



ONTARIO  
SECURITIES  
COMMISSION

# Guide to OSC Tribunal Proceedings

Office of the Secretary



## Guide to OSC Tribunal Proceedings

The frequently asked questions and answers contained in this document are intended to assist self-represented parties, as well as any other applicants, respondents, witnesses and others involved in proceedings heard by the Ontario Securities Commission (which is referred to as the “**Commission**” or the “**OSC**” in this document).

These questions and answers provide an overview of procedures for Commission proceedings. They provide general information only. Proceedings may vary and Panels may order different procedures than discussed here. You should review both the Commission’s [Rules of Procedure and Forms](#) and the Commission’s [Practice Guideline](#) when preparing for a hearing. If there is a discrepancy between the information contained in this document and the [Rules of Procedure and Forms](#) or the [Practice Guideline](#), then the [Rules of Procedure and Forms](#) and/or the [Practice Guideline](#) will apply.

This is not a legal document and does not give any legal advice. If you have questions about a matter that involves you, consider contacting a lawyer or paralegal. If you are involved in an enforcement proceeding, you may be eligible to apply for a volunteer lawyer to assist you through the Litigation Assistance Program (the “**LAP**”). For more information on the LAP, see the section on “Representation” in Part 3 of this document.

The Office of the Secretary cannot provide legal advice.

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# 1 Introduction to Proceedings at the Commission

## What is the Commission?

The Commission is a regulatory body that administers and enforces compliance with the provisions of the [Ontario Securities Act](#), including through adjudicative proceedings. The Commission works to protect investors from unfair, improper or fraudulent practices. It also fosters fair, efficient and competitive capital markets, fosters capital formation and contributes to the stability of the financial system by making and monitoring compliance with rules governing the securities industry in Ontario.

## Is the Commission a court? Are there judges?

No, the Commission's tribunal is not a court and is not presided over by a judge. Proceedings at the Commission are heard and decided by a panel of one to three Members of the Commission, who are referred to as "Commissioners". The Office of the Secretary is responsible for assigning Commissioners to "Panels" to hear and decide proceedings at the Commission.

While securities law may be dealt with by criminal or civil courts, this document does not discuss proceedings before any court. Enforcement Staff can start quasi-criminal proceedings in the Ontario Court of Justice for alleged violations of Ontario securities law. That Court has the authority to impose financial sanctions and jail terms. Enforcement Staff can also start civil proceedings in the Superior Court of Ontario.

## Who are Commissioners? What do they do at a proceeding?

Commissioners are appointed to the Commission for a fixed term by the Ontario Lieutenant Governor in Council. In addition to their board and policy oversight roles, the Commissioners adjudicate proceedings, with the sole exception of the Chair of the Commission, who does not. For more information on the Members of the Commission, see the [OSC Website](#).

Commissioners decide issues in proceedings based only on the evidence and the arguments (which are referred to as "submissions") made at hearings. Commissioners must conduct hearings and make decisions in a fair and impartial manner, without bias towards any party, including Staff of the Commission. See the [Adjudication Guideline](#) for more information on the standards of conduct for Commissioners when adjudicating.

Commissioners may order financial sanctions and prohibitions on certain activities in the capital markets. Commissioners cannot order jail terms.

Commissioners do not conduct the opportunity to be heard (OTBH) process for Director's Decisions. For more information relating to Director's Decisions or opportunities to be heard, refer to the [OSC Website](#).

## **How do I address the Panel or Commissioners?**

At a hearing, each member of a Panel has a nameplate in front of their seat. You may address a specific Panel member as “Commissioner” and use their last name. If the Panel includes a Commissioner who is also a Vice-Chair, you may address that Panel member as “Vice-Chair” and use their last name. You may address the full Panel as “Commissioners”. You should not refer to a Commissioner as Your Honour, Judge or Justice.

You may be able to see which Commissioners are assigned to a Panel for an upcoming hearing by checking the [OSC Website](#), where the Panel members are identified.

## **What are decisions, reasons and orders?**

A decision is a Panel’s conclusion after it considers the parties’ arguments (which are referred to as “submissions”) and any evidence presented. Reasons are the legal rationale behind a Panel’s decision, which may be delivered orally or in writing.

An order sets out the result of the Panel’s decision in writing and often includes the steps that the parties must take. For example, if the Panel sets a schedule for the exchange of written submissions, then the Panel may issue an order that specifies each party’s obligations.

## **When does the Panel make its decision?**

A Panel may reserve its decision after hearings. This means that at a date sometime after the hearing is complete the Panel will issue its decision with written reasons. This generally happens within 90 days.

In some cases, the Panel may give an oral decision immediately following the hearing, with or without written reasons to follow at a later date. If an order is issued with reasons to follow, the reasons are generally issued within 90 days of the order, except when the circumstances justify a longer period.

## **Where can I find a decision, reasons or an order of the Commission?**

Decisions, written reasons and orders are sent to the parties by the Registrar and are posted on the [OSC Website](#). They are also published in the [OSC Bulletin](#), the official record of the Commission’s activities. The OSC Bulletin is available on the [OSC Website](#).

Reasons issued after 2004 are also available on the [Canadian Legal Information Institute \(CanLII\) website](#).

For more information, see Rule 34 of the [Rules of Procedure and Forms](#).

## **2 General Information about Proceedings**

### **Office of the Secretary**

#### **What is the Office of the Secretary?**

The Office of the Secretary provides support to Commissioners in their responsibility as regulators, as Board members and as adjudicators. The Office of the Secretary is responsible for the fair, impartial and efficient operation of the Commission's adjudicative proceedings. It includes the Secretary to the Commission, the Registrar and adjudicative counsel.

#### **Who is the Registrar? What do they do?**

A Registrar attends hearings to provide administrative assistance to Commissioners and the parties. The Registrar assists with scheduling hearings, maintaining the record of proceedings, and communicating with the Panel, parties and the public about proceedings before the Commission.

#### **Who is Adjudicative Counsel? What do they do?**

Adjudicative Counsel attends hearings to provide independent legal advice and assistance to Panels, as required by the Panels.

### **Parties to Proceedings**

#### **What is a party?**

Parties to proceedings include Staff, applicants and respondents. These terms are all discussed further below. The Registrar, the Commissioners, adjudicative counsel and the Office of the Secretary are not parties to a proceeding.

See Rule 5(f) of the [Rules of Procedure and Forms](#).

#### **Who is Staff?**

In Commission proceedings, "Staff" are employees of regulatory branches of the Ontario Securities Commission, including the Enforcement branch, the Office of Mergers & Acquisitions and the Compliance and Registrant Regulation branch. Staff does not include the Registrar, the Commissioners, adjudicative counsel or the Office of the Secretary.

See Rule 5(b) and (f) of the [Rules of Procedure and Forms](#).

#### **Who is Enforcement Staff?**

Staff of the Commission's Enforcement branch, also called "Enforcement Staff", investigate possible misconduct in the capital markets and can seek to start

proceedings against individuals or companies suspected of violating Ontario securities law or acting contrary to the public interest.

### **Who is an applicant?**

An applicant is a party that asks the Commission to start a proceeding (other than an enforcement proceeding) and asks the Commission to issue an order.

See Rule 5(b) of the [Rules of Procedure and Forms](#).

### **Who is a respondent?**

A respondent is a party to a proceeding started by someone else (including Staff), who may respond to an Application or a Statement of Allegations.

See Rule 5(f) of the [Rules of Procedure and Forms](#).

### **What is an intervenor?**

Intervenors are not parties named in a proceeding. They are individuals and companies who may not be directly involved in a proceeding, but who have an interest in the proceeding's outcome. They may be granted leave (permission) by the Panel to participate in a proceeding and be treated like a party to a proceeding.

For more information, see Rule 21(4) of the [Rules of Procedure and Forms](#).

## **Proceeding Documents**

### **What is a Statement of Allegations?**

A Statement of Allegations is a document created by Staff in an enforcement proceeding that identifies the respondents and outlines the allegations against them. A Statement of Allegations contains the contact information for Enforcement Staff. It is posted on the [OSC Website](#) and published in the [OSC Bulletin](#).

