

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 – Generally, the Commission holds two kinds of hearings under the Act

- enforcement hearings commenced by the executive director under notices of hearing
- hearings to review decisions made by the executive director, single commissioners and SROs

1.2 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.

“**SRO**” means the TSX Venture Exchange Inc., the Investment Industry Regulatory Organization of Canada, the Mutual Fund Dealers Association of Canada or any other self regulatory body, exchange, quotation and trade reporting system, or clearing agency recognized by the Commission under the Act.

PART 2 HEARINGS

2.1 Procedures – The Commission conducts hearings less formally than the courts. The Act and Regulation prescribe 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 natural justice 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 of the Commission and respondents. Respondents are persons against whom the executive director makes allegations in a notice of hearing.

In a hearing to review a decision of the executive director 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 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
- 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

Generally, the Commission sets the dates for the hearing when the parties appear on the date in the notice. The Commission aims to start the hearing on the scheduled hearing start date and complete it promptly. To achieve that goal, the Commission generally holds hearing management meetings. Please see Part 6 **Hearing Management**.

The Commission publishes notices of enforcement hearings on its website.

Reference:

Regulation, section [15](#)

(b) **Reviews** – A person wishing a hearing to review a decision requests a review, by sending the request to the Commission and the other parties. For a description of what must be in the request, see paragraph 5.2 **Requests for reviews**. Please also see paragraph 7.6 **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 5.5 **Notices of hearings**.

The Commission publishes notices of these hearings on its website.

Reference:

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

2.4 Temporary orders – The executive director may issue a temporary order without a hearing, but must issue a notice of hearing 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 [161](#)

2.5 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 BC Form 15-601F.

(b) **Service** – The party requesting a summons must give the summons and conduct money to the witness. The conduct money should be the same as that paid to witnesses summoned to attend before the Supreme Court of British Columbia. The form of affidavit of service 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 221/90, Appendix C, Schedule 3

2.6 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.

(b) **Enforcement hearings** – In an enforcement hearing, the executive director must disclose to each respondent all relevant information that is not privileged. 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.

(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 under way. The Commission considers all relevant evidence. Therefore, it will permit a party to produce the evidence. In these circumstances, parties may ask for an adjournment to consider the new information, to recall witnesses, or to produce other new evidence.

2.7 Evidence

(a) **Admission 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 will receive all relevant evidence from a party.

The Commission need not follow the formal rules of evidence that apply in the courts. Generally, evidence should be the best evidence. In the case of oral evidence, that means the witness on the stand, giving oral testimony from memory. This allows the Commission to assess the witness' credibility and the 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.

(b) *Evidence of experts* – A party calling evidence of experts must comply with the *Evidence Act*.

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

(d) *Witnesses* – The parties call the witnesses. Generally, a party may cross-examine the witnesses of the other parties.

References:

Act, sections [144](#), [173](#)

Evidence Act, RSBC 1996, c 124, sections 10 and 11

2.8 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 their evidence to the secretary to the Commission prior to the scheduled hearing start date. The evidence must be in acceptable electronic format. Generally, the secretary marks documents as exhibits before the hearing. A party that disputes a document marked as an exhibit may raise an objection before the panel.

Please also see paragraph 7.6 **Sending records**.

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.

References:

Act, section [4.1](#)

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

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.

References:

Act, section [4.1](#)

Administrative Tribunals Act, section [46](#)

2.11 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](#)

2.12 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 during the course of the hearing.

Reference:

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

PART 3 ENFORCEMENT ORDERS UNDER SECTION 161(6)

3.1 Power – If 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, the Commission may make orders against the person under section 161(1) of the Act after providing an opportunity to be heard under section 161(6).

3.2 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 the record and any submissions and gives the person a reasonable time to make written submissions. The Commission considers the record and all submissions and makes its decision.

Reference:

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

PART 4 SETTLEMENTS IN ENFORCEMENT MATTERS

4.1 Delegation – The Commission authorizes the executive director to settle enforcement matters when it is in the public interest. The Commission publishes settlements on its website.

4.2 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
- undertake to comply with the Act and Regulation
- waive all reviews and appeals
- undertake to consent to reciprocal orders

4.3 Financial sanctions - The party settling must pay any financial sanction at the time of settlement or negotiate arrangements to provide security and pay in the future. 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 5 REVIEWS

5.1 Purpose – The Commission holds hearings to review decisions of the executive director, single commissioners and SROs. The hearings happen in these circumstances

- a person directly affected by a decision may request a review
- the executive director may request a review of an SRO decision
- the Commission may review a decision of the executive director or an SRO

Reference:

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

5.2 Requests for reviews

(a) By a person directly affected – A person directly affected by a decision may have the decision reviewed by sending a request to the secretary to the Commission within 30 days of the date the decision maker sent the decision to that person.

The request must identify

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

The person requesting the review must send the request to the other parties. Please see paragraph 5.6 **Parties**.

(b) By the executive director – The executive director may have the decision of an SRO reviewed by sending a request to the secretary to the Commission. Please see paragraph 5.6 **Parties**. The executive director must send the request within 30 days of the date the SRO sent the decision to the executive director.

Reference:

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

5.3 **Reviews by the Commission** – The Commission may review

- a decision of the executive director 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 an SRO

Reference:

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

5.4 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, the person should say so in the request for review and describe the grounds for the stay. Please see paragraph 5.2 **Requests for reviews**.

Reference:

Act, section [165](#)

5.5 Notices of hearings – The Commission schedules a hearing for the review when it receives the record for the decision under review (see paragraph 5.7 **Record**) and the statement of points of the party requesting the review (see paragraph 5.8 **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.

