



# Guide to Capital Markets Tribunal Proceedings



## Guide to Capital Markets Tribunal Proceedings

This guide is intended to help self-represented parties and others involved in proceedings at the Capital Markets Tribunal.

This guide gives an overview of how Tribunal proceedings work. It gives general information only. Proceedings may vary and the Tribunal may tell you to follow different procedures than discussed here. You should review the Tribunal's [Rules of Procedure](#) when preparing for a hearing. If there is a difference between the information 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. For more information on that program, see the section on “Representation” in Part 3 of this document.

# Table of Contents

<b>Guide to Capital Markets Tribunal Proceedings.....</b>	<b>i</b>
<b>1. Introduction to Tribunal proceedings .....</b>	<b>1</b>
About the Tribunal .....	1
What is the Capital Markets Tribunal?.....	1
How does the Tribunal operate? .....	1
Is the Tribunal a court? Are there judges?.....	1
Tribunal adjudicators .....	1
Who are adjudicators? What do they do at a hearing? .....	1
How are adjudicators appointed?.....	2
How are adjudicators assigned to hearings? .....	2
Governance & Tribunal Secretariat.....	2
What is the Governance & Tribunal Secretariat?.....	2
Who are the Registrars? What do they do?.....	3
Who are Governance & Tribunal Secretariat counsel? What do they do? .....	3
<b>2. General information about Capital Markets Tribunal proceedings.....</b>	<b>3</b>
What are proceedings and hearings?.....	3
Parties to proceedings.....	3
What is a party? .....	3
Who is the OSC or the Commission, in Tribunal proceedings? .....	3
Who is an applicant?.....	4
Who is a respondent? .....	4
What is an intervenor? .....	4
What is an application? What do I need to do if I want to start a proceeding? .....	4
What is a notice of hearing?.....	5
How do I change or withdraw my application? .....	5
What is a motion? How can I bring a motion? .....	5
What is the proper format for application records, motion records and written submissions? .....	6
Service and filing .....	6
What is the difference between service and filing? .....	6
How do I serve documents?.....	7

How do I file documents with the Tribunal? .....	7
What if a document contains confidential information that I don't want to be public? .....	7
What if my document contains personal information that is not relevant? .....	7
Contacting the Tribunal and the parties .....	8
How do I communicate with the panel? .....	8
How do I contact the Registrar? .....	8
How do I contact the parties? .....	8
Resources .....	8
What resources can help me understand the process for proceedings before the Tribunal? .....	8
Where is the legislation that applies? .....	8
<b>3. Attending a hearing.....</b>	<b>9</b>
What is a hearing? .....	9
In-person hearings.....	9
Where do in-person hearings take place? .....	9
What does a hearing room look like? .....	10
Who is in the hearing room and where do they sit? .....	10
How do I address the adjudicators? .....	11
Can I access the internet in the hearing room? .....	11
Is there a space outside the hearing rooms for me to use? .....	11
Are the hearing rooms accessible? .....	11
What if I have accessibility needs? What if my witness has accessibility needs? .....	12
Videoconference hearings .....	12
Does the Tribunal conduct hearings by videoconference? .....	12
Can I attend by videoconference? Can my witnesses attend by videoconference? .....	12
What is expected of me at a videoconference hearing? .....	12
What are the technical requirements for videoconference hearings? .....	13
Scheduling and adjournments of hearings .....	14
How do I know what time a hearing will start? .....	14
What time should I arrive for the hearing? What if I am delayed in getting to the hearing? .....	14
What if I cannot attend on a scheduled date? What is an adjournment and how can I ask for one? .....	15
Representation .....	15
Can I have representation for a proceeding? .....	15
What is the Litigation Assistance Program? .....	15

What is the Duty Counsel Program? .....	15
Can I change my representative? .....	16
Public proceedings .....	16
Is the hearing open to the public and the media? .....	16
What if I want to tell the panel sensitive financial or personal information without the public in the room? .....	16
Can I record a hearing? .....	16
Confidential conferences .....	17
What is a confidential conference? .....	17
Language of hearings .....	17
Can a hearing be conducted in French? .....	17
What if I need an interpreter for English or French? .....	17
What if I need an interpreter for a language other than English or French? .....	17
What if I need documents translated? .....	18
Transcripts of hearings .....	18
Can I get a transcript of the hearing? .....	18
How can I request copies of documents filed in a hearing? .....	18
<b>4. Evidence and witnesses .....</b>	<b>18</b>
What is evidence? .....	18
Do I need to call a witness? How do I call a witness? .....	19
What if a witness does not want to testify? .....	19
I'm a party. Can I testify? .....	20
What are witness lists and summaries? .....	20
I'm going to be a witness. What is the process for testifying at an in-person hearing? .....	20
How is evidence dealt with at a videoconference hearing? .....	21
<b>5. Capital Markets Tribunal Processes and Proceedings .....</b>	<b>21</b>
Enforcement proceedings .....	21
General .....	21
Case management hearings .....	23
Documents for merits hearings and sanctions and costs hearings .....	23
Preparing for a hearing in an enforcement proceeding .....	24
Settlements in enforcement proceedings .....	25
Presenting cases at merits hearings and sanctions and costs hearings .....	26
Sanctions and costs hearing .....	27

Orders in other provinces or territories .....	29
Application for review of a decision.....	29
Definition and application process.....	29
Extension of a temporary order.....	32
Definition and process for extension of a temporary order .....	32
Application for authorization to disclose.....	34
Definition and application process.....	34
Application for further decision, revocation or variation of a decision .....	35
Definition and application process.....	35
Application relating to a transaction .....	37
Definition and application process.....	37
Early dismissal of applications or motions .....	37
Grounds for dismissal and process .....	37
<b>6. Tribunal decisions.....</b>	<b>38</b>
General information about Tribunal decisions.....	38
What are Tribunal decisions? .....	38
When does the panel make its decision? .....	38
Where can I find a decision of the Tribunal? .....	38
<b>7. Appeals .....</b>	<b>39</b>
How to appeal a Tribunal decision.....	39
Can I appeal a Tribunal decision? .....	39
Can I ask for a judicial review of a Tribunal decision? .....	39
<b>Appendix: Accessible Text for Diagrams.....</b>	<b>40</b>
<b>Contact Information .....</b>	<b>43</b>

# 1. Introduction to Tribunal proceedings

## About the Tribunal

### What is the Capital Markets Tribunal?

The Capital Markets Tribunal is the administrative tribunal that holds hearings under the [Securities Act](#) and [Commodity Futures Act](#). The Tribunal is made up of at least nine adjudicators (*i.e.*, decision makers), including the Chief Adjudicator.

The Tribunal is an independent division of the Ontario Securities Commission (the **OSC**). It was created by the [Securities Commission Act, 2021](#).

### How does the Tribunal operate?

The Chief Adjudicator oversees the Tribunal.

The Tribunal and its adjudicators are supported by the Governance & Tribunal Secretariat, which provides legal advice and case and hearing management support.

The Tribunal is fully independent from the OSC when performing its adjudicative functions. None of the adjudicators, including the Chief Adjudicator, holds any position with the OSC. The Chair of the OSC and the Chief Adjudicator recognize that the Tribunal's adjudicative decisions need to be made, and be seen by the public to be made, independently and impartially.

The Chief Adjudicator reports to the OSC's Board of Directors about some administrative items (*e.g.*, information technology, human resources), but the Board's oversight does not include the Tribunal's adjudicative functions.

### Is the Tribunal a court? Are there judges?

No, the Tribunal is an administrative tribunal, not a court. Adjudicators, not judges, run hearings at the Tribunal and make the decisions. Hearings at the Tribunal do have many similarities to trials in a court.

When the OSC decides to bring a case, the OSC can choose whether it will be:

- an “administrative proceeding” in front of the Tribunal;
- a “quasi-criminal proceeding” (when someone is charged with an offence), that is heard by a judge of the Ontario Court of Justice; or
- a “civil proceeding” (an application or an action, *i.e.*, a lawsuit), that is heard by a judge of the Superior Court of Justice.

## Tribunal adjudicators

### Who are adjudicators? What do they do at a hearing?

Adjudicators decide questions of fact and law in Tribunal proceedings based on the evidence and the submissions (arguments) made at hearings. Adjudicators must conduct

hearings and make decisions fairly and impartially, without bias towards any party, including the OSC.

In enforcement proceedings, adjudicators may order financial sanctions, and restrictions on a person's or company's activities in the capital markets. Adjudicators cannot order jail terms.

The [Securities Act](#) says that some types of hearings may be conducted by Directors (certain senior employees of the OSC). The Tribunal and its Adjudicators are not involved with those hearings. For more information relating to Directors' decisions, refer to [Opportunity to be heard and Director's decisions](#), on the OSC Website.

## How are adjudicators appointed?

Adjudicators and the Chief Adjudicator are appointed by the Lieutenant Governor in Council, on recommendation of the Minister of Finance, for a fixed term. The Tribunal conducts a merit-based application and interview process, through the Public Appointments Secretariat, to find suitable candidates for the Minister's consideration.

