



OSC

**FREQUENTLY ASKED QUESTIONS
ABOUT HEARINGS**

TABLE OF CONTENTS

1. OSC'S AUTHORITY TO CONDUCT HEARINGS	1
1.1 What is the OSC's legislative authority to conduct hearings?	1
1.2 What types of proceedings can the OSC conduct?	1
1.3 What procedural rules apply to OSC hearings?	1
2. HEARING DOCUMENTS.....	2
2.1 What documents must be filed in relation to a hearing?	2
2.2 How do I file documents related to a hearing?	2
2.3 How can I get copies of documents relating to a hearing?.....	2
2.4 How can I get a transcript of a hearing?.....	3
3. HEARING PROCESS	3
3.1 Where are hearings held?	3
3.2 What if I'm delayed getting to the hearing?	3
3.3 Who will hear the case?.....	3
3.4 Do I need a lawyer?.....	3
3.5 Are intervenors permitted in OSC hearings?.....	4
3.6 What happens in a pre-hearing conference?	4
3.7 How can I bring a motion?	4
3.8 How do I ask a witness to attend a hearing?.....	4
3.9 Where can I get information about the status of a proceeding?.....	5
4. CONFIDENTIALITY.....	5
4.1 How do I file documents that contain confidential information?	5
4.2 What information must be disclosed to the parties?.....	5
4.3 Are hearings open to the public?.....	6
4.4 Will information that a witness considers confidential be kept confidential in the proceeding?	6
5. DECISIONS.....	6
5.1 How are decisions made?	6
5.2 How long does it take for a decision to be made?.....	6
5.3 What can I do if I'm not satisfied with the decision?.....	6

5.4 How do I appeal a decision?.....	6
5.5 What happens in a judicial review of a decision?	7
5.6 How do I apply for a judicial review of a decision?	7
5.7 Will the Commission revoke or change any decision?	7
5.8 How do I apply for a further decision, or to vary or revoke a decision?	7
6. ENFORCEMENT PROCEEDINGS	7
6.1 How is an enforcement proceeding commenced?	7
6.2 What sanctions can the Commission impose?.....	8
6.3 What does the OSC do with the money from sanctions?.....	8
6.4 Can the Commission order a respondent to pay costs?	8
7. TAKE-OVER BIDS	8
7.1 Who can request a take-over bid or issuer bid hearing?	8
8. REVIEWS OF A DIRECTOR’S DECISION	9
8.1 Who can apply for a review of a Director’s decision?.....	9
8.2 How do I apply for a review of a Director’s decision?.....	9
8.3 How are reviews of Director’s decisions conducted?	9
9. REVIEW OF A DECISION OF A SELF-REGULATORY ORGANIZATION, STOCK EXCHANGE OR CLEARING AGENCY	9
9.1 What does a review of a decision made by an SRO, recognized exchange or clearing agency involve?.....	9
9.2 Who can apply for a review of a decision of an SRO, stock exchange or clearing agency?	10
9.3 How do I apply for a review?	10
9.4 How is the review conducted?.....	10

1. OSC's authority to conduct hearings

1.1 What is the OSC's legislative authority to conduct hearings?

The OSC holds hearings under the *Securities Act*, R.S.O. 1990, c. S.5, as amended and the *Commodity Futures Act*, R.S.O. 1990 c. C.20, as amended. You can find Ontario's statutes and regulations at www.e-laws.gov.on.ca.

1.2 What types of proceedings can the OSC conduct?

The OSC has the jurisdiction to conduct regulatory (or administrative) proceedings relating to securities law. Enforcement staff and private parties may also initiate criminal or civil proceedings, but these proceedings are heard by the courts.

The OSC conducts regulatory or administrative proceedings involving applications:

- by Enforcement staff relating to enforcement matters;
- in connection with take-over bids, issuer bids and other merger and acquisitions transaction issues;
- for further decisions, and revocations or variations of Commission decisions;
- for reviews of decisions of self-regulatory organizations, exchanges and clearing agencies; and
- for reviews of a Director's decision.

