

BC POLICY 15-601 HEARINGS

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BC POLICY 15-601 *HEARINGS*

INTRODUCTION

This policy describes procedures for hearings under the *Securities Act*.

PART 1 INTERPRETATION

1.1 Application – The Commission holds distinct types of hearings under the Act, including:

- enforcement hearings commenced by the executive director under notices of hearing
- hearings to review decisions made by the executive director, single commissioners and Recognized Entities
- public interest hearings related to public market transactions, including take-over bids and shareholder rights plans
- hearings to vary or revoke decisions made by a commissioner or panel of commissioners.

1.2 General Principles

The Commission holds administrative hearings, which are less formal than the courts. **The Commission’s goal is to conduct its proceedings fairly, flexibly and efficiently.** The procedures set out in this Policy are in furtherance of this goal and the provisions of this policy are to be interpreted in light of this goal. **Where the circumstances require a variation of the procedures set out in this policy in order to achieve this goal, the Commission may do so.**

1.3 Defined terms

“**Act**” means the *Securities Act*, RSBC 1996, c 418 and “**Regulation**” means the *Securities Regulation*, BC Reg 196/97. Terms defined in the Act have the same meanings in this policy.

“**Recognized Entities**” means 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, trade repository, quotation and trade reporting system, or clearing agency recognized by the Commission under the Act.

PART 2 GENERAL

2.1 Procedures – The Act and Regulation prescribe very few procedures the Commission must follow in hearings. Consequently, the Commission is the master of its own procedures, and can do what is required to ensure a proceeding is fair, flexible and efficient. In deciding procedural matters, the Commission considers the rules of natural justice set by the courts and the public interest in having matters heard fully and fairly, and decided promptly.

2.2 Commission Hearing Office - The Commission Hearing Office oversees and manages the Commission’s hearing process. Each hearing has a hearing officer assigned to it. The hearing officer performs administrative tasks to ensure the integrity of the hearing process, including updating the hearing schedule, preparing and distributing hearing materials, and attending in the hearing room during oral hearings.

The address of the Commission's Hearing Office is:

British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street Vancouver, BC V7Y 1L2
Attention: The Commission Hearing Office
Fax: (604) 899-6506
E-mail: hearingoffice@bcsc.bc.ca

The Commission's website address is www.bcsc.bc.ca.

2.3 Appointment and Composition of Panels – Panels of Commissioners are appointed by the Commission chair under section 6 of the Act. It is the Commission's usual practice to appoint one panel to hear both the liability portion and, if necessary, the sanction portion of a hearing commenced by a notice of hearing. However, there may be circumstances where the original panel is unavailable to hear the sanction portion of a hearing. When that happens, the Commission chair will appoint a second panel to hear the sanction portion of a hearing and notify the parties in advance of the hearing.

A panel must have at least two commissioners. Usually, a panel of three commissioners is appointed to each hearing. A panel of three can continue as a panel of two if the third commissioner ceases to be a member. Further, a panel member can continue to act on a panel after they have ceased to be a commissioner, if their authority to preside over that matter has been extended.

Reference

Act section 6, [*Michaels v. British Columbia Securities Commission, 2016 BCCA 144*](#)

2.4 Parties – For hearings on enforcement matters, the parties include the executive director of the Commission and respondents named in a notice of hearing. Respondents are persons against whom the executive director makes allegations in a notice of hearing. When a respondent is a corporation that has been wound up, the Commission may take submissions from another person who formerly had authority to act for the wound-up corporation, as the Commission may make orders against that corporation.

In a hearing to review a decision of the executive director or a commissioner, the parties include the executive director and the person directly affected by the decision.

In a hearing to review a decision of a Recognized Entity, the parties include the Recognized Entity, the executive director and the person who is directly affected by the decision

2.5 Commencement of Hearings

(a) Enforcement hearings – The executive director sends a notice of hearing to each respondent to the enforcement hearing. A notice of hearing contains:

- the time, date and place of the set date hearing
- the allegations against each respondent
- notice of the orders that the executive director will be seeking against the respondents
- notice that if the respondent does not appear, the executive director may apply to have questions of liability and sanction heard at the same time
- notice that determinations may be made against the respondents, even if they do not appear at the hearing

Generally, the Commission sets the dates for a hearing management meeting (see **Part 3 Pre-Hearing Matters**) and the hearing itself when the parties appear on the date in the notice. This first appearance before the Commission is known as a “set date hearing.”

If the Commission finds that the executive director has delivered a notice of hearing to a party in compliance with the Act and Regulation, and the party does not appear at the set date hearing, the proceedings may continue in the party’s absence without the Commission providing that party further notice in the proceedings.

If a party does not appear at the hearing date set by the Commission at the set date hearing, the executive director may apply then or later to the Commission, without notice to the party, to have the liability and sanction portion of the hearing with respect to that party heard at the same time.

The Commission publishes notices of enforcement hearings on its website.

