



Ontario Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

20th Floor
20 Queen Street West
Toronto ON M5H 3S8

20e étage
20, rue Queen ouest
Toronto ON M5H 3S8

Date: 2024-04-30

IN THE MATTER OF BINANCE HOLDINGS LIMITED AND BINANCE.COM

APPLICATION IN WRITING

(Subsection 144(1) of the *Securities Act*, RSO 1990, c S.5)

**Decision
Maker:**

Frances Kordyback as authorized by the Ontario Securities Commission pursuant to subsection 5(3) of the *Securities Commission Act*, 2021, SO 2021, c 8, Schedule 9.

Hearing:

In writing

TABLE OF CONTENTS

1. INTRODUCTION.....	1
2. BACKGROUND	2
2.1 Binance and the Undertaking	2
2.2 Investigation Order and Summons	3
3. PROCEDURAL HISTORY	5
3.1 Tribunal Decision	5
3.2 Interim Stay Decision	6
3.3 Divisional Court Decision.....	6
3.3.1 The Investigation Order was not Foreclosed by the Undertaking.....	7
3.3.2 The Divisional Court Declined to Rule on the Summons	7
4. ISSUES	8
5. ANALYSIS	9
5.1 Issue 1: Does the Commission have jurisdiction under s. 144(1) of the <i>Act</i> to revoke or vary the Summons?.....	9
5.1.1. Subsection 144(1) of the <i>Act</i>	9
5.1.2 Is the Summons a Decision of the Commission?.....	11
5.2 Issue 2: If the Commission has jurisdiction, should the Summons be revoked or varied because it offends s. 8 of the <i>Charter</i> ?.....	14
6. CONCLUSION.....	14

REASONS AND DECISION

1. INTRODUCTION

1. This is an application brought by Binance Holdings Limited (“Binance”) under s. 144(1) of the *Securities Act*, RSO 1990, c S.5 (the “*Act*”). Binance seeks an order from the Ontario Securities Commission (the “Commission” or “OSC”) revoking a summons that was issued to it under s. 13 of the *Act* (the “Summons”). In the alternative, Binance seeks to vary the Summons.
2. Binance operates a crypto-asset trading platform, Binance.com (“Binance.com”). On May 10, 2023, the Commission issued an investigation order under s. 11(1)(a) of the *Act* (the “Investigation Order”) appointing various individuals to investigate Binance’s conduct, including concerns about it circumventing Ontario securities law. On May 11, 2023, one of the individuals appointed to investigate issued the Summons.
3. Binance’s application raises important questions about the jurisdiction of the Commission, as defined under the *Act* and the *Securities Commission Act, 2021*, SO 2021, c 8, Schedule 9 (“SCA”), to grant relief related to a summons issued under s. 13 of the *Act* during the course of an investigation.
4. Investigation orders and summonses are critical tools designed to enable the OSC to enforce the provisions and pursue the purposes of the *Act*. Those purposes, which are set out in section 1.1 of the *Act*, include the protection of investors, capital markets efficiency, and ensuring public confidence in capital markets. The Supreme Court of Canada has recognized that obtaining evidence to regulate the securities industry is a goal of substantial public importance.¹
5. Binance asserts that the Commission has jurisdiction under s. 144(1) of the *Act* to revoke or vary the Summons on the basis that the Summons is a “decision” of Commission. Binance positions its challenge under s. 8 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”). Section 8 gives everyone the right to be secure against unreasonable search or seizure. Binance argues that the Summons is overbroad and not minimally intrusive, and that part of the Summons is not authorized by law, contrary to s. 8 jurisprudence.
6. Staff of the OSC’s Enforcement Branch (“Staff”) maintain that the Commission does not have jurisdiction to decide this application because the Summons is not a decision of the

¹ *British Columbia (Securities Commission) v Branch*, 1995 2 SCR 3 at para 35.

