



**OSC**

# **GUIDE TO ENFORCEMENT PROCEEDINGS**

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## **Introduction**

This guide explains how enforcement investigations and proceedings of the Ontario Securities Commission (the OSC) are conducted. It includes information about hearings, decisions and sanctions, and provides tips on how to prepare for a hearing.

The guide is intended primarily to assist respondents in OSC Enforcement proceedings. It may also be useful for witnesses and others who may be involved in an investigation or proceeding. It is not a legal document and may not contain all the information you need. If you have questions about a matter you are involved in, you should contact a lawyer or licensed paralegal.

In addition to enforcement matters, the OSC conducts hearings on regulatory matters, including merger and acquisition transaction issues, applications for reviews of Directors' decisions and decisions of self-regulatory organizations and stock exchanges and applications to revoke or vary OSC decisions. You can find general information about hearings in *Frequently Asked Questions about Hearings*. It is available on the OSC website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

### **About the OSC**

The OSC is a regulatory body responsible for overseeing Ontario's capital markets. It is a self-funded Crown corporation, accountable to the Ontario Legislature through the Minister of Finance. The OSC administers and enforces the *Securities Act* (Ontario) (the Act) and the *Commodity Futures Act*.

The OSC's mandate is to:

- provide protection to investors from unfair, improper or fraudulent practices; and
- foster fair and efficient capital markets and confidence in capital markets.

The OSC consists of Commissioners (also referred to as the Commission) and OSC staff. OSC staff are responsible for the day-to-day operations of the OSC. Enforcement staff have broad powers to investigate conduct that appears to contravene securities law or to be contrary to the public interest. The Commissioners act as the board of directors, set policy and adjudicate at hearings. They perform their roles independently of OSC staff.

The OSC co-operates with securities regulators across Canada, in the United States and other countries with respect to the enforcement of securities laws

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

Enforcement staff investigate allegations of misconduct in the capital markets. Under section 127 of the Act, they can initiate proceedings against individuals or companies suspected of violating securities law or acting contrary to the public interest.

These proceedings are administrative (or regulatory) in nature, not criminal or civil. They take place at the OSC, and are heard and decided by a Panel of Commissioners. Hearings before the Panel are also referred to as administrative hearings.

A proceeding is the period between the beginning and final disposition of a matter. A proceeding begins when the OSC issues a Notice of Hearing regarding a Statement of Allegations that has been issued by Enforcement staff. Those named in the Statement of Allegations are the respondents. Enforcement staff must prove the allegations in a public hearing before the Panel. The Statement of Allegations and Notice of Hearing are served on the respondents and are published on the OSC website and in the OSC Bulletin.

Enforcement staff and the respondents present their evidence and arguments at a hearing (also known as a hearing on the merits). The hearing on the merits is a public hearing where Enforcement staff must prove their allegations. The Panel makes a decision based on the evidence. If the Panel finds that a respondent has violated securities law or has acted contrary to the public interest, it can order sanctions such as financial penalties and bans on trading and other activities to protect investors and the integrity of the capital markets.

The Panel does not have the authority to order jail terms. However, Enforcement staff can initiate quasi-criminal proceedings in the Ontario Court of Justice, which has the authority to impose financial sanctions and jail terms.

Before the hearing on the merits begins, there will often be other hearings before a Panel to deal with issues such as setting the dates for the hearing on the merits, motions or other procedural issues. They may take the form of status update hearings, pre-hearing conferences or motion hearings.

Information relating to open and completed proceedings before the Commission and before the courts is available under “OSC Proceedings” on the OSC website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

## **About the Panel**

The Panel is an administrative tribunal with quasi-judicial powers. The tribunal is not a court, but has been given powers through statute to decide specific matters relating to securities law. A tribunal operates independently from the government and the courts. The powers are described as quasi-judicial because they are adjudicative in nature, but the proceedings are administrative and are not presided over by a judge.

Panel members are unbiased adjudicators who decide the matter based only on the evidence that is submitted at the hearing. They have no involvement in, or knowledge of, the investigation or the background to the Statement of Allegations. The Chair of the Commission does not sit on any Panels.

Hearings on the merits are heard before a Panel of one to three Commissioners. One Commissioner who has been authorized by the Commission may sit alone at any 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 available on the OSC website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

## **Rules of Procedure**

Certain rules apply to how hearings are conducted. The rules for hearings before the Commission are set out in the OSC's *Rules of Procedure*. These rules apply to hearings on the merits in Enforcement proceedings, as well as all other types of hearings before a Panel.

