

NEW BRUNSWICK
SECURITIES COMMISSION

COMMISSION DES
VALEURS MOBILIÈRES
DU NOUVEAU-BRUNSWICK



A Guide to Investigations and Hearings for Self-Represented Parties

This Guide is intended for anyone involved in investigations and hearings who is unfamiliar with New Brunswick Securities Commission procedures. The rules governing the hearing process are found in the [New Brunswick Securities Act](#) and [Local Rule 15-501 – Proceedings Before a Panel of the Commission](#).

Published 20 January 2012
Updated 4 January 2013

Table of Contents

1. ABOUT THE COMMISSION	3
Our role	3
The Commission consists of the Commission members and staff	3
Our proceedings are administrative	3
2. WHAT HAPPENS DURING AN INVESTIGATION	4
Staff investigate	4
Staff lawyers	4
A lawyer can represent you.....	4
You must not disclose information you receive about an investigation	4
Staff keep investigations confidential	4
You may settle with staff.....	4
3. WHAT IS THE “STATEMENT OF ALLEGATIONS”, “NOTICE OF HEARING” AND “RESPONSE”	5
Statement of Allegations	5
Notice of Hearing	5
Response	6
Privacy and Confidentiality	6
Language of Proceedings.....	6
4. WHAT HAPPENS BEFORE THE HEARING STARTS	6
You can hire a lawyer	6
You must provide your current contact information	6
Temporary orders can be issued	7
An investigation may continue after a proceeding has been commenced	7
Disclosure.....	7
Filing documents	7
Settlement discussions can resume.....	8
There can be a pre-hearing conference	8
The hearing can be adjourned	8
The hearing can go on without you.....	8
Proceedings may be conducted in writing	8
5. HOW TO PREPARE FOR THE HEARING	9
6. WHAT TO EXPECT AT THE HEARING	9
The room	9
The Panel.....	10
Court Reporter	10
Public and the media	10
Hearing Room Protocol	10
7. HOW CASES ARE PRESENTED AT THE HEARING	10
A case consists of pre-hearing briefs or opening statements, evidence and argument.....	10
Commission staff present their evidence.....	11
You present your evidence.....	11
The parties make their arguments	12
8. HOW THE DECISION IS MADE	12
9. HOW TO CHANGE OR APPEAL A COMMISSION DECISION	13
The Commission can change its decision.....	13
You can ask the Court of Appeal to review a Commission decision	13
10. HOW TO CONTACT THE COMMISSION	13

1. ABOUT THE COMMISSION

Our role

The New Brunswick Securities Commission (“Commission”) is a Crown Corporation established by the Province of New Brunswick to regulate the securities industry and ensure the efficiency and integrity of capital markets in New Brunswick.

Our job at the Commission is to protect and promote the public interest by:

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

The *Securities Act* regulates the buying and selling of stocks, bonds and other securities – see definition of “security” in the [Securities Act](#). For example, it says that no one can sell securities or give investment advice unless they are registered with the Commission. It also says that investors must receive specific information about the securities they buy. (There are exceptions to these requirements.)

Our interest is not limited to New Brunswick. We also help securities regulators elsewhere in Canada, the United States and other countries.

The Commission consists of the Commission members and staff

Commission members act as the board of directors who set policy and recommend changes to the *Securities Act*, and act as a quasi-judicial tribunal. The Chair, a full-time member, acts as the Chief Executive Officer and is responsible for the overall operation of the organization.

Commission staff, headed by the Executive Director, are responsible for day-to-day operations of the Commission. Staff have broad powers to investigate conduct that is thought to contravene the *Securities Act*. When staff find misconduct, they may commence an enforcement proceeding by filing a Statement of Allegations with the Secretary of the Commission (“Secretary”). Once a Statement of Allegations is filed with the Secretary, the Secretary issues a Notice of Hearing. Staff must then prove the allegations in a public hearing before a panel of Commission members (the Panel).

