

BC POLICY 15-601 COMMISSION HEARINGS

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BC POLICY 15-601 COMMISSION HEARINGS

INTRODUCTION

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

PART 1 INTERPRETATION

1.1 Application – The commission holds three kinds of hearings under the Act:

- enforcement hearings commenced by the executive director under notices of hearing
- enforcement hearings commenced by interested parties with leave of a single commissioner under section 64 of the Act and
- hearings to review decisions made by officers or employees of the commission, single commissioners and SROs

The commission appoints the executive director who is the chief administrative officer of the commission and is a party to all hearings.

1.2 Defined terms

“**Act**” means the *Securities Act*, SBC 2004, c. 43 and “**Rules**” means the *Securities Rules*, RBC ----- . Terms defined in the Act and the Rules have the same meanings in this policy.

“**SRO**” means the TSX Venture Exchange Inc., the Investment Dealers Association of Canada, the Mutual Fund Dealers Association of Canada, RS Inc. or any other marketplace, regulatory organization or self-regulatory organization recognized by the commission under the Act.

PART 2 HEARINGS

2.1 Procedures – The commission conducts hearings less formally than the courts. The Act and Rules include very few procedures the commission must follow in hearings. Consequently, except for these, the commission is the master of its own procedures. In deciding procedural matters, the commission considers the rules of fairness set by the courts and the public interest in having matters heard fully and decided promptly.

2.2 Parties – For hearings on enforcement matters, the parties include the executive director and respondents and, in a section 64 enforcement hearing, also the applicant. Respondents are persons against whom the executive director (or applicants, in the case of section 64 enforcement hearings) makes allegations in a notice of hearing.

In a hearing to review a decision of an officer or employee of the commission or a commissioner, the parties include the executive director and the parties named in the decision.

In a hearing to review a decision of an SRO, the parties include the SRO, the executive director and the parties named in the decision.

2.3 Application for leave for a section 64 enforcement hearing – If an interested person believes that another person has contravened the Act or the Rules, the interested person may apply for leave from a commissioner for a hearing to be held under section 59. The interested person must:

- produce evidence of the contravention
- have the capacity to present the case
- show that there is a reasonable prospect for success
- show that granting leave is in the public interest

The commissioner's decision is final.

Reference:

Act, section 64

2.4 Notices 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 hearing
- the allegations against each respondent and
- the penalties the executive director seeks from the commission

Generally, the commission sets the dates for the hearing when the parties appear on the date in the notice.

The commission publishes notices of enforcement hearings on its website.

(b) Section 64 enforcement hearings – For hearings under section 64 of the Act, the commission follows the procedure described under paragraph (a). In these enforcement hearings, the applicant, not the executive director, makes the allegations and seeks the penalties from the commission. Please see paragraph 6.7 *Sending records*.

Generally, the commission sets dates for the hearing when the applicant makes disclosure. Please see paragraph 2.6 (c) *Disclosure – section 64 enforcement hearings*.

The commission publishes notices of these enforcement hearings on its website.

(c) **Reviews** – A person wishing a hearing to review a decision must request a review, by sending the request to the commission and the other parties. A description of what must be in the request is found in paragraph 4.2 *Requests for reviews*. Please also see paragraph 6.7 *Sending records*.

Generally, the parties agree on dates for the hearing after the person making the request discloses their case to the parties. Please see paragraph 4.4 *Notices of hearings*.

The commission publishes notices of these hearings on its website.

Reference:

Act, section 70

2.5 Temporary orders – The executive director may issue a temporary order without an opportunity to be heard, but must issue a notice of hearing, or a notice of opportunity to be heard, with the temporary order. The temporary order is effective for not more than 15 days unless the commission extends it. The commission generally gives a party the opportunity to be heard on an application by the executive director to extend a temporary order.

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

Reference:

Act, section 59

2.6 Summons of witnesses

(a) **Power to issue** – The commission may summon (require) a witness to attend a hearing and to give evidence and to produce records and things. A party to the hearing may apply to the commission to summon a witness. The party must be able to show that the witness is likely to produce relevant evidence. The form of summons is attached.