Reference

Regulation, section [15](#)

(b) Reviews – A person directly affected by a decision of a Recognized Entity, the executive director or a single commissioner may request a review of the decision under section 165 of the Act within 30 days of the date the decision maker sent notice of the decision. The Commission may extend the time period for seeking a review to a date the Commission considers appropriate. A person may apply for a review by sending the request to the Commission Hearing Office and the other parties. For a description of what must be in the request, see paragraph 7.2 **Requests for reviews**.

Once a request for a review has been received, the Commission will hold a hearing management meeting to schedule a date for the hearing of the review. See **paragraph 7.5 Dates of Review Hearings**, and **Part 3 Pre-Hearing matters**.

The Commission publishes notices of these hearings on its website.

Reference:

Act, sections [28](#), [165](#), [166](#)

(c) Hearings related to applications for public interest orders – Public interest hearings applications include those relating to take over bids, shareholder rights plans or other issuer transactions. A person may apply for such a hearing by sending the request to the Commission Hearing Office and to the other parties. Once an application for an order in the public interest is received, the Commission will hold a hearing management meeting to set up the process for the public interest hearing. See

Part 3 Pre-Hearing matters.

PART 3 PRE-HEARING MATTERS

3.1 Hearing Management Meetings

(a) Purpose – The Commission holds hearing management meetings so that hearings start on their scheduled start dates, run fairly and efficiently and conclude promptly. The Commission usually schedules a hearing management meeting at the set date hearing. Hearing management meetings are not recorded, and are less formal meetings where the parties meet to discuss preliminary matters. Matters for discussion at hearing management meetings include:

- hearing dates
- witnesses and the requirements for summonses – see paragraph 3.5
- disclosure and reliance lists – see paragraph 3.6
- evidence not in dispute – see paragraph 4.1(d)
- preliminary applications (identification, timing and compliance with paragraph 3.4)
- electronic hearing preparation
- translation requirements at the hearing
- accommodating witnesses from other jurisdictions
- where necessary, amending the length of time scheduled for the hearing
- provision of the statement of points and record for review hearings (see paragraph 7.7)
- other matters that promote a fair and efficient hearing

The commissioner attending a hearing management meeting does not address issues of fact or law, and does not issue substantive orders that require formal applications.

(b) Directions by commissioner – At a hearing management meeting, the commissioner may give the parties directions.

(c) Outcome – After a hearing management meeting, the commissioner sends each party a summary of what the parties discussed and agreed to.

3.2 Temporary orders – The executive director may issue a temporary order without providing a party the opportunity to be heard, but must provide written notice of the temporary order to any person directly affected by it. The temporary order is effective for not more than 15 days, unless the Commission extends it.

The Act does not require the Commission to give a party the opportunity to be heard before extending a temporary order. Generally, however, the Commission gives a party the opportunity to be heard at the executive director's application to extend a temporary order. At the hearing of the application, the executive director usually tenders affidavit evidence and respondents may also tender evidence.

The Commission may also issue temporary orders on its own initiative. In these circumstances, the Commission generally gives the parties an opportunity to be heard.

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

Reference:

Act, section [161](#)

3.3 Preservation Orders - The Commission may issue an order relating to the preservation, management or disposition of a person's funds, securities, derivatives or other property, or register a charge against a person's real or personal property. The Commission may issue a preservation order in a number of circumstances, including where it proposes to order an investigation, or during or after an investigation.

A person who has property that is subject to a preservation order made by a single commissioner may apply to the Commission under section 165 of the Act for a review of the decision within 30 days of the date the decision maker sent notice of the decision to the person. The Commission may extend the time period for seeking a review to a date the Commission considers appropriate. See **Part 7 Reviews**.

A person who has property that is subject to a preservation order may also apply to the Commission, seeking a variation or revocation of the preservation order under section 171, as outlined below in paragraph **9.10(a) Discretion to revoke or vary**.

Reference:

Act, sections [164.04](#), [165](#), [166](#) and [171](#)

3.4 Preliminary Applications

(a) Parties to proceedings may apply to the Commission for orders, prior to the Commission proceeding with the hearing on the merits. These include applications relating to:

- disclosure
- admissibility of evidence
- new evidence or change in circumstances in a review or section 171 hearing
- adjournments

Usually, the Commission hears preliminary applications in writing, and expects the party applying to provide compelling evidence in support of its application. Generally, the Commission expects:

- a party making an application to give reasonable notice to the other parties and the Commission Hearing Office
- parties in a complex matter to make written submissions
- parties to provide written submissions to the other parties and the Commission Hearing Office so the parties and panel have a reasonable time to consider them before the application

(b) Draft Orders – The Commission expects any party seeking an order from the Commission to provide a draft of the terms of the order sought, including identifying the jurisdiction of the Commission to make the order sought, as part of their application.

