

BC Policy 15-501 - Disclosure of Investigation Information

Under section 148(1) of the *Securities Act*, a person must not disclose any information or evidence obtained or sought to be obtained or the name of any witness examined or sought to be examined under sections 143, 144 or 145 of the Act (information).

Section 148(1) provides two exceptions. A person may disclose information

- (a) to the person's counsel, or
- (b) with the consent of the Commission.

BC Instrument 15-501 *Disclosure of Investigation Information* (the instrument) provides general Commission consent for disclosure of information by:

- (a) Commission staff to conduct an investigation and any resulting proceedings, to assist securities-related and governmental agencies and to comply with court orders,
- (b) other securities-related and governmental agencies,
- (c) counsel to a client who is a respondent or witness, and
- (d) anyone, other than Commission staff or other agencies, to allow people to prepare for administrative, civil and criminal proceedings.

Agencies

Sections 2(e) and 3 of the instrument allow Commission staff, other securities regulators and governmental agencies to share information despite section 148 of the Act. These consents are intentionally broad. They allow Commission staff, other regulators and agencies to cooperate fully with each other in carrying out their functions.

The definition of agency closely tracks the list of agencies in section 169.1(2) of the Act, which allows the Commission and Executive Director to share information with a wide variety of securities regulators and governmental agencies. By doing so, this instrument clarifies that Commission staff may share compelled information with those agencies, not just information staff obtain from other sources.

Despite the consent provided by the instrument, other requirements, including section 11 of the Act, any agreement under section 169.1 of the Act, the *Canadian Charter of Rights and Freedoms* or other laws of general application might restrict the sharing of information with others or their use of that information.

If other requirements apply to the sharing of information, Commission staff may seek an agreement from another regulator or agency to restrict its subsequent use of the information or decline to share the information.

Counsel for Respondent or Witness

Section 4 of the instrument allows counsel to speak freely to a client about information at any stage of an investigation. It also permits a lawyer to share information with multiple clients who are all respondents or witnesses in the same investigation.

Proceedings

Section 5 of the instrument allows everyone, other than staff or an agency, to share information once a notice of hearing has been issued, administrative or civil proceedings have been commenced, or criminal charges have been laid. It allows respondents, accused persons and witnesses to prepare for and conduct hearings and trials, but does not allow information to be used for any other purpose.

Section 5 omits Commission staff and agencies because sections 3 and 4 prescribe the circumstances in which they may disclose information. In the absence of a court order, it prevents staff from voluntarily sharing information for the purpose of civil or other proceedings without the Commission's specific consent.

Section 5 applies only to proceedings that have started, not those that might start in future.