

# Your Guide to Settlements and Hearings

This is for anyone involved in investigations and hearings who is unfamiliar with our procedures. You can also read [BC Policy 15-601 – Hearings](#).

Updated June 14, 2021

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## **1. About the Commission**

### **Our role**

Our job at the British Columbia Securities Commission is to protect and promote the public interest by fostering:

- a securities market that is fair and warrants public confidence, and
- a dynamic and competitive securities industry that provides investment opportunities and access to capital.

We are an independent provincial government agency.

The *Securities Act* regulates buying and selling stocks, bonds and other securities. For example, it says that no one can sell securities or give investment advice unless they are registered. It also says that investors must receive specific information about the securities they buy. (There are exceptions to these requirements.)

Our interest is not limited to British Columbia. We also help securities regulators elsewhere in Canada, the United States and other countries.

### **The Commission consists of the commissioners and Commission staff**

The commission consists of two groups: the commissioners and Commission staff. The commissioners hold hearings, act as a board of directors and set policy.

Commission staff, headed by the executive director, are responsible for day-to-day operations. Staff have broad powers to investigate conduct that contravenes the *Securities Act* or is otherwise contrary to the public interest. When staff finds misconduct, they state their allegations in a notice of hearing. Staff must then prove the allegations in a public hearing before a panel of commissioners.

If the panel of commissioners finds that staff have proven the allegations, they can order sanctions to protect investors and the integrity of the securities market. The panel can ban those involved in misconduct from the securities market and impose financial sanctions on them.

### **Our proceedings are administrative**

Legal proceedings are of three types: criminal, civil or administrative. Proceedings before the Commission are administrative.

Each of the three types has a distinct purpose. Those who commit securities fraud, for example, may be exposed to all three:

- the government can prosecute them in the criminal court system,
- their victims can sue them in the civil court system to get their money back, and

- the Commission can hold an administrative hearing and order penalties to protect investors and the integrity of the securities market.

Compared to the criminal and civil courts, our administrative proceedings have less formal procedures.

## **2. What happens if I want to settle**

You may settle with Commission staff. By settling, you may receive lesser sanctions and will avoid the costs and inconvenience of a hearing. Staff will settle if it is in the public interest. If you settle, generally, the executive director will require that you:

- agree to a statement of facts, including an admission of wrongdoing,
- agree to sanctions and conditions, which can include restrictions on your access to the securities market, or your participation with those operating in the securities market, and financial sanctions,
- waive all reviews and appeals, and
- consent to reciprocal orders (for non-financial sanctions) in other Canadian jurisdictions.

You must pay any financial sanctions at the time of settlement or negotiate arrangements to provide security for payment in the future. The executive director may require that non-financial sanctions remain in effect until you make all payments.

A lawyer can represent you during settlement discussions with Commission staff.

The Commission publishes settlements on its website. They are public documents.

You can choose to settle before or after the executive director issues a notice of hearing.

## **3. What is the notice of hearing**

If Commission staff decide to pursue the case against you, the executive director issues a notice of hearing. It contains:

- your name and those of the other respondents,
- a statement that staff are seeking penalties from the panel of commissioners,
- the staff's allegations of conduct that contravenes the *Securities Act* or that is contrary to the public interest, and
- the time, date and place of the hearing.

Staff send you, and the other respondents, the notice of hearing to each respondent's last known address.

The parties to a hearing are staff and the respondents.

Once the executive director issues a notice of hearing, the matter is no longer confidential. Anyone can attend the hearing and observe the evidence. The Commission publishes notices of hearing on its website.

#### **4. What happens before the hearing starts**

##### **You can hire a lawyer**

If you are a party to a hearing, or a witness, a lawyer can represent you.

##### **You file notice of service**

If you are a respondent, the Commission expects you to send the Commission a notice disclosing your address where the Commission and the parties can send you documents related to the hearing. If you hire a lawyer, the Commission and the parties expect to give you documents by giving them to your lawyer. Your lawyer should send the Commission a notice disclosing particulars for service.

##### **The hearing date is set**

The notice of hearing contains a date to appear before a commissioner. At this appearance, known as a “set date hearing,” the parties estimate how long the hearing will take. The commissioner and the parties then try to find dates that are as soon as practicable and convenient for everyone. If agreement is not possible, the commissioner sets the dates.

##### **Temporary orders can be issued**

If Commission staff think your conduct is an ongoing threat to the market, the executive director can – without a hearing – make a temporary order restricting your conduct in the securities market. A temporary order is effective for not more than 15 days. If staff want to extend it, they will apply to a panel of commissioners, usually at the set date hearing.