Every year, the Chief Adjudicator assesses the performance of each adjudicator. The Chief Adjudicator uses the performance assessments to make recommendations to the Minister of Finance about re-appointment of adjudicators.

## How are adjudicators assigned to hearings?

When a proceeding begins, the Chief Adjudicator assigns one adjudicator to be the Case Management Adjudicator for that proceeding. The Case Management Adjudicator makes sure that the proceeding runs efficiently and expeditiously. For more information, see the [Case Management Adjudicator Policy](#).

The Chief Adjudicator assigns adjudicators to hearings, in panels of one or more adjudicators. Typically, a single adjudicator presides over simple hearings, and a three-member panel presides over hearings about the merits of an application, or other more complex hearings. There may be exceptions for training or other operational reasons. When assigning a panel, the Chief Adjudicator takes into account potential conflicts of interest, adjudicator expertise and experience, adjudicator workload, opportunities for mentorship and training, and other factors.

## Governance & Tribunal Secretariat

### What is the Governance & Tribunal Secretariat?

The Governance & Tribunal Secretariat is a department of the OSC that supports the Tribunal and its adjudicators. It helps to administer the Tribunal, to safeguard tribunal integrity and procedural fairness, and to give ongoing education to the adjudicators.

The Governance & Tribunal Secretariat also provides governance advice, education and support to the OSC's Board of Directors, but that role is separate and distinct from the support provided to the Tribunal.



## Who are the Registrars? What do they do?

A 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 adjudicators, 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 and provide independent legal advice and assistance to panels of adjudicators, as the panels require.

# 2. General information about Capital Markets Tribunal proceedings

## What are proceedings and hearings?

A “proceeding” is one entire case that is before the Tribunal. Most proceedings include multiple hearings. For example, an enforcement proceeding typically includes several case management hearings, a “merits hearing” (to decide whether there was any conduct that might deserve sanctions) and a “sanctions and costs hearing”.

The Tribunal starts a proceeding when a party files an application (explained further below) asking the Tribunal for an order.

At some hearings, the Tribunal will hear testimony from witnesses. At all hearings, the Tribunal will hear submissions (argument) from the parties or their representatives. Usually, the Tribunal will make a decision after a hearing.

## Parties to proceedings

### What is a party?

A “party” to a proceeding includes whoever brought the application before the Tribunal (applicant(s)) and whoever the applicant(s) named as those who must respond to the application (respondent(s)). The OSC is usually the applicant, but other parties may bring applications. Sometimes the OSC is a respondent.

The term “party” also includes any person or company to which the Tribunal grants intervenor status, which is a right to participate in the proceeding.

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 OSC or the Commission, in Tribunal proceedings?

In Tribunal proceedings, “the OSC”, or “the Commission”, means employees of regulatory divisions of the OSC, including those in: (i) Enforcement; (ii) Mergers & Acquisitions (iii) the

General Counsel Division; and (iv) Registration, Inspections and Examinations. The terms do not include adjudicators, Registrars or counsel of the Governance & Tribunal Secretariat.

The OSC investigates possible misconduct in the capital markets and can start proceedings against people or companies suspected of violating Ontario securities law.

See rules 2(d) and (f) of the [Rules of Procedure](#).

## Who is an applicant?

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

## Who is a respondent?

A respondent is a party to a proceeding that an applicant (*i.e.*, someone else, often the OSC) starts. The applicant names who the respondents are. The respondents have the right to respond to the application.

## What is an intervenor?

Intervenors are people or companies who are not named in a proceeding, but who have an interest in the proceeding's outcome, and whom the Tribunal has allowed to participate in the proceeding, as a party would.

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

## What is an application? What do I need to do if I want to start a proceeding?

An application is a document that a party files with the Tribunal to ask that the Tribunal make an order. Applications are posted on the Tribunal website under [Proceedings](#) and published in the [OSC Bulletin](#).

The types of applications are:

- application for an enforcement proceeding under section 127 of the [Securities Act](#) (these applications are usually filed by the OSC)
- application for permission to disclose information about an investigation or examination under section 17 of the [Securities Act](#)
- application for extension of a temporary order made under subsections 127(7) or 128(8) of the [Securities Act](#) (these applications are usually filed by the OSC)
- application for review of a decision of the Director under section 8 of the [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 [Securities Act](#)

- application for further decision or revocation or variation of a decision under subsection 10(7) or section 144.1 of the [Securities Act](#)
- application relating to a transaction under sections 104 and/or 127(1) of the [Securities Act](#)

Each of these types of application is discussed in more detail below. It is also possible to file an application for an order not specified in the [Rules of Procedure](#).

For more information, see rules 13 to 20 and Appendices C to G of the [Rules of Procedure](#).

## What is a notice of hearing?

A notice of hearing is a document from the Tribunal that starts a new proceeding, after the filing of an application. A notice of hearing tells you the type of proceeding (for example, enforcement proceeding or application for review) and the date, time, format (*i.e.*, in person, videoconference, or in writing), 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 change or withdraw my application?

A change to an application is called an amendment. An applicant can make an amendment to an application at any time if the other parties agree (also known as “with consent of the parties”), or with the Tribunal’s permission. To ask for permission, 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 sets out your requested changes. 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 (cancel) 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 give particulars (additional information) to better understand the nature of the proceeding. This may include the reasons why a party thinks they should get what they are asking for, or a 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 Tribunal 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 ask for 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 asking for a motion hearing should give the parties' availability for a case management hearing and their preliminary position on the motion, and, where possible, an agreed-upon schedule for the exchange of motion materials.

Motions are posted on the Tribunal website under [Proceedings](#) when filed, unless a party requests and gets a confidentiality order over the motion (preventing public access to the motion materials).

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 any evidence in support (e.g., one or more "affidavits", documents that set out sworn testimony). Application records and motion records should be filed as a PDF and should clearly identify the documents they contain.

Written submissions are a party's arguments about why the Tribunal should make a particular decision. They should also be filed as a PDF. If the written submissions refer to authorities (previous court or tribunal decisions, or other sources, in support of the submissions), the text should contain hyperlinks to publicly available sources for those authorities.

PDF documents that are more than 500 pages 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 means providing documents or other things to the other parties in a proceeding. The OSC is a party to every proceeding at the Tribunal, so all documents must be served on the OSC. In an enforcement proceeding, the contact information for the OSC's representative is on the application. Where it is not clear who the representative is for the OSC, the OSC can be served by email to [originalservice@osc.gov.on.ca](mailto:originalservice@osc.gov.on.ca).

Filing means giving documents or other things to the Tribunal's Registrar. The requirement to serve is different from the requirement to file, so filing a document with the Registrar does not satisfy the obligation to serve other parties, including the OSC. Similarly, serving a document on the OSC (or any other party) is different from filing the document.

## How do I serve documents?

Documents may be served in a variety of ways, including by mail, personal delivery and email. How a document may be served depends on whether the party being served has someone else representing them, and whether they are an individual or a company. For more information, see rule 5 of the [Rules of Procedure](#).

## How do I file documents with the Tribunal?

Documents must be clear and legible, and should be filed electronically in accordance with rule 6 of the [Rules of Procedure](#). Other than the application that is filed to begin the proceeding, all filed documents must include the assigned file number, which is shown on the notice of hearing.

For a merits hearing in an enforcement proceeding (which is the hearing where a panel decides whether the OSC has proven the allegations in its application), follow the *Protocol for Document Production* in Appendix K of the [Rules of Procedure](#).

Documents should be filed as searchable PDFs. Documents that cannot be converted to a PDF should be given to the Registrar in their original format. Certain documents must also be filed in Microsoft Word format. See rule 6(1) of the [Rules of Procedure](#) for more information.

Documents must be filed before 4:30 p.m. If a document is filed after 4:30 p.m., it will be treated as if it was 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 ask for a confidentiality order, which 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 be confidential redacted (removed or blacked out), together with the original unredacted document, and state your request for confidentiality in writing when you file the document. The Tribunal 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 that is not relevant?

If your document contains personal information of an investor, witness or other person, you must redact from the document personal information that is not relevant to the issues in the proceeding.

The Registrar will not redact personal information for the parties.

For more information and examples of the personal information that must be removed, see rule 11 of the [Rules of Procedure](#).

## Contacting the Tribunal and the parties

### How do I communicate with the panel?

Your only direct communication with the panel of adjudicators is in the hearing itself.

If you want to communicate with the panel about a proceeding, other than in a hearing, you must send the communication to the Registrar and copy all parties, including the OSC.

See rule 7 of the [Rules of Procedure](#).

### How do I contact the Registrar?

You can contact the Registrar by email at [registrar@capitalmarketstribunal.ca](mailto:registrar@capitalmarketstribunal.ca). Consider copying all parties on emails to the Registrar.

You can also contact the Registrar by phone at 416-595-8916.

### How do I contact the parties?

To contact the OSC in an enforcement proceeding, use the contact information on the OSC's 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, ask the party that started the proceeding for 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 Tribunal proceedings and are available on the Tribunal's website under [Resources](#). Tribunal proceedings are also governed by the [Statutory Powers Procedure Act](#).