(c) Adjournment Applications – The Commission expects parties to meet scheduled hearing dates. If

a party applies for an adjournment, the Commission considers the circumstances, the timing of the application in relation to any hearing date, the fairness to all parties and the public interest in having matters heard and decided efficiently and promptly. The Commission will generally only grant adjournments if a panel is satisfied based on the evidence filed by the applicant that there are compelling circumstances. Where an adjournment application is based on a party's health, the Commission usually requires sufficient evidence from a medical professional. Where the Commission has previously set dates for a hearing, and a party retains new counsel, the Commission expects the new counsel to be available for those dates.

3.5 Summons of witnesses

(a) Power to issue – The Commission may summon (require) a witness to attend a hearing, to give evidence and to produce records and things. A party to a hearing may apply to the Commission to summon a witness. A party requesting a summons may be required to demonstrate that the witness is likely to produce relevant evidence and provide an explanation for why the summons is required. The form of summons is BC Form 15-601F.

(b) Service – The party that requested the summons must give the summons and conduct money to the witness. The conduct money is the same as that paid to witnesses summoned to attend before the Supreme Court of British Columbia. The form of affidavit of service the party must obtain is BC Form 15-903F.

References:

Act, sections [144](#), [173](#), [177](#) **Regulation**, sections [9 to 11](#) **Forms**, [15-601F](#), [15-903F](#) **Supreme Court Rules**, [BC Reg 168/2009](#), Appendix C, Schedule 3

3.6 Disclosure

(a) General principle – Full and timely disclosure promotes fairness and efficiency in hearings. The Commission expects each party who intends to produce evidence in a hearing to disclose that evidence to the other parties long enough before the hearing to give them reasonable time to prepare. This includes identifying evidence to be relied on, the identity of the witnesses the party intends to call, and what they expect the witness will say.

When providing other parties with reliance and witness lists, all parties must also copy the Commission Hearing Office. Further, all communications by a party to the Commission Hearing Office should be copied to all other parties to the proceeding, including the executive director. See paragraph **8.5 Sending Records**.

(b) Enforcement hearings – In an enforcement hearing, the executive director must disclose to each respondent all relevant information that is not privileged. The executive director must also provide each respondent a reliance list, identifying the records the executive director intends to rely on at the hearing.

The Commission considers it contrary to the public interest if respondents use information contained in the executive director's disclosure for any purpose other than answering the allegations made against them in the notice of hearing. Respondents therefore receive the executive director's disclosure on the implied undertaking not to use information contained in those records for any purpose other than participating in the hearing and answering the allegations in the notice of hearing.

A respondent's failure to comply with this undertaking may result in enforcement proceedings under the Act, or contempt proceedings in Court, against them.

Respondents may apply to the Commission to be released from their undertaking. Respondents should copy counsel for the executive director on such applications.

If the Commission provides access to hearing materials to a third party, Respondents are released from their implied undertaking relating to the released materials, except with respect to any personal information in the materials, which remain subject to the implied undertaking. See paragraph **8.4(b) Access to Hearing Materials**.

(c) Timing – The Commission expects the parties to make every effort to make disclosure as far in advance of the hearing as possible. However, sometimes relevant information is not discovered until the hearing is about to start or already underway. The Commission considers all relevant evidence from a party in an enforcement hearing, unless some other reason precludes the evidence from being entered as an exhibit. Therefore, if the evidence is relevant, it will permit a party to introduce it. In these circumstances, parties may ask for an adjournment to consider the new information, to recall witnesses, or to produce other new evidence. See also paragraph **4.1(a) Admission of Evidence**.

It is the Commission's usual practice to require the disclosure of will say statements and reliance lists approximately thirty days prior to the commencement of the hearing by the executive director, and approximately fifteen days prior to the hearing by the respondents.

3.7 Electronic hearings – The Commission holds electronic hearings. Under the Commission's e-hearings system, a party introduces evidence and files submissions in electronic form.

Parties submit the records they intend to rely on in the hearing to the Commission Hearing Office prior to the scheduled hearing start date. The records must be described succinctly and accurately in a list, and provided in an acceptable electronic format. Parties may agree on exhibits prior to the hearing. A party that disputes a record being entered as an exhibit at the hearing may raise an objection before the panel.

The Commission encourages all parties to a proceeding to tender exhibits that contain only that personal information which is required for their cases, and where possible provide copies of exhibits with personal information redacted. This includes information such as social insurance numbers, birth dates, and passport numbers. See also paragraphs **8.4(b) Access to Hearing Materials** and **8.5 Sending records**.

3.8 Notice of constitutional question – If a constitutional question is raised in a hearing, the party who raises the question must give notice in compliance with [section 8](#) of the *Constitutional Question Act*, RSBC 1996, c 68.

References:

Act, section [4.1 Administrative Tribunals Act](#), [section 46](#)

3.9 Notice of Human Rights Code question – If a party raises the question of whether there is a conflict between the *Human Rights Code* and the Act or regulations, the party must give notice

in compliance with section 46.1 of the *Administrative Tribunals Act*. The Commission may decline jurisdiction to apply the *Human Rights Code*.

