section 44(2) does not apply, the materials requested may be captured by litigation privilege or solicitor-client privilege; and
- e) The constitutional challenge was filed without providing sufficient notice and pursuant to section 12 of the *APJA* the question of constitutional law cannot be considered until the 14-day notice period expires.

[10] The hearing proceeded before the Panel from February 2 to 12, 2026, with the presentation of the case by ASC staff. It is scheduled to resume on May 13, 2026, at which time the applicant is expected to commence presenting his defence.

[11] The applicant sought to appeal the Panel's dismissal of his disclosure application and denial of his adjournment request and was advised by this Court's Case Management Officer that permission to appeal was required.

### **Analysis**

#### *The Applicant Requires Permission to Appeal Pursuant to Rule 14.5(1)(c)*

[12] The applicant asserts he is not required to obtain permission to appeal the ASC's denial of his disclosure request or the denial of his adjournment request to permit the ASC to determine the constitutional issues raised in his motion or refer that matter to the Court of King's Bench.

[13] Rule 14.5(1)(c) of the *Alberta Rules of Court*, Alta Reg 124/2010, provides that permission to appeal is required for "any ruling during trial, where the appeal is brought before the trial is concluded". The rules require that permission be obtained to appeal interim rulings because of the increased costs and delay caused by such appeals: *Workum v Alberta Securities Commission*, 2006 ABCA 181 at para 2 (*Workum*). The preferred procedure for contesting interlocutory rulings of administrative bodies is to raise it as a ground of appeal in relation to the final decision: *Patel v Alberta (Securities Commission)*, 2018 ABCA 292 at para 4; *Arbour Energy Inc v Alberta (Securities Commission)*, 2009 ABCA 278 at para 16 (*Arbour*); *Fawcett v College of Physicians and Surgeons of Alberta (Complaint Review Committee)*, 2022 ABCA 416 at para 19.

[14] The applicant asserts that the Panel's denial of his motion occurred prior to the commencement of the hearing. I disagree. It was addressed by the Panel as a preliminary matter after the Panel convened the hearing. The applications in question here, which were determined by the Panel after the hearing commenced, fall within the scope of the rule. Permission to appeal is therefore required.

#### *Challenge to the Constitutionality of Section 44(2) of the Securities Act*

[15] The Panel declined to consider the applicant's challenge to constitutionality of section 44(2) of the *Securities Act* because the required notice had not been provided.

[16] The ASC is designated pursuant to the *APJA* as a decision-maker with jurisdiction to determine "questions of constitutional law that relate to the Charter or arising from the federal or provincial distribution of powers under the Constitution of Canada": *Designation of Constitutional Decision Makers Regulation*, Alta Reg 69/2006. A person who intends to raise a question of constitutional law at a proceeding before the ASC must provide written notice of their intention to do so to the Attorney General of Canada, the Minister of Justice (Alberta), the parties and the ASC

at least 14 days before the date of the proceeding: *APJA*, s 12(1). The ASC is prohibited from beginning the determination of the question of constitutional law until the notice requirement has been complied with: *APJA*, s 12(2).

[17] The ASC can either decide the constitutional question or, if it is of the opinion that the Court of King's Bench is a more appropriate forum, it may direct the person who provided the notice to apply to the court to have the question determined or state the question in the form of a special case to the court: *APJA*, s 13.

[18] To the extent that the applicant's disclosure application sought to challenge the constitutionality of section 44(2) of the *Securities Act*, the Panel recognized that it was prohibited by statute from dealing with that issue until the required notice had been given pursuant to the *APJA*. The Panel went on to state that "[o]nce proper notice has been given, and if we have jurisdiction, we may direct Levy to apply to the Court of King's Bench to have the question determined if we are of the opinion that the Court is the more appropriate forum to decide the question."

[19] I was advised at the hearing of the application that neither the applicant nor the ASC staff has requested that the Panel address the applicant's challenge to the constitutionality of section 44(2) of the *Securities Act* since the required notice period has lapsed. Until a decision is made by the Panel on this matter it is premature for this Court to consider the issue.

*The Applicant Has Not Demonstrated That Permission to Appeal Should Be Granted*

[20] This Court will only review interlocutory decisions of administrative tribunals in "rare and exceptional circumstances": *689799 Alberta Ltd v Edmonton (City)*, 2018 ABCA 212 (689799) at para 2, leave to appeal to SCC refused, 2018 CanLII 105398; *Arbour* at para 16. This policy, which is the basis of Rule 14.5(1)(c), has also been applied to ASC proceedings: *Arbour* at para 16; *Workum* at para 2. The rationale for the rule includes respect for the standard of review, as well as concerns about premature intervention and related implications for efficiency, minimization of costs and the protection of the administrative process: *689799* at para 3.