For more information, see Rules 10 and 11(1) and Appendix A of the [Rules of Procedure and Forms](#).

### **What is an Application? How can I bring an Application?**

An Application is a document that a party files with the Commission to request that the Commission make an order. A new proceeding starts after the party files an Application and the Office of the Secretary issues a Notice of Hearing. Applications are posted on the [OSC Website](#) and published in the [OSC Bulletin](#). The types of applications are:

- application for authorization to disclose information about an investigation or examination under section 17 of the [Ontario Securities Act](#)

- application for extension of a temporary order made under subsections 127(7) and/or 128(8) of the [Ontario Securities Act](#) (these applications are usually brought by Staff)
- application for hearing and review of a decision of the Director under section 8 of the [Ontario Securities Act](#)
- application for hearing and review of a decision of a Self-Regulatory Organization such as the Mutual Fund Dealers Association of Canada (MFDA), the Investment Industry Regulatory Organization of Canada (IIROC), or the Toronto Stock Exchange (TSX) under section 21.7 of the [Ontario Securities Act](#)
- application for further decision or revocation or variation of a decision under subsection 9(6) or section 144 of the [Ontario Securities Act](#)
- application for transactional proceeding under sections 104 and/or 127(1) of the [Ontario Securities Act](#)

Each of these types of applications are discussed in more detail below. It is also possible to bring an application for an order not specified in the *Rules of Procedure and Forms*.

For more information, see Rules 10 and 17 and Appendices C to G of the [Rules of Procedure and Forms](#).

## What is a Notice of Hearing?

A Notice of Hearing is a document that is issued by the Office of the Secretary to start a new proceeding, after the filing of a Statement of Allegations or Application. A Notice of Hearing identifies the type of proceeding (for example, enforcement proceeding or application for hearing and review) and the date, time, and location of the “First Attendance” for the proceeding.

For more information, see Rules 5(h) and 10 of the [Rules of Procedure and Forms](#) and section 4(3) of the [Practice Guideline](#).

## How do I amend or withdraw my Application?

An applicant can amend an Application at any time when the other parties agree to the proposed amendments (also known as “with consent of the parties”) or with permission from a Panel. To request the permission of a Panel, you must file with the Registrar a motion using the form in Appendix B of the [Rules of Procedure and Forms](#) and serve it (deliver a copy) on all other parties. You must create a “motion record”, which must include the motion itself (the request for permission) and a version of your Application that clearly indicates your requested amendments. For example, you may choose to include a copy of the document that tracks the proposed changes (also called a “blacklined copy”).

An applicant can withdraw an Application at any time. To withdraw, you must file with the Registrar a Notice of Withdrawal using the form in Appendix H of the [Rules](#)

[of Procedure and Forms](#) and serve the completed form (deliver a copy) on all other parties.

For more information, see Rules 18 and 19 of the [Rules of Procedure and Forms](#).

## **What is a Motion? How can I bring a Motion?**

A motion is a request for the Panel to make an order relating to an issue in an existing proceeding (meaning that a Statement of Allegations or an Application has already been filed). Common types of motions include requests for an order that a party comply with disclosure obligations, and requests that certain documents be kept confidential (not available to the public).

A party may request a motion hearing at any time in a proceeding by filing with the Registrar the form in Appendix B of the [Rules of Procedure and Forms](#) and serving the form (delivering a copy) on all other parties.

Motions are posted on the [OSC Website](#) when filed, unless a party requests and is granted a confidentiality order over the motion (preventing public access to the motion materials). If you are filing a motion that you do not want to be publicly available, you should indicate your request for confidentiality in writing when you file the motion. A Panel will decide whether to grant your request for confidentiality.

For more information, see Rule 28 of the [Rules of Procedure and Forms](#) and section 8 of the [Practice Guideline](#).

## **Service and Filing**

### **What is the difference between service and filing?**

Service refers to providing documents or other things to the other parties in a proceeding. Staff is a party to every proceeding at the Commission and must be served. In an enforcement proceeding, Staff's contact information is on the Statement of Allegations.

Filing refers to providing documents or other things to the Registrar at the Commission. The requirement to serve is different from the requirement to file, so filing a document with the Registrar is not service on any party, including Staff of the Commission.

### **How do I serve documents?**

Documents may be served in a variety of ways, including by mail, personal delivery and email. Acceptable methods of service vary depending on whether the party is represented, is an individual or is a company. For details on how documents may be served, see Rule 6 of the [Rules of Procedure and Forms](#).

## How do I file documents with the Commission?

Most documents should be filed both electronically and in paper in accordance with section 2 of the [Practice Guideline](#). For a merits hearing in an enforcement proceeding (which is the hearing where a Panel determines whether Enforcement Staff can prove the allegations in the Statement of Allegations), only electronic documents need to be filed.

Electronic documents should be filed as searchable PDFs. Searchable PDFs are documents that apply OCR (Optical Character Recognition).

For paper filings, deliver five copies to the Registrar by mail, courier or personal delivery to:

Ontario Securities Commission  
20 Queen Street West, 22nd Floor  
Toronto, Ontario M5H 3S8  
Attention: Registrar, Office of the Secretary

After a proceeding is started, all filings must identify the assigned file number, which is found on the Notice of Hearing. All filed documents should be clear and legible.

Documents must be filed before 4:30 p.m. to be considered filed that day. A document filed after 4:30 p.m. is considered filed on the next day that is not a holiday. For more information on filing documents, including what is a “holiday”, see Rules 7 and 9 of the [Rules of Procedure and Forms](#) and section 2 of the [Practice Guideline](#).

## What if a document contains confidential information that I don't want to be public?

If a document or part of a document contains confidential or sensitive financial or personal information that you do not want to be made public, you can bring a motion to request a confidentiality order. A confidentiality order may be made for any document filed with the Registrar, any document received in evidence or any transcript of a proceeding. A confidentiality order prevents public access to the confidential information. If you are filing a document that you do not want to be publicly available, you should file a copy of the original document with the part you are requesting to be confidential redacted, together with the original unredacted document, and indicate your request for confidentiality in writing when you file the document. A Panel will decide whether to grant your request for confidentiality.

For more information, see Rule 22 of the [Rules of Procedure and Forms](#) and section 2 of the [Practice Guideline](#).

## What if my document contains personal information about others?

If your document contains personal information of an investor, witness or other person who is not a party to the proceeding, you must redact (remove or black out)

from the document personal information that is not relevant to the issues in the proceeding. You are not expected to redact personal information of respondents.

For more information and examples of the personal information that should be removed, see section 3 of the [Practice Guideline](#).

## **What colour should the back page/cover sheet be for paper filings?**

The [Rules of Procedure and Forms](#) and the [Practice Guideline](#) do not specify colour requirements for documents filed in paper. A Panel may direct colour requirements, or the parties may agree about their colour preferences for cover sheets and back pages of paper copies.

## **Contacting the Commission and the Parties**

### **How do I communicate with the Panel?**

All communications with a Panel member by a party, other than in an oral hearing, must be sent to the [Registrar](#) and copied to all parties, including Staff.

See Rule 8 of the [Rules of Procedure and Forms](#).

### **How do I contact the Registrar?**

The Registrar can be contacted by email at [registrar@osc.gov.on.ca](mailto:registrar@osc.gov.on.ca). Consider copying all parties on emails to the Registrar. If your email contains information intended for the Panel, you must copy all parties, including Staff. The Registrar can also be contacted by phone at (416) 595-8916.

### **How do I contact the parties?**

To contact Staff in an enforcement proceeding, use the contact information on the Statement of Allegations.

To contact an applicant in any other type of proceeding, use the applicant's contact information on the Application.

If you are a respondent and want to contact other respondents, the party that started the proceeding (either Staff or an Applicant) can provide the contact information they are using for the other respondents.

## **Resources**

### **What resources can help me understand the process for proceedings before the Commission?**

The [Rules of Procedure and Forms](#) and [Practice Guideline](#) apply to all proceedings before the Commission and are available on the [OSC Website](#). Commission proceedings are also governed by the [Statutory Powers Procedure Act](#).