The *Rules of Procedure* apply to all proceedings before the Commission commenced on or after April 1, 2009. The *Rules of Practice* apply to all proceedings commenced on or before March 31, 2009.

The *Rules of Procedure* and *Rules of Practice* are available on the OSC website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

## **Office of the Secretary**

The Office of the Secretary provides support to the Commissioners in the exercise of their responsibilities and provides counsel to Commissioners on adjudicative matters and administrative law, corporate law and corporate governance.

The Office of the Secretary is responsible for the fair, impartial and efficient operation of the Commission's adjudicative proceedings, reviews and appeals. The Secretary coordinates the schedule of tribunal hearings and proceedings. Adjudicative Counsel attend hearings and provide legal advice on administrative law, and adjudicative and procedural matters.

## **2. What happens during an investigation**

### **Enforcement staff investigate under investigation orders**

Enforcement staff investigate possible market misconduct or breaches of the Act under an investigation order issued by the Chair (or a designate) of the Commission. The order sets out the scope of the investigation.

To carry out their investigation, Enforcement staff have the power to compel:

- the attendance of any person to answer questions at an interview or examination; and
- the production of documents.

Interviews may also be conducted on a voluntary basis.

A person being examined is required to attend the examination and to bring any relevant documents to the examination. All questions from Enforcement staff must be answered truthfully. Examinations are recorded by a court reporter. Enforcement staff may introduce the transcript of the examination as evidence in any subsequent hearing, subject to the Panel's discretion.

### **A person being examined may have legal representation**

Anyone examined by Enforcement staff may be represented by a lawyer or licensed paralegal, and may bring their representative to the examination.

### **Information about the investigation will be disclosed to respondents**

Enforcement staff provide respondents with transcripts of examinations and other relevant documents relating to the investigation. This disclosure is made at least 20 days before the hearing on the merits.

If you have questions about a transcript, you can call Atchison & Denman Court Reporting at 416-865-9339 or 1-800-250-9059.

### **Cases are usually kept confidential until a proceeding is initiated**

Enforcement staff generally do not publicly disclose the existence or details of an investigation before a proceeding has been commenced. An investigation may be compromised if disclosure is made before the investigation has been completed. In addition, an investigation may not result in a proceeding and confidentiality helps protect the reputation of those under investigation.

In some instances, Enforcement staff may seek the Commission's permission to disclose information under section 17 of the Act. The Act provides that when an investigation order or examination order is issued, information about the investigation or any examination or evidence of a person must not be disclosed to anyone, other than the counsel representing the examined person, unless a formal request is made to the Commission under section 17 of the Act, and the Commission consents by issuing an order.

For more information on investigations and examinations, see sections 11 to 18 of the Act.

**A respondent can choose to settle with Enforcement staff at any time**

A respondent can seek a settlement with Enforcement staff at any time during an investigation or proceeding, and up to the conclusion of the hearing on the merits. In some cases, individuals or companies being investigated may discuss settling with Enforcement staff before a Statement of Allegations is issued. For more information, see section 4, *Settling with Enforcement staff*.

**A temporary cease trade order may be issued**

A cease trade order is a trading ban. It can suspend all trading in a company's securities or prohibit individuals and companies from trading in certain or all securities.

If Enforcement staff think that an individual's or company's conduct is an immediate and ongoing threat to the capital markets and/or the public, the Chair or a Commissioner authorized by the Commission can issue a temporary cease trade order. Enforcement staff make the request for the temporary cease trade order.

Temporary cease trade orders are usually issued without a hearing (*ex parte*), and typically restrict an individual or company from trading in any security. They are often issued before the Statement of Allegations and Notice of Hearing are issued. However, they may be issued at any time during an investigation or proceeding.

An *ex parte* temporary order is initially effective for not more than 15 days.

**A temporary cease trade order may be extended**

Enforcement staff may seek to extend a temporary order by requesting a hearing. The hearing must be held within 15 days of the date the original *ex parte* temporary order was made. A notice of the hearing is sent to the respondent. This hearing is separate from a hearing on the merits. At the hearing, the person or company subject to the cease trade order may provide reasons why the temporary order should not be extended.

