CAPITAL MARKETS TRIBUNAL

Guide to Capital Markets Tribunal Proceedings

Ontario

Guide to Capital Markets Tribunal Proceedings

This guide is 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's Capital Markets Tribunal (which is referred to as the "**Tribunal**" in this document).

This guide provides an overview of procedures for Tribunal proceedings. It provides general information only. Proceedings may vary and panels may order different procedures than discussed here. You should review the Tribunal's Rules of Procedure when preparing for a hearing. If there is a discrepancy between the information contained in this document and the Rules of Procedure, then the Rules of Procedure 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 Governance & Tribunal Secretariat cannot provide legal advice.

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1. Introduction to Tribunal proceedings

About the Tribunal

What is the Capital Markets Tribunal?

The Capital Markets Tribunal is an independent division of the Ontario Securities Commission established by the *Securities Commission Act, 2021*. The Commission regulates Ontario's capital markets by making rules that have the force of law and by adopting policies that influence the behaviour of capital markets participants. The Tribunal has exclusive jurisdiction to exercise the powers conferred to it under the Ontario *Securities Act* and the *Commodity Futures Act* and to determine all questions of fact or law in any proceeding before it under those Acts.

Is the Tribunal a court? Are there judges?

No, the Tribunal is not a court and is not presided over by a judge. Hearings at the Tribunal are heard and decided by a panel of one to three adjudicators. Adjudicators are assigned to panels by the Chief Adjudicator or their delegate.

While securities law may be dealt with by criminal or civil courts, this document does not discuss proceedings before any court. The Commission 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. The Commission can also start civil proceedings in the Superior Court of Ontario.

Who are adjudicators? What do they do at a proceeding?

Adjudicators, including a Chief Adjudicator, are appointed to the Tribunal for a fixed term by the Ontario Lieutenant Governor in Council.

Adjudicators determine questions of fact and law in Tribunal proceedings based on the evidence and the arguments (which are referred to as "submissions") made at hearings. Adjudicators must conduct hearings and make decisions in a fair and impartial manner, without bias towards any party, including the Commission.

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

Adjudicators 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 adjudicators?

At a hearing, each member of a panel has a nameplate in front of their seat. During a videoconference hearing, each member of the panel will have their name and title displayed on the screen. You may address a specific panel member as "Adjudicator" and use their last

name. You may address the full panel as “Adjudicators”. You should not refer to an adjudicator as “Your Honour”, “Judge” or “Justice”.

What are Tribunal decisions?

A Tribunal’s decision is the panel’s conclusion after it considers the parties’ submissions and any evidence presented. The panel’s reasons for its decision set out the legal rationale behind the decision. The order setting out the result of the panel’s decision 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.

Adjudicative decisions made by the Commission before the implementation of the Tribunal are treated as decisions of the Tribunal.

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.

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 of the Tribunal?

Decisions are sent to the parties and are posted on the Tribunal Website. They are also published in the OSC Bulletin. 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 39 of the Rules of Procedure.

2. General information about proceedings

Governance & Tribunal Secretariat

What is the Governance & Tribunal Secretariat?

The Governance & Tribunal Secretariat of the Commission supports the Tribunal and its adjudicators. It administers the Tribunal, safeguards tribunal integrity and procedural fairness and provides tribunal education to adjudicators.

Who are Governance & Tribunal Secretariat Registrars? What do they do?

A registrar of the Governance & Tribunal Secretariat ("**Registrar**") attends hearings to provide administrative assistance to adjudicators 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 Tribunal.

Who are Governance & Tribunal Secretariat counsel? What do they do?

Counsel of the Governance & Tribunal Secretariat attend 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 applicants and respondents (either of which may include the Commission) and any person or company granted intervenor status. These terms are all discussed further below. Registrars and counsel of the Governance & Tribunal Secretariat are not parties.

See rules 2(f) and 24(4) of the Rules of Procedure.

Who is the Commission?

In Tribunal proceedings, "the Commission" are employees of regulatory divisions of the Commission, including those in Enforcement, Mergers & Acquisitions and Registration, Inspections and Examinations. The Commission does not refer to registrars and counsel of the Governance & Tribunal Secretariat.

The Commission investigates possible misconduct in the capital markets and can seek to start proceedings against individuals or companies suspected of violating Ontario securities law.

See rule 2(d) and (f) of the Rules of Procedure.

Who is an applicant?

An applicant is a party (including the Commission) that asks the Tribunal to start a proceeding and issue an order.

Who is a respondent?

A respondent is a party to a proceeding started by someone else (including the Commission), who may respond to an application.

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 a party to a proceeding.

For more information, see rule 24(4) of the Rules of Procedure.