Commission and therefore does not fall within the ambit of s. 144(1) of the *Act*. Staff submit that given this lack of authority, the application should be dismissed. Staff also disagree with Binance's *Charter* submissions, maintaining that the Commission does not have the power to revoke a summons as a remedy for a *Charter* breach. Alternatively, Staff submit that Binance has failed to show that the Summons violates any reasonable privacy expectations or is otherwise unreasonable, particularly given the context of a corporation operating in a highly regulated securities industry in which expectations of privacy are at the lowest end of the spectrum.

7. For the reasons below, I have concluded that the Commission does not have jurisdiction under s. 144(1) of the *Act* to revoke or vary the Summons. Given this determination, I have no authority to decide the *Charter* issue.

2. BACKGROUND

2.1 Binance and the Undertaking

8. Binance is a Cayman Islands corporation that operates Binance.com. Binance.com permits registered users to store and transfer various digital assets.
9. On March 29, 2021, the OSC issued a press release stating that crypto asset trading platforms that offer trading in derivatives or securities to persons or companies located in Ontario must contact OSC staff to discuss how to bring their operations into compliance with Ontario securities law. On April 20, 2021, Staff sent Binance an Enforcement Notice setting out its preliminary view that Binance was operating in contravention of securities law requirements.
10. In the months that followed, correspondence ensued between Staff and Binance regarding regulatory compliance. In June 2021, Binance advised Ontario users that it could no longer service them and that operations would cease in Ontario by the end of the year. However, on December 29, 2021, Binance communicated to users that it was permitted to continue operating.
11. Roughly a week later, Staff notified Binance of their intention to bring an application for a cease trade order.
12. On March 16, 2022, Binance and its Canadian corporation, Binance Canada Capital Markets Inc. ("Binance Canada"), entered into an Undertaking and Acknowledgement to the OSC (the "Undertaking"). Binance acknowledged that it had given Ontario users incorrect information regarding its ongoing operations in Ontario and had permitted Ontario investors to continue

trading after restrictions on trading were supposed to be in place. In the Undertaking, Binance undertook to do a number of things, including:

- prevent Ontario users from opening accounts on Binance.com;
 - identify existing Ontario accounts and prevent all trading in those accounts except for certain actions, including closing out existing positions;
 - wind down its Ontario business in certain products entirely;
 - provide quarterly reports to the OSC; and
 - retain an independent third party consultant to review Binance's implementation of its commitments and report to the OSC.
13. Binance also acknowledged that the Commission and its Staff retained the right to bring enforcement proceedings or seek temporary orders against Binance, with an exception. The exception precluded such proceedings or orders arising from the matters set out in the "Facts" section of the Undertaking, as long as Binance complied with the Undertaking and did not make any misrepresentations to Staff in respect of it. Proceedings could also be brought and orders sought for any breach of the Undertaking.

2.2 Investigation Order and Summons

14. Subsection 11(1)(a) of the *Act* authorizes the Commission to appoint persons to make such investigation as it considers expedient for the due administration of Ontario securities law or the regulation of the capital markets in Ontario. Subsection 11(2) states that the order shall describe the matter to be investigated and s.11(3) describes the scope of what a person appointed may investigate and inquire into, and includes the affairs of the person or company in respect of which the investigation is made, their assets, liabilities and debts and the relationships that exist or existed between that person or company and any other person or company.
15. The OSC Staff Notice 15-707 *Enforcement Investigation Guidance* sets forth details about the investigative processes undertaken by Staff. It is intended, among other things, to assist individuals or companies in responding to a summons issued under section 13 of the *Act*, including a discussion of best practices and the confidentiality associated with an investigation, as well as providing an internal process for the resolution of issues related to summonses.
16. On May 10, 2023, Grant Vingoe, the Chief Executive Officer of the Commission, issued the Investigation Order in respect of Binance under s. 11(1)(a) of the *Act*. The Investigation

Order described Binance's business and set out in detail the matters to be investigated, including that it appeared that:

- Binance.com continues to have a significant presence in Ontario; and
- Binance and other parties may have engaged in conduct contrary to Ontario securities law and/or contrary to the public interest, including:
 - engaging in the business of trading in securities without registration or an applicable exemption from the registration requirement, contrary to s. 25(1) of the *Act*;
 - distributing securities without complying with the prospectus requirements and without an applicable exemption from the prospectus requirements, contrary to s. 53(1) of the *Act*;
 - making misleading statements in materials, evidence or information submitted to the Commission and/or any person acting under the authority of the Commission, contrary to s. 122(1)(a) of the *Act*; and
 - taking steps to circumvent Ontario securities law and relevant compliance controls in relation to the operation of Binance.com in Ontario, including in relation to the Undertaking, contrary to the public interest.