A Panel of Commissioners or a single Commissioner authorized to do so may extend a temporary order. They will consider:

- whether, based on Enforcement staff's evidence, it appears that the respondent may have contravened the Act or acted contrary to the public interest;
- whether an extension of the temporary order is necessary to protect the public interest;
- whether the respondent has presented satisfactory information to enable the Panel to decide not to extend the temporary order;
- the length of time Enforcement staff say they will take to complete the investigation;
- the length of time before a hearing on the merits can be conducted;

- the respondent's circumstances; and
- the scope of the temporary order.

The OSC publishes temporary orders and extensions of temporary orders on its website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

It is illegal for any respondent to breach a temporary order. A breach of a temporary order can result in sanctions from the Commission, or fines or jail sentences ordered by a court.

### **Enforcement staff may initiate a proceeding**

Depending on the nature of the matter and the evidence they have gathered, Enforcement staff may:

- initiate a proceeding before the Commission under section 127 of the Act;
- prosecute a respondent for a breach of the Act by initiating a quasi-criminal proceeding in the Ontario Court of Justice;
- bring an application before the Superior Court of Justice for a declaration that a person or company has not complied with or is not complying with Ontario securities law; or
- close the investigation with no further action taken.

Victims of fraud and other securities law violations can sue a respondent in the civil court system to try to get their money back. The Commission is not usually involved in these legal actions.

### 3. How a proceeding is commenced

Enforcement staff may initiate a proceeding under the Act by issuing a Statement of Allegations. This can happen during or after an investigation. Once a Statement of Allegations has been issued, the Secretary to the Commission will issue a Notice of Hearing. Enforcement staff prepare and deliver (serve) the Statement of Allegations and Notice of Hearing on each respondent at the respondent's last known address.

Once the Notice of Hearing with respect to a Statement of Allegations is issued, the matter is considered a proceeding. Notices of Hearing are published on the OSC website and in the OSC Bulletin.

#### **Statement of Allegations**

The Statement of Allegations describes the contraventions of the Act and conduct contrary to the public interest that are alleged by Enforcement staff. It must provide enough detail so that the respondents can understand and respond to the allegations against them. Statements of Allegations are published on the OSC website.

#### **Notice of Hearing**

The Notice of Hearing contains:

- the names of all respondents;
- any provisions of the Act that are alleged to have been breached;
- the general nature of the sanctions Enforcement staff are seeking from the Commission; and
- the time, date and location of the first appearance (the first hearing before a Panel).

The purpose of the first appearance is usually to discuss the status of the proceeding and schedule the hearing on the merits.

#### **Parties to the hearing**

The parties to the hearing are Enforcement staff and the respondents named in the Notice of Hearing.

#### **Key things to know if you are a respondent**

##### ***Legal representation is recommended***

You can choose to represent yourself at hearings, or to have a lawyer or paralegal represent you. Since Commission proceedings often involve complex issues of fact and law, the Commission recommends that respondents 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](http://www.osc.gov.on.ca/en/Proceedings_litigation-assist_index.htm).

You may also retain counsel independently by consulting the list of lawyers and paralegals licensed by the Law Society of Upper Canada at [www.lsuc.ca](http://www.lsuc.ca).

***Contact information must be kept up to date***

In order to ensure that you receive documents relating to the proceeding, Rule 1.5.2 of the *Rules of Procedure* requires respondents to keep their contact information up to date.

If you have a legal representative, Enforcement staff and other parties will provide documents through your representative. Your representative should send the Office of the Secretary a notice with contact information for serving documents.

If there are any changes to the contact information, the person who initially provided the information should notify the Office of the Secretary.

***You should review the Rules of Procedure***

The OSC's *Rules of Procedure* set out how hearings are conducted and the obligations of the Commission, Enforcement staff and respondents. The *Rules of Procedure* are available on the OSC website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

***You can seek to reach a settlement with Enforcement staff at any time***

You can seek a settlement with Enforcement staff at any time during an investigation or proceeding, and up to the conclusion of the hearing on the merits. For more information, see section 4, *Settling with Enforcement staff*.

## 4. Settling with Enforcement staff

A respondent can seek to reach a settlement with Enforcement staff at any time during an investigation or proceeding, and up to the conclusion of the hearing on the merits. A respondent seeking to settle should contact Enforcement staff to discuss settlement options.

Enforcement staff will settle if they conclude that it is in the public interest to do so. By agreeing to settle, a respondent may face lower sanctions and may avoid the costs, inconvenience and uncertainty of the outcome of a hearing.