Proceeding documents

What is an application? How can I bring an application?

An application is a document that a party files with the Tribunal to request that the Tribunal make an order. A new proceeding starts after the party files an application and the Tribunal issues a notice of hearing. Applications are posted on the Tribunal Website and published in the OSC Bulletin.

The types of applications are:

- application for an enforcement proceeding under section 127 of the Ontario *Securities Act* (these applications are usually brought by the Commission)
- 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 the Commission)
- application for review of a decision of the Director under section 8 of the Ontario *Securities Act*
- application for review of a decision of a Self-Regulatory Organization ("**SRO**") such as the Canadian Investment Regulatory Organization ("**CIRO**") or recognized stock exchanges and clearing agencies operating in Ontario, such as 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 10(7) or section 144.1 of the Ontario *Securities Act*
- application relating to a transaction 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.

For more information, see rules 13-20 and Appendices C–G of the Rules of Procedure.

What is a notice of hearing?

A notice of hearing is a document issued by the Tribunal to start a new proceeding, after the filing of an application. A notice of hearing identifies the type of proceeding (for example, enforcement proceeding or application for review) and the date, time, format, and location of the "first case management hearing" for the proceeding.

For more information, see rules 2(g) and 13 of the Rules of Procedure.

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 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 serve the completed form on all other parties.

At any point in a proceeding, the Tribunal may order an applicant to provide particulars (additional information) necessary to better understand the nature of the proceeding. This may include the grounds on which a party is seeking a remedy or order or a general statement of the facts a party is relying on.

For more information, see rules 22 and 23 of the Rules of Procedure.

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 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 serving the form (delivering a copy) on all other parties.

A party requesting a motion hearing should provide the parties' availability for a case management hearing and preliminary position(s) on the motion, and an agreed schedule for the exchange of motion materials.

Motions are posted on the Tribunal 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 32 of the Rules of Procedure.

What is the proper format for application records, motion records and written submissions?

Application and motion records include your application or motion and the evidence you rely on. Written submissions are a party's arguments about why the Tribunal should make a particular decision.

Your application record or motion record should be filed as a PDF and clearly identify the documents that are contained in the record(s). Your submissions should also be filed as a PDF, containing hyperlinks to publicly available authorities.

PDF documents over 500 pages in length must be separated into volumes.

See rules 21 and 31 of the Rules of Procedure for more information.

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. The Commission is a party to every proceeding at the Tribunal and must be served. In an enforcement proceeding, the representative for the Commission's contact information is on its application. Where it is not clear who the representative is for the Commission, the Commission can be served by email to originalservice@osc.gov.on.ca.

Filing refers to providing documents or other things to the Registrar at the Tribunal. 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 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 5 of the Rules of Procedure.

How do I file documents with the Tribunal?

Documents should be filed electronically in accordance with rule 6 of the Rules of Procedure. For a merits hearing in an enforcement proceeding (which is the hearing where a panel determines whether the Commission can prove the allegations in its application),

documents should be filed in accordance with the *Protocol for Document Production* in Appendix K of the Rules of Procedure.

Documents should be filed as searchable PDFs. Searchable PDFs are documents that apply OCR (Optical Character Recognition). Documents that cannot be converted to a PDF should be provided to the Registrar in their native format. Certain documents must also be filed in Microsoft Word format. See rule 6(1) of the Rules of Procedure for more information.

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 2(e) and 6 of the Rules of Procedure.

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. The document will not be made public until the request for confidentiality is decided.

For more information, see rule 8 of the Rules of Procedure.

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.

The Registrar will not redact personal information for the parties.

For more information and examples of the personal information that should be removed, see rule 11 of the Rules of Procedure.

Contacting the Tribunal and the parties

How do I communicate with the panel?

All communications with a panel member by a party about a proceeding, other than in a hearing, must be sent to the Registrar and copied to all parties, including the Commission.

See rule 7 of the Rules of Procedure.

How do I contact the Registrar?

The Registrar can be contacted by email at registrar@capitalmarketstribunal.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 the Commission. The Registrar can also be contacted by phone at 416-595-8916.

How do I contact the parties?

To contact the Commission in an enforcement proceeding, use the contact information on its application.

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 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 Tribunal?

The Rules of Procedure apply to all proceedings before the Tribunal and are available on the Tribunal Website. Tribunal proceedings are also governed by the *Statutory Powers Procedure Act*.

Documents relating to Tribunal proceedings are available on the Tribunal website. Reasons for decision issued after 2004 are also available on the Canadian Legal Information Institute website (CanLII).