5.6 Parties – The parties to a review include the person requesting it, the executive director, each person the Commission considers is 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. Persons not named in the decision must satisfy the Commission the decision directly affects them.

Reference:

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

5.7 **Record**

(a) **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.

(b) **Sending** – Upon receiving the request for a review, the person whose decision is under review must send the record to the secretary to the Commission, and to each other party. The

Commission expects parties to send the record in an electronic form. Please see paragraph 7.6 (a) **Sending records – Required procedures.**

5.8 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 secretary 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 5.9 (a) **Form and scope of reviews – Where the review of an SRO decision proceeds as an appeal.**

(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 must comply with this requirement, unless the executive director is not requesting the review or the executive director or a commissioner did not make the decision under review. In those circumstances, the executive director must send a statement of points at least 10 business days before the date of the hearing.

(c) **Sending** – The Commission expects parties to send their statement of points in electronic form. Please see paragraph 7.6 (a) **Sending records – Required procedures.**

5.9 Form and scope of reviews

(a) **Where the review of an SRO decision proceeds as an appeal** – The Commission does not provide parties with a second opinion on a matter decided by an SRO. 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 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 an 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 the executive director or a commissioner may proceed as a new hearing* – The Commission generally holds a new hearing where it is reviewing a decision of the executive director 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.

5.10 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.

Reference:

Act, section [165](#)

PART 6 HEARING MANAGEMENT

6.1 Purpose – The Commission holds hearing management meetings so that hearings start on their scheduled start dates, run fairly and efficiently and conclude promptly. Matters for discussion at the meetings, include

- hearing dates – see paragraph 2.3(a) Enforcement hearings
- disclosure – see paragraph 2.6
- evidence not in dispute – see paragraph 2.7(c)
- hearing applications (identification, timing and compliance with paragraph 6.5 Applications for rulings)
- marking exhibits – see paragraph 2.8 Electronic hearings
- electronic hearing preparation for counsel
- other matters that promote a fair and efficient hearing

6.2 Directions by commissioner – At hearing management meetings, the commissioner may give the parties directions.

6.3 Outcome – After hearing management meetings, the commissioner sends each party a summary.

6.4 Adjournments – The Commission expects parties to meet scheduled hearing start dates. If a party applies for an adjournment, the Commission considers the circumstances, the fairness to all parties and the public interest in having matters heard and decided promptly.

6.5 Applications for rulings – Generally, the Commission expects

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

PART 7 GENERAL

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

Reference:

Regulation, section [17](#)

7.2 Service

(a) **Party** – The Commission expects each party to a hearing to send the secretary to the Commission a notice so that the Commission and the other parties may serve the party with records related to the hearing.

(b) **Counsel** – The Commission expects that a person may serve records on a party or witness by delivering them to their lawyer. The lawyer should send to the secretary to the Commission a notice disclosing particulars for service.

7.3 Consolidation – The Commission may combine hearings involving the same or a related question of fact or law into a single hearing on all or any of the matters in issue.

7.4 Recording evidence – The Commission generally records 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 LiveNote software and an outside service provider.

On request to the secretary to the Commission, the Commission provides parties with monitors and computers for case management and monitors that display the LiveNote transcript.

A party may obtain certified transcripts from the service provider.

7.5 Public attendance

(a) **Hearings are public** – A hearing must be open to the public, unless 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

The public may review all published records for a hearing on the Commission website. If the Commission does not publish a record 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. A person who obtains hearing records must provide the Commission with an undertaking to protect personal information in those records.

Reference:

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

(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 to 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.

7.6 Sending records

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

A party or witness who does not wish to provide records in electronic form should apply by letter to the secretary to the Commission (copy to Commission staff counsel and any party) 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 secretary to the Commission and a copy to each party.

If a party or witness has any questions, please contact the secretary to the Commission.

References:

Act, section [180](#)

Regulation, section [20](#)

(b) **Commission address** – The Commission’s address 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 8 RULINGS, FINDINGS AND DECISIONS

8.1 Sanctions – Where the Commission finds that a respondent contravened the Act or the regulations or acted contrary to 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 market
- orders restricting the respondent’s participation with those operating in the securities market
- 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\(1\)](#)

8.2 Administrative penalty – Where the Commission finds that a respondent contravened the Act or the Regulation, the Commission may order the respondent to pay an administrative penalty of not more than \$1 million for each contravention.

Reference:

Act, section [162](#)

8.3 Conditions – The Commission may impose conditions, restrictions or requirements in a decision.

Reference:

Act, section [172](#)

8.4 Costs – In a hearing on enforcement matters, 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](#)

8.5 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 these 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

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

8.7 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 and the Commission’s decision on penalties, when issued, constitute the Commission’s decision.

8.8 Timing – The Commission has set these deadlines for issuing rulings, findings and decisions

- findings: 90 days
- written reasons for a decision made immediately with written reasons to follow: 90 days
- decision for a review conducted as a new hearing: 90 days
- decision for a review conducted as an appeal: 45 days
- decision on penalties: 30 days
- ruling: 30 days

8.9 Delivery – As soon as the Commission issues a ruling, findings or decision, the secretary to 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.

8.10 Reviews and appeals of decisions

(a) *Discretion to revoke or vary* – A party may apply to the Commission for an order revoking or varying a decision. Generally, the Commission does not hold a hearing; 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. 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 Commission's decision may appeal to the Court of Appeal with leave of a justice of that court.

Reference:

Act, sections [167](#), [171](#)