(b) **Service** – A summoned witness is entitled to conduct money. The party requesting a summons is responsible for ensuring that it is served (given) personally on the witness and that conduct money is paid. The conduct money should be the same as that paid to witnesses summoned to attend before the Supreme Court of British Columbia.

References:

Act, section 65

Supreme Court Rules, BC Reg 221/90, Appendix C, Schedule 3

2.7 Disclosure

(a) **General principle** – A policy of full disclosure promotes fairness and efficiency in hearings. A party to a hearing must disclose to each other party:

- (a) the evidence it intends to rely on and
- (b) if a party intends to call any witness, the identity of each witness and a summary statement of the expected testimony of the witness

Disclosure should be made sufficiently in advance of the hearing to afford other parties reasonable time to prepare for the hearing. The commission may require the parties to make disclosure in electronic form.

References:

Act, section 161

Rules, section 163

(b) **Enforcement hearings** – In an enforcement hearing under sections 45, 59, 60, 61 or 62 of the Act, the executive director must disclose to each respondent all relevant information that is not privileged. The executive director usually makes disclosure in electronic form. After the executive director makes disclosure, respondents must make disclosure as described in paragraph (a).

(c) **Section 64 enforcement hearings** – For a section 64 enforcement hearing under section 59, the applicant must make disclosure as described in paragraph (a). After the applicant makes disclosure, respondents must make disclosure as described in paragraph (a). Generally, the commission sets dates for the hearing after the applicant makes disclosure.

(d) **Withholding disclosure** – A party that has special reasons not to disclose information should, at the time of making disclosure, describe generally the information withheld and the reasons.

(e) **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 under way. The commission must consider all relevant evidence and therefore there is no arbitrary point in time after which evidence cannot be produced at the hearing. In these circumstances, parties may ask for an adjournment to consider the new information.

2.8 Evidence

(a) **Admission of evidence** – The commission is not bound by the rules of evidence. In enforcement matters, the primary test for the admission of evidence is its relevance to

the allegations in the notice of hearing. The commission must receive all relevant evidence from a party.

(b) Agreed statement of facts – The commission expects parties to agree on the evidence that is not in dispute. In these circumstances, the parties should file an agreed statement of facts.

(c) Witnesses – The commission can require a witness to give evidence and to produce records and things. A party will normally be given the opportunity to cross-examine the witnesses of the other parties.

(d) Delivering records – The commission may require a party producing records to do so in an electronic form. If not, the party must deliver the commission five copies and each other party one copy.

References:

Act, sections 65, 161

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

Reference:

Act, section 136 and *Administrative Tribunals Act*, SBC 2004, c.56, sections 43(1), 161, 162

2.10 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.

Reference:

Act, section 136 and *Administrative Tribunals Act*, sections 46, 162

2.11 Joint hearings – The commission may hold a hearing in or outside British Columbia in conjunction with any other regulator, and may consult with that regulator during the course of the hearing.

Reference:

Act, section 66

PART 3 SETTLEMENTS IN ENFORCEMENT MATTERS

3.1 Purpose – The executive director may settle an enforcement matter when it is in the public interest to do so.

3.2 Conditions – The party settling will generally be expected to:

- agree to a statement of facts, including an admission of wrongdoing
- agree to penalties
- undertake to comply with the Act and Rules
- waive all reviews and appeals and
- pay investigation and hearing preparation costs

The party settling must pay costs and any financial penalties at the time of settlement or negotiate arrangements to pay in the future. Normally, the executive director will require that non-financial penalties remain in effect until the party makes all payments.

3.3 Form – A settlement is finalized in an agreement with the executive director. The commission publishes settlements on its website.

PART 4 REVIEWS

4.1 Purpose – The commission holds hearings to review decisions of officers or employees of the commission, single commissioners (unless the decision is made under section 64), and SROs.