If the Panel finds that staff have proven the allegations, they can order penalties to deter similar misconduct and protect the integrity of the securities market. The Panel can ban those involved in misconduct from the securities market, order disgorgement of funds obtained as a result of breaking securities law, impose financial penalties on them, and order them to pay the investigation and hearing costs.

Our proceedings are administrative

Legal proceedings are of three types: criminal, civil or administrative. Proceedings before the Commission are administrative.

Each of the three types has a distinct purpose. Those who commit securities fraud, for example, may be exposed to all three.

- The government can prosecute them in the criminal court system.
- Their victims can sue them in the civil court system to get their money back.
- The Commission can hold an administrative hearing and order penalties to protect investors and the integrity of the securities market.

2. WHAT HAPPENS DURING AN INVESTIGATION

Staff investigate

Commission staff investigate market misconduct, sometimes under an investigation order issued by the Commission. With an investigation order, staff can issue a summons. A summons may require you to attend an interview with staff, produce relevant documents or both. You may prepare for your interview by reviewing these documents. You must answer all of staff's questions truthfully.

Staff lawyers

Staff lawyers represent the staff of the Commission and are not able to represent you or provide you with legal advice.

A lawyer may represent you

The rules and the law surrounding securities are complex. As such, you may want to consult with a lawyer or bring your lawyer to the interview.

You must not disclose information you receive about an investigation

Investigations and interviews are confidential. The *Securities Act* says you must not disclose any information about your interview to anyone, other than your lawyer, unless you get the Executive Director's written consent.

Staff keep investigations confidential

Generally, Commission staff do not disclose matters under investigation, unless they enter into a settlement, commence enforcement proceedings, are required to make disclosure for the purposes of the investigation or are required by law.

You may settle with staff

If Commission staff make allegations against you which are true, you can seek a settlement with staff. By settling, you may receive lesser penalties and will avoid the costs and inconvenience of a hearing. Staff will settle if it is in the public interest to do so. All settlements must be approved by a Panel of Commission members. If you enter into a settlement agreement, generally you must do the following:

- agree to a statement of facts, including an admission of wrongdoing;
- agree to penalties, which can include a reprimand, restrictions on your access to the securities market, or your participation with those operating in the securities market, and/or financial penalties;
- agree to keep the settlement confidential pending approval by a hearing Panel;
- waive the right to a full hearing and all reviews and appeals; and
- agree not to make public statement that are inconsistent with the Settlement Agreement.

The Commission publishes settlement agreements on its website.

3. WHAT IS THE “STATEMENT OF ALLEGATIONS”, “NOTICE OF HEARING” AND “RESPONSE”

More detailed rules relating to enforcement proceedings are found in Local Rule 15-501 *Proceedings Before a Panel of the Commission* (“[LR 15-501](#)”). Parties should refer to this rule if they are subject to an enforcement proceeding.

Statement of Allegations

If Commission staff decide to pursue a case against you, they will commence the proceedings by filing a Statement of Allegations with the Secretary - see [subsection 13\(1\) of LR 15-501](#) - or by filing a preliminary motion – see [subsection 6\(1.1\) of LR 15-501](#). The Statement of Allegations contains:

- a statement of the facts and allegations against you and any other respondents;
- the legal provisions relied on; and
- the relief and/or penalty staff are seeking against you and the other respondents.

Notice of Hearing

Once staff file a Statement of Allegations with the Secretary, the Secretary issues a Notice of Hearing – see [subsection 13\(2\) of LR 15-501](#). It contains:

- your name and those of the other respondents;
- the time, date, place and purpose of the hearing;
- a caution that the hearing may proceed if you or any other respondent fails to attend. In that event relief may be granted or penalties imposed in your or any other respondent’s absence;
- a provision that you or any other respondent may be represented by a lawyer; and
- a provision that you or the other respondents may be heard in either official language.

Staff send the Statement of Allegations and Notice of Hearing to you, and the other respondents, at the last known address.

The parties to a hearing are staff and the respondents.