The Tribunal's reasons for decisions issued after 2004 are available on the [Canadian Legal Information Institute website \(CanLII\)](#).

### Where is the legislation that applies?

The Tribunal hears proceedings arising under the [Securities Act](#) and the [Commodity Futures Act](#).

The Tribunal is established by the [Securities Commission Act, 2021](#).

The Tribunal's procedures are governed by the [Statutory Powers Procedure Act](#).

Each of these pieces of legislation is available on the Ontario government's [e-Laws page](#) or on [CanLII](#).

## 3. Attending a hearing

### What is a hearing?

A hearing is an opportunity for parties in a proceeding to present their evidence and arguments to an adjudicator or panel of adjudicators of the Tribunal. A hearing can take place in person in a hearing room or by videoconference, or both, as described below.

A hearing can also take place in writing, which means that the parties don't attend either in person or by videoconference. For example, applications for authorization to disclose information are usually dealt with in writing.

### In-person hearings

#### Where do in-person hearings take place?

In-person hearings take place in a hearing room.

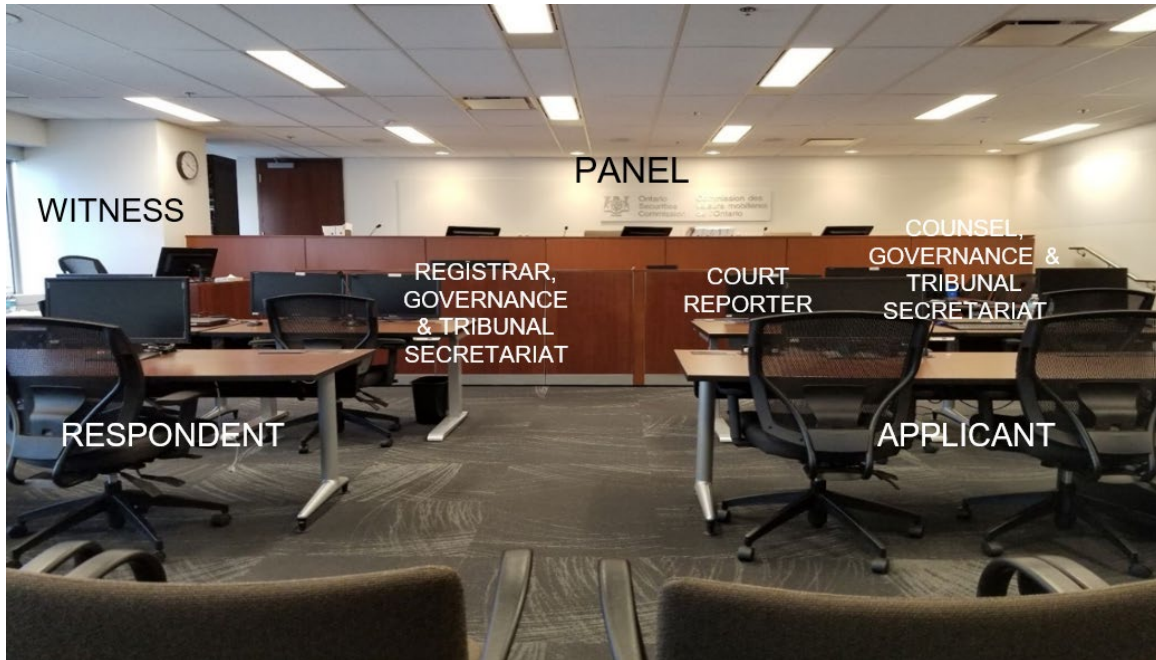
The Tribunal's hearing rooms are in Toronto at 20 Queen Street West (Cadillac Fairview Tower) on the 17th floor. The building is on the north side of Queen Street, between Bay Street and Yonge Street, at the south end of the Eaton Centre.

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 take place.



## 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).



## Who is in the hearing room and where do they sit?

The panel of one or more adjudicators sits at the front of the hearing room on a raised platform. The chair of the panel sits in the middle seat.

In front of the raised platform are:

- a witness box, where the witness sits to testify
- 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. Normally, the applicant sits at the tables in the front row on the right side (when facing the panel) and the respondent(s) sit at the tables in the front row on the left side.

The front table on each side is adjustable, so that a party can raise it when they stand to make submissions. The tables are equipped with a laptop, microphones and monitors connected to the audio/visual system. Requests for use of a laptop can be made to the [Registrar](#).

Public seating is available at the back of the room. Anyone can attend, including OSC staff, the media, and members of the public. Seats cannot be reserved for anyone, except staff of the Governance & Tribunal Secretariat.



## How do I address the adjudicators?

At a hearing in the Tribunal's hearing rooms, each panel member 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" followed by their last name. You may address the full panel as "Adjudicators". You should not refer to an adjudicator as "Your Honour", "Judge" or "Justice".

## Can I access the internet in the hearing room?

Internet access is not provided in the hearing rooms, except when required by the parties for the purpose of a hearing. A request for internet access can be made by contacting the [Registrar](#).

## Is there a space outside the hearing rooms for me to use?

Two consultation rooms are available on a first-come basis (they cannot be reserved), for use shortly before and after hearings, as well as during hearing breaks. They are located on the 17<sup>th</sup> floor, one across from the washrooms and the other in the waiting area outside Hearing Rooms A and B. You must not leave any belongings in the consultation room when you are not there. If you have questions about using the consultation 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 under [Accessibility at the OSC](#).

## 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 their ability to participate, the [Registrar](#) should be notified at least 30 days before the hearing. See also rule 12 of the [Rules of Procedure](#).

## Videoconference hearings

### Does the Tribunal conduct hearings by videoconference?

Hearings or parts of hearings may be conducted with some or all participants participating by videoconference (with or without video capability).

The panel will decide if a videoconference hearing is appropriate. For more information, see rule 9 of the [Rules of Procedure](#).

### Can I attend by videoconference? Can my witnesses attend by videoconference?

For a hearing that is scheduled to take place by videoconference, a party or their witness can attend by videoconference.

For a hearing that is scheduled to take place in the hearing room, if a party or their witness would like to attend that hearing by videoconference, they must ask for the panel's permission before the hearing. See rule 9 of the [Rules of Procedure](#).

### What is expected of me at a videoconference hearing?

Parties are expected to communicate and work cooperatively with each other and the panel, both before and during the hearing, to ensure that it is conducted fairly, expeditiously and cost-effectively.

Before the videoconference hearing, each party must give the Registrar the names of all those who will attend on their behalf (e.g., the parties themselves, counsel and other litigation support staff, and witnesses). Each person will be given a unique link to join the hearing.

Please keep the following points in mind:

- Do not share your link – it is unique to you.
- Wear business attire.
- 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 signal.
- If you are at home, 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 look at materials off-screen during the hearing.
- The Registrar will confirm that all parties and counsel are present before the panel signs into the hearing.
- If you are disconnected, you should first email the Registrar immediately at [registrar@capitalmarketstribunal.ca](mailto:registrar@capitalmarketstribunal.ca) or, if you do not have access to email, call the telephone number on the GoToWebinar or Zoom invitation, and try to rejoin the hearing. When you rejoin, you should announce your return.
- Mute your device at all times unless you are speaking. Remember to unmute yourself before speaking.
- Do not interrupt or speak over others.

## What are the technical requirements for videoconference hearings?

Videoconference hearings 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:

<b>System Requirements</b>	<ul style="list-style-type: none"> <li>• An internet connection – broadband wired or wireless (3G or 4G/LTE/5G)</li> <li>• Speakers and a microphone – built-in, USB plug-in, or wireless Bluetooth</li> <li>• A webcam or HD webcam - built-in or USB plug-in</li> <li>• 4GB of RAM (minimum), 16GB or more of RAM (recommended)</li> <li>• CPU 32 or 64 bit dual – Core or Higher</li> </ul>
<b>Supported Operating Systems</b>	<ul style="list-style-type: none"> <li>• macOS X with macOS X (10.13) or later</li> <li>• Windows 11</li> <li>• Windows 10</li> </ul> <p><b>Note:</b> Devices running Windows 10 must run Windows 10 Home, Pro, or Enterprise. S Mode is not supported.</p>
<b>Supported Mobile Operating Systems</b>	<ul style="list-style-type: none"> <li>• iOS 13.0 or later</li> <li>• iPadOS 13 or later</li> <li>• Android 6.0x or later</li> </ul>

<b>Web Browser</b>	<p>Desktop:</p> <ul style="list-style-type: none"> <li>• Google Chrome: Within 2 versions of current version</li> <li>• Mozilla Firefox: Within 2 versions of current version</li> <li>• Microsoft Edge: Within 2 versions of current version</li> <li>• Apple Safari: Within 2 versions of current version</li> </ul> <p>Mobile:</p> <ul style="list-style-type: none"> <li>• Apple Safari: Within 2 versions of current version</li> <li>• Google Chrome: Within 2 versions of current version</li> <li>• Mozilla Firefox: Within 2 versions of current version</li> </ul> <p>As an example, if the current version of Chrome is 111, then Zoom supports version 109, 110, and 111. As new versions are released, the minimum version will also be followed behind by 2 versions.</p>
<b>Bandwidth</b>	<p>Recommended bandwidth over WiFi:</p> <ul style="list-style-type: none"> <li>• For high-quality video: 1.0 Mbps/600kbps (up/down)</li> <li>• For 720p HD video: 2.6 Mbps/1.8 Mbps (up/down)</li> <li>• For 1080p HD video: 3.8 Mbps/3.0 Mbps (up/down)</li> <li>• For gallery wide receiving: 2.0 Mbps (25 views), 4.0 Mbps (49 views)</li> </ul>

Parties to a proceeding and their witnesses will be contacted by the Registrar before 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 hearings are posted on the Tribunal's website under [Hearing Schedule](#). They are also set out in notices of hearing, other notices published by the Governance & Tribunal Secretariat, or in orders made by panels.