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

The Tribunal hears proceedings arising from the provisions of the Ontario *Securities Act* and the Ontario *Commodity Futures Act*. The Tribunal is established by the *Securities Commission Act, 2021*. Each Act is available on the OSC Website and on CanLII.

3. Attending a hearing

Hearing room

Where do hearings take place?

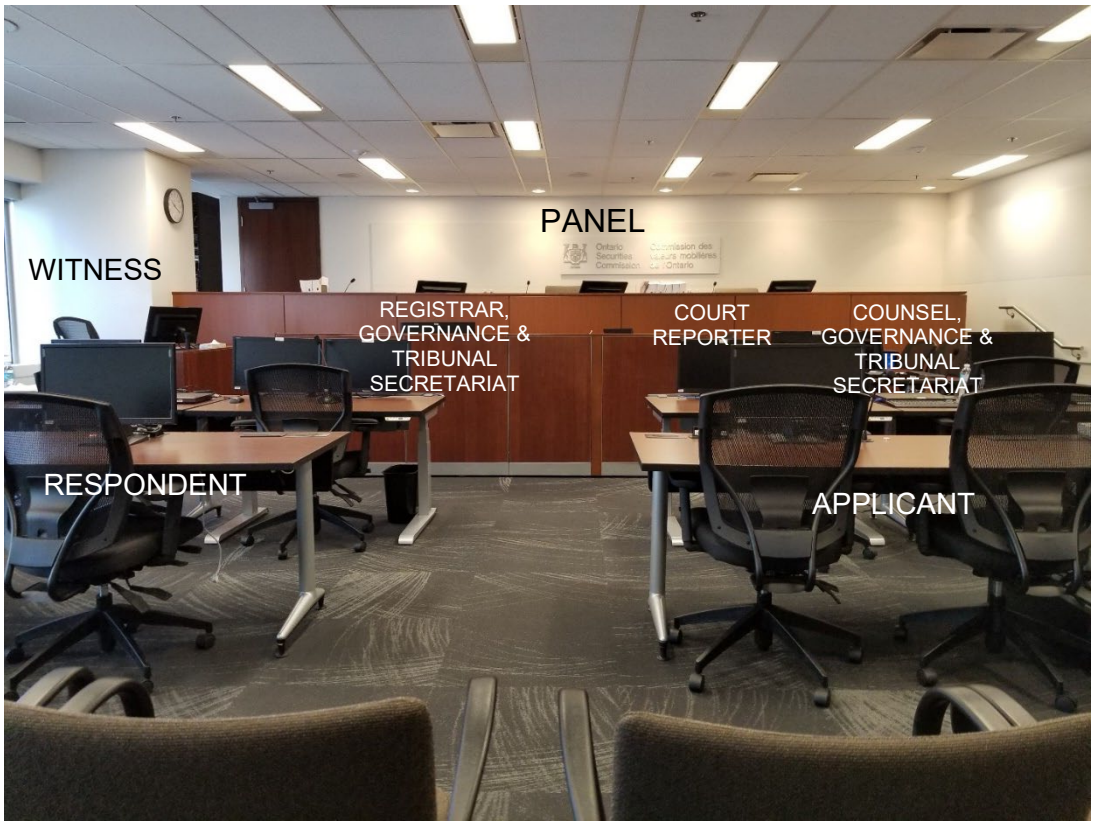
Hearings may take place in a hearing room, by videoconference, or a combination of both. Virtual hearings are discussed beginning at page 11 below.

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

The Tribunal has three hearing rooms. 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
- a desk for the court reporter (who records the hearing and prepares a transcript)
- a desk for Governance & Tribunal Secretariat counsel

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 Governance & Tribunal Secretariat.

What side do the parties sit on?

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.

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

Hearing rooms are set up for participation by phone or videoconference. Hearings may be conducted with some or all participants participating by videoconference (with or without video capability) or with some or all participants physically present in the hearing room, or both.

For a hearing scheduled to take place in the hearing room, if a party or their witness would like to attend the hearing by phone or videoconference, they must alert the panel in advance of the hearing, in accordance with rule 9 of the Rules of Procedure.

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 17th 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 Tribunal'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 C, 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 C.

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

More information about accessibility at the Tribunal 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 hearing.

More information about accessibility at the Tribunal is available on the OSC Website. See also rule 12 of the Rules of Procedure.

Virtual hearings

Does the Tribunal conduct hearings virtually?

Hearings or parts of hearings at the Tribunal may be conducted by videoconference (with or without video capability for all participants). A panel will determine if a virtual hearing is appropriate. For more information, see rule 9 of the Rules of Procedure.

If some or all of a hearing is scheduled to proceed in the hearing room, all participants must be prepared for any part of the hearing to instead proceed virtually, including on short notice.