Once the Secretary issues a Notice of Hearing, the matter is no longer confidential. Subject to settlement negotiations and requests for confidentiality, the pleadings, (which consist of documents such as the Statement of Allegations, the Response by a respondent and any additional responses to those submissions), will be made available to the public. All other documents (such as affidavits) will remain confidential until the start of the hearing when the Panel determines if any document must remain confidential – see [subsections 16\(1\), 16\(2\) and 16\(2.1\) of LR 15-501](#). The public may

inspect pleadings during normal business hours at the Commission's office or request copies upon payment of applicable fees. Hearings are open to the public unless the Panel orders that some or all of the hearing be held in private.

Response

Once you have received the Statement of Allegations, you must file a response with the Secretary within 20 days after being served with the Statement of Allegations - see [subsection 13\(5\) of LR 15-501](#). The response must outline:

- which of the allegations you do not dispute;
- which of the allegations you do dispute and on what basis; and
- any additional facts you are relying on in opposing the relief sought by staff.

If you do not file a response within the period set out in subsection 13(5), staff may request that the Panel proceed against you on the basis of written submission – see [subsection 13\(5.1\) of LR 15-501](#).

Privacy and Confidentiality

All parties should avoid the inclusion of personal or confidential information about non-parties in the pleadings when such inclusion is not necessary for the purpose of commencing or responding to a proceeding. For example, you should not identify non-parties by their names or initials, as this may still permit an inference of identity. Instead, you should use a single capital letter or a capital letter combined with a sequential number (for example "witness W1") to ensure that no information is present that may lead to the discovery of the identity of a non-party. For additional details, see [subsection 13\(6\) of LR 15-501](#) and the [Notice 15-703 from the Office of the Secretary - Guidelines for the Management of Personal Information](#).

Language of Proceedings

In all enforcement proceedings, you have the right to be heard in either official language. You must notify the Secretary of your choice of language as soon as practicable or as soon as specified in the served documents (such as the Notice of Hearing).

4. WHAT HAPPENS BEFORE THE HEARING STARTS

You may hire a lawyer

The rules and the law surrounding securities are complex. If you are a party to a hearing, or a witness, you may want to hire a lawyer to represent you. You may also wish to be represented at the hearing by an agent of your choosing who is not a lawyer. The Panel will generally not object to the participation of an agent; however, please be aware that the Panel does retain a discretion to limit the participation of non-lawyer agents to those who will facilitate the adjudicative process for you.

You must provide your current contact information

When you file materials or first appear before the Commission as a respondent, you must provide the Commission with or otherwise state on the record, and keep current

throughout the proceedings, your address, telephone number, fax number and email address. If you hire a lawyer, the Commission and the parties will communicate directly with your lawyer. Your lawyer should send the Commission a notice disclosing particulars for service of documentation.

Temporary orders can be issued

If the allegations are serious and in the opinion of the Commission the length of time required to hold a hearing could be prejudicial to the public interest, the Commission can – without a hearing – make a temporary order restricting your conduct in the securities market. A temporary order is effective for 15 days. The Commission may extend the temporary order until the hearing is concluded if a hearing is commenced within the 15 day period.

An investigation may continue after a proceeding has been commenced

In certain cases, Staff may continue investigating after the Secretary issues a Notice of Hearing because of other potential respondents or as a result of the review of evidence obtained in the investigation. Staff will amend the Statement of Allegations to include any new allegations, if applicable.

Disclosure

Full and timely disclosure of all evidence relevant to the case promotes fairness and efficiency in hearings. The Commission expects each party to make disclosure in such a manner as to ensure that everyone has adequate time to prepare for the hearing – see [Part 7 of LR 15-501](#). Staff will provide you with their disclosure shortly after you have been served with the Statement of Allegations.

Filing documents

You must file all documents by either:

- personal delivery of the document to the Office of the Secretary;
- delivery of the document by registered mail or courier to the Office of the Secretary; or
- delivery by electronic transmission to the attention of the Office of the Secretary in a format acceptable to the Secretary.