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?

You should 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 ask for one?

An adjournment is a postponement and rescheduling of a hearing date. If a party cannot 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. Adjournments of merits hearings, sanctions and costs hearings and motions hearings will only be allowed if a party can prove there are exceptional circumstances that should delay the hearing.

For more information, see rule 34 of the [Rules of Procedure](#).

## Representation

### Can I have representation for 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, and may be, but does not have to be, a licensed lawyer or paralegal. 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 give 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.

You may apply for volunteer legal services through the Litigation Assistance Program or the Duty Counsel Program, both discussed below.

You can also choose to represent yourself at a hearing.

### What is the Litigation Assistance Program?

The Litigation Assistance Program (**LAP**) gives free legal services to parties who do not have a representative and who are involved in certain proceedings before the Tribunal. LAP lawyers are independent of the Tribunal, and give services for case management hearings, confidential conferences, confidential settlement conferences, public settlement hearings, and sanctions and costs hearings.

LAP lawyers may also give services for motions, on an exceptional basis. The LAP is **not available** for merits hearings in enforcement proceedings (which is where a panel decides whether the OSC can prove the allegations in its application).

You can find more information about the LAP on the Tribunal’s website under [Assistance for self-represented parties](#).

### What is the Duty Counsel Program?

The Duty Counsel Program (**DCP**) is also available to parties who do not have a representative, but it is more limited in scope than the LAP. The DCP lawyer gives

immediate legal advice and assistance on the day of a hearing, and the lawyer can assist you at a hearing if you ask. You do not consult with counsel in advance of the day of your hearing.

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

You can find more information about the DCP on the Tribunal's website under [Assistance for self-represented parties](#).

## Can I change my representative?

Yes. When you change your representative, 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 that a hearing (or part of one) be confidential, or where confidentiality is specified in the [Rules of Procedure](#) (for example, confidential settlement conferences are not open to the public).

A member of the public who wishes to watch a virtual hearing must 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 videoconference hearings. They will be able to see the panel, any witnesses, 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?

No, unless it is purely for your note-taking purposes (which means you cannot reproduce or redistribute the recording), or you have the Tribunal's permission in advance. This prohibition includes photos or screen captures of a videoconference.

See rule 8(5) of the [Rules of Procedure](#).

## Confidential conferences

### What is a confidential conference?

At any stage of a proceeding, the parties may choose to, or a panel may require them to, participate in a confidential conference with an adjudicator to consider:

- simplifying or settling any issues (for more information on settlements, see below);
- facts that may be agreed upon; and
- anything else that might 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 hearings

### Can a hearing be conducted in French?

A party may request that a panel conduct a hearing, wholly or partly, in French. You must give your request to the [Registrar](#) and the other parties as soon as possible and no later than 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 needs 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 asks that a proceeding be conducted wholly or partly in French, the Tribunal will translate any notice of hearing into French.

The Tribunal will not translate transcripts or documents given by the parties, including evidence and written submissions. Decisions, including reasons and orders, and Tribunal correspondence, will be given in the language of the hearing.

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

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

## Transcripts of hearings

### Can I get a transcript of the hearing?

In most circumstances, the Registrar will give a copy of the transcript to all parties to the hearing by email. Other individuals that want to obtain copies of transcripts for a fee can contact [clientservices-on@veritext.com](mailto: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.

### 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’s website under [Proceedings](#), unless a panel orders that they not be available to the public.

For access to documents relating to a proceeding that are not published on the Tribunal’s website, make a request to [record@osc.gov.on.ca](mailto:record@osc.gov.on.ca).

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

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](mailto:record@osc.gov.on.ca). See also the Tribunal’s webpage “[Accessing Records](#)”.

The Governance & Tribunal Secretariat does not have access to, or knowledge of, documents that the OSC collected during its investigations.

## 4. Evidence and witnesses

### What is evidence?

Evidence consists of the facts presented in the hearing which support your application or which respond to an application against you. The following are examples of evidence:

- documents or other things (like recordings);



- a party's own testimony, given orally at the hearing or in an affidavit (which is a written version of testimony);
- a witness's testimony, given orally at the hearing or in an affidavit; and
- an agreed statement of facts.

The following are **not** evidence:

- a party's oral and written submissions (arguments), including opening and closing submissions;
- 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.

## Do I need to call a witness? How do I call a witness?

A witness is someone who can give evidence about one or more facts that are relevant to a proceeding. For example, a witness may tell the panel what they saw or heard, or they may explain a document. In a hearing, when a party asks questions of a witness that they themselves called, this is referred to as "examination-in-chief" or "direct examination". Other parties will then have an opportunity to question the witness (also called "cross-examination"). 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, as discussed below.

## What if a witness does not want to testify?

If a party wants to call a witness, but the witness does not want to testify, the Tribunal can issue a summons, which is a document legally requiring a person to attend before the Tribunal to testify and/or produce documents.

To request that the Tribunal issue a summons for a witness living in Ontario, you must file a draft of the form in Appendix I of the [Rules of Procedure](#). Once the summons is issued, you must have it delivered directly to the witness.

The summons form cannot be used for witnesses who do not live in Ontario. If the witness is outside Ontario, there is a different procedure involving the Ontario Superior Court that must be followed. For more information, see section 152 of the [Securities Act](#), and speak to the OSC's lawyer.

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 a party. Can I testify?**

Yes, any party may testify, either orally or in an affidavit. Parties do not have to testify.

If you are a party, you have no representative, and you want to testify orally, then you will make the statements of fact that you want to make. This is not the time to make your argument. You can do that during the time for closing submissions, after all the evidence has been heard.

If you have a representative, your representative will ask you questions. When you are finished giving your oral evidence, other parties can question ("cross-examine") you. The panel may also have questions for you at any time.

## **What are witness lists and summaries?**

A witness list is a list of people that a party intends to call to testify in a hearing.

A witness summary is a summary of what a witness is expected to say when they testify.

In enforcement proceedings, the OSC 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.

For more information, see rule 28(3) 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, or not to join the videoconference, until it is your turn to testify.

If you are in the hearing room, you will be asked to enter the witness box at the front.

The Registrar will 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 (make a solemn promise to tell the truth) or swear an oath (make a religious promise to tell the truth). The choice is yours and both are of equal legal 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?"

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 have 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?”

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, or by the party’s representative. You may then be asked questions (“cross-examined”) by the other parties or their representatives. After cross-examination, the party that went first may want to re-examine you to follow up on some items.

The panel may also ask you questions at any time during your testimony.

## **How is evidence dealt with at a videoconference hearing?**

The parties should discuss before the hearing whether witness testimony will be given in writing (*i.e.*, by affidavit) or orally, and, if applicable, how witnesses will be given copies of any documents 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 given electronically 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](#) gives 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 who want to have the Registrar help with sharing documents should arrange this with the Registrar in advance.

# **5. Capital Markets Tribunal Processes and Proceedings**

## **Enforcement proceedings**

### **General**

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

In an enforcement proceeding, the OSC files an application against individuals or companies it says violated Ontario securities law. The application sets out what the OSC says the individuals or companies did, why that conduct violated Ontario securities law, and the sanctions and costs the OSC says the Tribunal should order. These applications contain the OSC’s contact information. They are posted on the Tribunal’s website under [Proceedings](#) and published in the [OSC Bulletin](#).