Enforcement staff will typically require the respondent to:

- agree to a statement of the facts related to the matter;
- admit wrongdoing or that the respondent's conduct was contrary to the public interest;
- agree to sanctions, which can include a reprimand, bans on trading and other activities and financial sanctions;
- undertake to comply with the Act in the future;
- waive all appeals; and
- pay a portion of Enforcement staff's investigation and hearing costs.

The terms are set out in a settlement agreement that is signed by the respondent and Enforcement staff.

Respondents who settle are usually required to pay any financial sanctions and costs at the time the settlement becomes effective. If Enforcement staff agree, the proposed settlement may be discussed by Enforcement staff and the respondents with a single Commissioner who may assist the parties in reaching a settlement. These discussions can take place at a pre-hearing conference or at a settlement conference. They are confidential.

Rule 12 of the *Rules of Procedure* sets out the process for settlements. The Panel (or a single Commissioner who has been authorized by the Commission) will approve a settlement only if it is satisfied that the settlement is in the public interest. A settlement agreement must first be submitted for approval by a Panel or a single Commissioner. One or more confidential conferences are held with the settling parties. A Notice of Hearing for a settlement hearing is then issued and a public settlement hearing takes place.

The OSC publishes on its website settlement agreements, approval orders issued and any reasons given for approving settlements.

Until the settlement agreement is approved, Enforcement staff and the respondents are required to keep settlement discussions confidential.

## **5. What happens before the hearing on the merits takes place**

### **Pre-hearing conferences may be held**

One or more pre-hearing conferences may be held with the parties and a Commissioner to discuss preliminary issues, such as disclosure of evidence and the scheduling of any proposed motions and of the hearing on the merits.

A pre-hearing conference is intended to address any matters that will promote a fair and efficient hearing. The parties are expected to complete and file a pre-hearing conference form before the conference. The form is in Appendix A of the *Rules of Procedure*. Pre-hearing conferences are not open to the public.

### **The hearing date is set**

If Enforcement staff and the respondents are ready to proceed with the hearing on the merits, the parties estimate how long the hearing will take. A Commissioner and the parties will try to find the earliest dates that everyone can attend. If the parties cannot agree, the Commissioner sets the dates.

If Enforcement staff or the respondents are not ready to proceed, they may ask for an adjournment and request more time to prepare for the hearing on the merits. There may be a number of hearings before dates are set for the hearing on the merits, depending on the circumstances. The Panel will decide when the dates for the hearing on the merits should be set based on the information provided by the parties and the public interest.

### **Evidence and witnesses are disclosed**

In general, the Commission will only consider as evidence:

- the testimony of witnesses given at the hearing; and
- documents that are identified by witnesses who testify at the hearing.

The Commission expects Enforcement staff and each respondent to fully disclose all relevant evidence that they intend to produce or enter into evidence at the hearing, on a timely basis before the hearing begins.

Enforcement staff and the respondents are expected to follow the timelines for disclosure set out in Rule 4 of the *Rules of Procedure*. This is to help ensure that everyone has enough time to prepare for the hearing and that the hearing is fair and efficient.

In general, when Enforcement staff issue the Statement of Allegations, they will disclose to the respondents all relevant evidence that is not privileged. For example, legal advice given to a party may be protected by privilege. If the investigation is ongoing, Enforcement staff will also disclose any new and relevant information as it becomes available.

Enforcement staff are expected to provide:

- all evidence gathered in the investigation that is relevant to the allegations in the Statement of Allegations, including evidence that Enforcement staff intend to rely on and relevant evidence that does not support the allegations;
- the evidence Enforcement staff expect to use in presenting their case;
- a list of witnesses that Enforcement staff intend to call;
- summaries of the testimony that these witnesses are expected to give; and
- any expert reports Enforcement staff have had prepared and intend to rely on.

Respondents must provide similar information to Enforcement staff and any other respondents to the proceeding, subject to certain time limits prescribed under Rule 4 of the *Rules of Procedure*. A respondent is expected to provide:

- the evidence they intend to use in presenting their case;
- a list of witnesses that they intend to call;
- summaries of the testimony that these witnesses are expected to give; and
- any expert reports the respondent has prepared and intends to rely on.

### **Witnesses are summoned**

A summons is a document ordering a person to appear before the Panel to testify. It sets out the place, date and time of the hearing. Witnesses who have been summoned are legally required to testify at the hearing.

A party can request that a summons be issued, for example, if a witness may be reluctant to attend the hearing or needs a summons to get permission to be absent from work.

To request a summons, contact the Office of the Secretary. In most circumstances, the Chair of the Panel signs the summons.

