

## SASKATCHEWAN POLICY STATEMENT 12-602

### PROCEDURE ON HEARINGS AND REVIEWS BEFORE THE COMMISSION

#### PART 1 GENERAL

The Saskatchewan Securities Commission (the "Commission") is a quasi-judicial administrative body, which administers *The Securities Act, 1988*, (the "Act") and *The Securities Regulations* (the "Regulations").

In this policy statement, "Commission" means the Commission or a Hearing Panel appointed by the Chairperson, as the context requires.

This policy statement:

- (a) applies to proceedings under the Act;
- (b) explains how proceedings are conducted so that everyone involved knows what to expect and can prepare accordingly;
- (c) summarizes the provisions of the Act governing proceedings. References to section numbers in the Act are set out in brackets; and
- (d) may be modified by the Commission in its discretion to suit the circumstances of a particular proceeding.

#### PART 2 PROCEEDINGS

The two types of proceedings that take place under the Act are a Hearing ("Hearing"), and a Review ("Review"). Part 3 of this policy statement deals with Hearings and Part 4 deals with Reviews.

A Hearing and a Review are two distinct types of proceedings which can be differentiated as follows.

- 2.1 **Hearing** - A Hearing is held before the Commission, the Chairperson, or the Director, where one of them exercises original jurisdiction on matters brought forward by the staff of the Commission. A Hearing may be held before the Commission or the Chairperson when the staff of the Commission (the "staff") seeks an order pursuant to section 134 or 135.1 of the Act.

A Hearing may be held before the Director when the Director has not:

- (a) granted, renewed, reinstated or amended a registration (s.28(3); and
- (b) issued a receipt for a prospectus (s.70(3)).

A Hearing may also be held before the Commission or the Director as applicable, where the staff recommends that an application for an exemption, waiver, or approval be denied and the applicant requests a Hearing.

For the proper conduct of a Hearing, the Act (section 9) and the principles of natural justice and fairness require that a respondent be given adequate notice of the Hearing and the nature of the

allegations against him or her, the right to be represented by counsel, the opportunity to be heard on matters at issue, and the opportunity to respond to adverse arguments and evidence.

2.2 **Review** - A Review is conducted generally in an appellate fashion by the Commission to review decisions made by either the Chairperson or the Director (section 10). A Review may be conducted when:

- (a) the Director has refused registration (s.10(1)(a));
- (b) the Director has refused to issue a receipt for a prospectus (s.10(1)(b));
- (c) a person or company is directly affected by a decision of the Chairperson or Director (s.10(2));
- (d) a person or company is directly affected by a decision of a self regulatory organization (subsection 21(7)); and
- (e) a person or company is directly affected by a decision of a exchange in Saskatchewan (subsection 25(3)).

2.3 **Preparation** - A decision of the Commission or Director will be based on evidence presented by the parties at the proceeding. Therefore, the parties are urged to carefully and thoroughly prepare their cases before the proceeding and ensure that all documents and witnesses are available on the date of the proceeding. This will ensure that the proceeding advances expeditiously and that all relevant facts and evidence can be presented at the Hearing or Review and receive due consideration.

2.4 **Court of Appeal** - A decision of the Commission with respect to either a Hearing or a Review, except for a ruling pursuant to section 83(1) of the Act, may be appealed to the Court of Appeal (s.11 of the Act).

2.5 **Appointment of Hearing Panel** – When a matter arises that requires a Hearing or Review, the Chairperson will, pursuant to section 7 of the Act, appoint members of the Commission to be members of a Hearing Panel and will assign to the Hearing Panel the power to dispose of the proceeding. The Chair will designate one of the members of the Hearing Panel to act as chair.