17. The Investigation Order appointed several individuals who were empowered to “investigate and inquire into” the matters described therein. The Investigation Order also contained strict confidentiality requirements, stipulating that pursuant to s. 16(2) of the *Act*, the information obtained pursuant to the Investigation Order is for “the exclusive use of the Commission” and that any disclosure of the information to any other person or company or in any other proceeding is expressly prohibited, except in compliance with ss. 16(1.1) or 17 of the *Act*, or pursuant to an order under s. 17 of the *Act*.

18. On May 11, 2023, Senior Forensic Accountant J. Wang, who was appointed under the Investigation Order, issued the Summons to Binance under s. 13 of the *Act*.

19. Subsection 13(1) of the *Act* empowers a person investigating under a s. 11 investigation order to compel a person by summons to attend and provide oral testimony under oath and to summon and compel any person or company to produce documents and other things. This summons power is the same “as is vested in the Superior Court of Justice for the trial of civil actions” and refusal to comply makes the person or company liable to be committed for contempt by the Superior Court of Justice as if in breach of an order of that court.

20. The Summons requires Binance to, among other things:

- confirm the total fees and other revenue earned on all Ontario accounts since the inception of Binance.com;
- confirm the number of Ontario accounts remaining open on Binance.com and the aggregate value of holdings in those accounts as of certain dates in 2021 and 2022;
- confirm the methodology used to identify Ontario accounts; and
- provide all communications regarding Ontario or Canada generally among directors, officers, employees, contractors, agents and consultants of Binance and related entities, including Binance Canada, for the period between January 1, 2021 and the present.

21. The Summons provides that the communications produced should include a number of stipulated topics including Binance's December 29, 2021 notification to Ontario users that Binance was allowed to continue its operations in Ontario.

22. The high degree of confidentiality associated with the investigation, as stipulated in the Investigation Order, was reiterated in Ms. Wang's letter to Binance's counsel dated May 11, 2023, with which she served the Summons.

23. Following the dismissal of its interim stay motion (described below), Binance began providing responses and producing documents to the Commission on a rolling basis.

3. PROCEDURAL HISTORY

24. The litigation that led to this application did not follow a linear path.

3.1 Tribunal Decision

25. On May 18, 2023, seven days after it was served with the Summons, Binance applied to the Capital Markets Tribunal ("CMT" or "Tribunal") under s. 144(1) of the *Act* for an order revoking the Investigation Order and quashing the Summons. The application was made after the 2022 amendments to the *Act* and the enactment of the *SCA*, which had altered the Commission's role and led to the creation of the Tribunal as a separate adjudicative division of the Commission. As a result of these legislative changes, the *Act* now contained two separate provisions (ss. 144 and 144.1) for revocation or variation of Commission and Tribunal orders, respectively.

26. At a preliminary attendance, the Tribunal directed that the parties first address whether the Tribunal had jurisdiction to grant the relief sought before it would consider the merits of Binance's application.