## **Where can I find the legislation for securities-related matters?**

The Commission hears proceedings arising from the provisions of the [Ontario Securities Act](#) and the [Ontario Commodity Futures Act](#). Both Acts are available on the [OSC Website](#) and on the [Canadian Legal Information Institute website \(CanLII\)](#).

## **What other resources are available?**

Previous decisions, reasons and orders of the Commission are available on the [OSC Website](#) and in the [OSC Bulletin](#). Reasons issued after 2004 are also available on the [Canadian Legal Information Institute website \(CanLII\)](#).

The [Commission's Book of Authorities](#), which contains a list of cases frequently cited in Commission decisions, is available on the [OSC Website](#). These cases may not be applicable in every hearing and other cases not contained in the [Commission's Book of Authorities](#) may also be relevant to a hearing. Printed copies of the Commission's Book of Authorities are available in the hearing rooms for the use of parties and Panels during hearings.

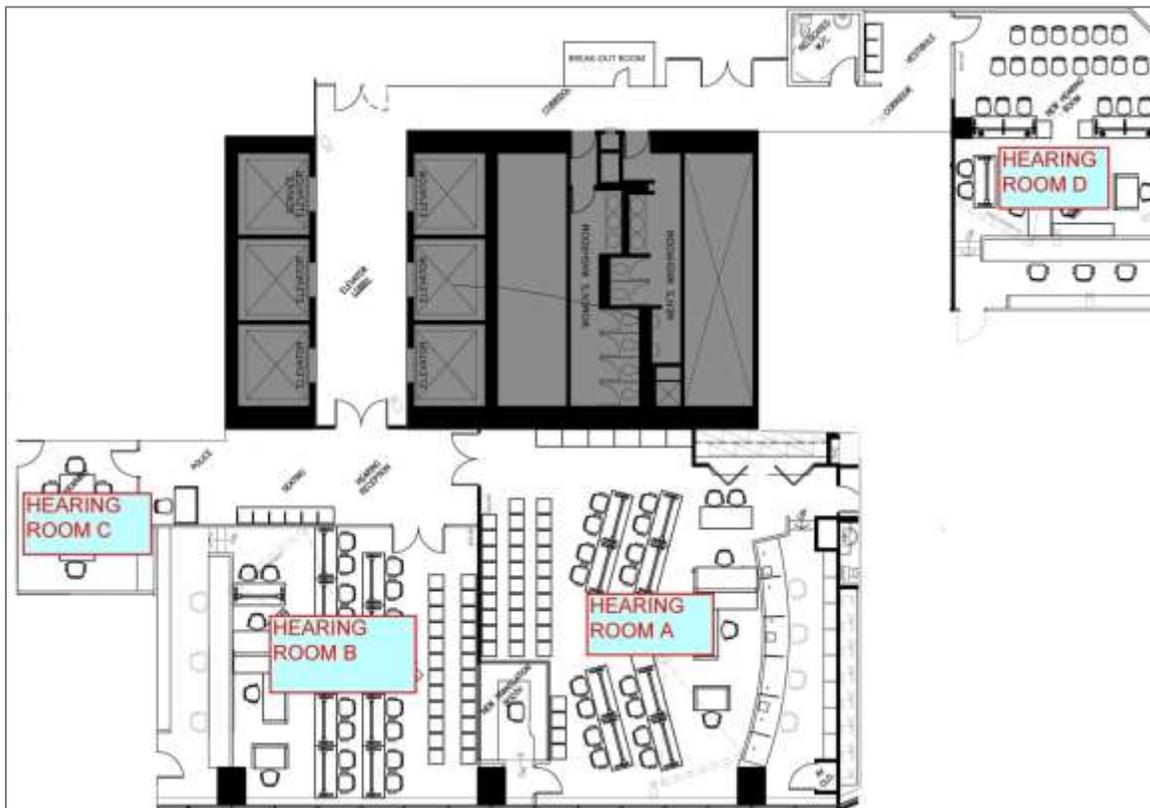
### 3 Attending a Hearing

#### Hearing Room

#### Where do hearings take place?

Hearings are held in Toronto at 20 Queen Street West (Cadillac Fairview Tower) on the 17th floor. The building is located on Queen Street, between Bay Street and Yonge Street, at the south end of the Eaton Centre.

The Commission has four hearing rooms, as shown on the following floor map. On the day of your hearing, a list will be posted by the elevators on the 17th floor directing you to the room where your hearing will be held.



## What does a hearing room look like?

The hearing rooms vary in size but are similar to the picture below (which was taken in Hearing Room B). The number of tables, size of public seating, and the location of the witness vary depending on the hearing room.



Hearing Room B

## Who is in the hearing room and where do they sit?

The Panel sits at the front of the hearing room on a raised platform. The Chair of the Panel sits in the middle seat.

Below the raised platform is a witness box, where the witness sits to testify. There are also three desks in front of the raised platform:

- a desk for the Registrar (who provides administrative assistance to the Panel and keeps track of the evidence)
- a desk for the court reporter (who records the hearing and prepares a transcript)

- a desk for adjudicative counsel (who provides independent legal advice to Panels)

The tables and chairs facing the raised platform are for the parties, the lawyers, and the other representatives of the parties at the hearing. The front table on each side has an adjustable table (podium) so that parties can raise the table when they stand to make submissions. The adjustable tables are equipped with a laptop connected to the audio/visual (A/V) system. All the tables are equipped with microphones and monitors connected to the A/V system. Requests for use of a laptop can be made to the [Registrar](#).

Public seating is available at the back of the room, in the “public gallery”. Anyone can attend, including Commission Staff, the media, and members of the public. Seats cannot be reserved for anyone, except staff of the Office of the Secretary.

### **What side do the parties sit on?**

In a hearing of an enforcement proceeding, the tables on the right side (when facing the Panel) are for Enforcement Staff and the tables on the left side are for the respondents.

In a hearing of an Application, the applicant generally sits at the tables in the front row on the right side (when facing the Panel) and the respondent generally sits at the tables in the front row on the left side. Staff typically sits in the second row.

### **Can I attend by phone or videoconference? Can my witnesses attend by phone or videoconference?**

Hearing rooms are set up for phone and videoconference attendances. If a party or a witness would like to attend a hearing by phone or videoconference, you must contact the [Registrar](#) in advance of the attendance to discuss possible arrangements.

### **Can I access the internet in the hearing room?**

Internet access is not provided in the hearing rooms, except when required by the parties in a merits hearing in an enforcement proceeding. A request for internet access can be made by contacting the [Registrar](#).

### **Is there a space outside the hearing rooms for me to use?**

A breakout room is available on a first-come basis, for use shortly before and after hearings, as well as during hearing breaks. It is located on the 17<sup>th</sup> floor across from the washrooms and cannot be reserved. You must not leave any belongings in the breakout room when you are not physically in the breakout room. You must vacate the breakout room by 5:00 p.m. each day and take all your belongings with you. If you have questions about using the breakout room, contact the [Registrar](#).

## **Are the hearing rooms accessible?**

The Commission's hearing rooms are accessible and include several assistive devices. An automatic door operator is located at the public access points to the Hearing Room Lobby and to Hearing Room A.

The tables for the parties in the hearing rooms and the hearing room seating areas are wheelchair accessible. The witness box in Hearing Room A is wheelchair accessible. For Hearing Rooms B and D, witness accessibility is accommodated via portable microphones. The hearing room sound systems allow headsets to be connected to assist those with hearing impairments.

A stand-alone unisex accessible washroom is located on the 17th floor, near Hearing Room D.

Individuals may be accompanied by a service animal and a support person in the hearing rooms.

More information about accessibility at the Commission is available on the [OSC Website](#).

## **What if I have accessibility needs? What if my witness has accessibility needs?**

If a party, representative, or witness participating in a proceeding has accessibility needs that may affect the ability to participate, the [Registrar](#) should be notified at least 30 days before the proceeding.

More information about accessibility at the Commission is available on the [OSC Website](#). See also Rule 25 of the [Rules of Procedure and Forms](#).