Reference:

Act, section 70

4.2 Requests for reviews – A person directly affected by a decision may have the decision reviewed by sending a request to the commission within 30 days of the decision.

The request must identify

- the decision to be reviewed
- how the person is directly affected by the decision and
- the grounds for the review

The person requesting the review must send the request to the other parties. Please see paragraph 4.5 *Parties*.

Reference:

Act, section 70

4.3 Stays – The commission may grant a stay of a decision under review to stop the decision from taking effect. If the person requesting the review wants a stay of the decision, they should say so in the request for review and describe the grounds for the stay. Please see paragraph 4.2 *Requests for reviews*.

Reference:

Act, section 70

4.4 Notices of hearings – The commission schedules a hearing for the review when it receives both the record for the decision under review (see paragraph 4.6 *Record*) and the statement of points of the party requesting the review (see paragraph 4.7 *Statements of points*). If the parties cannot agree on a date for the hearing that is satisfactory to the commission, the commission sets a date.

The secretary to the commission gives notice of the time, date, place and purpose of the hearing to each party.

The commission publishes notices of hearings on its website.

4.5 Parties – The parties to a review include the person requesting it, the executive director, each person considered by the commission to be directly affected by the decision under review, and an SRO if its decision is under review. Persons directly affected by a decision are generally those named in the decision. If a person is not named in the decision, the person must satisfy the commission they are directly affected by the decision.

Reference:

Act, section 70

4.6 Record

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

(b) Sending the record – Upon receipt of the request for a review, the person whose decision is under review must send the record to the commission, and to each other party. The commission may require the party to provide the record in an electronic form. If not, the party must send the commission five copies and each other party one copy.

Reference:

Act, section 161

4.7 Statements of points

(a) Contents – 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 and the other parties. For a review of a decision of an SRO, the statement

of points must identify the basis of review described in paragraph 4.8(a) *Form and scope of reviews*.

(b) Timing – First, the party requesting the review must send a statement of points. Then, each other party must send a statement of points at least 20 business days before the date of the hearing. The executive director (when not requesting the review or when the decision under review is not made by an officer or employee of the commission or a commissioner) must send a statement of points at least 10 business days before the date of the review.

(c) Delivery – The commission may require the party to send a statement of points in an electronic form. If not, the party must send the commission five copies and each other party one copy.

Reference:

Act, section 161

4.8 Form and scope of reviews

(a) Where the review of a SRO decision proceeds as an appeal – A review is not intended to provide parties with a second opinion from the commission on a matter decided by an SRO. If the decision under review is reasonable and has been 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 SRO responds to that case.

In these circumstances, the commission generally confirms the decision of the SRO, unless

- the SRO has made an error in law
- the SRO 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 the SRO's

(b) Where the review of a SRO decision may proceed as a new hearing - The commission may allow the review of an SRO decision to proceed as a new hearing, rather than an appeal, where:

- the parties have consented
- there is new and compelling 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 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 SRO 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 an officer or employee of the commission or a commissioner may proceed as a new hearing – The commission generally holds a new hearing where it is reviewing a decision of an officer or employee of the commission or a commissioner. Consequently, the executive director presents the case in support of the decision and the person requesting the review responds to that case.

4.9 Scope of decisions – The commission may confirm, vary or revoke (terminate) the decision under review or make another decision it considers proper, including referring the matter back to the decision maker.

Reference:
Act, section 70

PART 5 PRE-HEARING CONFERENCES

5.1 Purpose – A party may apply for a pre-hearing conference before a commissioner to consider:

- admissions of facts and authenticity and contents of records
- disclosure of information
- identification of the issues and
- other matters that will promote a fair and efficient hearing

5.2 Directions by commissioner – At the pre-hearing conference, the commissioner may direct a party to make disclosures or take other actions that will promote a fair and efficient hearing.

5.3 Outcome – After a pre-hearing conference, the commissioner sends each party a summary of the agreements reached and the commissioner’s directions.