References:

Act, section [4.1](#), *Administrative Tribunals Act*, section [46.1](#)

PART 4 HEARINGS

4.1 Evidence

(a) Admission of evidence – In enforcement hearings, the primary test for the admission of evidence is its relevance to the allegations in the notice of hearing.

The Commission will receive all relevant evidence from a party, unless some other reason precludes the evidence from being entered as an exhibit, such as being privileged. The Commission is not bound by the formal rules of evidence that apply in the courts. Generally, evidence should be the best evidence. The Commission expects that the party entering any evidence as an exhibit will properly describe it in a list of documents, and make submissions on its relevance during the hearing. A party may dispute the admission of any evidence before or during a hearing.

In the case of oral evidence, a witness on the stand will give oral testimony. This allows the Commission to assess the witness' credibility and the other parties to cross-examine the witness. Where the witness does not give oral testimony, then the Commission may accept transcripts, affidavits, or hearsay evidence. In doing so, the Commission decides what weight, if any, to give that evidence.

When an application or a hearing is in writing, the Commission generally does not permit a party to cross-examine witnesses on their affidavit evidence. If a party applies to cross-examine another party on their affidavit, the Commission may allow it where there are contested facts at issue in the affidavit. If cross-examination is allowed, it will generally be restricted to the facts in issue in the tendered affidavits.

(b) Witnesses – The parties call the witnesses. A party may cross-examine the witnesses of the other parties who testify at a hearing.

(c) Evidence of experts – A party calling evidence of experts must comply with the *Evidence Act*. However, the 30 day time period outlined in the *Evidence Act* is the minimum requirement for the exchange of expert evidence. In some circumstances, 30 days may be insufficient for other parties to have enough time to prepare for the hearing. The Commission expects that a party calling expert evidence will disclose it in advance of a hearing with sufficient time for other parties to adequately prepare.

(d) Evidence not in dispute – The Commission expects parties to agree in advance of the hearing on the evidence that is not in dispute.

References:

Act, sections [144](#), [173](#) *Evidence Act*, RSBC 1996, c 124, sections [10 and 11](#)

4.2 Recording evidence – The Commission generally produces a transcript of oral evidence and

submissions at hearings.

Except for routine procedural matters, for example setting hearing dates or hearing adjournment applications, the Commission uses real-time transcription reporting. Real-time reporting creates a viewable transcript simultaneously with the conduct of the hearing. The Commission uses an outside service provider.

The Commission provides parties with monitors and computers that display the electronic transcript during the hearing.

A party may obtain certified transcripts at their own cost from the service provider.

4.3 Facts, law – The Commission may determine all questions of fact, law or discretion that arise in any matter before it, including constitutional questions.

References:

Act, section [4.1](#) *Administrative Tribunals Act*, SBC 2004, c 56, section [43\(1\)](#)

4.3 Joint hearings – The Commission may hold a hearing in or outside British Columbia in conjunction with any other securities regulatory authority, and may consult with that authority before and throughout the course of the hearing.

Reference:

Act, section [4\(9\)](#)

4.4 Written and Oral Submissions – The Commission provides the parties an opportunity to provide an opening statement. As well, following the evidentiary portion of the hearing (see paragraph **4.1 – Evidence**), the Commission provides the parties the opportunity to make written and oral submissions on the evidence and the applicable law relating to liability and, when necessary, sanctions.

(a) Opening Statements and Oral submissions – At the beginning of the hearing, the parties may elect to make an opening statement. The purpose of an opening statement by the executive director is to give the panel a framework within which to understand and evaluate the case as it unfolds. The respondent may also elect to make an opening statement either at the beginning of the hearing or at the opening of the respondent's case. A panel will expect the parties to refrain from making arguments during opening statements.

After the parties have filed written submissions on liability or sanction, the parties may make oral submissions upon request to the panel. The Commission expects the parties to make these oral submissions promptly after all the written submissions are filed.

(b) Written submissions – The Commission expects the parties to file written submissions as soon as possible after the evidentiary portion of the oral hearing is complete. The panel will provide a schedule for the parties to file written submissions, but generally, after the evidentiary hearing the parties file written submissions on liability as follows:

- the executive director files within three weeks
- the respondents file two weeks after the executive director
- the executive director files reply submissions, if any, one week after the respondents

If required, the panel will also provide a schedule for the parties to file written submissions on sanction after the liability portion of the hearing is complete.

The Commission requires that the parties provide hyperlinks to public sources for all cited authorities (case law and legislation) in their written submissions. It is not necessary for the parties to provide the Commission copies of authorities in either paper or electronic format.

PART 5 ENFORCEMENT ORDERS UNDER SECTION 161(6)

5.1 Power – The Commission may make orders against a person under section 161(1) of the Act, after providing the person an opportunity to be heard under section 161(6), if:

- a person has been convicted in Canada or elsewhere of a securities related offence,
- another securities regulatory authority in a hearing or under a settlement sanctions a person, or
- a court makes a securities related finding against a person.