[21] As noted in *Patel v Alberta (Securities Commission)*, 2019 ABCA 13 at para 10:

The legal system cannot accommodate appeals from every interlocutory or evidentiary ruling made by the ASC panel. That is the reason why, as a general rule, appeals are only properly brought from the final decision on the merits.

[22] Such an appeal may be entertained where there may be a manifest injustice, such as if a decision maker clearly misdirected itself on the facts or law, proceeded arbitrarily, or if the decision is so clearly wrong it amounts to an injustice: *Bull v Canada (Attorney General)*, 2018 ABCA 161 at para 15; *Canada (Attorney General) v Fontaine*, 2017 SCC 47 at para 36, citing *WP v Alberta*, 2014 ABCA 404 at para 15.

[23] The applicant submits that special circumstances exist that justify the granting of permission to appeal in this case. He argues this appeal would directly affect the level of procedural fairness afforded to him during the ASC proceeding and impact his substantive rights. He adds that the Panel's decision constitutes a manifest injustice because of the Panel's refusal to determine the constitutional issues raised and because of the Panel's finding that the ASC staff would have disclosed the relevant materials obtained during the investigation.

[24] The applicant seeks permission to appeal the following issues:

- a) Whether the ASC lacked jurisdiction to determine and make any constitutional declarations or refer the constitutional question; and
- b) Whether procedural fairness was breached by denying the applicant the disclosure sought, deciding the underlying motion without an oral hearing, not meaningfully and appropriately weighing the potential prejudice to the applicant versus the respondent, and/or placing undue emphasis on practical efficiency.

[25] The applicant claims that the decisions he seeks to appeal are final orders that conclusively determine his substantive rights to seek constitutional relief and to obtain the requested disclosure. This assertion is without merit. As the respondent points out, the applicant's grounds of appeal would not be extinguished if he were to appeal the ASC decision following the conclusion of the merits hearing and any sanction decision. As stated in *Workum* at para 2:

As a general rule, this Court does not encourage litigation by installments. We do not hear appeals from rulings given partway through a hearing that will not resolve any final or significant issues, except in rare and exceptional circumstances: *Robertson v. Edmonton (City) Police Service*, 2003 ABCA 279. There are many reasons for doing so, including added costs, time delays, waste of judicial resources and the need to discourage premature applications: *Paramount Energy Operating Corp. v. Alberta (Energy and Utility Board)*: 2004 ABCA 273. In most cases, disagreement with an interim ruling can be a ground for the appeal of the final decision.

[26] The Panel's decisions do not constitute manifest injustice. The application was filed: (i) a year after the applicant was advised by ASC staff that they would not be disclosing the additional material requested by the applicant; (ii) 10 months after the expiry of the deadline for prehearing applications to be heard; and (iii) less than a week prior to the commencement of the hearing on February 2, 2026, which had been scheduled four and a half months earlier.

[27] The application was served on January 30, 2026 on the Attorney General for Canada and the Minister of Justice (Alberta) without providing the 14-day notice required by the *APJA*. One of the principal reasons that the application was denied was because the ASC exercised its discretion to dismiss a disclosure application brought at the last minute, well beyond the prescribed

deadline for dealing with pre-hearing applications, and without the statutory notice required by the *APJA*.

[28] The Panel's determination that the materials requested in the disclosure application were not relevant or were otherwise protected by privilege was not arbitrary. The Panel reached this conclusion with reference to the enabling statute, previous decisions by security commission panels, and the particular documents requested in the disclosure application. The Panel also reviewed the ASC staff's assessment of relevance contained in the response to the original request for disclosure. The Panel's findings were based on the materials before them and cannot be considered arbitrary or so clearly wrong that it would amount to an injustice.

[29] The applicant is entitled to challenge the Panel's assessments once a final decision on the merits is given. Any harm caused by an interim ruling of the ASC can be ameliorated by the presence of a statutory appeal mechanism in section 38 of the *Securities Act*, assuring the appeal of the final decision: *Arbour* at para 21; *KCP Innovative Services Inc v Alberta (Securities Commission)*, 2009 ABCA 102 at paras 11-12.

### **Conclusion**

[30] Permission to appeal is denied. As a result, it is not necessary to deal with the application for a stay.

Application heard on April 1, 2026

Reasons filed at Calgary, Alberta  
this 6th day of May, 2026

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Strekaf J.A.

**Appearances:**

L. Ridgedale (no appearance)  
S. Marescaux (no appearance)  
S. Gu  
    for the Applicant

R.M. Van Dorp  
J.P. Dunphy  
    for the Respondent