PART 6 GENERAL

6.1 Counsel – A party or a witness may hire a lawyer to represent them at a hearing.

Reference:

Rules, section 163

6.2 Service

(a) **Party** – A party to a hearing must send the commission a notice disclosing particulars for service of records on that party using BC Form 15-601F1 *Notice for service on a party*.

(b) **Counsel** – Where a lawyer is acting for a party or a witness, records may be served on the party or witness by delivering them to the lawyer. The lawyer should send the commission a notice disclosing particulars for service using the attached form *Notice for service on a lawyer*.

References:

Act, section 162

Rules, section 164

6.3 Consolidation – Hearings involving the same or a related question of fact or law may be combined into a single hearing on all or any of the matters in issue.

6.4 Recording evidence – The commission generally records a transcript of oral evidence and submissions at hearings.

Except for setting dates, hearing adjournment applications and similar procedural matters, the commission uses computer-based real time transcription reporting. Real time reporting creates a viewable transcript simultaneously with the conduct of the hearing. The commission uses LiveNote software and an outside service provider.

Parties wishing to use the real time reporting system must make arrangements in advance with the service provider to connect to the system. A laptop computer is required with LiveNote (available from the service provider) or other compatible software installed. The service provider charges a fee to use the system. Contact information for the service provider is available from the secretary to the commission.

A party not wishing to use the real time reporting system can order transcripts from the service provider.

6.5 Public attendance

(a) **Hearings are public** – A hearing must be open to the public, unless the commission orders that some or all the hearing be held in private to protect a substantial and compelling privacy interest of one or more of the persons attending the hearing.

The public may review all published records for a hearing on the commission's website. If a record is not published on the website, the public may inspect it during normal business hours at the commission's office. Copies are available from the secretary to the commission upon payment of the applicable fees.

References:

Act, section 67

Rules, section---18 and 19

(b) Media access – Except where the commission orders a hearing to be held in private, the media may cover the hearing. The television media must make arrangements through the secretary of the commission. Media representatives are subject to the direction of the commission. 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 or
- any other activity that the commissioner presiding considers distracting or disruptive

Microphones may not be placed before counsel, parties, witnesses, 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.

(c) Cellphones – Cellphones, pagers and similar devices must be turned off in the hearing room.

6.6 Adjournments – The commission expects parties to meet hearing dates. If a party cannot, the party should attempt to obtain the consent of the other parties to the adjournment and to new dates. In considering an adjournment request, the 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.

6.7 Sending records

(a) Required procedures – The Act and Rules set out requirements for sending records. The commission expects parties to send records in an electronic form.

Reference:

Act, sections 161, 162

(b) Commission address – The commission’s address for records is:

British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC
V7Y 1L2
Attention: Secretary to the Commission

Fax: (604) 899-6506

E-mail: commsec@bcsc.bc.ca

(c) Commission website – The commission’s website address is www.bcsc.bc.ca.

PART 7 RULINGS, FINDINGS AND DECISIONS

7.1 Penalties – Where the commission finds that a respondent has contravened the Act or Rules, the commission may impose penalties on the respondent including:

- a reprimand
- orders barring the respondent from trading and advising in the securities market
- orders restricting the respondent’s participation with those operating in the securities market
- orders requiring the respondent to give up ill-gotten gains
- orders requiring the respondent to pay an administrative penalty

Reference:

Act, sections 45, 59 to 61

7.2 Conditions – The commission may impose conditions, requirements and restrictions in a decision.

Reference:

Act, section 156

7.3 Costs – In a hearing on enforcement matters, the commission may order a party to pay the costs of the investigation, the hearing and related costs.

References:

Act, section 62

Rules, section ---22 and 23

7.4 Written reasons – Generally, the commission issues written reasons for decisions made after a hearing.

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

7.6 Timing – The commission has set these for issuing its rulings, findings and decisions:

- rulings: 21 days
- findings: 90 days
- decisions where the review is a new hearing: 90 days
- decisions where the review is an appeal: 45 days and
- decisions dealing with penalties following the release of findings: 14 days

The commission usually makes an immediate decision where it is dealing with takeover and issuer bid matters. The deadline applies to release of the written reasons for its decision.