With respect to enforcement matters, the OSC has the authority to order sanctions to protect investors and the integrity of the capital markets and as a deterrence measure. The OSC may also order a respondent to pay costs related to a proceeding.

1.3 What procedural rules apply to OSC hearings?

The consolidated version of the *OSC Rules of Procedure* (2010), 33 O.S.C.B. 8017, apply to all proceedings before the OSC commenced on April 1, 2009 or later.

The *OSC Rules of Practice* (1997), 20 O.S.C.B. 1947 apply to proceedings that were commenced before April 1, 2009.

OSC proceedings are also governed by the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended.

If there is a discrepancy between the *OSC Rules of Procedure* and the *OSC Guide to Enforcement Proceedings* and/or *Frequently Asked Questions About Hearings*, the *OSC Rules of Procedure* will apply.

The *Rules of Procedure* and *Rules of Practice* are available on the OSC website at www.osc.gov.on.ca.

2. Hearing documents

2.1 What documents must be filed in relation to a hearing?

The documents to be filed and the timing for filing the documents will depend on the type of proceeding and the purpose of the hearing. For filing requirements refer to the *OSC Rules of Procedure*, available on the OSC website at www.osc.gov.on.ca.

2.2 How do I file documents related to a hearing?

Send five copies of all documents to the attention of the Secretary to the Commission at:

Ontario Securities Commission
20 Queen Street West, Suite 1903
Toronto, Ontario
M5H 3S8

Documents under 25 pages may be faxed to 416-593-2318.

If a document contains confidential information, you can request a confidentiality order from the Panel. The confidentiality order may be with respect to any document filed with the Office of the Secretary, any document received in evidence or any transcript of the proceeding. The confidentiality order prevents public access to the confidential document. For more information, see Rule 5 of the *OSC Rules of Procedure* and section 9 of the *Statutory Powers Procedure Act*.

Documents containing confidential personal information (such as bank account numbers or social insurance numbers) that are not subject to a confidentiality order may be admitted at the hearing. In addition to the general filing requirements, you must file an additional copy of any document containing confidential personal information with the personal information removed (a redacted copy of the document). The redacted copy will be the version of the document available to the public.

You can find more information about the requirements for filing various applications in the *OSC Rules of Procedure* (Rules 1.5, 2.1, 2.2, 2.3, 2.4, 14.2 and 15.1), available on the OSC website at www.osc.gov.on.ca.

2.3 How can I get copies of documents relating to a hearing?

Notices of Hearing, Statements of Allegations, Orders and Decisions of the OSC are available on the OSC website at www.osc.gov.on.ca under [OSC Proceedings](#).

All documents required to be filed or received in evidence in a proceeding are available to the public, with the exception of documents that the Panel has ordered to be kept confidential. If a document has been redacted, only the redacted version will be made public.

You can review records of past proceedings onsite at the OSC. You can also ask for copies, but a fee applies. The OSC Records department is located at:

Ontario Securities Commission
20 Queen Street West (Cadillac Fairview Tower)
22nd floor
Toronto, Ontario
M5H 3S8

If you have questions about public records, contact OSC Records at 416-593-3735, TTY: 1-866-827-1295, email: records@osc.gov.on.ca.

2.4 How can I get a transcript of a hearing?

You can request a transcript of a public hearing from Atchison & Denman Court Reporting by calling 416-865-9339 or 1-800-250-9059. A fee applies.

Transcripts of confidential hearings are available only to the parties to the proceeding and not to the public.

Transcripts of examinations conducted by Enforcement staff during their investigation are confidential and may not be accessed without approval from the OSC.

3. Hearing process

3.1 Where are hearings held?

Hearings are held at the OSC offices in Toronto:

Ontario Securities Commission
20 Queen Street West (Cadillac Fairview Tower)
17th floor
Toronto, Ontario

We are located on Queen Street between Bay and Yonge at the south end of the Eaton Centre. If arriving by TTC, take the Yonge-University line to Queen station.