What is expected of me at a virtual hearing?

Virtual hearings require civility, professionalism, cooperation, communication and collaboration between parties, both before and during the hearing. Parties are expected to communicate and work cooperatively with each other and the panel to ensure that the hearing is conducted in a just, expeditious and cost-effective manner.

In advance of the virtual hearing, each party must provide the Registrar with the names of all those who will attend the virtual hearing on their behalf (e.g., the parties themselves, counsel and other litigation support staff, and witnesses). Each person will be provided a unique link or login to join the virtual hearing.

If you are participating in a virtual hearing at the Tribunal, you should keep the following points in mind:

- You should not share your link or login information – it is unique to you
- The Registrar will confirm that all parties and counsel are present before the panel signs into the virtual hearing
- If you are disconnected, you should first email the Registrar immediately at registrar@capitalmarketstribunal.ca or, if you do not have access to email, call the telephone number on the GoToWebinar invitation, and attempt to rejoin the hearing. When you rejoin, you should announce your return. If you encounter issues and are unable to rejoin the hearing, update the Registrar by email. If you do not have access to email, call the telephone number on the GoToWebinar invitation
- Any connectivity issues on the part of any party, counsel or the panel will be addressed as they arise. Where appropriate, the hearing will be put on hold while connectivity issues are resolved
- Speak clearly, not too quickly and at your normal volume
- Choose a quiet location. Let others nearby know that you will be taking part in a virtual hearing to minimize any potential disruptions. If possible, wear headphones or ear buds (preferably not wireless headphones such as AirPods) and turn down your speaker volume to minimize echo
- Ensure your device is plugged in or fully charged. Monitor battery life throughout the hearing
- Mute your device at all times unless you are speaking. Remember to unmute yourself before speaking
- Identify yourself before speaking, unless it is obvious that it is you speaking (e.g., because you are answering a question that was asked of you)
- Try not to interrupt or speak over others
- Wear business attire

- Turn your camera on before speaking
- Follow any instructions from the panel regarding the use of your camera
- If possible, connect your device to the internet using a cable instead of wi-fi. If you must use wi-fi, choose a location with a strong internet signal
- Try to limit other individuals in your home from using your network
- Ensure you are in a well-lit location with minimal distractions
- Close any unnecessary applications and web browsers, to assist with internet connectivity and to avoid interruptions resulting from notifications
- You are not expected to only look at the camera. It is expected that the panel, parties, witnesses and counsel may need to consult materials off-screen during the hearing, such as documents or authorities

What are the technical requirements for virtual hearings?

Virtual hearings (i.e., videoconferences) may be accessed using the following camera-enabled devices: PC desktop or laptop computer, Mac desktop or laptop computer, or an Android, Apple or Windows mobile device. Your device must meet the system requirements outlined below:

Operating System	• Windows 10 or higher • Mac OS X 10.9 (Mavericks) – Mac OS 12 (Monterey) • macOS Ventura • Linux • Google Chrome OS
Web Browser	• Google Chrome (most recent 3 versions) • Mozilla Firefox (most recent 3 versions) • Microsoft Edge (most recent 3 versions) • Apple Safari (most recent 3 versions)
Internet Connection	• Computer: speed 1 Mbps or better (broadband recommended) • Mobile Device and Chromebook: speed 3G or better (WiFi recommended for VoIP audio)
Software	• GoToWebinar desktop app (JavaScript enabled) • GoToWebinar mobile app
Hardware	• 2GB of RAM (minimum), 4GB or more of RAM (recommended) • Webcam • Microphone and speakers (USB headset recommended)

Mobile Device	• iOS 10 or newer (GoTo Webinar app) • iOD 12.4 or newer (GoTo Webinar app) • Android OS 8 (Oreo) or newer

Parties to a proceeding and their witnesses will be contacted by the Registrar in advance of their hearing to schedule a trial run, at which the parties and witnesses can test their devices and internet connection.

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 Tribunal Website. The time and dates of hearings are also set out in notices of hearing, other notices published by the Governance & Tribunal Secretariat, or in orders made by panels. You may be expected to consult with the other parties in your proceeding and agree on dates and times for future hearings.

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 and motions hearings.

For more information, see rule 34 of the Rules of Procedure.

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 Tribunal. A “representative” is

an individual who represents a person or company, which may include licensed lawyers and paralegals. See rule 2(h) of the Rules of Procedure.

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.

Self-represented parties may also apply for volunteer legal services through the Litigation Assistance Program or the Duty Counsel Program ("**DCP**"), both discussed below.

What is the Litigation Assistance Program?