7.7 Delivery – As soon as the commission issues a ruling, findings or decision, the commission 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.

7.8 Reviews and appeals of decisions

(a) Discretion to revoke or vary – If a party wants the commission to change a decision, the party must apply to the commission for an order revoking or varying the decision. However, before the commission changes a decision, it must consider that it would not be prejudicial to the public interest. This usually means that the party must show the commission new evidence or a significant change in the circumstances.

(b) Appeal to Court of Appeal – A person directly affected by a decision of the commission may appeal to the Court of Appeal with leave of a justice of that court.

Reference:

Act, sections 75, 157

Date of the policy

Douglas M. Hyndman
Chair

Summons to attend before the commission

This is the form for summons under section 65(1) of the *Securities Act*, SBC 2004, c. 43

[names of the respondents in an enforcement matter or the person requesting the hearing to review a decision]

TO: [name (and address if known) of the person to be summoned]

The commission is holding a hearing [into allegations made in a notice of hearing issued (date) against (names of the respondents)] [to review the decision of (name of the decision maker) made (date)] *.

You are summoned as a witness to attend the hearing at the time, date and place set out below and to give evidence and to produce all records or things in your custody, possession or control relating to [the allegations in the notice of hearing] [the review] *.

TIME:

DATE:

PLACE:

Date of the summons

Commissioner's name and signature

* delete the phrase in square brackets which does not apply

Authority of commission

65 (1) At a hearing the commission has the same power as the Supreme Court has for the trial of civil actions to

- (a) summon the attendance of a witness,
- (b) compel a witness to give evidence, and
- (c) compel a witness to produce a record or thing, or a class of records or things, in the custody, possession or control of the witness.

(2) Despite section 34 (5) of the *Evidence Act* [financial institution not compellable], no financial institution, as defined in that section, and no officer or employee of a financial institution, is exempt from the operation of this section.

Committal for contempt

69 (1) On application by the commission to the Supreme Court, a witness summoned under section 65 (1) (a) is liable to be committed for contempt, as if in breach of an order or judgment of the Supreme Court, if the witness neglects or refuses to

- (a) attend,
- (b) give evidence under section 65 (1) (b), or
- (c) produce a record or thing in the custody, possession or control of the witness.

Notice for service on a lawyer

This is the form for service on a lawyer under section 162 of the *Securities Act*, SBC 2004, c.43

[names of the respondents in an enforcement matter or the person requesting the hearing to review a decision]

I [name of lawyer] represent [name of party or witness] in the hearing [into allegations made in a notice of hearing issued (date) against (names of the respondents)] [to review the decision of (name of the decision maker) made (date)] *.

You may serve records related to the hearing on [name of party or witness] by delivering them to me as follows.

ADDRESS:

FAX:

E-MAIL:

You may telephone me at [telephone number].

If any information in this notice concerning the service of records on me changes, I will file a new notice with the commission.

If I stop representing [name of party or witness] in the hearing, I will file a new notice with the commission.

Date of the notice

Counsel's name and signature

Notices generally

162 (1) Unless otherwise required by the commission, this Act or the regulations, a record under this Act or the regulations that is sent or required to be sent to a person must be

- (a) left with the person or deposited in the person's mailbox or receptacle at the person's residence or place of business,
- (b) mailed to the person, or
- (c) transmitted electronically to the person.

(2) A record sent to a person under subsection (1) must be sent to the person

- (a) at the location where the sender knows the person to be,
- (b) at the latest personal or business address, including e-mail address or facsimile number, that the sender knows as the person's latest address,
- (c) at the address for service in British Columbia that the person filed, or
- (d) at the address of the person's solicitor, if the person or the solicitor has advised that the solicitor is acting for the person.