3.2 What if I'm delayed getting to the hearing?

If you are scheduled to appear at a hearing and are delayed, contact the Registrar at registrar@osc.gov.on.ca.

3.3 Who will hear the case?

Cases are heard and decided by Commissioners (also known as the Commission). In addition to their adjudicative role, Commissioners act as the OSC's board of directors and set policy. They perform these functions independently of OSC staff.

Commissioners sit on Panels of one to three Commissioners. Any Commissioner authorized by the Commission may sit alone at an OSC hearing.

The OSC's *Guidelines for Members and Employees Engaging in Adjudication* set out the standards expected of Commissioners in exercising their adjudicative responsibilities. The guidelines are intended to ensure that the adjudicative process is, and is seen to be, conducted with impartiality, integrity and independence. You can find the guidelines on the OSC website at www.osc.gov.on.ca.

3.4 Do I need a lawyer?

Respondents may choose to represent themselves or to hire a representative who is a lawyer or paralegal licensed by the Law Society of Upper Canada to represent them at a hearing. OSC proceedings often involve complex issues of fact and law and it is prudent for respondents to seek legal advice. Witnesses, intervenors and other parties may also choose to have legal representation.

Free litigation assistance may be available through the OSC Volunteer Litigation Assistance Program for eligible respondents appearing in enforcement proceedings before the Commission. For more information, please refer to http://www.osc.gov.on.ca/en/Proceedings_litigation-assist_index.htm.

3.5 Are intervenors permitted in OSC hearings?

Individuals and companies that are not directly involved but have a sufficient interest in the outcome of a proceeding may be granted leave (permission) to intervene as a party by the Panel.

A motion for leave to participate in a hearing (intervene) must be served on all parties and be filed with the OSC. It must set out:

- the title of the proceeding in which the applicant wants to intervene,
- the applicant's name and address,
- a concise statement of the scope of the intervention, the issue that directly affects the applicant and the extent to which the applicant wants to participate in the hearing, and
- the reasons why participation (intervenor status) should be granted.

The Panel decides whether to grant the request and can limit the scope of intervention. If you find your interest in a proceeding is adequately represented by another party to the proceeding, you may not need to apply for intervenor status.

3.6 What happens in a pre-hearing conference?

A pre-hearing conference is a confidential hearing before a Panel of one or more Commissioners to address issues before the hearing on the merits. This may include:

- creating or amending a timetable for scheduling the hearing;
- scheduling any preliminary motions;
- considering simplifying or clarifying issues in the proceeding; and
- making an order resolving any matter, on the consent of all parties.

The Panel may direct the parties to participate in a pre-hearing conference, or any party may request a pre-hearing conference by filing a request with the Secretary to the Commission. All parties are required to file a Pre-Hearing Conference Form before attending the conference. For more information, see Rule 6 of the *OSC Rules of Procedure*. A sample form is in Appendix A of the *OSC Rules of Procedure*.

In general, pre-hearing conferences are not open to the public and submissions are not available to the public. Any statements or submissions made at the pre-hearing conference are not communicated to the hearing Panel.

3.7 How can I bring a motion?

Parties may bring motions, for example, to request an adjournment or disclosure. A party may bring a motion by filing a notice of motion accompanied by a motion record, including any affidavit(s) setting out the facts to be relied upon. Contact the Office of the Secretary to set a time and date for the hearing of the motion. For more information, see Rule 3 of the *OSC Rules of Procedure*.

3.8 How do I ask a witness to attend a hearing?

A party may request that the Panel issue a summons to a witness if, for example, a witness may be reluctant to attend the hearing or needs a summons to get permission to be absent from work. The summons sets out the place, date and time of the hearing and requires the person to give

evidence at the hearing and to bring documents and things specified by the OSC that are relevant to the proceeding.

Once the Panel issues a summons, it must be served personally on the person summoned and will remain in effect for the duration of the hearing. The person summoned is legally required to attend the hearing.