The LAP provides free legal services to self-represented parties involved in certain proceedings before the Tribunal (both in-person and virtually), including at case management hearings, 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 the Commission can prove the allegations in its application).

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 Tribunal Website.

What is the Duty Counsel Program?

The DCP is also available to self-represented parties, but is different and more limited in scope than the LAP. The DCP provides immediate legal advice and assistance on the day of a hearing, and a representative can assist you at a hearing if requested. You do not consult with counsel in advance of your hearing and they do not help you prepare for your hearing.

The DCP is only available at case management hearings, confidential conferences and sanctions and costs hearings. Counsel will not be able to provide you with assistance, legal advice or representation for any other legal matter, including subsequent steps in your proceeding before the Tribunal.

More information on the DCP can be found on the Tribunal Website.

Can I represent myself?

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

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 24 of the Rules of Procedure.

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 (for example, confidential settlement conferences are not open to the public). A court reporter is present at all public hearings and a transcript will be made of the hearing.

A member of the public who wishes to observe a virtual hearing may select the "Register to attend" link on the Hearing schedule webpage, next to the hearing date and time indicated. Members of the public will be muted by the Registrar in all virtual hearings. They will be able to view the panel and the party making submissions. For more information, see rule 8 of the Rules of Procedure.

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 8(2) of the Rules of Procedure.

Can I record a hearing?

Rule 8(5) of the Rules of Procedure prohibits visual or audio recording of a hearing, except for note-taking purposes, unless a panel grants permission. This prohibition includes photos or screen captures of a videoconference.

First case management hearing

What is a first case management hearing? What happens at the first case management hearing?

At the first case management hearing, the panel sets a timeline for further hearings and other steps that may be required in a proceeding. All parties are required to attend.

For more information on what to expect at the first case management hearing, see rules 13(3) and 14(4) of the Rules of Procedure.

What if a party does not appear at the first case management hearing?

If a party does not appear at the first case management hearing 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.

For more information, see rule 24(3) of the Rules of Procedure.

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.

Confidential conferences are not open to the public.

For more information, see rule 33 of the Rules of Procedure.

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 10(1) of the Rules of Procedure.

What if I need an interpreter for English or French?

Upon request, the Tribunal 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.

For more information, see rule 10(3) of the Rules of Procedure.

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.

For more information, see rule 10(4) of the Rules of Procedure.

What if I need documents translated?

If a party requests that a proceeding be conducted wholly or partly in French, the Tribunal will ensure any notice of hearing is translated into French.

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

Where one party uses French and at least one party uses English, Tribunal correspondence will be provided in both languages.

For more information, see rule 10(2) and 10(5) of the Rules of Procedure.

Witnesses and evidence

What are witness lists and summaries?

A witness list is a list of witnesses that a party (including the Commission) 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, the Commission 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 28(3) of the Rules of Procedure.

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 Tribunal to issue a summons that requires a witness to attend at a hearing and give evidence, as discussed below.

What if a witness does not want to testify?

The Tribunal can require a witness to testify by issuing a summons. A summons is a document requiring a person to attend before the Tribunal 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. The summons must be delivered directly to the witness being summoned. The summons form cannot be used for witnesses who are not resident in Ontario.

Witnesses who have been summoned are required to be paid the same fees and allowances 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.

For more information, see rules 5(4) and 27 of the Rules of Procedure.

I'm going to be a witness. What is the process for testifying at an in-person hearing?

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.

What is the process for testifying at a virtual hearing?

If you are a witness at a videoconference hearing before the Tribunal, you should keep the following points in mind, in addition to those listed above under "What is expected of me at a virtual hearing?":

- Witnesses are often excluded from a hearing before they testify. You will be asked to make yourself available at a scheduled time and date, but you may have to wait after that scheduled time until you may actually join the hearing. You will be advised when you should join
- Should the panel need to exclude you at any point during the hearing, the chair of the panel will explain the process to you and provide instructions for returning to the hearing
- Before you give your evidence, the chair of the panel will remind you that you must do so without using any outside information, without direction from the panel, and without having contact (including electronic communication) with any other individuals. You will be asked to acknowledge that you understand this obligation
- The Registrar will then ask whether you prefer to affirm or swear that you will tell the truth. If you prefer to swear an oath, you must provide your own holy book or other sacred object. The requirement to tell the truth is not altered by the fact that the hearing is taking place virtually
- The chair of the panel may instruct you not to communicate with any person about the proceeding until you have finished giving all your evidence. Once you have finished, you may be instructed not to communicate with anyone else who may be a witness in the same proceeding but who has not yet testified
- When giving your evidence, wait until each question is finished before answering
- If at any time you are unable to hear or see clearly the information that is being delivered via the videoconference, you may immediately inform the panel

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 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 the Commission. 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 Tribunal decisions, court decisions and legislation; and
- the questions asked of witnesses at a hearing (as opposed to the witnesses' answers).

