

# **Nova Scotia Securities Commission**

## **Guide to Investigations and Hearings**

This is for anyone involved in investigations and hearings who is unfamiliar with our procedures.

This is an informal description of procedures.

Official legal Rules of Procedure Act are contained in

[NS Rule 15-501 – General Rules of Practice and Procedure](#)

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## ABOUT THE COMMISSION

### ***Public interest role of the Commission***

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

- protecting investors from practices and activities that tend to undermine confidence in fair and efficient capital markets, and
- fostering the process of capital formation.

We are a provincial government agency, falling under the Nova Scotia Department of Finance.

The [Securities Act](#) regulates buying and selling stocks, bonds and other securities. For example, it says that no one can sell securities or give investment advice unless they are registered. It also says that investors must receive specific information about the securities they buy. (There are exceptions to these requirements and regulation of derivatives was recently added.)

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

### ***The Commission consists of the commissioners and Commission staff***

The commission consists of two groups: the commissioners and Commission staff. The commissioners hold hearings, act as a board of directors and set policy.

Commission staff, headed by the executive director, are responsible for day-to-day operations. Staff have broad powers to investigate conduct that contravenes the [Securities Act](#) or is otherwise contrary to the public interest. When staff finds misconduct, they state their allegations with a notice of hearing. Staff must then prove the allegations in a public hearing before a panel of commissioners.

If the panel of commissioners finds that staff have proven the allegations, they make orders to protect investors and the integrity of the securities market. The panel can restrict or ban those involved in misconduct from activities in the securities market, 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 to make orders to restrict conduct and pay an administrative penalty to protect investors and the integrity of the securities market, including sanctions.

Compared to the criminal and civil courts, our administrative proceedings have less formal procedures.

## WHAT HAPPENS DURING AN INVESTIGATION

### ***Staff investigate***

Commission staff investigate market misconduct, with or without an investigation order issued by the chair or other designated commissioners of the Commission. With an investigation order, staff can issue a summons. A summons requires a person to attend an interview with staff and/or produce any relevant documents. If you receive a summons, you should prepare for your interview by reviewing these documents. You must answer all of staff's questions truthfully.

### ***A lawyer can represent you***

You may want to consult with a lawyer and/or bring your lawyer to the interview.

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

### ***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 Commission's permission.

### ***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, stress and inconvenience of a hearing. Staff will settle if it is in the public interest to do so. All settlements must be approved by the Commission, and if you settle, generally the Commission will require that you:

- agree to a statement of facts, including an admission of wrongdoing
- agree to restrictions and/or 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 of one or more commissioners
- waive all reviews and appeals
- agree not to make public statements that are inconsistent with the settlement agreement
- pay investigation and hearing preparation costs.

You must pay any financial penalties and costs at the time of settlement or negotiate arrangements for a payment plan.

Settlement agreements become public documents once approved by the panel of commissioners, and are then published on its website.

## NOTICE OF HEARING AND STATEMENT OF ALLEGATIONS

If Commission staff decide to pursue a case against one or more persons (individuals or entities) they are referred to as “respondents”. If you are a respondent, the director of enforcement signs a statement of allegations and requests that a notice of hearing be issued. These contain:

- your name and those of any other respondents
- the time, date and place of the hearing
- a statement of the facts and allegations against you and any other respondents, including the specific sections of the [Securities Act](#) that staff alleges you violated
- the general relief or penalties/sanctions staff are seeking against you

Staff send you, and the other respondents, the notice of hearing and statement of allegations to each respondent’s last known address.

The “parties” to the hearing are the director of enforcement and the respondents.

Once the Commission issues a notice of hearing, the matter is no longer confidential. Anyone can see the documents filed in the case and can attend the hearing.

The Commission publishes notices of hearing and statements of allegations on its website.

All parties should avoid including unnecessary personal or confidential information about nonparties in documents filed with the Commission. Nonparties should be identified using capital letters and/or numbers (for example “AA” or “witness W1”) to ensure that no information is included which identifies a nonparty.

## WHAT HAPPENS BEFORE THE HEARING STARTS

### ***You can hire a lawyer***

If you are a party to a hearing, or a witness, a lawyer can represent you.