3.9 Where can I get information about the status of a proceeding?

All public information about OSC proceedings is available on the OSC website at www.osc.gov.on.ca under [OSC Proceedings](#). For information on upcoming OSC hearings, see [Before the Commission](#). For documents relating to current and past proceedings, see [All Proceedings](#).

Information about confidential hearings, such as certain motions and pre-hearing conferences, is not listed on the OSC website. However, certain information may be available to the parties to a proceeding. They can contact the Registrar at registrar@osc.gov.on.ca.

4. Confidentiality

4.1 How do I file documents that contain confidential information?

If a document contains confidential information, you can request a confidentiality order from the Panel. The confidentiality order may be with respect to any document filed with the Office of the Secretary, any document received in evidence or any transcript of the proceeding. The confidentiality order which prevents public access to the confidential document. For more information, see Rule 5 of the *OSC Rules of Procedure* and section 9 of the *Statutory Powers Procedure Act*.

Documents containing confidential personal information (such as bank account numbers or social insurance numbers) that are not subject to a confidentiality order may be admitted at the hearing. In addition to the general filing requirements, you must file an additional copy of any document containing confidential personal information with the personal information removed (a redacted copy of the document). The redacted copy will be the version of the document available to the public.

You can find more information about the requirements for filing various applications in the *OSC Rules of Procedure* (Rules 1.5, 2.1, 2.2, 2.3, 2.4, 14.2 and 15.1), available on the OSC website at www.osc.gov.on.ca.

4.2 What information must be disclosed to the parties?

Each party must disclose to every other party copies of all documents that the party intends to produce or enter as evidence at the hearing.

Enforcement staff have additional requirements when an application is brought under section 127 of the *Securities Act* (Ontario). They must provide respondents with copies or permit them to inspect all documents and information that are relevant to the hearing and within the control of Enforcement staff. For more information, see the *Guide to Enforcement Proceedings* on the OSC website at www.osc.gov.on.ca.

Disclosure in all cases must be made as soon as reasonably practicable after a Notice of Hearing has been served, and at least 20 days before the hearing on the merits begins.

4.3 Are hearings open to the public?

Ordinarily, hearings are open to the public. However, if testimony or evidence is sensitive or confidential in nature, the Panel may order that part or all of the hearing be held “in camera”. This means that the public is excluded and the record of the “in camera” part of the hearing will not be available to the public.

4.4 Will information that a witness considers confidential be kept confidential in the proceeding?

While hearings are generally public, a witness’s confidential personal or financial information, such as their address or banking information, may be redacted from documents in the record at the discretion of the Panel. The Panel may also rule that portions of a witness’s testimony be held *in camera*. Transcripts of public hearings (not *in camera*) are available to the public.

5. Decisions

5.1 How are decisions made?

At the conclusion of a hearing, the Panel will make a decision. Decisions of the Panel are based on the evidence submitted to them as part of the hearing. The decision may be made orally immediately following the hearing, but more likely the Panel will reserve its decision and provide an order and/or written reasons at a later date.

Decisions are released to the parties a short time before they are released to the public. All written decisions are posted on the OSC website and are published in the OSC Bulletin, which is the official record of the OSC’s activities.

In enforcement hearings, if the Panel concludes that Enforcement staff have proven their allegations, the OSC will typically hold a separate sanctions hearing to determine the appropriate sanctions to impose to protect investors and the integrity of the capital markets. Any request by Enforcement staff for costs under section 127.1 of the *Securities Act* (Ontario) will also be heard and decided at that time. For more information, see the *Guide to Enforcement Proceedings* on the OSC website at www.osc.gov.on.ca.

5.2 How long does it take for a decision to be made?

The timing depends on the complexity of the issues and the evidence presented during the hearing. The OSC tries to issue its decisions in a timely manner.

5.3 What can I do if I’m not satisfied with the decision?

Respondents can:

- appeal a final decision of the Commission with the Divisional Court of the Ontario Superior Court of Justice,
- ask for a judicial review of a final decision with the Divisional Court of the Ontario Superior Court of Justice, or
- ask the OSC to revoke or vary (change) a decision.