## **PART 2A FILING OF DOCUMENTS**

2A.1 Unless otherwise provided in this policy, a party that is required to file documents shall file six copies of those documents with the Secretary to the Commission and with the other parties to the proceeding at least five days before the proceedings

## PART 2B APPLICATIONS

2B.1 A party who intends to make an application to the Hearing Panel before the date set for the Hearing or Review on a matter related to a Hearing or Review including:

- (a) an application to withdraw a notice of hearing pursuant to section 3.25
- (b) an application for approval of a settlement pursuant to section 3.26;
- (c) an application for an adjournment pursuant to section 3.12;
- (d) an application for an amendment to notice hearing, notice of review, statement of points to be argued and the like;
- (e) an application to dispense with transcripts pursuant to section 4.8;
- (f) an application for a stay of decisions pursuant to section 4.9; or
- (g) an application for a witness to testify at a hearing by telephone.

shall serve on every party and file with the Secretary a written notice of the application at least 5 days before the day that the application is to be heard.

2B.2 The notice of application shall set out the relief sought, the grounds for the application and the evidence to be relied upon.

2B.3 The Hearing Panel will hear the application

2B.4 **Hearing Date for the Application** - Except when an application is to be argued on a scheduled hearing date, the party making the application shall, before serving the notice, obtain an appointment from the Secretary to the Commission for the hearing of the application.

2B.5 **Where No Notice Required** – The Hearing Panel may permit a party to make an application without notice if:

- (a) the nature of application or the circumstances render service of a notice of the application impractical or unnecessary; or
- (b) the delay necessary to effect service might have serious consequences.

2B.6 **Filing Application Materials** – The Hearing Panel may set time frames for filing briefs and other materials relating to an application.

If the party making an application fails to comply with the time frames set out in this policy or to comply with the time frames directed by the Hearing Panel for filing of application materials, the Hearing Panel may refuse to hear the motion.

2B.7 The Hearing Panel may permit applications to be made by telephone.

## PART 2C MEDIA

In this part “Hearing” includes “Review.”

Hearings, except when held *in camera*, are open to the media, including television; provided notice to have television cameras at a Hearing has been given to the Secretary at least 4 hours prior to the commencement time of the Hearing.

Media personnel will be subject to the direction of the Hearing Panel or the Director presiding at the Hearing. During the Hearing, media personnel are expected to limit themselves to one position at the side or the back of the Hearing Room. Media Personnel may engage in any activity associated with their coverage of a Hearing as long as these activities do not disrupt the Hearing. Disruptive activities include *inter alia*:

- (a) Conducting interviews of parties in the Hearing Room while the Hearing is in session or in such close proximity to the Hearing room as to disturb the Hearing;
- (b) Using television lights, and equipment which, when in use, could distract the Parties to the Hearing;
- (c) Using electronic flashes for still photography;
- (d) Intrusive behavior of reporters, camera operators, sound technicians and other technical support staff;
- (e) Movement of equipment while the Hearing is in session. Equipment should be set up prior to the commencement of the Hearing and should not be removed until the Hearing breaks, adjourns or concludes;
- (f) Any other behavior which disrupts or detracts from the process of the Hearing.

There are no restrictions on audio recording, but microphones must not be placed at the witness area, counsel tables, or on the Hearing Panel's table.

Additional information or background materials such as exhibits filed with the Hearing Panel will be available, upon request and payment of copying fees, from Staff Counsel.

Any additional information or assistance required may be obtained from the Staff Counsel.

### **PART 3 HEARING PROCESS**

- 3.1 **Notice of Hearing** - The Hearing process is commenced by the issuance of a Notice of Hearing. This Notice is prepared by the staff when the staff decides to request that the Commission or the Director exercise their powers under the Act or the Regulations or when an applicant requests a Hearing when the Director is about to refuse to grant an application for exemption or refuse to register an individual.

This document advises a person or company named in the Notice of Hearing (the "Respondent") of:

- (a) the time and place set for the Hearing (s.9(2));

- (b) the purpose of the Hearing (s.9(2));
- (c) the allegation(s) against him or her;
- (d) the relief requested, and the Commission's authority to grant that relief;
- (e) his or her right to counsel (s.9(10));
- (f) the requirement of giving written notice of his or her intention to attend the Hearing;
- (g) the consequences of failure to appear at the Hearing (s.9(15)); and
- (h) the procedure for obtaining disclosure of evidence and copies of documents to be presented at the Hearing.

- 3.2 **Service** - The Notice of Hearing must be sent to person who or company that is the subject of the hearing and any other person or company that may be substantially affected by the hearing. (s.9(2)).