## **Scheduling and Adjournments of Hearings**

### **How do I know what time a hearing will start?**

The times and dates for upcoming public proceedings, including motions, are posted on the [OSC Website](#). The time and dates of hearings are also set out in Notices of Hearing, or other notices published by the Office of the Secretary, or in orders made by Panels. If you are not sure about the time or date of a hearing, contact the [Registrar](#) by email, copying the other parties.

### **What time should I arrive for the hearing? What if I am delayed in getting to the hearing?**

It is recommended that you arrive at least 15 minutes before your scheduled hearing time. If you are delayed and will not arrive by the start of the hearing, contact the [Registrar](#) by email, copying the other parties.

## What if I cannot attend on a scheduled date? What is an adjournment and how can I request one?

An adjournment is a postponement and rescheduling of a hearing date. If a party is unable to attend a scheduled hearing date, the party should write the [Registrar](#), copying all other parties, with the request for an adjournment. The Registrar will notify the Panel. The Panel will decide whether to grant the adjournment request and reschedule the hearing.

You may be required to file a motion with your adjournment request, providing an explanation for your request. Exceptional circumstances are required for adjournments of merits hearings, sanctions and costs hearings, motions, and application hearings.

For more information, see Rule 29 and the Motion form at Appendix B of the [Rules of Procedure and Forms](#).

## Representation

### Can I have representation for a proceeding?

Parties can choose to have legal representation at any time during a proceeding. Parties are permitted to have a “representative” at a hearing before the Commission. A “representative” is an individual authorized under the [Law Society Act](#) to represent a person or company, which may include licensed lawyers and paralegals. See Rule 5(i) of [the Rules of Procedure and Forms](#).

The Law Society Referral Service is an online service for residents of Ontario for referrals to lawyers or paralegals who will provide a free, up to 30-minute consultation either by phone or in person. For more information on the Law Society Referral Service, visit its [website](https://lsrs.lsuc.on.ca/lrs/) at <https://lsrs.lsuc.on.ca/lrs/>.

Self-represented parties may also apply for volunteer legal services through the Litigation Assistance Program, which is discussed below.

### What is the Litigation Assistance Program?

The Litigation Assistance Program (LAP) provides free legal services to self-represented parties involved in certain proceedings before the Commission, including at attendances, confidential conferences, confidential settlement conferences, public settlement hearings, and sanctions and costs hearings. The LAP may also provide services for motions, on an exceptional basis. The LAP is **not available** for merits hearings in enforcement proceedings (which is where a Panel determines whether Enforcement Staff can prove the allegations in the Statement of Allegations).

You may be eligible to apply for a volunteer lawyer to assist you with your matter. More information on the LAP can be found on the [OSC Website](#).

## **Can I represent myself?**

You can choose to represent yourself at hearings before the Commission.

## **Can I change representation?**

Parties may change representation at any time during a proceeding. When you change representation, you must notify all parties and the [Registrar](#).

For more information, see Rule 21 of the [Rules of Procedure and Forms](#).

## **Public Proceedings**

### **Is the hearing open to the public and the media?**

Hearings are open to the public, including the media, except where a Panel orders confidentiality or confidentiality is specified in the [Rules of Procedure and Forms](#) (for example, confidential settlement conferences are not open to the public).

For more information, see Rule 22 of the [Rules of Procedure and Forms](#).

### **What if I want to tell the Panel sensitive financial or personal information without the public in the room?**

If the hearing includes a discussion of confidential or sensitive financial or personal information, a party may bring a motion to request that all or part of the hearing be held without the public present (which is also called “*in camera*”). After hearing submissions from the parties, a Panel will decide whether to conduct some or all of the hearing without the public present.

For more information, see Rule 22(2) of the [Rules of Procedure and Forms](#).

## **First Attendance**

### **What is a first attendance? What happens at the first attendance?**

At the first attendance, the Panel sets a timeline for further attendances and other steps that may be required in a proceeding. All parties are required to attend. A party who needs to attend by telephone must contact the [Registrar](#) in advance of the attendance to make arrangements.

For more information on what to expect at the first attendance, see sections 5(1), 6(1) and 7(1) of the [Practice Guideline](#).

## **What if a party does not appear at the first attendance?**

If a party does not appear at the first attendance and does not otherwise respond to the Notice of Hearing, the proceeding may continue in the party's absence and the party is not entitled to any further notice in the proceeding.

See Rule 21(3) of the [Rules of Procedure and Forms](#).

## **Confidential Conferences**

### **What is a confidential conference?**

At any stage of a proceeding, the parties may participate in a confidential conference with a Panel to consider:

- the settlement of any or all issues (for more information on settlements, see below);
- the simplification of the issues in the proceeding;
- facts that may be agreed upon; and
- any other matter that may further promote a fair and efficient hearing.

Unlike most other attendances, confidential conferences are not open to the public. Transcripts of confidential conferences (other than confidential settlement conferences) are made, but are only available to the parties, not the public. The materials filed by the parties are also not available to the public.

For more information, see Rule 20 of the [Rules of Procedure and Forms](#).

## **Language of Proceedings**

### **Can a hearing be conducted in French?**

A party may request that a Panel conduct a hearing, wholly or partly, in French. Written notice requesting that a hearing is conducted in French must be provided to the [Registrar](#) and the other parties as soon as possible, and in any event, at least 60 days before the hearing.

For more information, see Rule 24 of the [Rules of Procedure and Forms](#) and section 4(1) in the [Practice Guideline](#).

### **What if I need an interpreter for English or French?**

Upon request, the Commission will provide an interpreter to translate to English from French, or to French from English, during a hearing. If a party or a witness requires such an interpreter, a request can be made to the [Registrar](#).

See Rule 24(3) of the [Rules of Procedure and Forms](#).

## **What if I need an interpreter for a language other than English or French?**

If a party or a witness requires an interpreter to translate to or from any language other than French or English, the Registrar and the other parties must be notified at least 30 days before the hearing.

See Rule 24(4) of the [Rules of Procedure and Forms](#).

## **What if I need a translation of evidence, transcripts or a decision?**

The Commission is not obligated to translate documentary evidence or transcripts. Decisions, including reasons and orders, will be issued in the language of the hearing.

For more information, see Rule 24 of the [Rules of Procedure and Forms](#) and section 4 in the [Practice Guideline](#).

## **Witnesses and Evidence**

### **What are witness lists and summaries?**

A witness list is a list of witnesses that a party (including Enforcement Staff) intends to call to testify in a proceeding. A witness summary is a summary of each witness's anticipated testimony (also known as oral evidence).

In enforcement proceedings, Enforcement Staff is required to serve and file its witness list and serve (but not file) witness summaries to the respondents first. Respondents will then serve and file their witness list and serve (but not file) their witness summaries.

Witness lists and summaries may also be required in other types of proceedings and a Panel will set the order and schedule for their delivery.

For more information, see Rule 27(3) of the [Rules of Procedure and Forms](#) and sections 5(1), 6(1) and 7(1) in the [Practice Guideline](#).

### **Do I need to call a witness? How do I call a witness?**

A witness is someone who can provide evidence about an issue or fact that is relevant to a proceeding. For example, a witness may tell the Panel what they saw or heard, or they may explain a document. When a party questions a witness that the party called, this is referred to as "examination-in-chief" or "direct examination". Other parties will have an opportunity to question the witness (also called "cross-examination") following the examination-in-chief. The Panel may ask questions of the witness at any time.

A witness can appear voluntarily at the request of the party, or the party can ask the Commission to issue a summons that requires a witness to attend at a hearing and give evidence, as discussed below.

For more information, see Rule 26 of the [Rules of Procedure and Forms](#).

### **What if a witness does not want to testify?**

The Commission can require a witness to testify by issuing a summons. A summons is a document requiring a person to attend before the Commission to testify and/or produce documents. Witnesses who are summoned are legally required to testify at the hearing.

To request the issuance of a summons for a witness residing in Ontario, you must file a draft of the form in Appendix I of the [Rules of Procedure and Forms](#). For more information, see Rule 26 of the [Rules of Procedure and Forms](#). The summons form cannot be used for witnesses who are not resident in Ontario. If you intend to call a witness who is not resident in Ontario, inform the Panel as soon as possible.