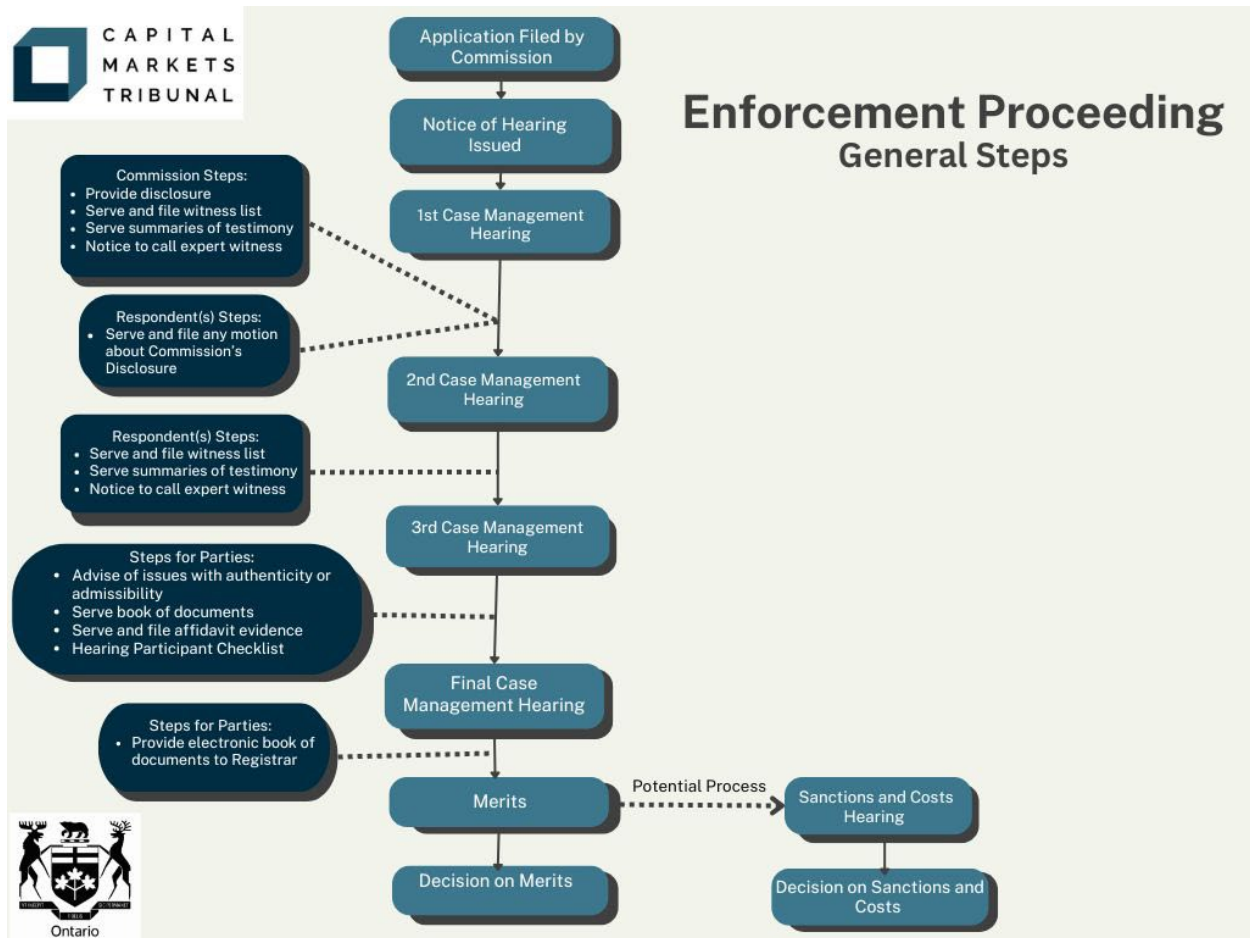
For more information, see rule 14(1) and Appendix A of the [Rules of Procedure](#).

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

After the OSC files an application with the Registrar, the Tribunal starts a proceeding by issuing a notice of hearing. The OSC then serves the notice of hearing and application on each respondent. The application and notice of hearing will be available on the Tribunal's website under [Proceedings](#).

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

## What are the usual steps in an enforcement proceeding?



[\[Accessible Description for Enforcement Proceeding diagram\]](#)

## What is a merits hearing?

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

At the end of the merits hearing, the panel will probably “reserve” its decision. That means that the panel will not give its decision on the spot, but will take time to issue the appropriate

decision. A panel's decision (which includes the reasons for its decision) will explain whether each respondent violated Ontario securities law as the OSC alleged.

If the panel decides that a respondent did not violate Ontario securities law, or do anything else that would justify sanctions, that ends the proceeding for that respondent.

### **What is a sanctions and costs hearing?**

If the panel that held the merits hearing decides that a respondent violated Ontario securities law, or did something else that would justify sanctions, a sanctions and costs hearing will then take place. At this second hearing, a panel decides the appropriate sanctions and costs to order against the respondent.

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 or between the main hearing(s) in the proceeding. Interlocutory matters may include motions, which are heard before a merits hearing, such as a motion about the documents that a party disclosed. There can also be interlocutory matters that are dealt with before a sanctions and costs hearing.

## **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 later 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 additional deadlines 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 submissions (arguments) of the OSC, and any other respondents who appear, in reaching the panel's decision.

The proceeding may continue without any further notice given to that respondent.

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

## **Documents for merits hearings and sanctions and costs hearings**

### **What is disclosure? Am I expected to give disclosure?**

Early in an enforcement proceeding, the OSC must give respondents copies of all documents and things in its possession that are relevant to the allegations. The OSC must

also disclose any new and relevant information as it becomes available. This is called disclosure.

There are some exceptions to the OSC's disclosure obligation; for example, certain communications between a person and their lawyer are not required to be disclosed, since those communications are legally confidential ("privileged").

Respondents do not have to give similar disclosure to the OSC or to any other party early in the proceeding. However, closer to the merits hearing, respondents are required to provide a book of documents containing all documents that they intend to present 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 OSC have to give me? What kind of documents do I have to give to the OSC?**

At the case management hearings leading up to the merits hearing, the panel will identify other documents and information that the parties must give 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 books of documents. The panel will also set a timeline for the delivery of these documents and information.

For more information, see rules 14(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 present as evidence at the hearing. All parties exchange their books of documents before the final case management hearing in an enforcement proceeding.

Each party must give to the [Registrar](#) its book of documents along with an index.

Documents given before a hearing are not available to the public unless a panel admits them as evidence during the hearing.

Parties are encouraged to come to an agreement about 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 state each party's position as to the authenticity and admissibility of each document in the book of documents.

For more information, see rules 28(2) and 29(4) 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:

- the notice of hearing;

- the application;
- the OSC's disclosure;
- any orders or decisions 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 have settlement discussions with the OSC 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 OSC directly using the contact information found on its application.

### **What is the process for settlements?**

If the OSC 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 panel may ask for further information, and an additional settlement conference may be scheduled. When the confidential settlement conference(s) are finished, the panel tells the parties whether it would be prepared to approve the settlement agreement.

If the panel is prepared to approve the settlement agreement, the parties can ask for a public hearing to approve the settlement. A notice of hearing for a public settlement hearing is then issued. 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 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 OSC, 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's website under [Proceedings](#) 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 usually proceed in the following way:

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

### **What is an opening statement?**

Merits hearings and sanctions and costs hearings usually start 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 reach from those facts. What the parties say in their opening statements is not evidence.

Respondents do not have to make opening statements. 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?**

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(4) of the [Rules of Procedure](#).

The OSC presents its evidence first because it is the OSC's responsibility (also called the OSC's "onus") to prove the allegations in its application. The OSC will call its witnesses to testify. When the OSC has finished questioning a witness, the respondents can cross-examine the witness. After cross-examination, the OSC may re-examine the witness on issues that need to be clarified. All questions must be relevant to the allegations in the application.

Once the OSC 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 OSC and the other parties can ask their questions. You will have a limited right to re-examine the witness after the OSC's questions.

The panel may ask a witness questions at any time.



## **Can a respondent testify?**

Respondents are allowed to, but do not have to, testify. If a respondent chooses not to testify, the OSC may ask the Tribunal to issue a summons requiring the respondent to testify or may ask for the Tribunal's permission to use transcripts of any interviews of the respondent conducted during the OSC's investigation.

If you are a respondent and choose to testify, make the statements of fact that you want to make (or, if you have legal representation, your representative will ask you questions). When testifying, you must present only the facts. It is not the time to present your views of the facts or to make your argument. You will have the opportunity to do that later, in your submissions.

When you are finished giving your evidence, other parties (including the OSC) can question you. The panel may also have questions for you at any time.

## **What is a closing argument, or closing submissions?**

Each party makes closing submissions (argument), which is a summary of the evidence presented, a statement of the conclusions the party wants the panel to reach, and the reasons why the panel should reach those conclusions.

Closing submissions can be made in writing, or orally, or both. This is usually decided before 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 OSC will present its closing submissions first. The respondents will then present their closing submissions. The OSC will get an opportunity to make a final reply submission, which is limited to new issues that came up during the respondents' closing submissions.

## **Sanctions and costs hearing**

### **What is decided at a sanctions and costs hearing?**

At a sanctions and costs hearing, a panel will decide the appropriate sanctions and costs to be ordered against a respondent who violated Ontario securities law or who did something else to justify sanctions.

This hearing is based primarily on the decision from the merits hearing. At the sanctions and costs hearing, you must accept 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 OSC's requested sanctions and costs are appropriate, given 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;

- ban the trading or acquisition of securities by a respondent;
- ban the trading in securities of a respondent that is an issuer;
- provide that any exemptions under Ontario securities law do not apply to a respondent;
- require a respondent to undergo a review of its practices and procedures and make changes;
- ban a respondent from being a director or officer of any company and from being registered with the OSC;
- make a respondent pay to the OSC an administrative penalty of up to \$1,000,000 for each failure to comply with Ontario securities law; and/or
- require a respondent to disgorge (give up) to the OSC 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 [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 OSC is asking for?**

The OSC's application at the beginning of the proceeding lists the sanctions that the OSC may ask for. The application also states whether the OSC expects to ask for costs against a respondent.