### ***You file written notice with the Commission of your intention to participate***

If you are a respondent, the Commission expects you to file with the Commission, in writing, your intention to attend and participate in the hearing. You should also provide your address where the Commission and the parties can send you documents related to the hearing. If you hire a lawyer, the Commission and the parties expect to give you documents by giving them to your lawyer.

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

Often the date specified in the first notice of hearing is a date to appear at a pre-hearing conference before a commissioner. The pre-hearing conference is an opportunity to deal with any matters that will promote a fair and efficient hearing, such as the setting dates, timing of disclosure of evidence and identification of issues. A pre-hearing conference is an on-the-record meeting among the parties and a commissioner and it is not open to the public.

At the first pre-hearing conference, the parties estimate how long the hearing will take. The commissioner and the parties then try to find dates that are as soon as practicable and convenient for everyone. If agreement is not possible, the commissioner sets the dates. The Commission may also set a date for another pre-hearing conference.

***Temporary orders can be issued***

If allegations made against you are serious and Commission staff think your conduct is an immediate and ongoing threat to the market, a commissioner can – without a hearing – make a temporary order restricting your conduct in the securities market. A temporary order is effective for not more than 15 days. If staff want to extend it, they will apply to the Commission, usually before the first Notice of Hearing is issued.

In considering whether to extend a temporary order, a panel of commissioners considers:

- whether it appears you have contravened the [Securities Act](#) or otherwise acted contrary to the public interest
- whether the investigation is ongoing
- whether the public will be protected by extending the temporary order
- the scope of the requested order

The Commission publishes temporary orders and extensions of temporary orders on its website.

***The investigation may continue after a Notice of Hearing***

The panel of commissioners will want to consider all relevant evidence at the hearing. Consequently, Commission staff may continue investigating after they have issued the notice of hearing, even if the hearing has started. Staff will request permission to amend the notice of hearing to include any new facts and/or allegations.

***Disclosure occurs***

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 at least 15 days before a hearing (see [NS Rule 15-501](#) – General Rules of Practice and Procedure, part 8)
- to make disclosure soon enough so that everyone has adequate time to prepare for the hearing
- provide a copy of their disclosure to each party, whether electronic or paper

Generally, at the pre-hearing conference Commission staff will propose dates to either make available or disclose to respondents all relevant evidence that is not privileged (for example, legal advice given to a party may be protected by privilege), including:

- the statement of allegations against you
- all evidence gathered in the investigation that is relevant to the allegations in the notice of hearing
- the evidence staff expect to use in presenting their case
- the identity of the witnesses staff intend to call
- summaries of the testimony staff witnesses are expected to give
- the list of protected documents

***Settlement discussions can resume***

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

***The hearing can be adjourned***

The Commission expects parties to appear on hearing dates. If you cannot, you should seek the other parties' consent to an adjournment and to new dates. Generally, the Commission grants applications for adjournments to which all the parties have consented.

Common reasons to ask for an adjournment are:

- you need more time to prepare for the hearing
- the notice of hearing has been significantly amended
- you discover evidence after disclosure has been made
- a witness with important testimony cannot appear as planned

In considering an adjournment request, the panel of commissioners will consider the circumstances at the time, the fairness to all parties, and the public interest in having matters heard fully and decided promptly.

***There can be delays***

The Commission works to conclude hearings in the most expeditious and least expensive way possible, but sometimes substantial delays occur.

***The hearing can go on without you***

If you do not respond to a notice of hearing or a summons to a hearing, the hearing can proceed without you. In that case, the evidence and arguments presented by Commission staff are what the Commission considers in reaching its decision.

***Filing documents***

You must file documents with the Commission and send copies to the other parties. Please see [NS Rule 15-501](#) – General Rules of Practice and Procedure, part 5 for details.

Documents you are sending to the Commission or staff of the Commission must be personally delivered to the offices of the Commission, along with four extra copies. You may also deliver documents by prepaid mail or facsimile.

Documents being sent to other parties must be personally delivered, sent by prepaid mail or sent in a way that the Commission has said is acceptable.