5.4 How do I appeal a decision?

You will need to contact the Divisional Court of the Ontario Superior Court of Justice. Under section 9 of the *Securities Act* (Ontario), you have to file your appeal within 30 days after the final decision is made or the reasons for the final decision have been issued, whichever is later.

5.5 What happens in a judicial review of a decision?

In general, the court will consider whether the Panel of the Commission had the authority to make the decision it made and whether it properly exercised its authority and whether the Commission conducted a fair hearing.

5.6 How do I apply for a judicial review of a decision?

Although the Act does not specifically provide for it, respondents may also file an application for judicial review with the Divisional Court of the Ontario Superior Court of Justice.

5.7 Will the Commission revoke or change any decision?

While a person or company affected by any Commission decision can ask for a further decision or to vary or revoke the decision, in general, the Commission will do this only if:

- there is new and compelling evidence, or a significant and relevant change in circumstances; and
- the Commission is satisfied that it would not be prejudicial (harmful) to the public interest.

The Commission may hold a public hearing to consider the application.

5.8 How do I apply for a further decision, or to vary or revoke a decision?

Under subsection 9(6) or section 144 of the *Securities Act* (Ontario), a person or company affected by a Commission decision may apply for a further decision or to vary or revoke that decision. The application must:

- identify the decision;
- state the applicant's interest in the decision or its affect on the applicant;
- state the factual and legal grounds for the request; and
- state the applicant's desired outcome.

The application must be sent to the parties to the decision, including Enforcement staff if it relates to an enforcement proceeding, and to the Secretary to the Commission. For more information, see Rule 15.1 of the *OSC Rules of Procedure*.

6. Enforcement proceedings

For more information on enforcement investigations and proceedings, see the *Guide to Enforcement Proceedings* on the OSC website at www.osc.gov.on.ca.

6.1 How is an enforcement proceeding commenced?

Enforcement staff may commence a proceeding in the public interest under section 127 of the *Securities Act* (Ontario) with respect to an alleged contravention of Ontario securities law or conduct that is contrary to the public interest.

Enforcement staff bring an application to the OSC by filing a Statement of Allegations. A proceeding is commenced when the OSC issues the Statement of Allegation and a Notice of Hearing.

6.2 What sanctions can the Commission impose?

The OSC can impose monetary sanctions, bans and reprimands on individuals and companies for violations of securities law or conduct that is contrary to the public interest.

Monetary sanctions include penalties of up to \$1 million for each failure to comply with Ontario securities law and disgorgement orders. Disgorgement requires the respondent to pay the amount the respondent obtained as a result of the illegal activity.

The OSC can impose bans on future activity, such as bans on trading in securities (cease trade orders), acting as a director or officer of a public company, and acting as or becoming a registrant. The Commission can also remove prospectus and registration exemptions available under the Act, and require a review of a market participant's practices and procedures.

See section 127 of the *Securities Act* (Ontario) for more information on orders.

6.3 What does the OSC do with the money from sanctions?

Money paid as a result of sanctions orders may be directed to or for the benefit of third parties. See subsection 3.4(2) of the *Securities Act* (Ontario) for more information.

6.4 Can the Commission order a respondent to pay costs?

Under section 127 of the *Securities Act* (Ontario), the OSC can order a respondent to pay the costs of the investigation and/or hearing. These may include the costs of Enforcement staff involved in the investigation, witness examination costs, court reporter's fees, costs of transcripts and experts, and costs for the legal services of a lawyer acting as Enforcement staff.

Enforcement staff must request the order and the hearing Panel decides whether to grant it. A respondent served with a request for costs has up to 15 days to respond with any objections.

When deciding on costs, the OSC will consider factors, such as the complexity of the hearing, the conduct of the respondent during the proceeding, the conduct of Enforcement staff during the investigation and the proceeding, and the respondent's co-operation with Enforcement staff and others.

A party may not obtain an order for costs against Enforcement staff or the OSC.