27. The Tribunal determined that it did not have jurisdiction to grant Binance's s. 144 request and dismissed Binance's application on June 7, 2023; reasons followed on July 14, 2023. In its reasons, the Tribunal reviewed the legislative framework before and after the 2022 amendments to the *Act* and the legislative intent in creating the new Tribunal. It noted that the amendments were intended to ensure a clear separation between the regulatory and policy functions of the Commission, on the one hand, and the adjudicative function carried out by the Tribunal. In the Tribunal's view, the 2022 amendments created two parallel provisions relating to the revocation or variation of orders. The first, s. 144(1) authorizes "the Commission" to revoke or vary a decision of "the Commission" and the second, s 144.1(1), authorizes "the Tribunal" to revoke or vary a decision of "the Tribunal".
28. The Tribunal held that s. 144(1) did not give it jurisdiction to revoke or vary the Investigation Order, because the term "Commission" in s. 144(1) does not include the Tribunal. Given this, the Tribunal also concluded that it had no jurisdiction to consider the request to quash the Summons. Having determined that it lacked jurisdiction, the Tribunal did not hear or consider Binance's arguments on the merits, including its *Charter* submissions.

3.2 Interim Stay Decision

29. After the Tribunal Decision, Binance simultaneously: (i) appealed the Tribunal Decision; (ii) brought a motion to stay the Investigation Order and Summons pending the appeal; and (iii) filed an application for judicial review of the Investigation Order and Summons.
30. The motion judge, Justice Leiper, oversaw the case management process and made a number of orders. Binance agreed to abandon its appeal of the Tribunal Decision with the Commission's consent. Justice Leiper ordered that Binance was not required to exhaust all appeal routes it may have under the *Act* prior to seeking relief via judicial review. Her Honour set a timetable for the parties to follow for the judicial review hearing on the merits. Justice Leiper also dismissed Binance's motion to stay the Investigation Order and Summons pending appeal.

3.3 Divisional Court Decision

31. Binance pursued its judicial review application before the Divisional Court, arguing that: (i) the Investigation Order and Summons were foreclosed by the Undertaking and were therefore an abuse of process and contrary to the principles of promissory estoppel; and (ii) the Summons was overbroad and unenforceable under s. 8 of the *Charter*. The Divisional Court noted that relief sought on judicial review is discretionary – where another avenue of relief has not been pursued, the court can decide whether to proceed on the record before it.

In this case, the Divisional Court was persuaded to proceed on the abuse of process issue, but not the *Charter* issue.

3.3.1 The Investigation Order was not Foreclosed by the Undertaking

32. The Divisional Court declined to quash the Investigation Order because it held that it was: (i) not precluded by the Undertaking; (ii) not an abuse of process; and (iii) not barred by promissory estoppel.
33. The Court held that the Investigation Order contained “serious factual statements” which went “well beyond” the facts outlined in the Undertaking, including that since the Undertaking was given, Binance continued to have a significant presence in Ontario.² The Court also noted that the Investigation Order included an allegation that Binance had made misleading statements to the OSC.
34. Having declined to quash the Investigation Order, the Court then turned to a consideration of the Summons in the context of the *Charter* argument.

3.3.2 The Divisional Court Declined to Rule on the Summons

35. While the Court described the framework for a *Charter* analysis and commented on the case law, the Court declined to exercise its discretion to consider Binance’s *Charter* argument regarding the Summons in the circumstances of the application before it. The Court held that it was “not persuaded” to “decide the s. 8 issues in this case.”³
36. Binance submits that the Divisional Court “directly ruled that the Commission has jurisdiction to hear this application under s. 144(1)”. I disagree. The Court noted that “there appears to be a route available to Binance to raise the *Charter* issues at the OSC”⁴ but it did not make a binding determination about the Commission’s jurisdiction in the event such an application was made.
37. Staff (who were counsel to the OSC before the Divisional Court), did not argue that Binance should have applied to the Commission. Instead, Staff suggested to the Court that a s. 144 application to the Commission would be unproductive, because it maintained that the Commission lacked jurisdiction to grant the requested relief and that the application of case

² *Binance Holdings Limited v Ontario Securities Commission*, 2023 ONSC 4541 (“Divisional Court Decision”) at para 44.

³ Divisional Court Decision at para 64.

⁴ Divisional Court Decision at para 55.

law from the pre-2022 legislative regime would lead the Commission to reach that conclusion.

