

15-601 Commission Hearings [BCP Proposed - Lapsed]

BC POLICY 15-601 COMMISSION HEARINGS

INTRODUCTION

This Policy describes procedures for the conduct of hearings under the Securities Act and the relevant legislative provisions. The procedures are guidelines that are intended to apply to hearings in most cases, but the Commission has the discretion to adopt different procedures, when appropriate.

PART 1 INTERPRETATION

1.1 Application - This policy applies to enforcement hearings and hearings and reviews under the Act.

1.2 Defined terms

"**Act**" means the *Securities Act*, R.S.B.C. 1996, c. 418, "**Rules**" means the *Securities Rules*, R.B.C. 194/197 and "**Regulation**" means the *Securities Regulation*, R.B.C. 196/97. Terms that are defined in the Act, the Rules or the Regulation have the same meanings in this policy.

"**SRO**" means the Canadian Venture Exchange Inc., the Investment Dealers Association of Canada, the Mutual Fund Dealers Association of Canada or any other self regulatory organization recognized by the Commission.

"**Hearing**" includes a hearing and review, unless the context otherwise requires.

PART 2 BASIC HEARING PROCEDURES

2.1 Form of Hearing; Parties - A hearing is generally conducted like a trial, although the Commission is not bound by the formal practices and procedures used in the courts. Parties to a hearing include the applicant, the respondent, the Executive Director (when not the applicant) and any other persons granted standing by the Commission.

2.2 Notices of hearing

(a) Enforcement Hearings - The Executive Director will send a notice of hearing to each party to the hearing. A notice of hearing contains:

the time and place of the hearing,

the facts and allegations to be considered by the Commission, and

the orders that the Executive Director seeks from the Commission.

Notices of hearing are published on the Commission's website.

Reference:

Regulation, section 15

(b) Other Hearings - The applicant must send a notice to the Commission requesting a hearing. The notice must specify the decision that the applicant

wishes the Commission to make, the statutory authority for that decision and the grounds. The applicant must send the notice to the other parties.

If the parties cannot agree on a date for the hearing that is satisfactory to the Commission, the Commission will set a date.

2.3 Temporary Orders - If a temporary order has been issued, a notice of hearing will accompany the temporary order. The temporary order expires after 15 days unless the Commission extends it. The Commission will give a party the opportunity to be heard on an application by the Executive Director to extend a temporary order.

Temporary orders and extensions of temporary orders are published on the Commission's website.

Reference:

Act, section 161

2.4 Summons

(a) Power to issue - The Commission may compel a witness to produce documents and give evidence. A party to the hearing may apply to the Commission to summon a witness. The Commission will generally not issue a summons that would be unreasonable, excessive in scope, unduly burdensome, or unlikely to produce relevant evidence.

(b) Service - Form 15-601F1 is the form of summons. A summoned witness is entitled to conduct money. The party requesting a summons is responsible for ensuring that it is served personally on the witness to be summoned and that the conduct money is paid. The amount of conduct money required is the same as that paid to witnesses in the Supreme Court of British Columbia.

Form 15-601F2 is the affidavit of service. It proves that a summons has been served and that conduct money was paid.

References:

Act, sections 144, 173

Regulation, sections 9-11

Forms 15-601F1, 15-601F2

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

2.5 Disclosure

(a) General Principle - A policy of full disclosure promotes fairness and efficiency in the hearing process. The Commission expects each party to disclose the outline of its case and the evidence it intends to call to support that case. Disclosure should be made sufficiently in advance of the hearing to afford other parties reasonable time to prepare for the hearing.

(b) Section 161 Hearings - In an enforcement hearing under section 161, the Executive Director will disclose to each respondent:

particulars of the allegations in sufficient detail to give the respondent a fair opportunity to know and meet the case against the respondent,

all material gathered in the investigation that is relevant to the allegations in the notice of hearing,

the material upon which the Executive Director intends to rely in presenting the case at the hearing, and

the identity of the witnesses that the Executive Director intends to call at the hearing, together with summaries of the testimony that those witnesses are expected to give.

After the Executive Director has made disclosure, a respondent is expected to disclose to the Executive Director:

an outline of the respondent's proposed case

the material upon which the respondent intends to rely in presenting its case at the hearing, and

the identity of the witnesses that the respondent intends to call at the hearing.

(c) 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.

(d) 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 material is not discovered until the hearing is about to start or already under way. The Commission's practice is to consider all relevant evidence and therefore there is no arbitrary point in time after which evidence cannot be disclosed and relied upon.

2.6 Evidence

(a) Admission of Evidence - The Commission is not bound by the rules of evidence. The primary test for the admission of evidence is its relevance to the allegations in the notice of hearing. The Act requires the Commission to receive all relevant evidence from a party; the Commission's practice is to admit all relevant evidence.

(b) Witnesses - The Commission can compel a witness to give evidence and to produce relevant documents. A party will normally be given the opportunity to cross examine the witnesses of the other parties.

(c) Delivering Documents - A party submitting documentary evidence at a hearing must deliver 5 copies to the Commission and a copy to each party.