See rule 29 of the Rules of Procedure for more information.

How are evidence and authorities dealt with at a virtual hearing?

The parties should confer and discuss in advance of the hearing whether witness testimony will be provided in writing or orally, and, if applicable, how witnesses will be provided copies of any documents to which they will be asked to refer to in their oral testimony.

Documents the parties may refer to during the hearing and that are not attached to an affidavit from a witness should be electronically provided to the Registrar in advance of the hearing to ensure that the panel and all parties have copies.

Appendix K of the Rules of Procedure provides guidance on the preparation of books of documents containing documents the parties may refer to during a merits hearing in an enforcement proceeding. The DocumentID column of the Index File (which is a list of documents in the book of documents) should contain hyperlinks to the documents in the

book of documents. Upon request, the Registrar will provide a guide to hyperlinking documents. See Appendix M of the Rules of Procedure.

In a videoconference hearing, a party may show a document or authority the party is referring to on the screen.

Parties wishing to have the Registrar assist with sharing documents should arrange this with the Registrar in advance.

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 for a fee can contact clientservices-on@veritext.com to submit the order. They can also call 416-413-7755 and select "3" to reach the Client Services team by phone.

Can I make my own recording of the hearing?

Visual and audio recordings of a hearing are not allowed without permission of the panel. There are limited exceptions to this. For example, you may record a hearing for note-taking purposes. To request permission to make a recording, send a written request to the Registrar at least five days before the hearing.

See rule 8(5) of the Rules of Procedure for more information.

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

Notices of hearing, applications, motions, orders and decisions of the Tribunal are published on the Tribunal Website, unless a panel orders that they are confidential (not available to the public).

For access to documents relating to a proceeding that are not published on the Tribunal website, make a request to record@osc.gov.on.ca.

For more information, see the definition of adjudicative record in rule 2(b). in the Rules of Procedure. See also rule 8(3) of the Rules of Procedure.

The Governance & Tribunal Secretariat does not have access to or knowledge of documents obtained by the Commission 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. See also the Tribunal Website page "Accessing Records".

4. Extension of a temporary order

Definition and process for extension of a temporary order

What is a temporary order?

A temporary order is an order made by the Tribunal 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 Tribunal may issue a temporary order when the time required to conclude a hearing could be prejudicial to the public interest. If the Tribunal decides that an individual's or company's conduct is an immediate and ongoing threat to the capital markets or the public, the Tribunal may issue the temporary order without requiring notice to the respondent.

The first temporary order is often issued before the Commission files an application for an enforcement proceeding, but may also be issued at any time during a proceeding.

I wasn't given notice of the Commission'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?

The Commission 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* the Commission files an application for an enforcement proceeding, then the Commission serves (sends copies to) all respondents the notice of hearing, 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* the Commission files an application, then the Commission 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 Tribunal 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 the Commission can prove the allegations in its application).

For more information, see rule 16 and Appendix D of the Rules of Procedure 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 the Commission against individuals or companies suspected of violating securities law. The Commission files an application that identifies the respondents and outlines the allegations against them.

The application sets out the orders sought, including the sanctions and costs requested by the Commission. These applications contain the contact information for the Commission. They are posted on the Tribunal Website and published in the OSC Bulletin.

For more information, see rule 14(1) and Appendix A of the Rules of Procedure.

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

After the Commission files an application with the Registrar, the Tribunal starts a proceeding by issuing a notice of hearing. The Commission then serves the notice of hearing and application to each respondent. The application and notice of hearing will be available on the Tribunal Website.

For more information, see rule 14(1) and Appendix A of the Rules of Procedure.

What is a merits hearing?

A merits hearing is a hearing where a panel determines whether the Commission can prove the allegations in its application.

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.

If a panel decides that a respondent did not contravene Ontario's securities law or that the Commission has not provided another basis for the order sought 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.

What is an interlocutory matter? What is an interlocutory motion?

An interlocutory matter is anything that the Tribunal 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.

Case management hearings

What can I expect at the first case management hearing?

At the first case management hearing in an enforcement proceeding, the panel will impose a timeline for subsequent hearings and other steps in the proceeding, as set out in rule 14(4) of the Rules of Procedure. This may include a schedule for disclosure of documents and service and filing of witness lists.

What can I expect at the second, third, and final case management hearings?

Hearings after the first case management hearing will be used to set or evaluate timelines and may be used to hear motions.

For more information about each case management hearing, see rule 14(4) of the Rules of Procedure.