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

### **Will I have to pay for the OSC's costs of the enforcement proceeding?**

The OSC may ask 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: (i) the time spent by the OSC investigating the case; (ii) the time spent by the OSC preparing for and attending the hearings, and (iii) other things, such as 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 the OSC to pay the costs I incurred?

The [Securities Act](#) does not allow a panel to award a respondent any costs, even if a merits decision finds that the OSC failed to prove some or all of the allegations against that respondent.

## Orders in other provinces or territories

### If I am sanctioned by another securities tribunal or 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 the same 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 on the person for that contravention. Financial sanctions will not be duplicated in Ontario.

If a person or company is the subject of an order or settlement agreement issued by another securities regulator *before* December 4, 2023, or an order from a court, the OSC may ask the Tribunal to issue a similar order in Ontario, without giving the person or company an opportunity to respond, by filing an application under rule 14(3) of the [Rules of Procedure](#).

For more information, see sections 127(4.0.1) to (4.0.4), 127.0.1 and 127.0.2 of the [Securities Act](#) and [Automatically reciprocated orders and settlement agreements](#) on the OSC's website.

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

If another securities tribunal or regulator in Canada makes an order against you that automatically takes effect in Ontario, you may apply to the Tribunal for clarification of how the order should be applied in Ontario. The OSC may also apply to the Tribunal for clarification.

## Application for review of a decision

### Definition and application process

#### What is an application for review of a decision?

An application for review is a request that the Tribunal review a decision made by a delegated decision maker, including:

- a Director of the OSC (note that the Tribunal has no role in the process leading to Directors' decisions);
- a self-regulatory organization, 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 of such a decision if you are a person or company directly affected by it.

For more information, see sections 8 and 21.7 of the [Securities Act](#).

### **How do I apply for a review of a decision?**

To apply for a review of a decision, you must complete and file the application form at Appendix E of the [Rules of Procedure](#). After you file the application with the Registrar, you will be given the notice of hearing. You must then serve (deliver copies of) the notice of hearing and the completed application on every other party to the original proceeding as well as on the OSC.

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

### **Who are the parties in an application for a review of a decision?**

The parties in a proceeding to review a decision should include all parties from the original proceeding, as well as the OSC.

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

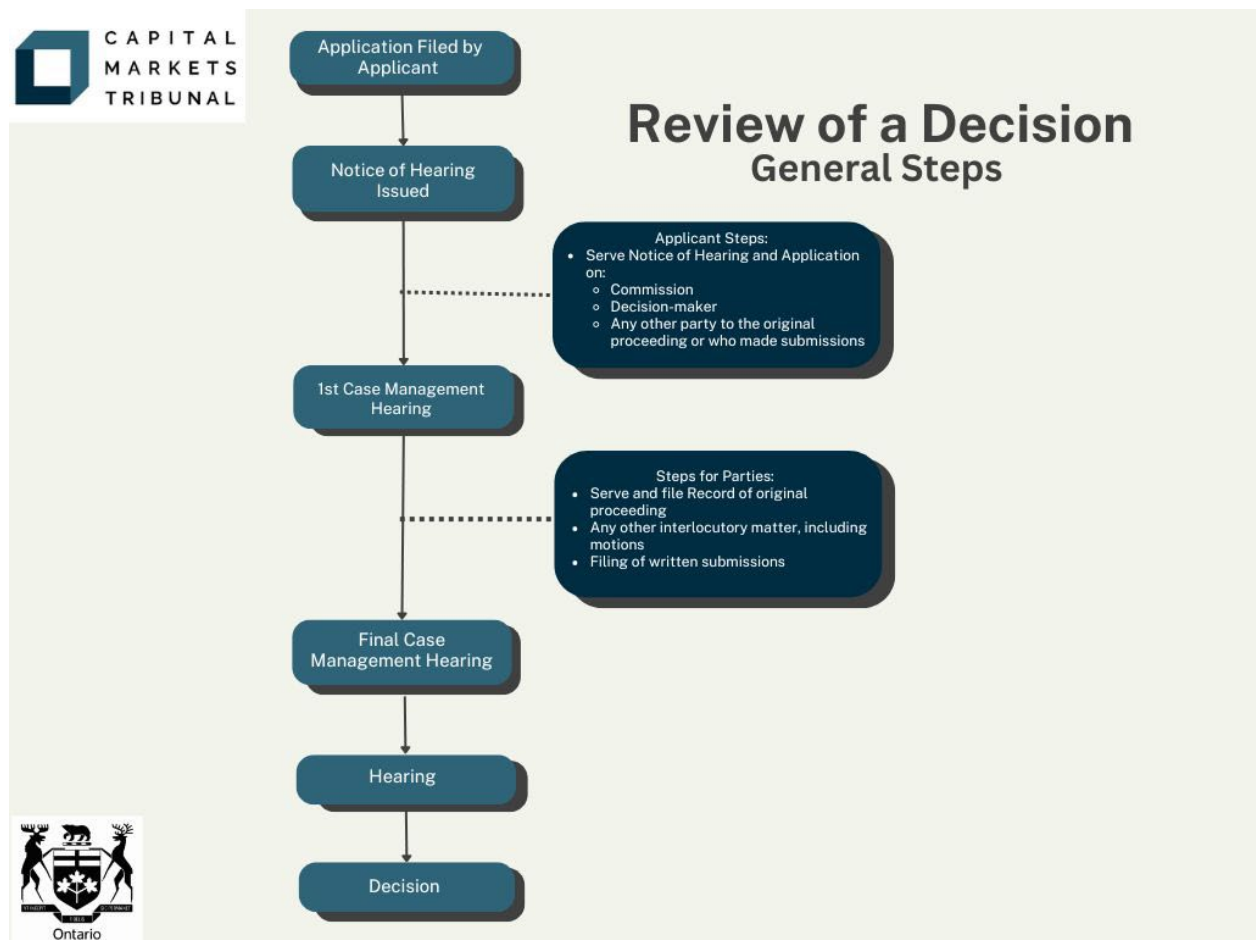
For more information, see rule 17(2) of the [Rules of Procedure](#).

### **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](#).

The general steps for a review application are summarized in the diagram below:



[\[Accessible Description for Review of a Decision diagram\]](#)

### What other information do I have to give? What is included in the record of the original proceeding?

Before the hearing of your application, you will have to give the [Registrar](#) and the other parties 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 the hearing?

If a party wants to rely on new 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 submissions (arguments) at the hearing?

You will have a chance to make written and oral submissions (arguments). 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 deliver your written submissions. The other parties will also be able to deliver written submissions before the hearing of your application.

## 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 that the OSC or the Tribunal makes for a specified period of time. An example of a temporary order is a temporary cease trade order, which suspends trading in a company's securities or prohibits individuals or companies from doing certain trading.

Sometimes a temporary order is issued before an enforcement proceeding is started. Sometimes a temporary order is issued during an enforcement proceeding.

The OSC or the Tribunal may issue a temporary order without a hearing, and without notice to a respondent, if the public interest might be harmed by waiting for a hearing. In that situation, a hearing must be held soon afterward, to decide whether the temporary order should be extended.

#### I wasn't given notice of the OSC'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 can 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 OSC may ask for an extension of a temporary order within 15 days after the original order was made.

If the request for an extension is made *before* the OSC files an application for an enforcement proceeding, then the OSC serves (sends copies to) all respondents the notice of hearing, which provides the date and time that a panel will hold the hearing to decide whether to extend the temporary order.