See [subsection 5\(4\) of LR 15-501](#).

If you file a document by electronic transmission, you must also deliver the original and the required number of copies of the document to the Office of the Secretary without delay. A document filed by facsimile transmission cannot exceed 25 pages. If you do not file a document electronically, the Office of the Secretary may require you to provide an electronic version – see [subsection 5\(5.1\) of LR 15-501](#). The Office of the Secretary may also require that you file an original and up to five (5) copies of any document required to be filed under LR 15-501 – see [subsection 5\(5.2\) of LR 15-501](#).

Documents filed electronically must be in a format acceptable to the Office of the Secretary. Electronic formats are outlined in [Notice 15-704 from the Office of the Secretary – Filing of Electronic Documents](#).

Settlement discussions can resume

You may want to consider settlement after Commission staff make disclosure of all evidence relevant to their case. At that point, you should understand Staff's case.

There can be a pre-hearing conference

The Panel may also set a date for a pre-hearing conference, at the request of any party or on its own motion, to deal with any matters that will promote a fair and efficient hearing, such as the estimated duration of the hearing or simplification of the issues – see [subsection 10\(1\) of LR 15-501](#).

The hearing can be adjourned

The Commission expects parties to appear on hearing dates. If you cannot do so, you are required to advise all parties of your adjournment request, and reasons for your request – see [subsection 14\(5\) of LR 15-501](#).

Common reasons to ask for an adjournment are:

- you need more time to prepare for the hearing because circumstances arose which did not allow for a reasonable amount of preparation time;
- the Notice of Hearing has been significantly amended;
- you discover evidence after disclosure has been made; and/or
- a witness with important testimony cannot appear as planned.

If all Parties consent to the adjournment request, you can file a written notification with the Office of the Secretary advising of the consent, and the Secretary will bring the request, reasons and notification of consent to the Panel for consideration – see [subsection 14\(5.2\) of LR 15-501](#). Even with consent, it is the Panel's decision whether or not to adjourn a hearing date.

If all Parties do not consent to your adjournment request, you must file and serve on all other Parties a motion for the adjournment. The Panel will hear the motion and issue their decision on the adjournment request – see [subsection 14\(5.2\) of LR 15-501](#). If there is no consent to an adjournment request and no motion is filed, the hearing will go on as scheduled.

The hearing can go on without you

If you do not respond to a Notice of Hearing or a summons, the hearing can proceed without you. In that case, the evidence and arguments Staff present are what the Panel considers in reaching its decision.

Proceedings may be conducted in writing

If the Panel and all parties agree, a proceeding may be dealt with by the Panel on the basis of written submissions made by the parties – see [Part 15 of LR 15-501](#). Submissions should be made in affidavit form or in such other form as the Panel may direct.

5. HOW TO PREPARE FOR THE HEARING

You can hire a lawyer to represent you at the hearing or you can represent yourself. If you are a respondent and you represent yourself, you should do the following:

- read the Notice of Hearing, Statement of Allegations and staff's disclosure to make sure you understand the allegations against you;
- interview the other parties' witnesses to see if they have any evidence helpful to your case. You can then ask them about that evidence at the hearing;
- review all the documents and witness statements of the other parties. Consider whether you have any documents or witnesses that will contradict those documents or statements or support a different interpretation of the events;
- review all of your documents and consider whether witnesses are available to support your version of the facts, if that version differs from staff's allegations or from the defences of other parties that implicate you;
- if you wish to introduce documents or other evidence in the hearing, consider who you will need to call as a witness to identify the documents or provide oral evidence. Organize your materials, including those provided by the other parties, so that you will be able to find documents, as you need them, during the hearing;
- prepare your witness before the hearing by asking them the questions that you expect to ask them at the hearing. To prepare them for questioning by other parties, ask them the questions that you think staff or other parties might ask. Make sure your witnesses know they must tell the truth, even if it is not helpful to your case. Skilled questioning will quickly discredit a witness who tries to be helpful by being evasive or lying;
- if you want to call a witness who is reluctant to attend the hearing, you can ask the Secretary to issue a Summons to Witness. Under the summons, the witness must attend the hearing to give evidence and produce documents. Before the Secretary will issue the summons, you must provide the Secretary with a completed [Form 15-501F1 Summons to Witness](#). When you receive the summons, you serve it on the witness and pay their expenses, called conduct money. For more details, see [Part 8 of LR 15-501](#); and
- if you call any witnesses, you must provide a witness list and summaries of all the witnesses to every party in the proceeding and to the Office of the Secretary, at least 10 days before the scheduled date of a hearing.