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 the Commission, 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?

The Commission must provide respondents with copies of all documents and things in its possession that are relevant to the allegations in the proceeding. The Commission must also disclose any new and relevant information as it becomes available. This is called disclosure. There are some exceptions to the Commission'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 the Commission or to any other party. However, respondents are required to provide a book of documents containing all documents that they intend to enter as evidence at the hearing (see below for more information on the book of documents).

For more information on disclosure, see rule 28 of the Rules of Procedure. The timelines for disclosure are set out in rule 14(4) of the Rules of Procedure.

What other documents does the Commission have to provide to me? What kind of documents do I have to provide to the Commission?

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 book of documents. The panel will also set a timeline for the delivery of these documents and information.

For more information, see rules14(4), 28 and 30 of the Rules of Procedure.

What is a book of documents?

A book of documents contains all the documents that a party intends to enter as evidence at the hearing. All parties exchange their book of documents before the final case management hearing in an enforcement proceeding.

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

Parties are encouraged to agree on evidence that is not in dispute. Parties may file a statement of agreed facts and/or a joint book of documents. The joint book of documents should contain a table of contents listing each document and should clearly indicate each party's position as to the authenticity and admissibility of each document in the book of documents.

Documents provided in advance are not adjudicative records (as defined by the Rules of Procedure) unless they are admitted as evidence by the panel.

For more information, see rules 28(2) and 29(2) of the Rules of Procedure.

What are witness lists and summaries?

A witness list is a list of witnesses, including witnesses that are parties, that a party (including the Commission) intends to call to testify in a proceeding and a witness summary is a summary of each witness's anticipated testimony. In enforcement proceedings, the Commission 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 28(3) of the Rules of Procedure.

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;
- application;
- the Commission's disclosure;
- the Rules of Procedure;
- any orders or reasons already issued in the proceeding;
- all the documents and witness statements of the other parties; and
- the book(s) of documents.

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

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 the Commission and try to arrive at an agreed resolution to the proceeding (also called a "settlement"). If you are interested in discussing a potential settlement, contact the Commission directly using the contact information found on its application.

What is the process for settlements?

If the Commission 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 adjudicator 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 37 and 38 of the Rules of Procedure.

Do all respondents have to settle at the same time?

No. One or more respondents can settle with the Commission, 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 Tribunal 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.

For more information, see rules 37 and 38 of the Rules of Procedure.

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 the Commission;
- the presentation of evidence (*i.e.*, having witnesses testify), beginning with the Commission's case; and
- a closing argument from each party, beginning with the Commission.

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. The Commission may make one at the beginning of the hearing, but respondents do not need to if they would prefer to hear the Commission'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.

The Commission's evidence is the facts it presents to support the allegations in its application 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 encouraged 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. See rule 29(2) of the Rules of Procedure.

The Commission presents its evidence first because it is the Commission's responsibility (also called the Commission's "onus") to prove the allegations in its application. The Commission will call its witnesses to testify. When the Commission 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, the Commission 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 application.

Once the Commission 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, the Commission and the other parties can ask their questions. You will have a limited right to re-examine the witness after the Commission'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 the Commission. 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. The Commission will present its closing argument first. The respondents will then present their closing arguments. The Commission 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, 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 the Commission'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 the Commission'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 (give up) 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 adjudicators 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 the Commission is requesting?

The application filed by the Commission at the beginning of the proceedings lists the sanctions that the Commission may seek. The Commission's application will also indicate whether the Commission expects to ask for costs against a respondent.

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

Will I have to pay for the Commission's costs of the enforcement proceeding?

The Commission 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 the Commission 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(2) of the Rules of Procedure.

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 the Commission failed to prove some or all of the allegations against that respondent.

Automatically reciprocal orders

If I am sanctioned by another securities regulator in Canada, do those sanctions automatically apply in Ontario?

If a person or company is the subject of an order or settlement agreement issued by another securities regulator in Canada *on or after* December 4, 2023, that order or agreement automatically takes effect against the person or company in Ontario. The order or agreement will come into effect without notice to the person or company and without a hearing. It will have effect as if it were made by the Tribunal.

The order or settlement agreement applies only to the extent the Tribunal could have imposed the same sanctions, conditions, restrictions or requirements on the person for that contravention. Financial sanctions will not be automatically reciprocated in Ontario.

If the order or settlement agreement is varied, amended or revoked by a securities regulatory authority in Canada, the variation, amendment or revocation will also apply in Ontario.

If a person or company is the subject of an order or settlement agreement issued by another securities regulator or an order from a court, *before* December 4, 2023, the Commission may request a reciprocal order without giving the person or company an opportunity to be heard, by filing an application in accordance with rule 14(3) of the Rules of Procedure. For more information, see the OSC Website.