### **The investigation may continue**

Enforcement staff may continue to investigate the matter after a Notice of Hearing and Statement of Allegations have been issued, and even after the hearing has started. They are required to disclose to respondents any new and relevant information arising from the investigation.

### **The Statement of Allegations may be amended**

Enforcement staff may amend the Statement of Allegations before the hearing on the merits commences to include any new allegations or withdraw allegations. The Panel can address any questions of fairness to a respondent resulting from an amendment.

**A respondent may wish to seek a settlement with Enforcement staff**

A respondent may wish to seek a settlement with Enforcement staff at any time during an investigation or proceeding, and up to the conclusion of the hearing on the merits. For more information, see section 4, *Settling with Enforcement Staff*.

**The hearing may be adjourned**

The Commission expects parties to appear on the dates for the hearing on the merits and to be prepared to proceed on those dates. If a party is not prepared to proceed, they should ask for an adjournment under Rule 9 of the *Rules of Procedure*.

Some common reasons for requesting an adjournment are:

- more time is needed to prepare for the hearing;
- the Notice of Hearing and/or Statement of Allegations has been significantly amended;
- additional evidence is discovered after disclosure has been made; and
- a witness who will give important testimony cannot appear as planned.

A party must make a motion for an adjournment as soon as they know they will need an adjournment. The Panel decides whether to grant the request for an adjournment. It will consider the particular circumstances at the time, the fairness to all parties, and the public interest in having the matter heard and decided promptly.

**The hearing may be delayed**

While Enforcement staff try to conclude investigations as quickly as possible, delays may occur because of the complexity of matters, and for other reasons.

## 6. Preparing for the hearing on the merits

### Consider hiring a legal representative

Respondents to a hearing may represent themselves, or hire a legal representative. The Commission recommends that respondents have legal representation at the hearing. For more information, see *Key things to know if you are a respondent* on page 9.

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](http://www.osc.gov.on.ca/en/Proceedings_litigation-assist_index.htm).

A witness who is called to testify at a hearing may also want to seek legal advice.

### Respondents may have to testify at the hearing

Respondents will have to testify at the hearing if they want to introduce evidence that will not be introduced by another witness. Respondents who testify may be cross-examined by Enforcement staff and the other parties, and should be prepared for detailed questioning.

#### **If you are a respondent representing yourself**

It is in your best interests to be prepared, follow the *Rules of Procedure* and act accordingly during the proceeding. The Commission promotes fair, timely and efficient hearings, and the Panel may take into account the conduct of respondents, as well as Enforcement staff, when making decisions regarding costs.

#### **Gather your evidence and witnesses**

Make sure you understand the allegations against you and the evidence Enforcement staff and any other respondents have provided. You will need to consider whether there are any documents or witnesses who will support your interpretation of the events, and whether your witnesses will be available to testify at the hearing.

You are required to provide any evidence that you want to rely on at the hearing to Enforcement staff before the hearing. If you want to introduce documents as evidence at the hearing, they must be identified by witnesses from their personal knowledge.

You will need to provide a list of witnesses to Enforcement staff. You may need to summon witnesses who will testify on your behalf. For more information, see section 5, *What happens before a hearing takes place*.

#### **Review the hearing materials**

You should review the following documents before the hearing:

- the Notice of Hearing, Statement of Allegations and Enforcement staff disclosure to make sure you understand the allegations against you;
- the *Rules of Procedure* so that you understand what you need to do before and during the hearing, and how hearings are conducted;

- all of the documents and witness statements of the other parties; and
- all of your own documents.

Organize these documents so that you can easily find them, and bring any documents that you think you or the other parties may refer to at the hearing on the merits.

***Prepare your witnesses***

Witnesses are required to give evidence and produce documents at the hearing. They will be questioned by Enforcement staff and other parties. A witness must give an oath or promise to tell the truth. Skilled questioning may quickly discredit a witness who tries to be helpful to a respondent by being evasive or lying.

Prepare your witnesses by asking them to review the documents related to the hearing. They may also want to review this guide. Ask them questions that you think Enforcement staff or other parties might ask in cross-examination.

Witnesses who have been summoned are legally required to attend and testify at the hearing. If you summon a witness, make sure they will be available to attend the hearing

## **7. What to expect at the hearing**

### **Hearings take place at the OSC**

Hearings are held at the OSC offices on the 17th Floor, 20 Queen Street West, Toronto. The time of the hearing is set out in the Notice of Hearing or an order made by the Commission.