If you choose to deliver documents by fax, the document cannot exceed 16 pages in total, unless the party receiving the fax agrees otherwise.

Any documents you file with the Commission must include your name and contact information, the name of your lawyer, if you have one, and the name of the hearing.

## 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:

- Read the notice of hearing and Commission staff 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 in 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 witnesses 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 a commissioner to issue a summons. Under the summons, the witness must attend the hearing to give evidence and produce documents. Before the commissioner will issue the summons, you must show that the witness is likely to produce relevant evidence. When the commissioner issues the summons, you serve it on the witness and pay their expenses, called witness fees. For more details, see [NS Rule 15-501](#) – General Rules of Practice and Procedure, part 4.
- If you call any witnesses, you must provide a witness list and summaries of the expected testimony of each witnesses to every party in the proceeding and to the Secretary of the Commission, at least 15 days before the hearing.

## WHAT TO EXPECT AT THE HEARING

The Commission holds hearings at its offices on the 4<sup>th</sup> floor of Duke Tower, 5251 Duke Street in downtown Halifax.

### ***The room***

The Commission has one hearing room. There are tables for the parties. At the front of the room, there is a witness stand at the left and a raised platform where the panel of commissioners sits. There is public seating at the right.

### ***The panel***

The panel is the group of commissioners who hear the evidence and arguments and decide the matter. Usually there are three commissioners on a panel. One chairs the hearing and sits in the center position.

### ***Hearing Reporter***

There will be a hearing reporter at the hearing who will record everything that is said during the hearing. A transcript of the proceedings will be produced after the hearing is over. Any party who wishes to obtain a copy of the transcript should request one from the Commission. You may be required to pay for the transcript.

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

### ***Evidence may be displayed electronically***

The Commission does not hold exclusively electronic hearings, but it may display evidence on large screens and monitors in the hearing room. Measures will be taken to ensure that personal and private information is protected.

### ***Public and the media***

Hearings are open to the public. The news media, including print, radio and television may attend and report on hearings. Please review the [Commission's Media Letter of Understanding](#) for more information.

### ***A few other things to know about hearings***

All parties should know that during a hearing:

- no one will be permitted to bring food or coffee into the hearing room – ice water will be made available to all parties
- cellular phones or other electronic devices must be turned off
- you are expected to stand up when the panel enters or leaves the hearing room
- you do not need to stand while addressing the panel, but you can if you want to
- You can address panel members as “Mr.” or “Ms.”, “Commissioner” or “Sir/Madam”

## **HOW CASES ARE PRESENTED AT THE HEARING**

### ***The hearing begins with opening statements***

An 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 of commissioners should draw from those facts.

You are not required to make an opening statement. Commission staff usually make one at the beginning of the hearing. You may prefer to hear staff's case first. If you decide not to make an opening statement at the beginning of the hearing, you can request permission to make one later when you start your case, or you can decide not to make one at all.

### ***Evidence will be presented***

Evidence consists of the facts presented in the hearing. In staff's case, these are the facts that support the allegations in the notice of hearing. If you are a respondent, these are the facts that support your defence. Evidence includes statements of witnesses who take the stand in the hearing and the documents that relate to the case.

The panel of commissioners expect parties to agree on the evidence that is not in dispute. In these circumstances, the parties should file an agreed statement of facts or enter the agreed documents.

***Commission staff have to prove the allegations***

The onus is on Commission staff to prove the allegations in the notice of hearing. This means that staff present their evidence first.

Staff call their witnesses. When staff have finished questioning a witness, if you are a respondent you can question the witness – this is called a cross-examination. Your questions must be relevant to the allegations in the notice of hearing. Staff can call you as a witness as part of their case.

***Respondents present their evidence after staff***

After Commission staff have presented their evidence, all other parties present theirs in turn. As a respondent, when your turn comes, you call your witnesses. When you have finished questioning a witness, staff and the other parties can ask questions of each witness.

If you want to give evidence, you can 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 commissioners as evidence. To do this, ask a witness to explain the relevance of the document and confirm its authenticity. Then ask the panel of commissioners 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.