References:

Act, sections 144, 168, 173

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 must:

agree to a statement of facts, including an admission of wrongdoing,

agree to sanctions,
undertake to comply with B.C. securities legislation,
waive all reviews or appeals, and
pay investigation and hearing preparation costs.

The party settling must pay costs and any monetary sanctions at the time of settlement or negotiate arrangements to pay in the future. Normally non-monetary sanctions will not be lifted until all such amounts are paid.

3.3 Form - A settlement is finalized by way of an agreement with the Executive Director. Settlements are published on the Commission's website.

PART 4 HEARINGS AND REVIEWS

4.1 Hearings and reviews - A person directly affected by a decision of a Commissioner, the Executive Director or an SRO is entitled to a hearing and review of that decision. The Executive Director is entitled to a hearing and review of SRO decisions and the Commission may review on its own motion decisions of the Executive Director and SROs.

The Commission may grant a stay of a decision until disposition of the hearing and review.

References:

Act, sections 27, 28, 165, 166

4.2 Notices

(a) Notice requesting a hearing and review - The person seeking a hearing and review must send a notice to the Commission within 30 days of the date the decision was sent to that person.

A notice requesting a hearing and review must identify
the decision to be reviewed,
how the person is directly affected by the decision,
the grounds for the request, and
whether the applicant is seeking a stay of the decision and if so, the grounds.

The person seeking the hearing and review must send the notice to the other parties.

Reference:

Act, section 165

(b) Notice of hearing and review - A hearing and review is scheduled when the Commission receives the record for the decision under review (see paragraph 4.4) and the statement of points of the party requesting the hearing and review (see paragraph 4.5). If the parties cannot agree on a date for the hearing and review that is satisfactory to the Commission, the Commission will set a date.

The Commission Secretary will give notice of the time, place and purpose of the hearing and review to each party.

Notices of hearings and reviews are published on the Commission's website.

4.3 Parties - The parties to a hearing and 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, if an SRO's decision is under review, the SRO.

4.4 Records

(a) Record of decision under review - The record for a decision under review includes the decision, all documentary evidence, a transcript of any oral evidence, and any written or oral submissions.

Reference:

Regulation, section 16

(b) Sending the record - Upon receipt of a notice requesting a hearing and review, the person whose decision is under review must send 5 copies of the record to the Commission, and one copy to each party, including the Executive Director.

4.5 Statements of points

(a) Contents - Each party to a hearing and review must prepare a concise statement of points containing the relevant facts and applicable law. In the case of a hearing and review of a decision of an SRO, the statement of points must identify the basis of review described in paragraph 4.6(b).

(b) Delivery - The party whose decision is under review and any other party directly affected must send a statement of points at least 20 business days before the date of the hearing and review. The Executive Director (when not the applicant or the person whose decision is under review) must send a statement of points at least 10 business days before the date of the hearing and review.

A party sending a statement of points must send 5 copies to the Commission and one copy to each other party, including the Executive Director.

4.6 Form and scope of hearings and reviews

(a) General - The hearing and review process is not intended to provide parties with a second opinion from the Commission on a matter decided by an SRO. The Commission's concern is to ensure that the decision under review is reasonable and has been made in accordance with the law, the evidence and the public interest. If the decision meets those criteria, the Commission is generally reluctant to interfere simply because it may have made a different decision in the circumstances. For this reason, a hearing and review is generally conducted like an appeal.

However, the Commission may proceed by way of a new hearing in appropriate circumstances, such as:

the parties have consented to a new hearing,

there is evidence that was not tendered at the time of the hearing of such quantity or character that the circumstances of the case have changed significantly,

there was unrecorded oral evidence considered at the original hearing that materially affected the decision that was made,

there are parties directly affected by the original decision who were not represented at the original hearing and who may suffer significant prejudice if unable to challenge the evidence leading to the findings in the original decision, or

the Commission has determined that it is in the public interest that a new hearing be held.

If the Commission proceeds by way of a new hearing, it will make its decision based on the evidence produced and submissions made at the new hearing.

(b) SRO Decisions - In a hearing and review of a decision of an SRO when the Commission does not proceed by way of a new hearing, the Commission will generally confirm the decision of the SRO unless

- (1) the SRO has erred in law,
- (2) the SRO has overlooked material evidence,
- (3) compelling evidence is presented to the Commission that was not tendered at the original hearing, or
- (4) the Commission's view of the public interest is different from the SRO's.

4.7 Restrictions on new evidence - Except where the Commission proceeds by way of a new hearing, the Commission will generally not consider new evidence other than evidence that is compelling and was not tendered at the original hearing.

4.8 Scope of decision - On a hearing and review, the Commission may confirm or vary the decision under review or make another decision it considers proper. In the case of an SRO decision, the Commission may also refer the matter back to the SRO.

Reference:

Act, section 165

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 documents,
- disclosure of evidence,
- identification of the issues, and
- other matters that will promote a fair and expeditious hearing.