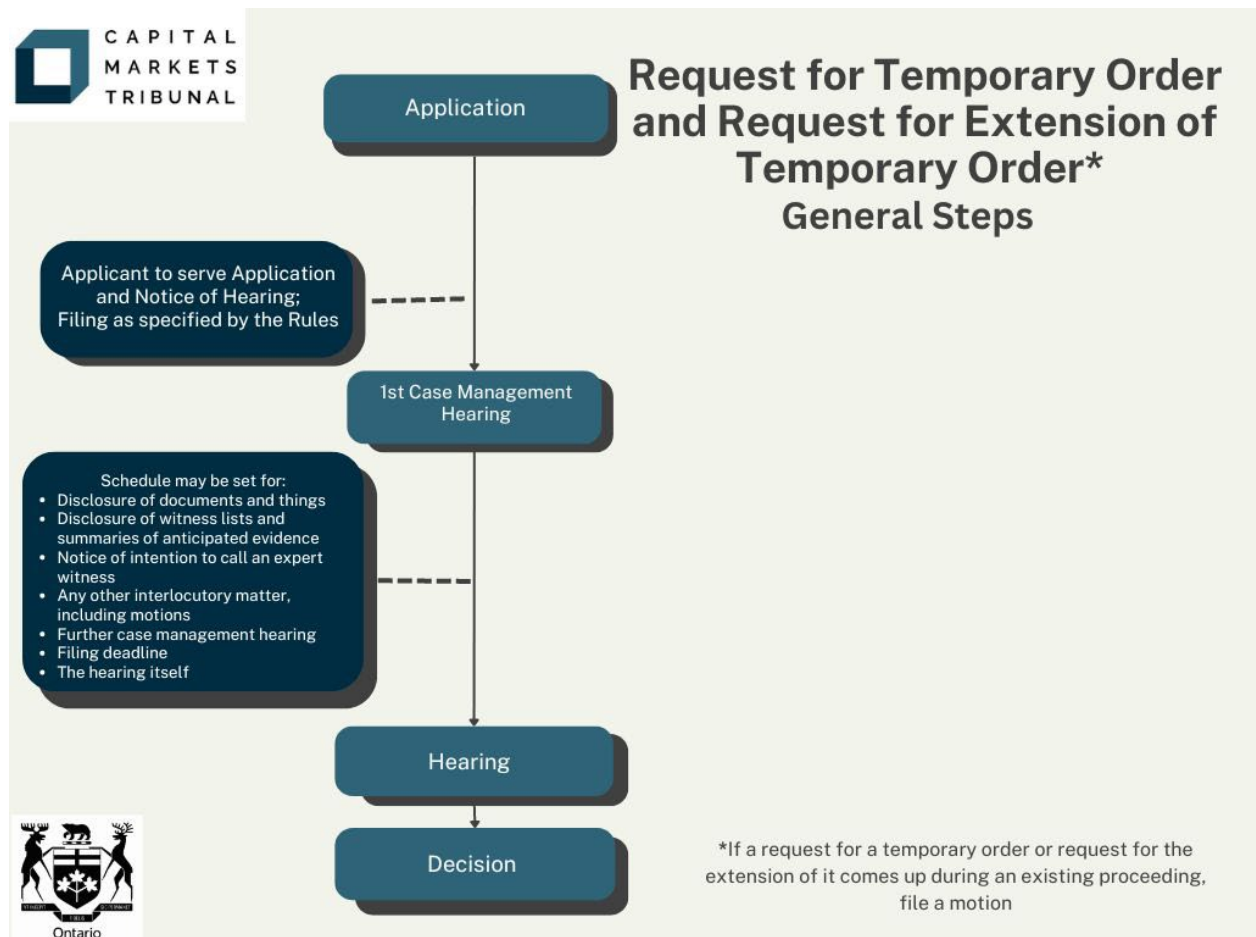
If the request for a hearing is made *after* the OSC files an application, then the OSC files a motion and serves it on (delivers a copy to) all parties to the enforcement proceeding. A schedule will be made for the hearing of the motion to decide whether to extend the temporary order.

At the hearing, all parties will be given an opportunity to make submissions (arguments) 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 decides whether the OSC 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 [Securities Act](#).

The general steps for this type of proceeding are set out in the diagram below:



[\[Accessible Description for Request for Temporary Order diagram\]](#)

### 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 original 15-day term. If there is an extension past the original 15 days, the panel's order will set out the length of the extension.



# Application for authorization to disclose

## Definition and application process

### What is an application for authorization to disclose?

The Tribunal may authorize the disclosure of information obtained in an OSC investigation which would otherwise be confidential under section 16 of the [Securities Act](#). The OSC or any other party can ask for that authorization by applying under section 17 of the [Securities Act](#).

That kind of application may be necessary, because section 16 of the [Securities Act](#) prohibits a person or company from disclosing to anyone other than their legal counsel or insurer:

- any information related to an investigation order;
- the name of any person the OSC has interviewed or asked to interview, by issuing a summons;
- 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 in answer to a summons.

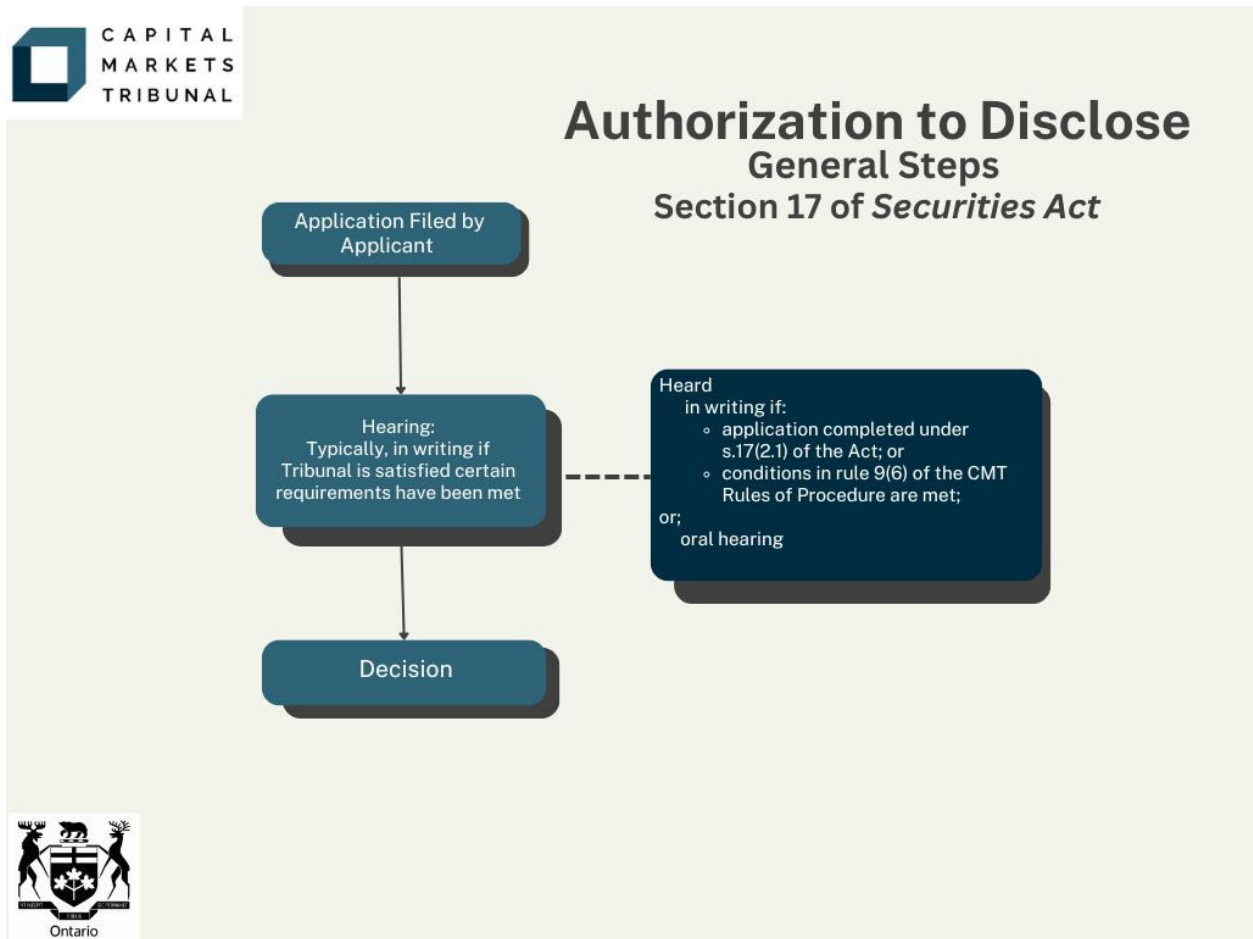
### How do I ask for an order authorizing disclosure?

To ask for an order authorizing disclosure under subsection 17(1) of the [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 OSC 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](#).



The general steps for an authorization to disclose application are summarized in the diagram below:



[\[Accessible Description for Authorization to Disclose diagram\]](#)