For more information about costs, see Rule 18 of the *OSC Rules of Procedure*, available on the OSC website at www.osc.gov.on.ca.

7. Take-over bids

7.1 Who can request a take-over bid or issuer bid hearing?

Under sections 104 and/or 127 of the *Securities Act* (Ontario), an interested person in a take-over bid, an issuer bid or other merger and acquisition transaction may request a hearing on the grounds that a person or company involved in the transaction has not complied with the requirements for take-over bids and issuer bids under Ontario securities law. For more information, see Rule 16 of the *OSC Rules of Procedure*.

8. Reviews of a Director's decision

8.1 Who can apply for a review of a Director's decision?

Under section 8 of the *Securities Act* (Ontario), a person or company directly affected by a regulatory decision of a Director of the OSC may apply for a review of the decision.

8.2 How do I apply for a review of a Director's decision?

You must submit an application within 30 days of the decision. This application must:

- identify the decision to be reviewed;
- state your interest in the decision or its effect on you;
- summarize the alleged errors in the decision and reasons for requesting a review; and
- state your desired outcome.

For more information, see Rule 14 of the *OSC Rules of Procedure*.

8.3 How are reviews of Director's decisions conducted?

A hearing and review of a decision of a Director is conducted in the same manner as a hearing and review of a decision of an SRO, recognized exchange or clearing agency.

Reviews are usually conducted orally before a Panel of the Commission. Written submissions are usually also submitted to the Panel. The decision under review and any reasons for that decision that form part of the record should be submitted to the Panel.

The applicant presents its case first, based on its application. The other parties respond. OSC Enforcement staff are also a party and may participate at the hearing.

For more information, see Rule 14 of the *OSC Rules of Procedure*.

9. Review of a decision of a self-regulatory organization, stock exchange or clearing agency

9.1 What does a review of a decision made by an SRO, recognized exchange or clearing agency involve?

The OSC regulates two self-regulatory organizations (SROs): the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA). The OSC also has oversight of recognized stock exchanges operating in Ontario, such as the [TMX Group and TSX Inc.](#), CNSX Markets Inc. and clearing agencies.

Under section 21.7 of the *Securities Act* (Ontario), the Commission has the authority to review regulatory decisions made by an SRO, recognized exchange or clearing agency. The purpose of a review is not to provide a second opinion or decision. The Commission will only interfere with the decision under review if:

- the SRO, exchange or clearing agency proceeded on an incorrect principle;
- the SRO, exchange or clearing agency erred in law;
- the SRO, exchange or clearing agency overlooked material evidence;

- new and compelling evidence is presented to the Commission; or
- the Commission's perception of the public interest conflicts with that of the SRO, exchange or clearing agency.

The Commission will not interfere simply because it might have made a different decision.

9.2 Who can apply for a review of a decision of an SRO, stock exchange or clearing agency?

A person or company directly affected by a regulatory decision made by an SRO, recognized exchange or clearing agency can apply to the Commission for a review of the decision under section 21.7 and section 8 of the *Securities Act* (Ontario).

9.3 How do I apply for a review?

You must apply to the Commission within 30 days after the decision by the SRO, stock exchange or clearing agency is made. An application must:

- identify the decision to be reviewed;
- state your interest in the decision or its affect on you;
- summarize the alleged errors in the decision and reasons for requesting a review; and
- state your desired outcome.

For more information, see Rule 14 of the *OSC Rules of Procedure*.

9.4 How is the review conducted?

A hearing and review are usually conducted orally before a Panel of the Commission. Written submissions are usually also submitted to the Panel. The decision under review and any reasons for that decision that form part of the record should be submitted to the Panel.

The applicant presents its case first, based on its application. The other parties respond. OSC Enforcement staff are also a party and may participate at the hearing. The applicant will produce any new evidence it wants to submit to the Panel using the procedures set out in the *OSC Rules of Procedure* (see Rule 14.5 of the *OSC Rules of Procedure*). The Panel will generally restrict new evidence to compelling evidence that was not before the SRO, recognized exchange or clearing agency when it made its decision.