6. WHAT TO EXPECT AT THE HEARING

The Commission typically holds hearings at its offices on the 3rd floor of 85 Charlotte Street in Saint John, New Brunswick.

The room

The Commission has one hearing room. There are tables for the parties. Generally, you and your lawyer will sit at the table on the left hand side of the room and enforcement staff will sit at the table on the right hand side of the room. At the front of the room,

there is a witness stand and tables for the Panel, the Secretary's Office and the hearing reporter. There is public seating at the back.

The Panel

The Panel is the group of Commission members who hear the evidence and arguments and decide the matter. Usually there are three Commission members on a panel. One chairs the hearing and sits in the center position. Pre-hearing conferences and procedural matters, such as motions, are sometimes handled by one member only.

Parties may address Panel members as "Mr." or "Ms".

The Commission does not publish hearing transcripts, evidence, and arguments on its website. However, it does make these available for viewing at its offices, subject to privacy and confidentiality issues.

Hearing Reporter

There will be a hearing reporter at the hearing who will record everything that is said during the hearing. The reporter will later produce a transcript of the proceedings. Any party who wishes to obtain a copy of the transcript may do so directly from the court reporter, and at their own expense.

Public and the media

Hearings are generally open to the public. The news media, including print, radio and television, may cover hearings, subject to the discretion of the Panel.

Hearing Room Protocol

All parties should follow the following protocol during a hearing:

- no one present during a hearing will be permitted to bring food or coffee into the hearing room;
- cellular phones or other electronic devices must be turned off,
- individuals are expected to stand up when the Panel enters or leaves the hearing room; and
- parties should stand up when they are addressing the Panel.

7. HOW CASES ARE PRESENTED AT THE HEARING

A case consists of pre-hearing briefs or opening statements, evidence and argument

The hearing begins with the pre-hearing briefs or opening statements. A pre-hearing brief or opening statement is a brief summary of the case a party intends to present. If you are a respondent, you describe the facts you intend to prove and the conclusions that you believe the Panel should draw from those facts.

You are not required to make a pre-hearing brief or opening statement. Commission staff may make one at the beginning of the hearing, but you do not need to if you would prefer to hear staff's case first. If you decide not to make a pre-hearing brief or

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.

Evidence consists of the facts presented in the hearing. In staff's case, these are the facts that support the allegations in the Statement of Allegations. In your case, these are the facts that support your defense. Evidence includes the statements of witnesses who take the stand in the hearing and the documents that relate to the case. The Panel expect parties to agree on the evidence that is not in dispute. With respect to areas of agreement, the parties should file an agreed statement of facts or enter the agreed documents by consent.

After all the evidence is before the Panel, the parties present their arguments. Your argument is your interpretation of the evidence, and your view of how the law ought to be applied to the evidence, but it is not evidence.

Commission staff present their evidence

The onus is on Commission staff to prove the allegations in the Statement of Allegations, so staff present their evidence first. The respondents then present their evidence in turn.

Staff call their witnesses. When staff have finished questioning a witness, you can question the witness. Your questions must be relevant to the allegations in the Statement of Allegations.

You present your evidence

When your turn comes, you call your witnesses. When you have finished questioning a witness, staff and the other parties can ask their questions.

If you want to give evidence, you must take the stand and, under oath, make the statements of fact that you want to make. When you are finished, staff and the other parties can question you.