Am I able to challenge the application of these sanctions in Ontario?

If you are the subject of an order of another securities regulator in Canada that automatically takes effect in Ontario, you may apply to the Tribunal for clarification of how the order ought to be applied in Ontario, if at all. The Commission may also apply to the Tribunal for clarification.

After giving the Commission and the person or company an opportunity to be heard, the Tribunal may make an order concerning the effect of the reciprocal order, and the Tribunal's order is binding on the person or company and on the Commission.

6. Application for authorization to disclose

Definition and application process

What is an application for authorization to disclose?

The powers granted to the Commission and used in formal investigations 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 Tribunal 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. You must serve (deliver copies of) the completed application on the Commission and any other person or company that a panel directs.

For more information about applications for authorization to disclose, see rule 15 of the Rules of Procedure.

7. Application for review

Definition and application process

What is an application for review?

An application for 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);
- an SRO, such as CIRO; and
- recognized stock exchanges and clearing agencies operating in Ontario, such as the TSX.

You may apply to the Tribunal for a review if you are a person or company directly affected by a regulatory decision made by a Director, an SRO, or a recognized exchange or clearing agency.

For more information, see sections 8 and 21.7 of the Ontario *Securities Act*.

Adjudicators do not conduct the 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 a review?

To apply for a review, you must complete and file the application form found at Appendix E of the Rules of Procedure. 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 the Commission.

For more information, see rule 17(1) of the Rules of Procedure.

Who are the parties in an application for a review?

The parties in a review proceeding may include all parties from the original proceeding as well as the Commission.

If there was no original proceeding, the parties include every person or company that made submissions leading to the direction, decision, order or ruling.

For more information, see rule 17(2) of the Rules of Procedure.

What is the process for a review application?

The notice of hearing that you receive will provide the date and time that a panel will hold a hearing called the "first case management hearing." At the first case management hearing, 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 hearings and, if applicable, for the delivery of other documents, including your delivery of the record from the original proceeding.

For more information, see rule 17(6) of the Rules of Procedure.

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 rule 17(4) of the Rules of Procedure.

What if I want to rely on new evidence at my review proceeding?

If a party wishes to rely on witness testimony, or on documents or things not included in the record of the original proceeding, that party must file a motion using the form in Appendix B.

See rule 17(5) of the Rules of Procedure.

How do I make arguments at a 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 case management hearing, 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 relating to a transaction

Definition and application process

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 19 of the Rules of Procedure.

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. 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 19 of the Rules of Procedure.

9. Application for further decision, revocation or variation of a decision

Definition and application process

Can the Tribunal change a decision? How do I request a change?

The Tribunal has the discretion to revoke or vary (change) an earlier Tribunal decision. That discretion is provided for in section 144.1 of the Ontario *Securities Act*. An adjudicative decision made by the Commission before the implementation of the Tribunal is deemed to be an order of the Tribunal and may be varied or revoked by the Tribunal.

To request a further decision, revocation or change of a Tribunal decision, you must complete and file an application using the form found in Appendix F of the Rules of Procedure. 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 the Commission.

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

For more information, see rule 18 of the Rules of Procedure.

10. Summary dismissal of applications or motions

Grounds for dismissal and process

Can the Tribunal dismiss my application or motion without a hearing?

The Tribunal may dismiss an application or motion without a hearing for the following reasons:

- the application or motion is frivolous, vexatious, or commenced in bad faith;
- the Tribunal does not have the jurisdiction to grant the application or motion; or
- the statutory requirements for bringing the application or motion haven't been met.

See rule 36(1) of the Rules of Procedure.

What happens if the Tribunal moves to dismiss my application or motion without a hearing?

Before the Tribunal dismisses an application or motion without a hearing, the Tribunal will let the applicant or moving party know of its intentions and provides the reasons for it. You will have the right to make written submissions to the Tribunal within 30 days of being told of its intention to dismiss your application or motion without a hearing. The Tribunal will consider the written submissions and proceed accordingly.

See rule 36(2) of the Rules of Procedure.

11. Appeals

How to appeal a Tribunal decision

Can I appeal a Tribunal decision?

The Chief Executive Officer of the Commission or person or company directly affected by a Tribunal 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 10 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*.

Orders made pursuant to ss. 127.0.1(2) and 127.0.2(2) of the Ontario *Securities Act* (*i.e.,* automatic reciprocal orders) cannot be appealed.

Can I request a judicial review of a Tribunal 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*.

CAPITAL MARKETS TRIBUNAL

Ontario

Contact Information

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