The Notice of Hearing must be served by personal service, or registered or certified mail at the last address of the person or company being served known to the Commission. (s.156)

A person who or company that is served with a Notice of Hearing must file a written response to the notice at least five business days before the hearing, and admit or deny each of the allegations in the notice. (ss9(3.1) and (3.2))

If a person or company has been served with a Notice of Hearing and is not present or represented at the hearing, the Hearing Panel may proceed with the hearing as though they were present. (ss.9(15)).

The Notice of Hearing is a public document, and it is posted on the Commission's Web site. (ss9(3.4))

- 3.25 **Withdrawal of Notice of Hearing** - If, after service of a Notice of Hearing and before the date fixed for the hearing, Staff decides that it does not want to proceed with the matter, it shall apply to the Hearing Panel for leave to withdraw the Notice of Hearing.
- 3.26 **Settlements** – If Staff and the Respondent propose to enter into a settlement agreement to resolve the matters at issue after a Notice of Hearing has been served on the Respondent, the Staff shall apply to the Hearing Panel for approval of the settlement agreement and the withdrawal of the Notice of Hearing.
- 3.3 **Parties** - The parties to the Hearing will be the staff who initiated the proceedings, the Respondent(s), and any other person or company who has been served with the Notice of Hearing (a "Party" or the "Parties"). The staff have the onus of establishing, on a balance of probabilities, the allegations in the Notice of Hearing.

- 3.4 **Counsel** - A Party is entitled to be represented at the Hearing by a lawyer at the Party's own expense (s.9(10)).

Counsel appearing on behalf of a Party shall file with the Secretary to the Commission (the "Secretary"), at least five business days before the date of the Hearing, a written notice of counsel's name, address, telephone, facsimile number and e-mail address; whereupon, service of any documents in connection with the Hearing may be made upon counsel.

- 3.5 **Non-Appearance of Party** - If a Notice of Hearing has been duly served on a Party and the Party does not attend at the Hearing, the Hearing may proceed in his absence and the Party is not entitled to any further notice of the proceedings (s.9(15)).

Prior to proceeding on that basis, the Hearing Panel should satisfy itself that a copy of the Notice of Hearing, including a warning of the consequences of non-appearance, had been duly sent to the Party.

- 3.6 **Summons** - The Hearing Panel has the power to summon and enforce the attendance of witnesses, and to compel witnesses to give evidence and to produce documents, records, securities, exchange contracts and other property or things (s.9(4)).

On application by any Party to the Hearing, a member of the Hearing Panel may summon witnesses to testify at the Hearing.

A summons shall be served personally on the witnesses summoned and shall be accompanied by the appropriate amount of fees as required by *The Queen's Bench Rules* (s.9(14)). The cost of service and the payment of conduct money or witness fees shall be at the expense of the party summoning the witness.

The service of a summons and the payment or tender of conduct money or witness fees shall be proved by an affidavit.

- 3.7 **Pre-Hearing Matters** - Prior to the Hearing, the Commission staff member who will be presenting the evidence on behalf of the staff (the "Staff Counsel") will provide the Parties with:

- (a) copies of all documents which he intends to use as evidence at the Hearing;
- (b) disclosure of all evidence collected by Commission staff during the investigation; and
- (c) disclosure of evidence that Staff Counsel intends to present at the Hearing.

Parties and their counsel are encouraged to meet with Staff Counsel to identify those matters in dispute. In the majority of cases, many facts will not be in dispute. Undisputed matters will be reduced to writing by Staff Counsel, as an agreed statement of facts, or as a statement of admissions, and submitted at the commencement of a Hearing with the consent of the Parties or their counsel. This process will expedite matters and allow the Hearing Panel to focus on the issues in dispute.

If the Respondent admits the allegations in the Notice of Hearing it may be possible for him or his counsel to come to an agreement with Staff Counsel with respect to a consent order to be placed before the Hearing Panel for its consideration.

- 3.8 **The Hearing** - The Hearing is normally held in the Hearing Room at the Commission's office. However, the Commission will consider requests for a Hearing at another location depending on the balance of convenience, and such factors as the number of participants involved, residence of Parties, related travel and other expenses, and the schedule of the Commission.