## 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?

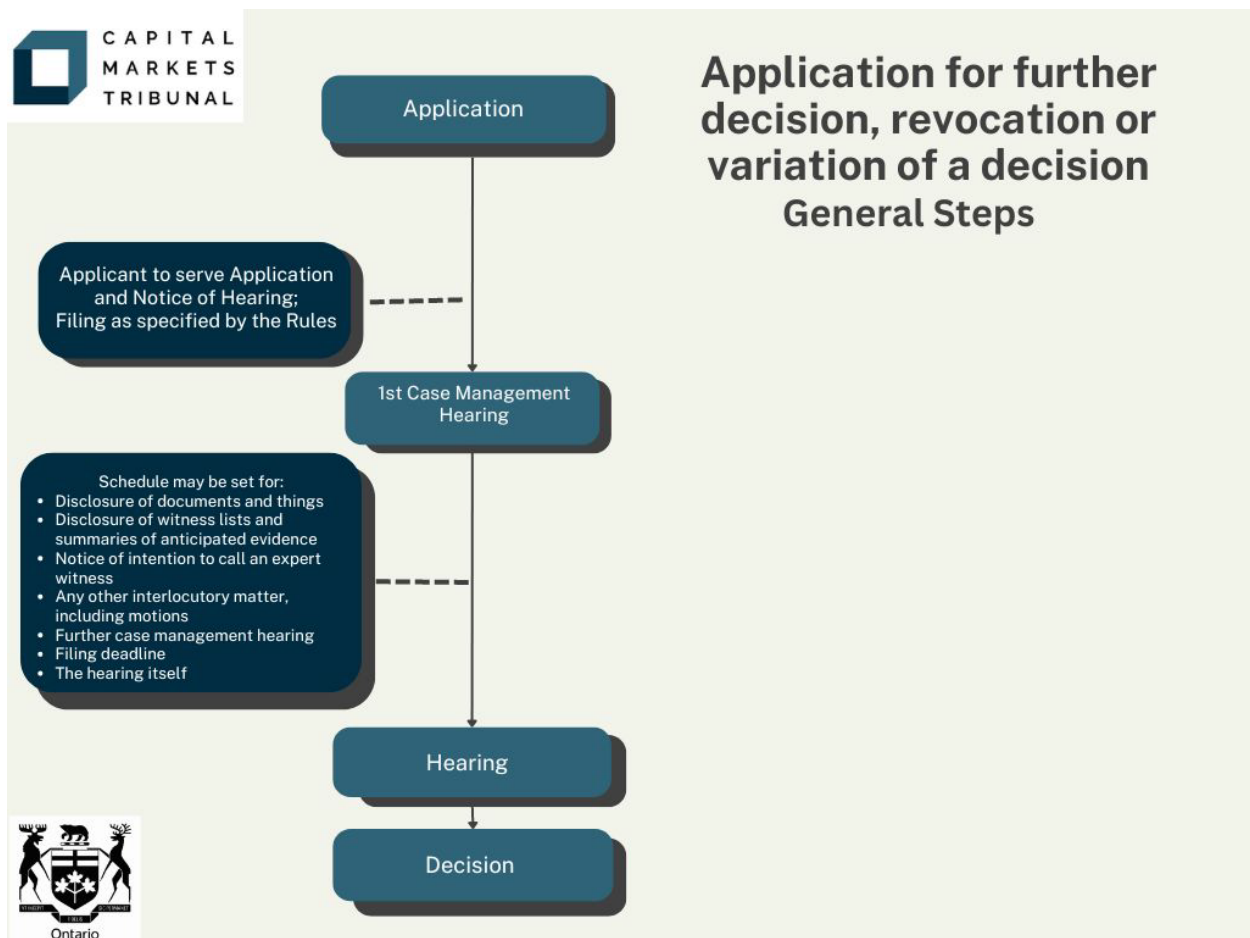
The Tribunal can revoke or vary (change) an earlier Tribunal decision as set out in section 144.1 of the [Securities Act](#).

To request a further decision, or a revocation or change of an earlier Tribunal decision, you must complete and file an application using the form in Appendix F of the [Rules of Procedure](#). After you file the application with the Registrar, you will be given 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 OSC.

An application for further decision, revocation or variation of a decision is not the same as an appeal of a decision. A further decision, revocation or variation usually results from a change of circumstances since the original decision. An appeal is usually based on the argument that the original decision was wrong, and the appeal must be made to the Divisional Court of the Ontario Superior Court of Justice (see the Court's [Guide to procedures in Divisional Court appeals](#)).

For more information about an application for a further decision, revocation or variation of a decision, see rule 18 of the [Rules of Procedure](#).

### What are the general steps for this application?



[[Accessible Description for Application for a Further Decision diagram](#)]

## 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 [Securities Act](#), about something regulated under certain paragraphs of subsection 143(1) of the [Securities Act](#). Transactional proceedings include requests for orders about:

- 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 in Appendix G of the [Rules of Procedure](#). After you file the application with the Registrar, you will be given the notice of hearing. You must serve (send copies of) the completed application and the notice of hearing to all parties, including the OSC.

See rule 19 of the [Rules of Procedure](#).

## Early 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 power 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 it is planning on doing that and why. You will have the right to make written submissions to the Tribunal within 30 days. The Tribunal will consider the written submissions and make a decision.

See rule 36(2) of the [Rules of Procedure](#).

# **6. Tribunal decisions**

## **General information about Tribunal decisions**

### **What are Tribunal decisions?**

A Tribunal's decision is the panel's conclusion after it considers the parties' submissions and any evidence presented.

Many decisions are reflected in an order, which is a brief document that specifies each party's obligations but does not include the reasons why the order was made. For example, if the panel sets a schedule for the exchange of written submissions, then the panel may issue an order.

The panel's reasons for its decision is a separate document that sets out the facts and law that support the decision and explains how the panel reached its decision.

### **When does the panel make its decision?**

At the end of a hearing, a panel may give its decision right away, or it may reserve its decision. This means that the panel will issue its decision sometime later.

In some cases, the panel will issue its decision and the reasons for its decision at the same time. In other cases, the panel will issue its decision sooner, with written reasons to follow later.

Panels try to issue reasons promptly, while allowing sufficient time for proper deliberation and writing. For simple matters, reasons are generally issued within 45 days after the last written or oral submissions of the parties are received. For all other decisions, reasons are generally issued within 90 days, except when the circumstances require a longer period.

### **Where can I find a decision of the Tribunal?**

Orders and reasons for decisions are sent to the parties and are posted on the Tribunal's website under [Proceedings](#). They are also published in the [OSC Bulletin](#).

Reasons issued after 2004 are available on the [Canadian Legal Information Institute \(CanLII\) website](#).

For more information, see rule 39 of the [Rules of Procedure](#).

## 7. Appeals

### How to appeal a Tribunal decision

#### Can I appeal a Tribunal decision?

A 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 [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 [Rules of Civil Procedure](#), which apply to court proceedings. The Ontario government has a [Guide to procedures in Divisional Court Appeals](#).

Automatic reciprocal orders made pursuant to ss. 127.0.1(2) and 127.0.2(2) of the [Securities Act](#) (which are based on decisions made by capital markets tribunals or regulators in other provinces, or by courts) cannot be appealed.

#### Can I ask for 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 [Rules of Civil Procedure](#) and the [Judicial Review Procedure Act](#).

# Appendix: Accessible Text for Diagrams

## Enforcement Proceedings – General Steps

1. Application filed by Commission
2. Notice of Hearing issued
3. 1<sup>st</sup> Case Management Hearing
4. Commission steps:
  - Provide disclosure
  - Serve and file witness list
  - Serve summaries of testimony
  - Notice to call expert witness
5. Respondent(s) steps:
  - Serve and file any motion about Commission's disclosure
6. 2<sup>nd</sup> Case Management Hearing
7. Respondent(s) Steps:
  - Serve and file witness list
  - Serve summaries of testimony
  - Notice to call expert witness
8. 3<sup>rd</sup> Case Management Hearing
9. Steps for Parties:
  - Advise of issues with authenticity or admissibility
  - Serve book of documents
  - Serve and file affidavit evidence
  - Hearing Participant Checklist
10. Final Case Management Hearing
11. Steps for Parties:
  - Provide electronic book of documents to Registrar
12. Merits Hearing
13. Decision on Merits
14. Potential Process:
  - Sanctions and Costs Hearing
  - Decision on Sanctions and Costs

[\[Return to Enforcement Proceedings section\]](#)

## Review of a Decision – General Steps

1. Application filed by Applicant
2. Notice of Hearing Issued
3. Applicant Steps:
  - Serve Notice of Hearing and Application on:
    - Commission

- Decision-maker
  - Any other party to the original proceeding or who made submissions
4. 1<sup>st</sup> Case Management Hearing
  5. Steps for Parties:
    - Serve and file Record of original proceeding
    - Any other interlocutory matter, including motions
    - Filing of written submissions
  6. Final Case Management Hearing
  7. Hearing
  8. Decision

[\[Return to Review of a Decision section\]](#)

## **Request for Temporary Order and Request for Extension of Temporary Order – General Steps**

1. Application
2. Applicant to serve Application and Notice of Hearing; Filing as specified by the Rules
3. 1<sup>st</sup> Case Management Hearing where the schedule may be set for:
  - Disclosure of documents and things
  - Disclosure of witness lists and summaries of anticipated evidence
  - Notice of intention to call an expert witness
  - Any other interlocutory matter, including motions
  - Further case management hearing
  - Filing deadline
  - The hearing itself
4. Hearing
5. Decision

Note: If a request for a temporary order or request for the extension of it comes up during an existing proceeding, file a motion.

[\[Return to Request for Temporary Order section\]](#)

## **Authorization to Disclose – General Steps**

1. Application filed by applicant.
2. Hearing: Typically in writing, if Tribunal is satisfied that certain requirements have been met:
3. Heard in writing if:
  - application completed under s.17(2.1) of the Act, or
  - conditions in the rule 9(6) of the CMT Rules of Procedure are met
4. Otherwise, oral hearing.
5. Decision.

[\[Return to Authorization to Disclose section\]](#)

## **Application for Further Decision, Revocation, or Variation of a Decision – General Steps**

1. Application
2. Applicant to serve Application and Notice of Hearing; Filing as specified by the Rules
3. 1<sup>st</sup> Case Management Hearing where the schedule may be set for:
  - Disclosure of documents and things
  - Disclosure of witness lists and summaries of anticipated evidence
  - Notice of intention to call an expert witness
  - Any other interlocutory matter, including motions
  - Further case management hearing
  - Filing deadline
  - The hearing itself
4. Hearing
5. Decision

[\[Return to Application for Further Decision, Revocation or Variation of a Decision section\]](#)



## Contact Information

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