Witnesses who have been summoned are required to be paid the same fees and allowances (also called "attendance money") that are paid to a person summoned to attend before the Superior Court of Justice, as outlined in the [Ontario Rules of Civil Procedure](#) (for example, \$50 per day plus travel allowances). The party calling the witness is responsible for paying the fees and allowances.

### **I'm going to be a witness. What is the process for testifying?**

If you are a witness but not a party to the proceeding, you may be asked to leave the hearing room until it is your turn to testify.

When it is your turn to testify, you will be asked to enter the witness box at the front of the hearing room. The Registrar will stand next to the witness box and say, "You are about to give evidence in this hearing. It is important that you be truthful, and the law requires that you tell the truth." The Registrar will then ask you whether you want to be affirmed or swear an oath. The choice is yours and both are of equal effect. You will then be asked to spell your name for the court reporter.

If you choose to be affirmed, the Registrar will ask you, "Do you promise to tell the truth, and nothing but the truth?" After you reply, the Registrar will ask you, "Do you understand that breaking that promise would be an offence under Ontario law?" After answering, you should be seated.

If you choose to swear an oath, you may do so on the Bible that is provided by the Registrar, or on a sacred object or holy book that you bring with you. The Registrar will ask you to hold the holy book or sacred object and the Registrar will ask you, "Do you swear to tell the truth, and nothing but the truth?" After you reply, the Registrar will ask you, "Do you understand that breaking that oath would be an offence under Ontario law?" After answering, you should be seated.

If you are a witness but not a party to the proceeding, you will first be asked questions by the party who asked you to testify. If that party has legal representation, the

representative will ask you questions. You may then be asked questions (“cross-examined”) by the other parties or their representatives. After cross-examination, there is a limited right for the party that called you to re-examine you, but only on issues that require clarification and arose from the cross-examination. You may also be asked questions by the Panel at any time during your testimony.

There will be a microphone in the witness box. You should speak clearly and loudly so that everyone in the hearing room can hear you. You should also avoid speaking too quickly, to assist the court reporter who will be transcribing what you say.

## **I’m a party. Can I testify?**

Yes, any party, including a respondent or applicant may testify (also known as giving oral evidence) at a hearing, but is not required to testify.

If you are a party and you want to give oral evidence yourself, then you go to the witness box and you swear or affirm that you will tell the truth. If you are representing yourself, you then make the statements of fact that you want to make. This is not the time to present your interpretation of another party’s evidence or to make your argument. You will have the opportunity to do that during closing submissions. If you have a legal representative, your representative will ask you questions. When you are finished giving your oral evidence, other parties can question (“cross-examine”) you, including Staff. The Panel may also have questions for you at any time.

## **What is evidence?**

Evidence consists of the facts presented in the hearing. The following are examples of evidence:

- documents or other things (like recordings);
- a party’s own testimony on the facts, provided orally at the hearing;
- witness statements, such as oral testimony or affidavits (which are written versions of testimony); and
- an agreed statement of facts.

The following are **not** examples of evidence:

- a party’s oral and written submissions and arguments, including opening and closing submissions;
- authorities, including previous Commission decisions, court decisions and legislation; and
- the questions asked of witnesses at a hearing (as opposed to the witnesses’ answers).

## **Transcripts and Records of Proceedings**

### **Can I get a transcript of the hearing?**

In most circumstances, the Registrar will provide a copy of the transcript to all parties to the hearing by email. Other individuals that may wish to obtain copies of transcripts can contact [Atchison & Denman Court Reporting](#) at 416-865-9339 or 1-800-250-9059 to request a copy of the transcript for a fee.

### **Can I make my own recording of the hearing?**

Visual and audio recordings of a hearing are not allowed without permission of the Panel. To request permission to make a recording, send a written request to the [Registrar](#) at least five days before the hearing.

See Rule 22(4) of the [Rules of Procedure and Forms](#).

### **How can I request copies of documents filed in a hearing?**

Notices of Hearing, Statements of Allegations, Applications, Motions, Orders and Reasons and Decisions of the Commission are published on the [OSC Website](#), unless a Panel orders that they are confidential (not available to the public).

Many documents relating to a proceeding are published on the OSC website. For access to documents relating to a proceeding that are not published on the OSC website, make a request to [record@osc.gov.on.ca](mailto:record@osc.gov.on.ca).

For more information, see the definition of Adjudicative Record in Rule 5 and Rule 22(3) *Public access to Adjudicative Records* in the [Rules of Procedure and Forms](#).

The Office of the Secretary does not have access to or knowledge of documents obtained by Staff during the course of their investigations.

To make a request for access to adjudicative records, contact OSC Records at 416-593-3735, TTY: 1-866-827-1295, or email at [record@osc.gov.on.ca](mailto:record@osc.gov.on.ca). See also the OSC Website page "[Accessing OSC Records](#)".

## **4 Extension of a Temporary Order**

### **What is a temporary order?**

A temporary order is an order made by the Commission for a specified period of time. An example of a temporary order is a temporary cease trade order, which is a trading ban suspending trading in a company's securities or prohibiting individuals and companies from certain trading.

The Commission may issue a temporary order when the time required to conclude a hearing could be prejudicial to the public interest. If the Commission decides that an individual's or company's conduct is an immediate and ongoing threat to the capital

markets or the public, the Commission may issue the temporary order without requiring notice to the respondent.

The first temporary order is often issued before Staff files a Statement of Allegations, but may also be issued at any time during a proceeding.

### **I wasn't given notice of Enforcement Staff's request for a temporary order. Why not?**

The first temporary order is often issued without a hearing and without notice to the respondents but is effective for no more than 15 days.

A respondent will not usually have an opportunity to respond to the initial request for a temporary order but will have an opportunity to participate in the hearing to extend the temporary order.

For more information, see subsection 127(5) of the [Ontario Securities Act](#).

### **How is a temporary order extended?**

Enforcement Staff may seek to extend a temporary order by requesting a hearing be held within 15 days after the initial order has been made.

If the request for a hearing is made *before* Staff files a Statement of Allegations, then Staff serves (sends copies to) all respondents a Notice of Hearing issued by the Office of the Secretary, which provides the date and time that a Panel will hold the hearing to determine whether to extend the temporary order.

If the request for a hearing is made *after* Staff files a Statement of Allegations, then Staff files a motion and serves it on (delivers a copy to) all parties to the enforcement proceeding. A schedule will be set for the hearing of the motion to determine whether to extend the temporary order.

At the hearing, all parties will be given an opportunity to make submissions about whether the Commission should extend the temporary order. The hearing to extend a temporary order is separate and different from a merits hearing (which is where a Panel determines whether Enforcement Staff can prove the allegations in the Statement of Allegations).

For more information, see Rule 13 and Appendix D of the [Rules of Procedure and Forms](#) and subsections 127(7) and (8) of the [Ontario Securities Act](#).

### **How long can a temporary order be extended? When will the temporary order end?**

A Panel will decide how long a temporary order can be extended after the initial 15-day term. If there is an extension past the initial 15 days, the Panel's order will set out the length of the extension.

## 5 Enforcement Proceedings

### General

#### **What is an enforcement proceeding?**

An enforcement proceeding is a proceeding brought by Enforcement Staff against individuals or companies suspected of violating securities law or acting contrary to the public interest.

For more information, see Rule 11 of the [Rules of Procedure and Forms](#).

#### **What is a Statement of Allegations?**

A Statement of Allegations is a document created by Staff that identifies the respondents and outlines the allegations against them in an enforcement proceeding. It sets out the orders sought, including the sanctions and costs requested by Staff. Statements of Allegations contain the contact information for Enforcement Staff. They are posted on the [OSC Website](#) and published in the [OSC Bulletin](#).

For more information, see Rules 10 and 11(1) and Appendix A of the [Rules of Procedure and Forms](#).

#### **How is an enforcement proceeding started? Will I know when it happens?**

After Enforcement Staff files a Statement of Allegations with the Registrar, the Office of the Secretary starts a proceeding by issuing a Notice of Hearing. Staff then serves (serves) the Notice of Hearing and Statement of Allegations to each respondent. The Statement of Allegations and Notice of Hearing are also available on the [OSC Website](#).