In considering whether to extend a temporary order, a panel of commissioners considers:

- whether based on Commission staff’s evidence it appears you have contravened the *Securities Act* or otherwise acted contrary to the public interest,
- how long it will be before the investigation is completed,
- how long it will be before the hearing is held, and
- your circumstances and the scope of the temporary order.

The Commission publishes temporary orders and extensions of temporary orders on its website.

##### **The investigation continues**

The Commission wants to consider all relevant evidence at the hearing. Consequently, Commission staff may continue investigating after they have issued the notice of hearing,

even if the hearing has started. Staff will amend the notice of hearing to include any new allegations.

### **Disclosure occurs**

Full and timely disclosure of all evidence relevant to the case promotes fairness and efficiency in hearings. The Commission expects each party:

- to make disclosure in an electronic form (see BC Policy 15-601 Hearings, [Part 3.6, Disclosure](#)), and
- to make disclosure soon enough so that everyone has adequate time to prepare for the hearing.

A party or witness who does not wish to provide records in electronic form should apply by letter to the Commission Hearing Office (copy to Commission staff and any other party) explaining why the Commission should decide that it is reasonable to provide only paper records. If the Commission consents to records in paper form, the applicant must deliver five copies to the Commission Hearing Office and a copy to each party.

Generally, at the time Commission staff issues the notice of hearing, they will disclose to you all relevant evidence that is not privileged (for example, legal advice given to a party may be protected by privilege), including:

- the particulars of the allegations against you, in enough detail that you can know and respond to the case against you,
- all evidence gathered in the investigation that is relevant to the allegations in the notice of hearing,
- the evidence staff expect to use in presenting their case,
- the identity of the witnesses staff intend to call, and
- summaries of the testimony staff witnesses are expected to give.

### **There can be a hearing management meeting**

The Commission may also set a date for a pre-hearing conference to deal with any matters that will promote a fair and efficient hearing, such as the timing of disclosure of evidence and identification of the issues. A pre-hearing conference is an informal meeting among the parties and a commissioner (see BC Policy 15-601 Hearings, [Part 3.1 Hearing Management Meetings](#)).

### **The hearing can be adjourned**

The Commission expects parties to appear on hearing dates. If you cannot, you should seek the other parties' consent to the adjournment and to new dates. Generally, the Commission grants applications for adjournments to which all the parties have consented, or if a panel is satisfied based on the evidence filed by the person seeking the adjournment that there are compelling circumstances.

Common reasons to ask for an adjournment are:

- you need more time to prepare for the hearing,
- the notice of hearing has been significantly amended,
- you discover evidence after disclosure has been made, or
- a witness with important testimony cannot appear as planned.

In considering an adjournment request, the panel of commissioners will consider the circumstances at the time, the fairness to all parties, and the public interest in having matters heard fully and decided promptly.

### **There can be delays**

Commission staff try to conclude investigations as quickly as possible, but sometimes substantial delays occur.

### **The hearing can go on without you**

If you do not respond to a notice of hearing or a summons, the hearing can proceed without you. In that case, the evidence and arguments the Commission staff present are what the panel of commissioners consider in reaching their decision.

## **5. How to prepare for the hearing**

You can hire a lawyer to represent you at the hearing or you can represent yourself. If you are a respondent and you represent yourself, you will probably want to do these things:

- read the notice of hearing and Commission staff disclosure to make sure you understand the allegations against you,
- interview the other parties' witnesses to see if they have any evidence helpful to your case. You can then ask them about that evidence in the hearing,
- review all the documents and witness statements of the other parties. Consider whether you have any documents or witnesses that will contradict those documents or statements or support a different interpretation of the events,
- review all of your documents and consider whether witnesses are available to support your version of the facts, if that version differs from staff's allegations or from the defences of other parties that implicate you,
- if you wish to introduce documents or other evidence in the hearing, consider who you will need to call as a witness to identify the documents or provide oral evidence,
- organize your materials, including those provided by the other parties, so that you will be able to find documents, as you need them, during the hearing,
- prepare your witnesses before the hearing by asking them the questions that you expect to ask them at the hearing. To prepare them for questioning by other parties, ask them the questions that you think staff or other parties might ask. Make sure your witnesses know they must tell the truth, even if it is not helpful to

your case. Skilled questioning will quickly discredit a witness who tries to be helpful by being evasive or lying,

- if you want to call a witness who is reluctant to attend the hearing, you can ask a commissioner to issue a summons. Under the summons, the witness must attend the hearing to give evidence and produce documents. Before the commissioner will issue the summons, you must show that the witness is likely to produce relevant evidence. When the commissioner issues the summons, you serve it on the witness and pay their expenses, called conduct money. For more details, including the forms, see BC Policy 15-601 Hearings, [Part 3.5 Summons of witnesses](#).