You may want to put documents before the Panel as evidence. To do this, ask a witness to explain the relevance of the document and confirm its authenticity. Then ask the Panel to enter the document as an exhibit.

At this stage, your task is only to present the evidence you intend to rely on in your argument. This is not the time to present your interpretation of the evidence or to make your argument.

To protect the privacy and confidentiality of non-parties, you should redact or remove all personal and confidential information in exhibits that are not relevant to the proceedings provided such redaction does not interfere with the proper conduct of a proceeding or otherwise affect your ability to fully present your case. For more details see the [Notice 15-703 from the Office of the Secretary – Guidelines for the Management of Personal Information](#).

The parties make their arguments

After all of the parties have presented their evidence, they present their arguments. If the hearing has been long or complicated, you can ask for an adjournment to review the evidence and prepare your argument.

You can make your argument in writing, orally, or both. Commission staff will present their argument first. The respondents will then do the same in turn. You can respond to any arguments made after yours. Staff will get an opportunity to make a final rebuttal submission.

8. HOW THE DECISION IS MADE

The Panel usually issues its findings of fact and law before it hears the parties' views on penalties. The Commission publishes its decisions on its website.

After the parties have had the opportunity to review the Panel's findings, if the Panel has made findings against them, they can make statements, called submissions, about what penalties, if any, ought to be imposed. You can make your submissions in writing, orally or both. You might want an oral hearing if, for example, you want to call evidence, such as a character witness.

The Panel imposes penalties by making orders. They can order, for example, that:

- your trading in securities is restricted;
- your participation with those operating in the securities market is limited; and
- (if you are a registrant) your registration is suspended, cancelled or restricted.

These orders are often for specific periods but, in cases of severe misconduct, can be for life.

The Panel can also order you to pay a financial penalty, up to \$750,000 per contravention of the *Securities Act*, or order you to disgorge to the Commission any amount you obtained as a result of non-compliance with securities law.

If the Panel make findings against you, they may order you to pay some or all of the investigation and hearing costs. These include:

- the time spent by Commission staff investigating the case and preparing for and attending the hearing;
- fees paid to experts and witnesses;
- the cost of legal services; and
- an administration fee for each hearing day.

9. HOW TO CHANGE OR APPEAL A COMMISSION DECISION

The Commission can change its decision

The Commission has the discretion to revoke or vary its decision. However, before changing the decision, the Commission must be satisfied that it would not be prejudicial to the public interest. This usually means a party to the decision has to show the Commission new evidence or a significant change in the circumstances.

To ask the Commission to change its decision, you must file an application with the Office of the Secretary and serve it on every party to the original proceeding. The application must identify the original decision, state the interest of the party filing the request, state the factual and legal grounds and supporting evidence for the request and state the relief sought – see [Part 18 of LR 15-501](#).

You can ask the Court of Appeal to review a Commission decision

If you are a party to a Commission decision and the Court of Appeal gives you permission, called leave, you can appeal the Commission decision to that court.

You can ask the Commission or the Court of Appeal for a stay to stop the Commission decision from taking effect during the appeal. Generally, the Commission expects you to ask the court. You can do so in your leave application. There are strict time limits for making a leave application and you may want to consult a lawyer to assist you as soon as possible after receiving a decision from the Commission.

10. HOW TO CONTACT THE COMMISSION

The Commission's website address is www.nbsc-cvmnb.ca.

You can find LR 15-501 – *Procedures for Hearings Before a Panel of the Commission* on our website at the following link: <http://www.nbsc-cvmnb.ca/nbsc/rules.jsp?id=1> under the list of Rules, Policies, Orders and Notices.

Notices from the Office of the Secretary issued under LR 15-501 can also be accessed at the above link.

The Commission address is:
New Brunswick Securities Commission
85 Charlotte Street, Suite 300
Saint John, New Brunswick, E2L 2J2

The Office of the Secretary to the Commission may be contacted at:

Phone: (506) 658-3060
Fax: (506) 658-3059
E-mail: secretary@nbsc-cvmnb.ca