See Rule 11(1) and Appendix A of the [Rules of Procedure and Forms](#).

#### **What is a Merits Hearing?**

A merits hearing is a hearing where a Panel determines whether Enforcement Staff can prove the allegations in the Statement of Allegations.

#### **What is a Sanctions and Costs Hearing?**

A sanctions and costs hearing is a hearing where a Panel decides the appropriate sanctions and costs to order against a respondent, after the Panel determines that a respondent has contravened Ontario securities law or acted contrary to the public interest.

If a Panel decides that a respondent did not contravene Ontario's securities law or act contrary to the public interest following the conclusion of a merits hearing, no additional hearing is necessary, and no sanctions or costs will be ordered against that

respondent. In that case, the proceeding is over for that respondent after the merits decision is issued.

For more information, see Rule 35 of the [Rules of Procedure and Forms](#).

### **What is an interlocutory matter? What is an interlocutory motion?**

An interlocutory matter is anything that the Commission deals with or decides before the merits hearing. Interlocutory matters may include interlocutory motions, which are heard before a merits hearing, such as a motion about the documents that a party disclosed.

## **Inter-jurisdictional Enforcement Proceedings**

### **What is an inter-jurisdictional enforcement proceeding?**

An inter-jurisdictional enforcement proceeding is a proceeding brought by Enforcement Staff that asks the Commission to make an order against a respondent based on previous orders and/or findings of courts or regulators in other provinces or countries (for example, the British Columbia Securities Commission).

See subsection 127(10) of the [Ontario Securities Act](#).

### **What is the expedited procedure? How will I know if my proceeding uses the expedited procedure?**

In inter-jurisdictional enforcement proceedings, Enforcement Staff may choose to use an expedited procedure. The expedited procedure is only available for inter-jurisdictional enforcement proceedings. Enforcement Staff will say in the Statement of Allegations whether it chooses to use the expedited procedure. The Notice of Hearing will also state that Staff elected to proceed by way of the expedited procedure.

The expedited procedure requires that Enforcement Staff submits all the documents it intends to rely on, and its written submissions, at the same time as it delivers the Statement of Allegations. Unlike other enforcement proceedings, if no oral hearing is requested, then a hearing under the expedited procedure may not involve any attendance or oral hearing. The proceeding may be determined on the basis of written submissions and documents filed by the parties.

See Rule 11(3) of the [Rules of Procedure and Forms](#) for more information.

### **Can I object to the expedited procedure? What if I want to make oral submissions or have a witness testify?**

If you want to make oral arguments (submissions) or have a witness testify at an inter-jurisdictional enforcement proceeding, then you must send a written request to the [Registrar](#) and all other parties (including Enforcement Staff and the other respondents) within 21 days of Enforcement Staff providing you with the Notice of

Hearing, the Statement of Allegations and its documents. If you request an oral hearing, a first attendance will be scheduled to determine the next steps.

See Rule 11(3)(e) of the [Rules of Procedure and Forms](#).

### **If I don't object to the expedited procedure, how do I respond?**

If you don't object to the expedited procedure and don't file a request for an oral hearing, you may serve the other parties and file a hearing brief (containing any relevant documents) and written argument (submissions) within 28 days of receiving the Notice of Hearing and Statement of Allegations from Staff. You can also choose not to file anything. In that case, the Panel will determine the appropriate order based only on Staff's documents and submissions.

See Rule 11(3)(g) of the [Rules of Procedure and Forms](#).

## **E-Hearings**

### **What is an e-hearing?**

An e-hearing is an electronic hearing. At an e-hearing, all documents that the parties intend to enter into evidence are provided to the Registrar in an electronic format and are displayed electronically during the hearing. Unless a Panel orders otherwise, a merits hearing in an enforcement proceeding will be conducted as an e-hearing.

For more information, see the *Protocol for E-Hearings* and the *E-Hearing Checklist for Hearing on the Merits*, at Appendix A and B of the [Practice Guideline](#).

### **What is the standard electronic format for e-hearings?**

The standard electronic format for an e-hearing is searchable PDFs. Searchable PDFs are documents that apply OCR (Optical Character Recognition). There are programs available online that convert scanned documents into searchable PDFs.

The Commission may accept other electronic formats. If a party intends to use any other electronic format, the party must indicate this on the "*E-Hearing Checklist*" (see Appendix B of the [Practice Guideline](#)), and must tell the [Registrar](#) at least 10 business days before the start of the hearing. Issues about electronic document formats may also be raised with a Panel at an attendance.

## **Preliminary Attendances**

### **What can I expect at the first attendance?**

At the first attendance in an enforcement proceeding, the Panel will impose a timeline for attendances and other steps, as set out in section 5 of the [Practice Guideline](#). This may include a schedule for disclosure of documents and service of witness lists.

## **What can I expect at the second, third, and final interlocutory attendances?**

Attendances after the first attendance will be used to set or evaluate timelines and may be used to hear motions.

For more information about each attendance, see section 5(1) of the [Practice Guideline](#).

## **What if some respondents do not attend?**

If a respondent does not attend, the hearing may proceed without them. In this situation, the Panel will consider only the evidence and arguments of Enforcement Staff, and any other respondents who appear, in reaching the Panel's decision.

## **Documents for Merits Hearings and Sanctions and Costs Hearings**

### **What is disclosure? Am I expected to provide disclosure?**

Enforcement Staff must provide respondents with copies of all documents and things in its possession that are relevant to the allegations in the proceeding. Enforcement Staff must also disclose any new and relevant information as it becomes available. This is called disclosure. There are some exceptions to Staff's disclosure obligation; for example, communications between a person and their lawyer are not required to be disclosed, since those communications are protected by a legal privilege.

Respondents are not required to provide disclosure to Enforcement Staff or to any other party. However, respondents are required to provide hearing briefs containing all documents that they intend to enter as evidence at the hearing (see below for more information on hearing briefs).

For more information on disclosure, see Rule 27 of the [Rules of Procedure and Forms](#). The timelines for disclosure are set out in section 5 of the [Practice Guideline](#).

### **What other documents does Enforcement Staff have to provide to me? What kind of documents do I have to provide to Enforcement Staff?**

With assistance from the parties, the Panel will identify other documents and information that the parties must provide to each other before the merits hearing. These may include witness lists and summaries, notice of a party's intention to call expert witnesses, expert reports, and hearing briefs. The Panel will also set a timeline for the delivery of these documents and information.

For more information, see section 5 of the [Practice Guideline](#).

## What is a hearing brief?

A hearing brief contains all the documents that a party intends to enter as evidence at the hearing. All parties exchange hearing briefs before the final interlocutory attendance in an enforcement proceeding.

Each party must provide to the [Registrar](#) an index to its hearing brief. The index will not be available to the public. For a merits hearing, each party must also provide to the Registrar the hearing brief documents in advance of the hearing. The documents in the hearing brief will only become publicly available if they are entered into evidence at a hearing.

For more information, see Rule 27(2) of the [Rules of Procedure and Forms](#) and section 5(1) and Appendix B of the [Practice Guideline](#).

## What are witness lists and summaries?

A witness list is a list of witnesses, including witnesses that are parties, that a party (including Enforcement Staff) intends to call to testify in a proceeding and a witness summary is a summary of each witness's anticipated testimony. In enforcement proceedings, Enforcement Staff is required to serve and file its witness list and serve (but not file) witness summaries first. Respondents will then serve and file their witness lists and serve (but not file) their witness summaries.

For more information, see Rule 27(3) of the [Rules of Procedure and Forms](#) and sections 5(1), 6(1) and 7(1) in the [Practice Guideline](#).

## Preparing for a Hearing in an Enforcement Proceeding

### What documents should I review?

Before a hearing, including a merits hearing or a sanctions and costs hearing, you should review all the relevant documents you have for the proceeding, including:

- Notice of Hearing;
- Statement of Allegations;
- Enforcement Staff disclosure;
- the [Rules of Procedure and Forms](#);
- the [Practice Guideline](#);
- any Orders or Reasons already issued in the proceeding;
- all the documents and witness statements of the other parties; and
- hearing briefs.