5.2 Procedure – In these circumstances, the executive director sends the person notice of an application to the Commission for orders under section 161(1) of the Act. The notice includes records from the underlying proceeding, any submissions, and a draft of the order sought by the executive director. The person will have a reasonable time to make written submissions.

While many of these hearings proceed in writing, the Commission may proceed with an oral hearing at the request of the parties.

5.3 Automatic Reciprocation of Extraprovincial Orders – Some orders from other securities regulatory authorities in Canada are automatically reciprocated in British Columbia. If the Commission has the power to impose the same order as that made by the other securities regulatory authority, and:

- a person has been sanctioned by, or has entered into a settlement agreement with, another securities regulatory authority in Canada, and
- there has been a finding or admission that the person contravened securities law in that jurisdiction,

the sanctions imposed automatically apply to the person in British Columbia under section 162.07 of the Act. The Commission is not required to provide notice to the person affected by this automatic reciprocation in British Columbia, and does not provide the person a hearing.

Reference:

Act, section [161\(6\)](#), [162.07](#)

PART 6 SETTLEMENTS IN ENFORCEMENT MATTERS

6.1 Delegation – The Commission authorizes the executive director to settle enforcement matters when it is in the public interest. This authorization allows the executive director wide discretion, including the ability to:

- determine the content of settlement discussions
- refuse to enter settlement discussions with any party
- dismiss an unreasonable settlement offer from a party without consultation with the Commission

The Commission publishes settlements on its website.

6.2 Conditions – Generally, the executive director expects a party settling to:

- agree to a statement of facts, including an admission of wrongdoing
- agree to sanctions and conditions
- waive all rights to a review or an appeal
- undertake to consent to reciprocal orders

6.3 Financial sanctions - Any financial sanction the settling party undertakes to pay is due and payable in accordance with the settlement terms. The executive director may require the settling party to provide security for outstanding payments to the Commission, including a mortgage in favour of the Commission on their interest in real property. The party must pay interest on outstanding amounts, based on the interest payable on judgments under the *Court Order Interest Act*. Normally, the executive director will require that non-financial sanctions remain in effect until the party makes all payments.

Reference:

Court Order Interest Act, RSBC 1996, c 79, [Part 2](#)

PART 7 REVIEWS

7.1 Purpose – The Commission holds hearings to review decisions of the executive director, single commissioners, and Recognized Entities. The hearings may be held in circumstances where:

- a person directly affected by a decision of the executive director, a single commissioner or a Recognized Entity requests a review
- the executive director requests a review of a decision of a Recognized Entity or
- the Commission reviews a decision of the executive director, a single commissioner or a Recognized Entity on its own initiative

Reference:

Act, sections [27 and 28](#), [165](#), [166](#)

7.2 Requests for reviews

(a) By a person directly affected – A person directly affected by a decision referred to in paragraph **7.1 Purpose** may have the decision reviewed by sending a request to the Commission Hearing Office within 30 days of the date the decision maker sent notice of the decision to the person seeking its

review. The Commission may extend the time period for seeking a review to a date the Commission considers appropriate.

The request must identify:

- the decision to be reviewed
- how the person is directly affected by the decision
- the grounds for the review
- the grounds for a stay of the decision, if requested

The person requesting the review must send the request to the other parties. See paragraphs **2.4 Parties** and **7.6 Persons directly affected by a decision**

(b) By the executive director – The executive director may have the decision of a Recognized Entity reviewed by sending a request to the Commission Hearing Office. See paragraph **2.4 Parties**. The executive director must send the request within 30 days of the date the Recognized Entity sent the decision to the executive director. The Commission may extend the time period for seeking a review to a date the commission considers appropriate.

Reference:

Act, sections [28](#), [165](#), [166](#).

7.3 Reviews by the Commission – The Commission, on its own initiative, may review:

- a decision of the executive director or a single commissioner by notifying, within 30 days of the date of the decision, the executive director and any person directly affected by the decision
- a decision of a Recognized Entity.

Reference:

Act, sections [27](#), [165](#)

7.4 Stays – The Commission may grant a stay of a decision under review. If the person requesting the review seeks a stay of the decision, the person should say so in the request for review and describe the grounds for the stay. Generally, the test for a stay includes:

- Is there a serious question to be tried?
- Will irreparable harm be suffered if the stay is not granted? and
- Assessing any harm in granting or rejecting the stay, weighing the balance of convenience, including the public interest.

The Commission generally will attach conditions to a stay of a decision and require the review to be heard promptly.

Reference:

Act, section [165](#)

7.5 Dates of review hearings and delivery of materials – The Commission usually schedules a hearing for the review at a hearing management meeting. At the hearing management meeting, the Commission will also set dates for the delivery of materials, including the statement of points and record (see paragraph **7.7 Materials**). Generally, the Commission will set the hearings of reviews for one day.

The Commission Hearing Office gives notice of the time, date, place and purpose of the hearing to each party.