38. The Court acknowledged this position but observed that “the OSC [Staff] obviously could not and did not know what would have transpired if the application had been made.”⁵ The Court explained that it would be preferable to permit an administrative decision maker to carry out its process, so that the Court would have a full record and the benefit of reasons, particularly in a *Charter* case. In this context, the Court described an application to the Commission under s. 144(1) of the *Act* as “an avenue to pursue these issues at the OSC that has not been attempted.”⁶
39. Clearly, in describing an application to the Commission as an available option, the Court did not rule that the Commission has jurisdiction under s. 144(1) of the *Act*. Rather, because there was another avenue for relief which had not been pursued, the Court declined to proceed on the *Charter* issue. The Court dismissed Binance’s application “without prejudice to Binance moving forward with an application to the Commission under s. 144(1) of the *Securities Act*.”⁷
40. As such, it remains an open question whether the Commission has jurisdiction to revoke or vary the Summons under s. 144(1) of the *Act*. That is the jurisdictional question I must decide now that Binance has brought this application before the Commission.

4. ISSUES

41. There are two issues before the Commission:
1. Does the Commission have jurisdiction under s. 144(1) of the *Act* to revoke or vary the Summons?
 2. If the Commission has jurisdiction, should the Summons be revoked or varied because it offends s. 8 of the *Charter*?

⁵ Divisional Court Decision at para 27.

⁶ Divisional Court Decision at para 64.

⁷ Divisional Court Decision at para 67.

5. ANALYSIS

5.1 Issue 1: Does the Commission have jurisdiction under s. 144(1) of the Act to revoke or vary the Summons?

5.1.1. Subsection 144(1) of the Act

42. The jurisdictional issue on this application turns on statutory interpretation. As the Tribunal remarked in its decision, it “is a creature of statute with no inherent jurisdiction. It can exercise only those powers the legislature gives it, even if that leaves parties with options they consider less than ideal.”⁸ The same holds true for the Commission. As a statutory body, the Commission is bound by the words of the statute and can only order what it is empowered to order.⁹

43. The scope of the Commission’s jurisdiction is prescribed by s. 144(1) of the Act, which provides:

Revocation or variation of decision

144 (1) The Commission may make an order revoking or varying a decision of the Commission, on the application of the Chief Executive Officer of the Commission or a person or company affected by the decision, if in the Commission’s opinion the order would not be prejudicial to the public interest.

44. I will now look to the statute to determine whether the Commission has jurisdiction under this provision. This involves a two-step inquiry. First, I will consider the jurisdictional parameters of s. 144(1) to determine which types of decisions are amenable to revocation or variation under the provision. Second, I will consider the nature of a summons issued under s. 13 to determine whether it fits within the parameters of s. 144(1).

45. My analysis is informed by the principles of statutory interpretation enunciated by the Supreme Court of Canada. The basic principle is that the words of a provision must 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 the legislative body.¹⁰ The “ordinary meaning” of a provision is “the natural meaning which appears when the provision is simply read through as a whole.”¹¹

⁸ *Binance Holdings Limited (Re)*, 2023 ONCMT 27 at para 39, citing *B (Re)*, 2020 ONSEC 21 (“B”) at para 17.

⁹ *Amato v Welsh*, 2015 ONSEC 16 at para 18.

¹⁰ *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para 26; *Lehri (Re)*, 2023 ONCMT 47 (“Lehri”) at para 22.

¹¹ *Lehri* at para 23; *Canadian Pacific Air Lines Ltd v. Canadian Air Line Pilots Association*, [1993] 3 SCR 724 at 735.

46. Another important principle of statutory interpretation is that “all words in a statute must be given meaning.”¹² This means that in interpreting legislative provisions, “we eschew interpretations that render any portion of a statute meaningless, pointless, or redundant.”¹³

47. I begin with the text of s. 144(1), which has three parts:

- the opening phrase: “The Commission may make an order revoking or varying a decision of the Commission”;
- the middle phrase: “on the application of the Chief Executive Officer of the Commission or a person or company affected by the decision”; and
- the closing phrase: “if in the Commission’s opinion the order would not be prejudicial to the public interest.”