Every proceeding is different, so your relevant documents may vary.

You may also wish to refer to the [Commission's Book of Authorities](#) and any relevant case law. The cases contained in the Commission's Book of Authorities may not be

applicable in every hearing and other cases not contained in the Commission's Book of Authorities may also be relevant to a hearing. Reasons issued in Commission proceedings after 2004 are available on the [Canadian Legal Information Institute website \(CanLII\)](#).

## **Settlements in Enforcement Proceedings**

### **How do I enter into settlement negotiations?**

At any time during an enforcement proceeding, a respondent can enter into settlement discussions with Enforcement Staff and try to arrive at an agreed resolution to the proceeding (also called a "settlement"). If you are interested in discussing a settlement, contact Enforcement Staff directly using the contact information found on the Statement of Allegations.

### **What is the process for settlements?**

If Enforcement Staff and the respondents reach a settlement agreement, the parties present their proposed settlement agreement to a Panel at a confidential settlement conference that is not open to the public.

At the confidential settlement conference, the parties discuss the proposed settlement with the Panel. The Panel indicates whether it would be prepared to approve the settlement agreement. The Panel may ask for further submissions and/or information, and an additional settlement conference may be scheduled.

If the Panel is prepared to approve the settlement agreement following the confidential settlement conference, the parties can then request a public hearing to approve the settlement. A Notice of Hearing for a settlement hearing is then issued and a public settlement hearing takes place. The Panel at the public settlement hearing will include at least one Commissioner from the Panel at the settlement conference.

If no settlement agreement is approved, the enforcement proceeding continues. If there is a merits hearing, the Panel at the merits hearing will be different from the Panel at the settlement conference. The Panel at the merits hearing will not know any information about the discussions at the confidential settlement conference.

For more information on settlements, see Rules 32 and 33 of the [Rules of Procedure and Forms](#).

### **Do all respondents have to settle at the same time?**

No. One or more respondents can settle with Staff, even if that leaves other respondents who have not settled.

### **Are settlements available to the public?**

Approved settlement agreements, along with the Panel's order and the Panel's reasons for approval, if any, are publicly available on the [OSC Website](#) and in the [OSC](#)

[Bulletin](#). Proposed settlement agreements and other documents filed for use at confidential settlement conferences will remain confidential and are not available to the public. Settlement discussions and negotiations are also confidential.

See Rules 32(4) and 34(2) of the [Rules of Procedure and Forms](#).

## **Presenting Cases at Merits Hearings and Sanctions and Costs Hearings**

### **How are the parties' cases presented?**

Merits hearings and sanctions and costs hearings typically proceed in the following way:

- an opening statement from each party, if desired, beginning with Enforcement Staff;
- the presentation of evidence (*i.e.*, having witnesses testify), beginning with Staff's case; and
- a closing argument from each party, beginning with Enforcement Staff.

### **What is an opening statement?**

Merits hearings and sanctions and costs hearings typically begin with an opening statement from each party. An opening statement is a brief summary of the case a party intends to present. Parties describe the facts they intend to prove and the conclusions that they believe the Panel should draw from those facts. What the parties say in their opening statements is not evidence.

Respondents are not required to make opening statements. Enforcement Staff may make one at the beginning of the hearing, but respondents do not need to if they would prefer to hear Staff's case first. If you are a respondent and decide not to make an opening statement at the beginning of the hearing, you can still make one later when you start your case, or you can decide not to make one at all.

### **How is evidence presented?**

Evidence consists of the facts presented in the hearing. Evidence includes the statements of witnesses who testify in the hearing and the documents that relate to the case.

Staff's evidence is the facts it presents to support the allegations in the Statement of Allegations for a merits hearing or, in a sanctions and costs hearing, the facts it presents to support the requested sanctions. For respondents, their evidence is the facts they present to support their defense.

Parties are expected to agree on the evidence that is not in dispute. For areas of agreement, the parties should file an agreed statement of facts and/or enter agreed documents as evidence.

Enforcement Staff presents its evidence first because it is Staff's responsibility (also called Staff's "onus") to prove the allegations in the Statement of Allegations. Staff will call its witnesses to testify. When Enforcement Staff has finished questioning a witness (which is called "examination-in-chief" or "direct examination"), the respondents can question the witness (also called "cross-examination"). After cross-examination, Staff will have a limited right to re-examine the witness on issues that require clarification and arose from the cross-examination. All questions must be relevant to the allegations in the Statement of Allegations.

Once Staff has presented all its evidence, including calling all its witnesses, the respondents present their evidence. When your turn comes, you call your witnesses to testify. You may also want to put documents before the Panel as evidence. To do this, ask a witness to explain the relevance of the document and to confirm that the document is authentic (in other words, explain what the document is and the witness's knowledge of the document). You will then ask the Panel to enter the document as an exhibit. When you have finished questioning a witness, Staff and the other parties can ask their questions. You will have a limited right to re-examine the witness after Staff's questions.

The Panel may ask a witness questions at any time.

### **Can a respondent testify?**

Respondents are not required to testify (also known as giving oral evidence) about the facts. If you are a respondent and you want to give oral evidence yourself, then you go to the witness box and, after you have sworn or affirmed that you will tell the truth, make the statements of fact that you want to make (or, if you have legal representation, your representative will ask you questions). When testifying, your task is only to present the evidence you intend to rely on in your argument. It is not the time to present your interpretation of the evidence or to make your argument (you will have the opportunity to do this in your submissions). When you are finished giving your evidence, other parties can question you, including Staff. The Panel may also have questions for you at any time.

### **What is a closing argument?**

A closing argument is each party's summary of the evidence presented and submissions about how the Panel should use the evidence to reach a conclusion.

After all the parties have presented their evidence, they present their closing arguments. If the hearing has been long or complicated, the parties may ask for a recess or an adjournment (a break in the hearing) to review the evidence and prepare closing arguments.

Closing arguments can be made in writing, orally, or both. This is usually determined in advance of the hearing or after all the evidence is heard. The Panel will set a schedule for the delivery of written closing submissions and/or the hearing of oral closing submissions.

Enforcement Staff will present its closing argument first. The respondents will then

present their closing arguments. Staff will get an opportunity to make a final reply submission, which is limited to new issues that came up during the respondents' closing arguments.

## **Sanctions and Costs Hearing**

### **What is decided at a sanctions and costs hearing?**

After a merits hearing, if a Panel finds that a respondent contravened Ontario securities law or acted contrary to the public interest, then a separate sanctions and costs hearing is held to determine the appropriate sanctions and whether the respondent should reimburse any of the costs associated with Staff's investigation and the hearing.

At a sanctions and costs hearing, you cannot dispute the findings of fact or the legal conclusions made in the merits decision. Submissions and evidence at the sanctions and costs hearing should focus on whether Enforcement Staff's requested sanctions and costs are appropriate, in light of the findings in the merits decision.

### **What sorts of sanctions can be ordered against me?**

Sanctions may include financial sanctions and prohibitions on activities in the capital markets. The Panel does not have the authority to order jail terms. Sanctions are meant to protect investors and the integrity of the capital markets.

For instance, a Panel may issue an order to:

- suspend, restrict or terminate a respondent's registration under securities law;
- cease the trading of securities by a respondent;
- cease the trading in securities of a respondent that is an issuer;
- prohibit the acquisition of securities by a respondent;
- provide that any exemptions under Ontario securities law do not apply to a respondent;
- require that a market participant submit to a review of its practices and procedures and institute changes;
- reprimand (admonish) a respondent;
- require that a respondent resign a position held as a director or officer of an issuer (company), registrant or investment fund manager;
- prohibit a respondent from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;
- prohibit a respondent from becoming or acting as a registrant, investment fund manager or promoter;

- require a respondent to pay the Commission an administrative penalty of not more than \$1,000,000 for each failure to comply with Ontario securities law; and/or
- require a respondent to disgorge (pay) to the Commission any amounts obtained as a result of non-compliance with Ontario securities law.

The Panel imposes sanctions by making Orders. Prohibitions on activities in the capital markets, such as a trading ban, can be for a specific period of time or can be permanent.