7.6 Persons directly affected by a decision - Persons directly affected by a decision are generally those named in the decision. Persons not named in the decision must satisfy the Commission that the decision directly affects them, in order to be recognized as a party to a review.

A person who is not directly affected by a decision, but who wants to be granted intervener status in a review must apply to the Commission and identify why it is in the public interest for the Commission to exercise its discretion to grant the application. On an intervener application, the Commission balances the efficiency of the proceedings with affording the opportunity to persons with relevant evidence to make submissions and have the opportunity to be heard. The Commission may consider submissions from all the parties.

Reference:

Act, sections [28](#), [165](#), [166](#)
[Re Chilean Metals Inc., 2019 BCSECCOM 24](#)

7.7 Materials

(a) Statement of points – Each party to the review must prepare a concise statement of points containing the relevant facts and applicable law and must send the statement of points to the Commission Hearing Office and the other parties. For a review of a decision of a Recognized Entity, the statement of points must identify the basis of review described in paragraph **7.9(a) Where the review of a Recognized Entity decision proceeds as an appeal**.

(b) Record of decision under review – The record for a decision under review includes the decision, reasons given for the decision, all records and things considered by the decision maker, a transcript of any oral evidence, and submissions.

(c) Timing – If the party requesting the review does not file materials within the time frame established by the Commission, the Commission may place the review on the inactive list maintained by the Commission Hearing Office, and notify the parties. A party may apply to the Commission to have a review removed from the inactive list. If a review has remained on the inactive list for 180 days, the Commission will issue a decision dismissing the review as abandoned.

(d) Sending – The Commission expects parties to send their materials in electronic form. See paragraph **8.5(a) Required procedures**.

7.8 New evidence

A party who wants to introduce evidence that was not considered by the original decision maker on a review must apply to the Commission in advance of the hearing, and demonstrate why the evidence they wish to produce is both new and compelling and should be admitted. The Commission will consider whether the evidence is “new and compelling”, which requires the following assessments:

- does an assessment of the evidence raise a significant likelihood
 - that the decision maker would have reached a different decision had it considered the evidence, or
 - that the panel should not show deference to the decision in question
- was the evidence considered by the decision maker?
- is there a reason in the public interest not to admit the new evidence.

The Commission will hear submissions from all parties. In some circumstances, the Commission may hear the application to introduce new evidence as part of the review hearing. In that case, it will receive the evidence for the purposes of determining if it meets the test to be admitted.

Reference:

Re Imex Systems Inc., [2019 BCSECCOM 23](#)

7.9 Form and scope of reviews of a decision under sections 28 and 165

(a) Where the review of a Recognized Entity decision proceeds as an appeal – The Commission does not provide parties with a second opinion on a matter decided by a Recognized Entity. If the decision under review is reasonable and was made in accordance with the law, the evidence, and the public interest, the Commission is generally reluctant to interfere simply because it might have made a different decision in the circumstances. For this reason, generally, the person requesting the review presents a case for having the decision revoked or varied and the Recognized Entity responds to that case.

The Commission generally confirms the decision of the Recognized Entity, unless:

- the Recognized Entity has proceeded on an incorrect principle
- the Recognized Entity has made an error in law
- the Recognized Entity has overlooked material evidence
- new and compelling evidence is presented to the Commission or
- the Commission’s view of the public interest is different from that of the Recognized Entity

(b) Where the review of a Recognized Entity’s decision may proceed as a new hearing – The Commission may allow the review of a Recognized Entity’s decision to proceed as a new hearing, rather than an appeal, where:

- the parties have consented

- there is new and compelling evidence that requires the panel to reconsider all of the evidence
- there is a significant change in the circumstances
- the decision maker considered significant oral evidence that was not recorded
- there are parties directly affected by the decision who were not represented at the hearing before the Recognized Entity and who may suffer significant prejudice if unable to challenge the evidence leading to the findings in the decision or
- the Commission considers it in the public interest

If the Commission holds a new hearing, the Recognized Entity presents the case in support of the decision and the person requesting the review responds to that case.

(c) The review of a decision of the executive director or a commissioner– Generally, where the Commission holds a hearing to review a decision of the executive director or a single commissioner, the executive director presents the case in support of the decision and the person requesting the review responds to that case.

7.10 Scope of decisions – The Commission may confirm, vary or revoke the decision under review or make another decision it considers proper, including referring the matter back to the decision maker. If a review proceeds on the Commission’s own initiative or proceeds as a hearing de novo, the Commission may make a decision in the public interest.

Reference:

Act, sections [27](#), [165](#)

PART 8 GENERAL

8.1 Counsel – A party or a witness may have a lawyer represent them at a hearing. A party or a witness must apply to the Commission if they want to be represented at a hearing by someone other than a lawyer.

Reference:

Regulation, section [17](#)

8.2 Attendance – The Commission expects each party, or their representative, to attend hearings in person. If a party is unable to attend in person, they may apply to the Commission to attend by telephone or by video conference.