48. The middle phrase outlines who has standing to bring an application under the provision. The closing phrase sets out the standard for when decisions may be revoked or varied. Neither phrase impacts the analysis of what types of decisions can be revoked or varied in this case.

49. The opening phrase, on the other hand, permits the Commission to revoke or vary a “decision of the Commission”. This is a jurisdictional constraint on the types of decisions that can be revoked or varied.

50. Both the terms “decision” and “Commission” are defined terms in the *Act*:

“**decision**” means, in respect of a decision of the Commission, the Tribunal or a Director, a direction, decision, order, ruling or other requirement made under a power or right conferred by this Act or the regulations;

“**Commission**” means the Ontario Securities Commission continued under the *Securities Commission Act, 2021*;

51. On a plain reading, s. 144(1) only extends to decisions of the “Commission”, i.e., the OSC continued under the *SCA*.¹⁴ It does not extend to any other individual or entity. For instance, “person” is defined in s. 1(1) of the *Act* as “an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative”. A decision made by a “person” so defined is not

¹² *Lehri* at para 23; *Winters v. Legal Services Society*, [1999] 3 SCR 160 at para 48.

¹³ *R v. Ali*, 2019 ONCA 1006 at para 67.

¹⁴ The “Commission” has the same meaning in the *SCA* as it does in the *Act*. *SCA*, s. 1.

amenable to revocation or variation under s. 144(1) because a person is not “the Commission.”

52. The definition of “decision” further bolsters this interpretation, as that term is specifically confined to a decision “in respect of a decision of the Commission, the Tribunal or a Director”. This opening phrase of the definition was previously considered by an adjudicative panel of the OSC in *B (Re)*, a case in which the recipient of a summons (B) sought direction from the Commission that they would not be in breach of their employment contract if they testified in response to the summons.¹⁵ The parties suggested that s. 154 of the *Act* might protect B because that provision protects disclosure made in good faith compliance with “Ontario securities law”.¹⁶ The term “Ontario securities law” in the *Act* includes “...a decision of the Commission...to which the person or company is subject”.

53. The issue before the Commission panel in *B* was whether a summons is a “decision” of the Commission for the purposes of “Ontario securities law.” The panel held that a summons is not a decision of the Commission in part because:

...while the words “requirement made under a power or right conferred by this Act” [in the definition of “decision”] may seem to apply to a summons, those words cannot be viewed in isolation. They are qualified by the opening words of the definition, i.e., “in respect of a decision of the Commission or a Director.”¹⁷

54. I agree with the Commission panel's conclusion. The opening words of the definition of “decision” have the effect of limiting the types of decisions that are captured by the definition, and exclude decisions made by individuals or entities other than the Commission, the Tribunal or a Director. In accordance with the principles of statutory interpretation, these words must be given meaning and not rendered pointless.

55. I turn to a consideration of a summons issued under s. 13(1) of the *Act* and whether it fits within the parameters of s. 144(1) of the *Act*.

5.1.2 Is the Summons a Decision of the Commission?

56. The power to issue a summons is found in s. 13(1) of the *Act*. A summons cannot be issued unless the person who intends to do so is appointed by an investigation order under s. 11(1):

¹⁵ *B* at para 3.

¹⁶ *B* at para 33.

¹⁷ *B* at para 45, referring to the definition of “decision” as it then was.

Investigation order

11(1) The Commission may, by order, appoint one or more persons to make such investigation with respect to a matter as it considers expedient,

(a) for the due administration of Ontario securities law or the regulation of the capital markets in Ontario; or

(b) to assist in the due administration of the securities or derivatives laws or the regulation of the capital markets in another jurisdiction. (emphasis added).