For more information, see subsection 127(1) of the [Ontario Securities Act](#).

### **Will the Panel be the same as the Panel I had for the merits hearing?**

One or more of the Commissioners from the Panel for the merits hearing may be on the Panel for the sanctions and costs hearing or the Panel may be entirely different.

### **How do I know what sanctions Enforcement Staff is requesting?**

The Statement of Allegations filed by Enforcement Staff at the beginning of the proceedings lists the sanctions that Staff may seek. The Statement of Allegations will also indicate whether Enforcement Staff expects to ask for costs against a respondent.

As part of the sanctions and costs hearing, Enforcement Staff prepares written submissions, including more details about the order Staff is requesting. Respondents will have a chance to respond to Enforcement Staff's submissions and make their own submissions about the appropriate order.

### **Will I have to pay for Staff's costs of the enforcement proceeding?**

Enforcement Staff may request that a Panel order a respondent to pay some or all of the costs of the investigation and the hearings. The requested costs may include the time spent by Enforcement Staff investigating the case and preparing for and attending the hearings and other things, like fees paid to experts.

If costs are sought against you, you will have an opportunity to make written and oral submissions about whether the requested costs are appropriate. The Panel will set a schedule for the delivery of your written submissions and the hearing of your oral submissions. After the sanctions and costs hearing, the Panel will decide on the appropriate costs to order against each respondent.

For more information, see Rule 35(3) of the [Rules of Procedure and Forms](#).

### **Can I ask for the Commission to pay the costs I incurred?**

The [Ontario Securities Act](#) does not allow a Panel to award a respondent any costs, even if a merits decision finds that Staff failed to prove some or all of the allegations against that respondent.

## 6 Application for Authorization to Disclose

### What is an Application for Authorization to Disclose?

The powers granted to the Commission and used in formal investigations by Enforcement Staff are outlined in sections 11 to 18 of the [Ontario Securities Act](#).

Section 16 of the [Ontario Securities Act](#) prohibits a person or company from disclosing to anyone other than their legal counsel:

- any information related to the nature or content of an investigation order or financial examination order,
- the name of any person examined or sought to be examined,
- any testimony given,
- any information obtained, the nature or content of any questions asked or demands for production of any document or other thing, or
- the fact that a document was produced under compulsion.

In some instances, the Commission may authorize the disclosure of information obtained in an investigation. Such authorization is obtained by an Application for Authorization to Disclose under section 17 of the [Ontario Securities Act](#).

### How do I request an order authorizing disclosure?

To request an order authorizing disclosure under subsection 17(1) of the [Ontario Securities Act](#), you must file an Application using the form in Appendix C found in the [Rules of Procedure and Forms](#). You must serve (deliver copies of) the completed Application on Enforcement Staff and any other person or company that a Panel directs.

For more information about applications for authorization to disclose, see Rule 12 of the [Rules of Procedure and Forms](#).

## 7 Application for Hearing and Review

### What is an application for hearing and review?

An application for hearing and review is an opportunity for an independent review of a decision made by a delegated decision maker. This includes a decision of:

- a Director of the Ontario Securities Commission, including following an opportunity to be heard (OTBH);
- a self-regulatory organization (SRO), including the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA); and
- recognized stock exchanges and clearing agencies operating in Ontario, such as the Toronto Stock Exchange (TSX).

You may apply to the Commission for a hearing and review if you are a person or company directly affected by a regulatory decision made by a Director, a self-regulatory organization, recognized exchange or clearing agency.

For more information, see sections 8 and 21.7 of the [Ontario Securities Act](#).

Commissioners do not conduct the opportunity to be heard (OTBH) process for Director's Decisions. For more information relating to Director's Decisions or OTBHs, refer to the [OSC Website](#).

## **How do I apply for hearing and review?**

To apply for a hearing and review, you must complete and file the Application form found at Appendix E of the [Rules of Procedure and Forms](#). After you file the Application form with the Registrar, you will be provided with the Notice of Hearing. You must then serve (deliver copies of) the Notice of Hearing and the completed Application form on every other party to the original proceeding as well as on Enforcement Staff of the Commission.

See Rule 14(1) of the [Rules of Procedure and Forms](#).

## **Who are the parties in an application for hearing and review?**

The parties in a hearing and review proceeding may include all parties from the original proceeding as well as Enforcement Staff of the Commission.

See Rule 14(2) of the [Rules of Procedure and Forms](#).

## **What is the process for an application for hearing and review proceeding?**

The Notice of Hearing that you receive will provide the date and time that a Panel will hold a hearing called the "first attendance." At the first attendance, you and all other parties will have an opportunity to discuss scheduling issues and next steps. After hearing from everyone, the Panel will impose a timeline for later attendances and, if applicable, for the delivery of other documents, including your delivery of the record from the original proceeding.

For more information, see section 6 of the [Practice Guideline](#).

## **What other information do I have to provide? What is included in the record of the original proceeding?**

Before the hearing of your application, you will have to provide the Registrar and the other parties with the record of the original proceeding. For a list of what you must include, see subsection 6(2) of the [Practice Guideline](#).

## How do I make arguments at a hearing and review proceeding?

You will have an opportunity to make written and oral arguments (or submissions) for the proceeding. Usually, written submissions are served and filed before the hearing of your application. At the first attendance, the Panel will set a schedule for you to provide your written submissions. The other parties will also have the opportunity to deliver written submissions before the hearing of your application.

## 8 Application for Transactional Proceeding

### What is a transactional proceeding?

A transactional proceeding involves a request for an order under sections 104 or 127(1) of the [Ontario Securities Act](#), relating to a matter regulated under specified paragraphs of subsection 143(1) of the [Ontario Securities Act](#). Transactional proceedings include requests for orders relating to:

- take-over bids,
- issuer bids,
- amalgamations,
- statutory arrangements,
- other forms of merger or acquisitions, however structured,
- related party transactions, and
- meetings of security holders.

For more information, see Rule 16 of the [Rules of Procedure and Forms](#).

### How do I apply for a transactional proceeding?

To request a transactional proceeding, you must complete and file an Application using the form found in Appendix G of the [Rules of Procedure and Forms](#). After you file the Application with the Registrar, you will be provided with the Notice of Hearing. You must serve (send copies of) the completed Application and the Notice of Hearing to all parties, including Staff in the Commission's Office of Mergers and Acquisitions.

See Rule 16 of the [Rules of Procedure and Forms](#).

## 9 Application for Revocation or Variation of a Decision

### Can the Commission change a decision? How do I request a change?

The Commission has the discretion to revoke or vary (change) an earlier Commission decision. That discretion is provided for in section 144 of the [Ontario Securities Act](#).

To request a revocation or change of a Commission decision, you must complete and file an Application using the form found in Appendix F of the [Rules of Procedure and Forms](#). After you file the Application with the Registrar, you will be provided with the Notice of Hearing. You must serve (deliver copies of) the Application and the Notice of Hearing to all parties to the original decision, including Enforcement Staff.

An application for revocation or variation of a decision is not the same as an appeal of the decision, which cannot be made to the Commission and must be made to the Divisional Court of the Ontario Superior Court of Justice.

## **10 Appeals**

### **Can I appeal a decision?**

A person directly affected by a Commission decision, including a respondent in an enforcement proceeding, can appeal the decision to the Divisional Court of the Ontario Superior Court of Justice under section 9 of the [Ontario Securities Act](#). The appeal must be started within 30 days after the final decision or the reasons for the final decision are issued, whichever comes later. The appeal must be started in accordance with the [Ontario Rules of Civil Procedure](#).

### **Can I request a Judicial Review of a Commission decision?**

A party may file an application for judicial review with the Divisional Court of the Ontario Superior Court of Justice. A judicial review is not the same as an appeal. In a judicial review hearing, the court will consider whether the tribunal had the authority to make the decision it made and whether the tribunal properly exercised its authority and conducted a fair hearing. The application for judicial review must be started in accordance with the [Ontario Rules of Civil Procedure](#) and the [Ontario Judicial Review Procedure Act](#).



ONTARIO  
SECURITIES  
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