(a) Attendance by telephone or video conference – if the Commission allows a party to attend by telephone or video conference, that party must:

- not record or broadcast the proceedings
- use:
 - a land line for attendance by telephone (not a cellular telephone number), and provide the number to the Commission Hearing Office in advance of the hearing or
 - a video-conference facility pre-approved by the Commission
- ensure the telephone or video-conference remains connected during the hearing. If the connection is lost, the party is responsible for contacting the Commission Hearing Office.

and

- understand that participation in the hearing will be limited. A party will be able to speak, listen and make submissions during the proceeding, but will not be able to see any exhibits or documents displayed in the hearing room.

(b) Attendance of a witness by telephone or video conference - Similarly, a party who applies for a witness to testify by telephone or by video must ensure the witness fulfills the same obligations as a party attending by telephone or video conference, outlined above. Further, the testimony of the witness will be limited as they will not be able to see exhibits or documents displayed in the hearing room.

8.3 Communicating with the Commission Hearing Office

(a) Party – Each party to a hearing must send the Commission Hearing Office a notice disclosing their delivery address so that the Commission and the other parties may deliver to the party records related to the hearing. It is the responsibility of the party to ensure that the Commission Hearing Office has the party’s current address for delivery. All communication with the Hearing Office must be copied to all other parties.

(b) Counsel – The Commission Hearing Office may deliver documents to a party or witness through their lawyer or approved representative. If a party’s lawyer ceases to act for the party, the lawyer must provide the Commission Hearing Office a new address for delivery for the party, prior to getting off the record.

8.4 Public attendance

(a) Hearings are public – A hearing must be open to the public, unless the Commission considers that:

- a public hearing would be unduly prejudicial to a party or a witness and
- it would not be prejudicial to the public interest to order that the public be excluded for all or part of the hearing

(b) Access to Hearing Materials – Generally, the public does not have access to copies of hearing materials, including transcripts, exhibits and the submissions of the parties.

A person who requests access to hearing exhibits or transcripts must make an application to the Commission. The Commission will consider applications having regard to the public interest and privacy interests. In considering an application, the Commission may:

- consult the parties to the proceeding
- give the parties the opportunity to provide redacted copies of the requested exhibits or transcripts and
- require the person who obtains access to hearing exhibits or transcripts to provide an undertaking to keep any third party personal information disclosed confidential

Applications must be sent in writing to the Commission Hearing Office, at the address in paragraph **2.2 – Commission Hearing Office**.

If the Commission provides access to exhibits or transcripts, it will usually redact personal information to protect the privacy of parties, witnesses and third parties, and may redact other sensitive information. A person who requests access to un-redacted hearing exhibits or transcripts must make an application to the Commission, setting out the reasons why the Commission should provide this information, including the potential impact on the privacy interests of parties, witnesses and third parties.

A person who wants copies of written submissions of a party to the proceeding must contact that party directly.

Reference:

Regulation, sections [19](#), [22-items 22 and 23](#)

(c) Media access – Except where the Commission orders a hearing to be held in camera, media may cover the hearing. Media must apply to the Commission to televise or record hearings sufficiently in advance of the hearing to allow the parties to the proceeding to make submissions on the application. The Commission may grant the application with conditions. If the Commission grants the request to televise or record a hearing, media must make arrangements through the Commission Hearing

Office, and provide an undertaking to the Commission not to use the recording of the hearing for any purpose other than that granted by the Commission. The Commission may create a list of preapproved members of the media.

Media representatives are subject to the direction of the Commission, which will balance the public interest and privacy interests. Media representatives must ensure that their activities do not disrupt the hearing. Disruptive activities include:

- conducting interviews in the hearing room while the hearing is in session or so nearby so as to disrupt the hearing
- moving equipment while the hearing is in session
- using flash photography, television lights or other equipment that distract parties, witnesses or the commissioners
- any other activity that the commissioner presiding considers distracting or disruptive

Microphones may not be placed before counsel, parties, witnesses, hearing officer, the court reporter or the commissioners.

Television coverage of hearings is limited to one fixed-camera position in the public area of the hearing room. If more than one media outlet wishes to film the hearing, they must work out sharing arrangements among themselves.

Members of the media who have questions or wish to set up an interview with the Commission may contact the Commission’s media relations contact at 604 899-6713.

(d) Hearing Room Etiquette – Members of the public must turn off all electronic devices in the hearing room, unless permitted by the hearing panel. “Electronic devices” includes cameras, phones, recorders, laptops, tablets and all other similar devices.

8.5 Sending records

(a) Required procedures – The Act and Regulation set out requirements for sending records. The Commission expects parties and witnesses to send records to the Commission Hearing Office in electronic form.

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 counsel for the executive director and all other parties explaining why the Commission should decide that it is reasonable to provide only paper records. If the Commission gives permission to provide records in paper form, the applicant must deliver five copies to the Commission Hearing Office and a copy to each party.

If a party or witness has any questions, please contact the Commission Hearing Office.