5.2 Directives by Commissioner - At the pre-hearing conference, the Commissioner may direct a party to furnish any or all of the following:

an outline of its case or defence,
the law upon which it will rely,
the identity of the witnesses who will give evidence on its behalf,
copies of or a list of documents that it intends to present at the hearing, and
any other information that will promote a fair and expeditious hearing.

5.3 Outcome - After a pre-hearing conference, the Commissioner will send to each of the parties a summary of the agreements reached and any recommendations the Commissioner considers necessary or advisable.

5.4 Disqualification of Commissioner - The Commissioner who conducts a pre-hearing conference will not sit on the hearing except with the consent of all parties.

PART 6 GENERAL

6.1 Representation by counsel - A party or a witness may be represented by counsel. Every witness represented by counsel and every party must send to the Commission and to each party, including the Executive Director, a written notice stating the name, address and telephone and facsimile numbers for service of any notices or documents in connection with the hearing. If a party or a witness is represented by counsel the notice must identify that counsel. A new notice must be sent promptly if any of this information changes.

Reference:

Regulation, section 17

6.2 Consolidation - Hearings involving a common question of fact or law may be joined with respect to all or any of the matters in issue.

6.3 Recording evidence - The Commission generally records a transcript of oral evidence 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 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 Commission Secretary.

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

Reference:

Regulation, section 16

6.4 Public and media access

(a) Hearings are public - A hearing is open to the public, including the media, except where the Commission considers that

(1) a public hearing would be unduly prejudicial to a party or a witness, and

(2) it would not be prejudicial to the public interest to order that the public be excluded for all or part of the hearing.

Exhibits and other documents may be inspected during normal business hours of the Commission at its offices. Copies are available from the Commission Secretary upon payment of the applicable fees.

References:

Regulation, sections 19, 22(1), item 26

(b) Media access - Except as set forth above, Commission hearings are open to coverage by the media. Arrangements for media coverage should be made through the Commission Secretary. 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 panel, or

any other activity that the Commissioner presiding considers distracting or disruptive.

Microphones may not be placed before counsel, witnesses, the court reporter or the panel.

Television coverage of the hearing 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 while in the hearing room.

6.5 Adjournments - The Commission may order that a hearing be adjourned. A party applying for an adjournment should attempt to obtain the consent of the other parties. If dates have been set for the hearing, generally the Commission will require that the adjournment order set new dates.

6.6 Sending notices and documents

(a) Required procedures - Notices and documents must be sent as required by the Act and the Regulation.

References:

Act, section 180

Regulation, section 20

(b) Commission address - Notices and documents required to be sent to the Commission in connection with a hearing must be sent to:

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

Attention: Commission Secretary
Fax: (604) 899-6506
Phone: (604) 899-6534

(c) Commission website - The Commission's website address is www.bcsc.bc.ca.

PART 7 FINDINGS AND DECISIONS

7.1 Conditions - Commission decisions may include any conditions the Commission considers necessary.

Reference:

Act, section 172

7.2 Fees and charges - The Commission may order a party to pay costs. These include the cost of:

administration and investigation,
disbursements,
fees paid to experts and witnesses, and
legal services.

A party may apply to the Supreme Court of British Columbia to review a costs order.

References:

Act, sections 174, 179

Regulation, section 22(1), item 31

7.3 Written reasons - The Commission is required to issue written reasons for a decision made after a hearing if requested by a person whose right to trade in securities is affected by the decision. The Commission's practice is to issue written reasons for most decisions made after a hearing.

Reference:

Regulation, section 18

7.4 Findings and decisions - In enforcement hearings in which the party is present in person or represented by counsel, the Commission's general practice, unless the party agrees otherwise, is to issue its findings of fact and law before hearing submissions on sanctions. The findings generally set a timetable for receipt of submissions on sanctions. These findings and the Commission's decision on sanctions, when issued, constitute the Commission's decision.

7.5 Time for release of decisions - The Commission endeavours to meet the following deadlines in releasing its decisions:

decisions (including findings, when rendered separately) under sections 114, 161 and 162: 90 days;

decisions under sections 27 or 28, when heard as a new hearing: 90 days;

decisions under sections 27 or 28, when heard as an appeal: 45 days;

decisions following the release of findings: 14 days; and

all other decisions and rulings: 21 days.

These deadlines are measured from the end of the hearing. If submissions are outstanding at the close of the oral portion of the hearing, the hearing is not considered ended until those submissions are received. The time constraints associated with takeover bids usually require the Commission to make an immediate decision. The deadline applies to release of the written reasons.

7.6 Notice of decision - Upon release of a decision, the Commission gives immediate notice to the parties. A press release is issued concurrently or shortly following release to the parties. Decisions are published on the Commission's website.

Reference:

Regulation, section 18

7.7 Reviews and Appeals of Decisions

(a) Discretion to vary or revoke - A party wishing to change a Commission decision may apply to the Commission for an order varying or revoking the decision.

(b) Appeal to Court of Appeal - Decisions of the Commission may be appealed to the British Columbia Court of Appeal, with leave of that court.

References:

Act, sections 167, 171

DATED at Vancouver, British Columbia, on [XX], 2001.

Douglas M. Hyndman
Chair