

Securities litigation case comment: *Binance Holdings Limited v. Ontario Securities Commission*

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Issue: Pursuant to a summons issued under section 13 of the *Securities Act*, can a securities regulator compel a respondent in an investigation to: (a) produce all documents or communications between parties, without any limitations; and (b) provide answers to questions?

Key facts: Section 13 of the *Securities Act* provides:

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.

Binance operates an online crypto asset trading platform. The OSC Staff obtained an order issued under section 11 of the *Securities Act* appointing investigators to investigate allegations of conduct by Binance contrary to Ontario securities laws or to the public interest. One of the appointed Staff issued a summons to Binance under section 13 of the *Securities Act*. The summons included a demand:

For the period of January 1, 2021 to present, provide all communications regarding Ontario (or Canada generally) among directors, officers, employees, contractors, agents and consultants of Binance Holdings Limited and related entities (the “Document Request”).

Binance argued that the summons contravenes section 8 of the *Charter*, which provides “the right to be secure against unreasonable search or seizure”, on grounds which included the unlimited scope of the Document Request.

In concluding that the Document Request did contravene section 8 of the *Charter*, the Ontario Court of Appeal made the following key findings:

- An enforceable demand for production of business records made by state agents is a “seizure” within the meaning of section 8.
- The holder of business records has a reasonable expectation of privacy in the business records that are targeted by the seizure, but this reasonable expectation of privacy is low.
- Even where there is a “very low expectation of privacy”, the ability of regulators to compel the production of documents and information is limited to terms that are fair and reasonable.

- The power of an investigator to issue a production order under section 13 is limited to documents that may be relevant to an inquiry that is properly undertaken pursuant to the *Securities Act*. A seizure that purports to compel the production of documents in the absence of a reasonable foundation to believe they may be relevant is therefore overbroad and unreasonable, contrary to section 8.
- The Document Request demanded production, without limitation, of all communications between virtually anyone that may have managed, been employed by, or done work for either Binance or its related entities over a two-and-a-half-year period relating not only to Ontario but to all of Canada, regardless of the subject matter of those communications. The request **“is staggering in its breadth and in my view was made without apparent concern about the relevance of what was being demanded, beyond mere speculation that there could be something relevant that would otherwise be missed”** and is therefore unconstitutionally overbroad.

Balancing these findings, the Court also held that a regulated party cannot be permitted to increase the intensity of its expectation of privacy in its business platforms by allowing them to be used for personal purposes.

The summons also included requests to provide answers to questions that did not expressly require the production of existing documents. Binance argued that orders under section 11 are, under that section of the Act, limited to requiring the attendance of a person to provide compelled testimony and to produce documents and other things, but do not empower Staff to furnish written answers to demands for information. While the OSC conceded that it did not seek answers to written questions, the Court did not decide this issue. However, the Court took the opportunity to “discourage the use of this kind of language in a summons”.

Key takeaways

- Investigations by securities regulators can have serious consequences, including administrative, civil or provincial offence prosecution by OSC Staff or referral to a law enforcement agency. Production of information to regulators can also have serious collateral consequences, including breach of privacy claims by third parties and other related civil litigation. For these reasons, the protection of respondent rights in such investigations is important and some of those rights were addressed by the Court of Appeal in *Binance*.
- It has become increasingly common for Canadian securities regulators to issue demands to parties subject to an investigation to produce documents without any substantive limitations. The *Binance* decision¹ makes clear that such requests from a securities commission can be improper and unenforceable, under section 8 of the *Charter*. The decision also casts doubt over the propriety of unlimited scope document requests by other regulators such as CIRO.
- The *Binance* decision also casts serious doubt over the propriety of securities commissions purporting to demand written answers to questions as part of a section 13 summons.

FOOTNOTE

[1. *Binance Holdings Limited v. Ontario Securities Commission*, 2025 ONCA 751.](#)

To discuss these issues, please contact the author(s).

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