At the Hearing, Staff Counsel and the Parties or their counsel present evidence to the Hearing Panel, which will serve as the basis for the eventual decision in the case. The Hearing Panel is also provided with the Notice of Hearing, the record of the proceedings and any briefs of law and argument accepted for filing.

Hearings are public proceedings and observers may attend. However, application may be made to have the Hearing held *in camera*. Where the Hearing Panel is satisfied that the interests of a party outweigh the public interest, it may order that the public be excluded from all or part of the Hearing (s.9(13)).

Only Parties and their counsel may lead evidence, cross-examine witnesses, present argument, or otherwise participate in a Hearing.

Smoking is not permitted in the Hearing Room nor in the waiting area outside the Hearing Room.

- 3.9 **Procedure at the Hearing** - The following is an outline of the manner in which Hearings are generally conducted:

- (a) The person presiding, calls the Hearing to order and introduces the Hearing Panel and the Parties and their counsel.
- (b) The person presiding advises those present that the Parties will have an opportunity to present their views. To prevent confusion and ensure an orderly Hearing, the Chairperson or the Director will require that only one person speaks at a time.
- (c) The person presiding will establish valid service of the Notice of Hearing by asking the Respondent whether he is prepared to admit that notice has been given. If he does not admit service, Staff Counsel will file an Affidavit of Service as proof of service. Staff Counsel will also prove valid service on any party that was served with the notice of hearing, but has not appeared.
- (d) The person presiding will describe the manner in which the Hearing will be conducted. While the Hearing Panel determines its own procedure and there may be some variation, the procedure is generally as follows:
  - (i) to hear preliminary applications, if any;
  - (ii) to hear evidence from Staff Counsel and from the Respondent regarding the various allegations;
  - (iii) to hear argument;

- (iv) to consider all evidence and reach a decision;
  - (v) to send a copy of the decision to all Parties.
- (e) Staff Counsel presents his case first to establish the allegations against the Respondent.
  - (f) Each witness is "sworn in" or affirmed by the person presiding before testifying.
  - (g) Staff Counsel's witnesses give their testimony and documents are entered as exhibits if allowed by the Hearing Panel. (Note that pursuant to subsection 9(4) of the Act a person or corporate officer of a company, whose conduct is the subject of a Hearing, may be compellable to testify at a Hearing by the Hearing Panel.)
  - (h) The Respondents or counsel may cross-examine each witness presented by Staff Counsel.
  - (i) A Party, other than the Respondent, may with leave of the Hearing Panel, cross-examine each witness;
  - (j) The Hearing Panel may also ask questions of each witness.
  - (k) The Respondent may then call witnesses to give testimony, at his or her choice, and documents are entered as exhibits if allowed by the Hearing Panel.
  - (l) Staff Counsel may cross-examine each of the Respondent's witnesses.
  - (m) A Party, other than a Respondent, may with leave of the Hearing Panel, cross-examine each witness;
  - (n) The Hearing Panel may also ask questions of each witness.
  - (o) The Respondent and Staff Counsel make their closing summaries and arguments.
- 3.10 **Recording of Evidence** - A court reporter will be present to record all oral evidence received and documents entered at the Hearing. A transcript may be ordered and purchased from the reporter on payment of the court reporter's charge, provided the Hearing is not held *in camera*.
- 3.11 **The Record** - The record of the proceedings (the "Record") consists of:
- (a) all the evidence taken down in writing or recorded by electronic means; and,
  - (b) all documentary evidence and things received in evidence (s.9(9)).
- 3.12 **Adjournments** - Any Party may apply to the Hearing Panel to request an adjournment of the Hearing. Generally, the burden of establishing a valid reason for an adjournment falls on the Party requesting the adjournment. Where the Hearing Panel decides that an adjournment is required to allow the matters at issue to be properly dealt with, and there is no undue prejudice, it will normally grant the adjournment.