### **The hearing room**

The OSC has three hearing rooms. Each hearing room has a table on one side of the room for Enforcement staff and a table on the other side of the room for the respondents.

At the front of the room are a witness stand and a raised platform where the Panel sits. The Chair of the Panel sits in the middle seat. Three desks are in front of the platform—one for the registrar, who keeps track of the evidence, one for the court reporter, who records the proceeding and prepares a transcript, and one for the Adjudicative Counsel to the Panel.

Public seating is at the back of the room.

### **Hearings are usually open to the public and the media**

Most Commission hearings are open to the public and the media. However, cameras are not allowed in the hearing room.

If the evidence presented during the hearing includes personal, financial or other confidential matters, a respondent may ask for all or part of the hearing to be held confidentially (or *in camera*). This means that the hearing is not open to the public or the media. The Panel will decide whether to grant the request.

The rules for public and *in camera* hearings are set out in Rule 8 of the *Rules of Procedure*. Transcripts of public hearings may be obtained by the public for a fee by contacting Atchison & Denman Court Reporting at 416-865-9339 or 1-800-250-9059.

### **Confidential and personal information in documents presented at the hearing**

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 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](http://www.osc.gov.on.ca).

**The hearing can go on without all respondents present**

If a respondent does not respond to a Notice of Hearing or does not appear at a hearing, the hearing may proceed without them. Enforcement staff must prove that they have taken all reasonable steps to serve and contact the respondent.

In this situation, the evidence and arguments of Enforcement staff and any other respondents who appear are the only evidence and submissions that the Panel will consider in reaching its decision. The Commission can make orders and impose sanctions against a respondent even if the respondent does not respond or appear at a hearing.

**There are communication protocols**

Panel members will not communicate with Enforcement staff about any matter or issue involved in the hearing, except on notice to the respondents or in the open hearing room. Equally, all communications between respondents and the Panel must occur in open hearings or by contacting the Office of the Secretary.

## **8. How cases are presented at hearings**

### **The parties make their opening statements**

A hearing begins with opening statements. An opening statement is a brief summary of the evidence a party intends to present and the conclusions the party asks the Panel to draw from the evidence.

Enforcement staff usually make their opening statement first. Respondents can choose to make an opening statement or not. If they choose to make an opening statement, they can make it after Enforcement staff have completed their opening statement or after Enforcement staff have presented all of their evidence.

### **Evidence includes witness testimony and documents**

Evidence may include documents agreed upon by the parties before the hearing, the testimony of witnesses who take the stand at the hearing and documents or other materials that are provided by and identified by witnesses.

The Commission encourages parties to agree on facts that are not in dispute before the hearing. If possible, the parties may file an agreed statement of facts at the hearing or introduce agreed documents into evidence at the hearing. This helps make the hearing more efficient and may reduce any costs awards against a respondent.

Documents can be introduced as evidence at the hearing by a party who is questioning their own witness or during cross-examination of a witness called by another party. The witness must identify the document from their personal knowledge, and should explain the relevance of the document and confirm its authenticity. The party should then ask the Panel to enter the document as an exhibit.

### **Enforcement staff present their evidence**

Enforcement staff present their evidence first because the onus is on them to prove the allegations they made in the Statement of Allegations.

Enforcement staff call their witnesses. When they have finished questioning a witness (examination in chief), respondents may cross-examine the witness. This allows respondents to ask questions that challenge the testimony the witness gave during examination in chief or to elicit additional relevant information. Respondents may also object to questions Enforcement staff ask a witness. The Panel will rule on whether the questions may be asked.

Once the respondents have cross-examined the witness, Enforcement staff may re-examine the witness. These questions must be limited to any new issues arising from the cross-examination.

Members of the Panel may ask a witness questions to assist them in understanding the witness's testimony. If a question from the Panel raises a new issue, the parties will be allowed to ask follow-up questions.

### **Respondents present their evidence**

After Enforcement staff have presented their evidence, the respondents may present their evidence. When a respondent's turn comes, the respondent will call their witnesses. When a respondent has finished questioning a witness (examination in chief), Enforcement staff can cross-examine the witness.

Once Enforcement staff and any other respondents finish their cross-examination, the respondent may re-examine the witness. These questions must be limited to any new issues arising from the cross-examination.

A respondent who wants to give evidence can take the witness stand and testify under oath. When the respondent has finished testifying, Enforcement staff and any other respondents may cross-examine the respondent.