## **6. What to expect at the hearing**

The Commission holds hearings at its offices on the 12th floor of 701 West Georgia Street in downtown Vancouver. They usually start at 10 o'clock in the morning.

### **The room**

The Commission has two hearing rooms. There are tables for the parties. At the front of the room, there is a witness stand at the right and a raised platform where the panel of commissioners sits. There is public seating at the back.

### **The panel**

The panel is the group of commissioners who hear the evidence and arguments and decide the matter. Usually there are three commissioners on a panel. One chairs the hearing and sits in the center position.

### **Hearings are electronic**

The Commission holds hearings using documents in electronic form. Parties introduce evidence and file arguments in electronic form through the hearing officer. Please see see BC Policy 15-601 Hearings, [Part 3.7 Electronic hearings](#).

Electronic records that a party wants to rely on in the hearing should be provided to the Commission Hearing Office in advance of the hearing, following the Commission's Formatting Requirements for Electronic Documents (see [Format for Electronic Documents](#)).

The Commission does not publish hearing transcripts, evidence, and arguments on its website. While a party to the proceedings will have access to copies of these records, any other person may request access to hearing exhibits and transcripts by making an application in writing to the Commission Hearing Office.

### **Public and the media**

Hearings are open to the public. The news media, including print, radio and television, may cover hearings.



## **7. How cases are presented at the hearing**

### **A case consists of opening statements, evidence and argument**

The hearing begins with the opening statements. An opening statement is a brief summary of the case a party intends to present. If you are a respondent, you describe the facts you intend to prove and the conclusions that you believe the panel of commissioners should draw from those facts.

You are not required to make an opening statement. Commission staff usually make one at the beginning of the hearing, but you do not need to if you would prefer to hear staff's case first. If you decide not to make an opening statement at the beginning of the hearing, you can still make one later when you start your case, or you can decide not to make one at all.

Evidence consists of the facts presented in the hearing. In staff's case, these are the facts that support the allegations in the notice of hearing. In your case, these are the facts that support your defense. Evidence includes the statements of witnesses who take the stand in the hearing and the documents that relate to the case. The panel of commissioners expect parties to agree on the evidence that is not in dispute. In these circumstances, the parties should file an agreed statement of facts or enter the agreed documents.

After all the evidence is before the panel of commissioners, the parties present their arguments. Your argument is your interpretation of the evidence, and your view of how the law ought to be applied to the evidence.

### **Commission staff present their evidence**

The onus is on Commission staff to prove the allegations in the notice of hearing, so staff present their evidence first. The other parties then present their evidence in turn.

Staff call their witnesses. When staff have finished questioning a witness, you can question the witness. Your questions must be relevant to the allegations in the notice of hearing. Staff can call you as a witness as part of their case.

### **You present your evidence**

After Commission staff have presented their evidence, the other parties present theirs. When your turn comes, you call your witnesses. When you have finished questioning a witness, staff and the other parties can ask their questions.

If you want to give evidence, you can take the stand and, under oath, make the statements of fact that you want to make. When you are finished, staff and the other parties can question you.

You may want to put documents before the commissioners as evidence. To do this, ask a witness to identify the document and explain its relevance. Then ask the panel of commissioners to enter the document as an exhibit.

At this stage, your task is only to present the evidence you intend to rely on in your argument. This is not the time to present your interpretation of the evidence or to make your argument.

### **The parties make their arguments**

After all of the parties have presented their evidence, they present their arguments. If the hearing has been long or complicated, you can ask for an adjournment to review the evidence and prepare your argument.

You can make your argument in writing, orally, or both. Commission staff will present their argument first. The other parties will then do the same in turn. You can respond to any arguments made after yours.

### **8. How the decision is made**

The panel of commissioners usually issue their findings of fact and law before they hear the parties' views on penalties. You can waive this procedure and have a combined hearing to avoid the extra cost and delay of a separate hearing on penalties. The panel will aim to release their findings within 120 days of the close of the hearing. The Commission publishes findings on its website.

After the parties have had the opportunity to review the panel's findings, if the panel has made findings against them, they can make statements, called submissions, about what penalties, if any, ought to be imposed. You can make your submissions in writing, orally or both. You might want an oral hearing if, for example, you want to call evidence, such as a character witness.

The panel will aim to issue their sanction decision within 45 days of receiving the parties' submissions. The Commission publishes decisions on its website.