***Arguments will be made at the end by parties***

After all the witnesses have testified and all evidence is before the Commission 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.

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. You and all other respondents will present your arguments first, in turn. Commission staff will then do the same. You can respond to any arguments made after yours. Staff will get the opportunity to make a final argument after all other arguments have been made.

**HOW THE DECISION IS MADE**

Once all evidence and arguments have been submitted to the panel of commissioners, the panel will either make a decision right away or “reserve” its decision. Reserving a decision means the Commission will take time to review all the evidence and arguments and release a decision at some point in the future. This is often referred to as the merits decision.

The panel usually decides first whether any laws were violated, and issues that decision before it considers and/or decides appropriate restrictions, prohibitions or penalties.

After the parties have had the opportunity to review the merits decision, if the Commission panel has made findings against them, those parties can make submissions to the panel about what restrictions, prohibitions or penalties, if any, ought to be imposed. These submissions can be made in writing, orally or both. You might want an oral hearing if, for example, you want to call evidence, such as a character witness. Once the Commission has reviewed all evidence and

arguments, it will release a decision that imposes restrictions, prohibitions or penalties. This is often referred to as the sanctions decision.

The Commission publishes the merits and sanctions decisions on its website.

***The types of sanctions that could apply***

The Commission imposes sanctions by making orders against respondents, which can include:

- restricting your trading in securities
- limiting your participation with those operating in the securities market
- if you are registered under the Securities Act suspending, restricting or cancelling your registration

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

The panel can order you to pay an administrative (financial) penalty, up to \$1,000,000 per contravention of the [Securities Act](#). The Commission can also order you to disgorge (pay) to the Commission any amounts obtained as a result of your non-compliance with the law.

If the Commission makes findings against you, they may order you to pay some or all of the investigation and hearing costs. These can 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

Your right to appeal the decision begins when Commission issues the sanctions decision.

**HOW TO CHANGE OR APPEAL A DECISION**

***The Commission can change its decision***

The Commission has the discretion to change its decision. However, before changing the decision, the Commission panel 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, send a copy of your request to the parties to the decision (including the director of enforcement) and to the secretary to the Commission.

***You can appeal a decision of a director or a self-regulatory organization***

The Commission regulates self-regulatory organizations, called SROs. The primary SROs in Nova Scotia are the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA).

If you are directly affected by a regulatory decision made by an SRO or by a director of the Commission, you can ask the Commission to review the decision.

The purpose of a review is not for the Commission to provide a second opinion. There is usually no new evidence produced at the review, unless it is compelling and was not before the decision

maker. A panel of commissioners reviews the evidence, called the record, and decides whether the decision is reasonable and is in accordance with the law, the evidence, and the public interest. If the decision meets these criteria, the panel will not interfere with the decision simply because they may have made a different decision.

You must send a request to the secretary to the Commission within 30 days of the decision, and follow the requirements set out in [NS Rule 15-501](#) – General Rules of Practice and Procedure, Part 3.

***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 must apply for leave to appeal within 30 days of the decision and comply with the [court's formal requirements](#). 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.

**HOW TO CONTACT THE COMMISSION**

The Commission's website address is <http://nssc.novascotia.ca/>

You can find [NS Rule 15-501](#) – General Rules of Practice and Procedure on our website. Go to our Home Page and click on Securities Law and Policy. You will find the rules under 1 – Procedure Related Matters. You can also use the search box on the homepage, searching “general rules of practice and procedure.”

These rules are authorized by the Securities Act of Nova Scotia. Some of the matters described in this guide derive directly from the Securities Act, rather than Rule 15-501.

[View the Securities Act](#)

The Commission address is:  
Nova Scotia Securities Commission  
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400-5251 Duke Street  
Halifax, NS B3J 2P8

The phone, fax and e-mail for Commission are:  
Phone: (902) 424-7768  
Toll Free Number (within Nova Scotia): (855) 424-2499  
Fax: (902) 424-4625  
E-mail: [NSSCinquiries@novascotia.ca](mailto:NSSCinquiries@novascotia.ca)