### **The parties make their closing arguments**

After all of the parties have presented their evidence, they make their closing arguments (closing submissions) to the Panel. If the hearing has been long or complicated, a party may ask for an adjournment to review the evidence and prepare their argument.

Closing arguments are submissions, not evidence. They consist of a party's interpretation of the evidence and how the law ought to be applied to the evidence. Parties will often summarize the relevant facts and refer to prior decisions of the Commission or of the courts that are relevant to the legal issues the Panel has to decide.

Closing arguments can be made orally, in writing, or both. In most cases, the Commission recommends that parties provide oral and written submissions. Enforcement staff present their arguments first. The other parties make their arguments in turn, followed by any reply arguments by Enforcement staff.

Enforcement staff almost always prepare written arguments and submit copies of cases that they have relied on in a "Book of Authorities".

## **9. How the decision is made**

### **The Panel considers the evidence**

After the hearing on the merits has concluded, the Panel will consider all of the evidence presented and the submissions made by the parties.

The Panel uses the balance of probabilities as the applicable standard of proof. This is also known as the preponderance of the evidence. This means that the Panel must decide whether the evidence proves that the allegations are more likely to be true than not true. This is the standard of proof applied in civil matters and matters before administrative tribunals. It is lower than the criminal law standard of proof beyond a reasonable doubt.

### **The Panel makes an oral or written decision**

The Panel may give an oral ruling immediately following the hearing. However, it usually reserves its decision and issues a written decision on the merits with reasons at a later date.

The decision on the merits sets out the Panel's conclusions on whether Enforcement staff have proven their allegations of violations of the Act or acts alleged to be contrary to the public interest.

The decision is released to the parties and written decisions, which include orders and reasons, are posted on the OSC website and are published in the OSC Bulletin.

If the Panel finds that a respondent contravened the Act or acted contrary to the public interest, a separate sanctions hearing is usually held to determine the appropriate sanctions.

If the panel decides that the respondent did not contravene the Act or act contrary to the public interest, no additional hearing is necessary and no sanctions or costs will be ordered.

## **10. How sanctions are imposed**

### **A sanctions hearing may be held**

If the Panel finds that a respondent contravened the Act or acted contrary to the public interest, a separate sanctions hearing is usually held to determine the appropriate sanctions. However, if all parties agree, a respondent may waive the opportunity to have a separate sanctions and costs hearing, and request a combined hearing on the merits and hearing on sanctions and costs.

At the sanctions hearing, Enforcement staff ask the Panel to order specific sanctions against the respondents. Enforcement staff may also request that a respondent pay costs.

Respondents can make statements and submissions about the appropriate sanctions and costs to be ordered by the Panel.

Submissions may be made orally, in writing, or both. An oral hearing is usually held, and is generally recommended when a party wants to call evidence relating to sanctions.

Enforcement staff almost always prepare written arguments supporting their request for sanctions, including copies of the cases they relied on. Respondents may also submit their own written arguments and cases relied on.

### **A sanctions decision is made**

The sanctions decision is released to the parties and posted on the OSC website and published in the OSC Bulletin.

After the decision is released, Enforcement staff may file a Commission decision with the Superior Court of Justice and enforce it as an order of that court, under section 151 of the Act.

### **Sanctions are ordered**

The Panel imposes sanctions by making orders. The orders, which are set out in section 127(1) of the Act, may include financial sanctions and bans on activities in the capital markets. The Panel may order that:

- a respondent's registration under securities law be suspended, restricted or terminated;
- trading of securities by or of a respondent cease;
- the acquisition of securities by a respondent be prohibited;
- any exemptions under Ontario securities law do not apply to a respondent;
- a market participant submit to a review of its practices and procedures and institute changes;

- a release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular, offering memorandum, proxy solicitation or any other document be provided to a person or company, not be provided to a person or company, or be amended;
- a respondent be reprimanded;
- a respondent resign a position held as a director or officer of an issuer, registrant or investment fund manager;
- a respondent be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;
- a respondent be prohibited from becoming or acting as a registrant, investment fund manager or promoter;
- a respondent pay an administrative penalty of not more than \$1,000,000 for each failure of the party to comply with Ontario securities laws; and
- a respondent disgorge to the OSC any amounts obtained as a result of non-compliance with Ontario securities law.

An order is usually for a specific period, but in cases of severe misconduct, can be permanent.