The panel imposes penalties by making orders. They can order, for example, that:

- your trading in securities is restricted,
- your participation with those operating in the securities market is limited, and
- (if you are a registrant) your registration is suspended, cancelled or restricted.

These orders are often for specific periods but, in cases of severe misconduct, can be for life.

The panel can also order you to pay a financial penalty, up to \$1,000,000 per contravention of the *Securities Act*.

Generally, the panel will require that administrative penalties remain in effect until you make all payments.

Your right to appeal the decision begins when the commissioners issue the penalty decision.

For more details on *How the decision is made*, see BC Policy 15-601 Hearings, [Part 9](#) Rulings, Findings and Decision.

## **9. How to change or appeal a commission decision**

### **The Commission can change its decision**

The Commission has the discretion to change its decision. However, before changing the decision, the Commission must be satisfied that it would not be prejudicial to the public interest. This usually means a party to the decision has to show the Commission new evidence or a significant change in the circumstances. You do not need to follow any formal requirements.

To ask the Commission to change its decision, send a copy of your request to the parties to the decision (including the executive director) and to the Commission Hearing Office (see BC Policy 15-601 Hearings, at [Part 4 Hearings](#) and [Part 9.10 Post Hearing Applications](#)).

### **You can ask the court of appeal to review a Commission decision**

If you are a party to a Commission decision and the court of appeal gives you permission, called leave, you can appeal the Commission decision to that court. You must apply for leave to appeal within 30 days of the decision and comply with the court's formal requirements.

You can ask the Commission or the court of appeal for a stay to stop the Commission decision from taking effect during the appeal. Generally, the Commission expects you to ask the court. You can do so in your leave application (see BC Policy 15-601 Hearings, [Part 9.10 Post Hearing Applications](#)).

## **10. How to appeal a decision of a recognized entity or commission staff or a commissioner**

The Commission regulates self-regulatory bodies, called Recognized Entities. These are the TSX Venture Exchange Inc., the Canadian Securities Exchange, the Investment Industry Regulatory Organization of Canada, the Mutual Fund Dealers Association of Canada or any other self-regulatory body, exchange, quotation and trade reporting system, or clearing agency recognized by the Commission under the Act.

If you are directly affected by a regulatory decision made by an Recognized Entity, you can ask the Commission to review the decision.

The purpose of a review is not for the Commission to provide a second opinion. There is usually no new evidence produced at the review, unless it is compelling and was not before the decision maker. A panel of commissioners reviews the evidence, called the record, and decides whether the decision is reasonable and is in accordance with the law, the evidence, and the public interest. If the decision meets these criteria, the panel will not interfere with the decision simply because they may have made a different decision.

### **Send a request**

You must send a request to the Commission Hearing Office within 30 days of the Recognized Entity's decision. The request can be by letter. You must identify the decision to be reviewed, how you are directly affected by the decision, your grounds for the review, and whether you want a stay. If you ask for it, a commissioner may suspend the decision until the panel of commissioners reviews it. You must send a copy of your request to the Recognized Entity, the executive director of the Commission and any other person who is directly affected by the Recognized Entity's decision.

### **Follow the other requirements**

BC Policy 15-601 Hearings, [Part 7](#) *Reviews* describes the other formalities. Once you send your request, the Commission usually schedules a hearing management meeting. At the hearing management meeting, the Commission will set dates for the hearing, as well as dates for the delivery of materials, including a statement of points and the record

A statement of points is a document you send to the Commission Hearing Office and the other parties, outlining your argument. The other parties will do the same.

You can get a guide for preparing a statement of points from the Hearing Office.

### **How reviews are conducted**

You present your case first, based on your statement of points. The other parties then respond. You produce any new evidence using the procedures described earlier in this guide.

The panel of commissioners aims to release their review decision within 60 days of the end of the hearing. The Commission publishes review decisions on its website.

### **Appealing a decision of the Commission staff or a commissioner**

You can appeal a regulatory decision made by the Commission staff or a single commissioner in the same way you appeal an SRO's decision.

## **11. How to contact the Commission**

The Commission's website address is [www.bcsc.bc.ca](http://www.bcsc.bc.ca).

There are several ways to find [BC Policy 15-601 - Hearings](#) on our website. For one way, go to our Home Page and click on [About Hearings](#). You will find the policies on that page.

The Commission address is:

British Columbia Securities Commission  
PO Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, BC V7Y 1L2

The phone, fax and e-mail for the Commission Hearing Office are:

Phone: (604) 899-6500  
Fax: (604) 899-6506  
E-mail: [hearingoffice@bcsc.bc.ca](mailto:hearingoffice@bcsc.bc.ca)