References:

Act, section [180](#) Regulation, section [20](#)

PART 9 RULINGS, FINDINGS AND DECISIONS

9.1 Written reasons – Generally, the Commission issues written reasons for decisions made after a hearing.

9.2 Decisions – In enforcement hearings, generally, the Commission issues its findings of fact and law before hearing submissions on sanctions. These findings, any rulings and the Commission’s decision on sanctions, when issued, constitute the Commission’s decision.

In its written decisions, the Commission generally does not refer to persons, other than parties to the proceeding, by name.

9.3 Timing – The Commission has set these guidelines for issuing rulings, findings and decisions:

- findings: 120 days from the last day of submissions
- written reasons for a decision made immediately with written reasons to follow: 120 days
- a decision for a review conducted as a new hearing: 120 days
- a decision for a review conducted as an appeal: 60 days
- a decision on sanctions: 45 days
- a ruling: 30 days

While the Commission works to meet the timelines, the actual date of release for any ruling, findings or decision is dependent on numerous factors, including the complexity of the issues, the number of parties, and the volume of material entered into evidence.

9.4 Delivery – As soon as the Commission issues a ruling, findings or decision, the Commission Hearing Office sends it to the parties. The Commission issues press releases for findings and decisions and publishes rulings, findings, decisions and press releases on its website, unless the panel has ordered that the ruling, findings or decision be kept confidential.

9.5 Sanctions – Where the Commission finds that a respondent contravened the Act or any regulation or engaged in conduct that requires orders in the public interest, the Commission may impose sanctions on the respondent including:

- a reprimand
- orders barring the respondent from trading and advising in the securities or derivatives markets
- orders restricting the respondent’s participation with those operating in the securities or derivatives markets
- orders that the respondent pay to the Commission any amount obtained, or payment or loss avoided because the respondent contravened the Act or regulations.

Reference:

Act, section [161\(1\)](#)

9.6 Administrative penalty – Where the Commission finds that a respondent contravened the Act or the regulations, the Commission may order the respondent to pay an administrative penalty of not more than \$1 million for each contravention. Further, if the Commission finds that a person has contravened section 57.7 of the Act (record keeping), the Commission may order the respondent to pay an administrative penalty of not more than \$5 million for each contravention.

Reference:

Act, section [162, 57.7](#)

9.7 Conditions – The Commission may impose conditions, restrictions or requirements in a decision and may provide exceptions to prohibitions.

Reference:

Act, section [172](#)

9.8 Costs – In an enforcement hearing, the Commission may order a respondent to pay the costs of the investigation, the hearing and related costs.

References:

Act, section [174](#), **Regulation**, section [22-item 28](#)

9.9 Interest on financial sanctions and costs – When the Commission orders financial sanctions or costs after a hearing, the Commission files the order in the Supreme Court registry under section 163 of the Act. A filed order has the same force and effect, and the Commission may take all proceedings on it, as if it were a judgment of the Supreme Court.

Under Part 2 of the *Court Order Interest Act*, interest is payable on financial sanctions and costs at an annual simple interest rate equal to the prime lending rate of the banker to the government.

References:

Act, section [163](#) *Court Order Interest Act*, RSBC 1996, c 79, [Part 2](#)

9.10 Post Hearing Applications - applications to vary and appeals of decisions

(a) Discretion to revoke or vary – Under section 171 of the Act, the Commission may revoke or vary a decision it has made, or that was made by a single commissioner. A party that is subject to a decision may apply to the Commission for an order revoking or varying the decision. Generally, the Commission conducts these hearings in writing; it considers written submissions and makes its decision.

Before the Commission changes a decision, it must consider that it would not be prejudicial to the public interest to do so. If a panel of the Commission is considering its own decision, this usually means that the party must show the Commission new and compelling evidence that was not before the original decision maker, or a significant change in the circumstances since the original decision was made. If the Commission is considering a decision made by a single commissioner, the Commission may consider other factors.

A party must apply to the Commission in advance of the hearing and demonstrate why the evidence that was not before the original decision maker is new and compelling, and should be admitted. The Commission will hear submissions from all parties. In some circumstances, the Commission may hear the application to introduce new evidence as part of the hearing to revoke or vary a decision. In that case, it will receive the evidence for the purposes of determining if it meets the test to be admitted.

(b) Variation of orders under section 161(6) Generally, the Commission will not vary its own reciprocal order issued under section 161(6) of the Act unless the originating jurisdiction or securities regulatory authority has varied the underlying findings, order or agreement upon which the Commission's order is based.

(c) Timing If a party fails to diligently pursue their application under section 171 of the Act, or fails to file materials required by the Commission to hear the matter, the Commission may determine the matter has been abandoned and direct the Commission Hearing Office to strike it from the hearing schedule.

Reference:

Act, section [171](#)

(e) Appeal to Court of Appeal – A person directly affected by a Commission's decision, other than a decision of a person acting under delegated authority from the Commission, may appeal to the Court of Appeal with leave of a justice of that court.

Reference:

Act, sections [161\(6\)](#), [167](#)