57. Once an investigation order is issued under s. 11, a person appointed pursuant to it may then issue a summons in accordance with s. 13:

Power of investigator or examiner

13 (1) A person making an investigation or examination under section 11 or 12 has the same power to summon and enforce the attendance of any person and to compel him or her to testify on oath or otherwise, and to summon and compel any person or company to produce documents and other things, as is vested in the Superior Court of Justice for the trial of civil actions, and the refusal of a person to attend or to answer questions or of a person or company to produce such documents or other things as are in his, her or its custody or possession makes the person or company liable to be committed for contempt by the Superior Court of Justice as if in breach of an order of that court. (emphasis added).

58. In this case, the Investigation Order appoints a number of individuals, including Ms. Wang, to investigate the matters described therein. As an individual, Ms. Wang undoubtedly meets the definition of “person” under s. 1(1) of the *Act*.

59. In contrasting the opening words of ss. 11(1) and 13(1), it is evident that the Commission issues investigation orders and persons appointed under the investigation order issue summonses. Subsection 11(1) opens with the phrase “The Commission may, by order, appoint...one or more person to make such an investigation...”, and by contrast, s. 13(1) opens with the phrase “A person making an investigation...” (emphasis added).

“Commission” and “person” are both defined terms in the *Act* and must be given meaning. These words are clear and unambiguous.

60. I adopt the conclusion reached by the Commission panel in *B*:

Can a s. 13 summons be said to be a decision “of the Commission”? Clearly not. The summons is not issued by the Commission. It is issued by a person who is named in an Investigation Order and who is thereby appointed to investigate the matters described in that order. Persons appointed need not even be a member of Staff of the Commission. To think of a s. 13 summons issued by such a person as a “decision of the

Commission” is to stretch the phrase well beyond its breaking point.¹⁸

61. In *Universal Settlements International Inc. (Re)*, a decision related to a s. 144 application, a Commission panel also held that the issuance of a summons is not a decision of the Commission.¹⁹ While I agree with this finding for the reasons set out herein, I make no comment on the panel's further suggestion that if the section 11 order in that case was improperly issued it would have had authority to quash the summons. Such a determination is unnecessary as the Investigation Order is not at issue in this case.
62. The conclusion in the *B* and *USI* cases that a summons is not a decision of the Commission is reinforced by a review of the entirety of s. 13, which makes no mention of the Commission.
63. Binance also argues that the Summons is a decision of the Commission because the investigator who issued the Summons is an employee of the Commission and therefore falls under the CEO's supervisory authority. This ignores the language and scheme of the *Act*. It is true that in this case the OSC is the employer of the individuals appointed in the Investigation Order and has supervisory responsibility over them in the employment law sense. However, as noted in the excerpt from the *B* case, above, persons appointed to investigate need not be employed by the Commission.
64. The *Act* appoints specific decision-makers with powers of decision and provides for distinct routes for review or appeal from decisions so made. On Binance's argument, all decisions made by decision-makers who are also Commission employees would be decisions of the Commission regardless of the language of the *Act* and the prescribed appeal or review routes. This would subvert the clear language of the *Act* and distort the entire regulatory framework set out therein.
65. The fact that the OSC is the employer of individuals who work at the OSC does not have any bearing on, let alone trump the words used by the Legislature in ss. 144, 11 and 13, nor the broader scheme of the *Act*. Any employment law duties or obligations which may exist have no bearing on whether, on a proper reading of the *Act*, the Commission has jurisdiction to review the Summons on this application.

¹⁸ *B* at para 46 (emphasis added).

¹⁹ (2003), 26 OSCB 2345 at para 19; 67 OR (3d) 670 (Div Ct).

5.2 Issue 2: If the Commission has jurisdiction, should the Summons be revoked or varied because it offends s. 8 of the *Charter*?

66. As I have concluded that the Commission does not have jurisdiction to decide this application, I have not addressed the second issue.

6. CONCLUSION

67. For the aforementioned reasons, I find that the Commission has no jurisdiction to entertain this application under s.144(1) to vary or revoke the Summons issued under s.13 of the *Act*. Having found that that I lack jurisdiction under s. 144(1) of the *Act*, I have no authority or basis upon which to conduct a *Charter* analysis.

68. On this basis, I dismiss Binance's application.

Dated at Toronto this 30th day of April, 2024