### **Respondents may also have to pay costs**

Under section 127.1 of the Act, Enforcement staff may ask the Panel to order a respondent to pay some or all of the OSC's costs for the investigation and hearing. These costs may include:

- the time spent by Enforcement staff investigating the case and preparing for and attending the hearing;
- fees paid to experts and witnesses;
- court reporter fees;
- costs of transcripts; and
- the cost of legal services.

The Panel may consider 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. Rule 18 of the *Rules of Procedure* provides more information on costs.

A respondent served with a request for costs has up to 15 days after Enforcement staff's request to submit any objections. The Panel for the sanctions and costs hearing will decide on the appropriate costs to order against a respondent.

A respondent may not obtain an order for costs against Enforcement staff or the Commission.

## **11. Appealing or seeking a review, revocation or variation of a decision**

### **The Commission can revoke or vary a decision**

The Commission has the discretion to revoke or vary (change) a Commission decision under section 144 of the Act. The Commission will generally 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 to the public interest.

An application must be made to revoke or vary a Commission decision. It must be sent to the parties to the decision, including Enforcement staff, and to the Secretary to the Commission. The application process is set out in Rule 15 of the *Rules of Procedure*.

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

### **Appeals can be made through the Divisional Court**

A respondent subject to a merits or sanctions decision can appeal the decision to the Divisional Court of the Ontario Superior Court of Justice under section 9 of the Act. The appeal must be commenced within 30 days after the final decision or the reasons for the final decision have been issued, whichever comes later. The appeal must be commenced in accordance with the *Rules of Civil Procedure*.

A “stay” can be requested from the Commission or the Divisional Court to stop the Commission decision from taking effect immediately and during the appeal. This is done by way of a motion. A respondent seeking a stay must provide facts justifying the request for a stay.

### **Judicial review of a Commission 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. A judicial review is not the same as an appeal. In a hearing of a judicial review, the court will generally consider whether the tribunal had the authority to make the decision it made and whether it properly exercised its authority and conducted a fair hearing.

## **12. Accessibility in Enforcement Proceedings**

### **The OSC's Commitment to Accessibility**

In fulfilling its mandate, the OSC is guided by a set of core values that consist of: a commitment to honesty and integrity that is consistent with our legal and ethical obligations; serving with competence, excellence, efficiency, objectivity, and impartiality; and demonstrating respect, fairness, and courtesy in our dealings with the public, our employees, and our colleagues.

These core values underpin the OSC's commitment to providing an inclusive environment that meets the accessibility needs of individuals with disabilities. The OSC strives at all times to provide access to goods, services, information, employment opportunities, and our premises in a manner that respects the dignity and independence of people with disabilities.

The OSC's commitment to accessibility also extends to the hearing rooms, where the OSC is committed to providing an environment that is accessible and respects the dignity and independence of people with disabilities.

### **Accessibility in the Hearing Rooms**

The following assistive devices have been installed to make the OSC's hearing rooms accessible:

- an automatic door operator has been installed at the public access point to the Hearing Room Lobby and to Hearing Room A, all other doors have been equipped with accessible compliant hardware;
- hearing rooms' counsels' tables, and the hearing room seating area are all wheel chair accessible;
- the witness stand in Hearing Room A is wheel chair accessible. For Hearing Room B and D, witness accessibility is accommodated via portable microphones; and
- the Hearing Room sound system allows headsets to be connected to assist those with hearing impairments.

In addition, a stand-alone unisex accessible washroom is located on the 17th floor in the vicinity of the hearing rooms.

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

If any individual participating in a hearing has any accessibility needs that would affect their ability to participate in the hearing, the individual should notify the Office of the

Secretary by e-mailing the Registrar at [registrar@osc.gov.on.ca](mailto:registrar@osc.gov.on.ca) as soon as practicable so that reasonable accommodations can be arranged.

More information about accessibility at the OSC is available on the OSC's web site at: [http://www.osc.gov.on.ca/en/accessibility-osc\\_index.htm](http://www.osc.gov.on.ca/en/accessibility-osc_index.htm).

### **13. For more information**

If you have questions about this guide or proceedings before the Commission, please contact the Office of the Secretary:

Phone: 416-595-8916

Fax: 416-593-2318

E-mail: [registrar@osc.gov.on.ca](mailto:registrar@osc.gov.on.ca)

Ontario Securities Commission  
20 Queen Street West, 17th Floor  
Toronto, Ontario  
M5H 3S8

[www.osc.gov.on.ca](http://www.osc.gov.on.ca)

For more information on Commission hearings, see *Frequently Asked Questions about Hearings* on the OSC website.