- 3.13 **Amendments** - Staff Counsel may apply to the Hearing Panel to amend the Notice of Hearing prior to the Hearing. Staff Counsel may also make an oral application at any time during the Hearing to amend the Notice of Hearing. Leave to amend will normally be granted, provided the Respondent is given sufficient opportunity to prepare a response to the amendment.
- 3.14 **Documents** - The Hearing Panel is not bound to follow the legal and technical rules of evidence (s.9(7)) but it may do so depending on the circumstances before it. The Hearing Panel may therefore admit relevant written documents or reports from any source, whether or not they are tendered by the author (s.9(6)). While the Parties should use original documents whenever possible, photocopies may also be used as evidence if allowed by the Hearing Panel.

Summaries may be prepared by counsel where the underlying documents are numerous and the relevant information to be derived from them is comparatively limited.

Where documentary evidence is being presented, a sufficient number of copies must be available for all Parties and their counsel, the members of the Hearing Panel and the court reporter.

It is the practice of the Commission to retain all documents tendered as exhibits at a Hearing as part of the Record. However, the Commission will entertain applications from Staff Counsel or the Respondent to have documents returned to the witnesses who tendered them after the Hearing Panel has issued a decision and the period for appealing the decision has expired.

- 3.15 **Evidence** - The Hearing Panel accepts oral evidence given under oath or by affirmation, which is relevant to the issues being considered (s.9(6)). It has the right to admit opinions or conclusions of a witness without complying with the legal and technical rules of evidence (s.9(7)). However, the Hearing Panel may follow the rules of evidence in appropriate circumstances.

The Hearing Panel may also accept evidence of a hearsay nature. Hearsay evidence is testimony of a statement made by someone who is not present before the Hearing Panel. In other words, the witness is repeating what the witness heard others say. The admissibility of hearsay in a court of law is limited.

The Act gives the Hearing Panel the discretion to admit evidence where it is reasonably satisfied that the material being tendered is relevant to the matter being heard (s.9(6)).

This means the Hearing Panel could admit evidence which would be inadmissible in court.

Many cases before the Hearing Panel may involve evidence which is circumstantial. Circumstantial evidence does not directly prove the issue in question, but when viewed in context and in conjunction with other facts, tends to prove the issue or to sustain the assertion claimed. For example, an action which is required to be proven may not be obvious on its face. However, considering all of the surrounding circumstances, the fact that the action took place may be the only reasonable conclusion to be drawn.

The Hearing Panel is not bound to accept the sworn testimony of a witness, even if it stands on the record uncontradicted. However, if such testimony is rejected, the Hearing Panel will normally in its reasons, state the reason for so doing.

To arrive at a decision, the Hearing Panel must decide, on a balance of probabilities, that a breach of the Act or the Regulations has occurred, or that the allegations made against the Respondent in the Notice of Hearing have been established.

- 3.16 **Cross-Examination** - One purpose of cross-examination is to test the evidence of the witness. This may be done by reference to previous contradictory statements. Another purpose is to clarify any testimony given by the witness.

Although the Hearing Panel is reluctant to limit cross-examination, questions asked during the course of cross-examination must at least be relevant to the issues under consideration. Witnesses should not be harassed nor Hearings unnecessarily prolonged by unduly repetitious questioning. The Hearing Panel will restrict needless cross-examination.

- 3.17 **Closing Arguments** - After the Parties have presented all of their evidence and have concluded their cases, they may make closing statements. Staff Counsel are asked to present their argument first, and the Respondents or their counsel are entitled to present argument last.

The closing statement is a summation by the Parties of the evidence already introduced at the Hearing. It is intended to emphasize, to explain and to urge certain findings. It is not the time to add new evidence. Any Party may waive the right to make a closing statement.

Staff Counsel must file a written request for the specific relief requested along with the Commission's authority for granting the relief, and a draft of any order requested.

Any of the Parties may also file a written brief of law and/or a written brief of argument at the conclusion of their case. The Hearing Panel may consider allowing further written briefs of law and argument to be filed after the conclusion of the case and before a decision is rendered. Any Party filing a brief or seeking leave to do so, shall provide copies to all Parties prior to the filing or the application for leave to file.

At the conclusion of the Hearing the Hearing Panel usually reserves its decision and considers the Record and any briefs of law and briefs of argument which have been accepted for filing. If a Party wishes to introduce additional information, evidence, or documents, the Party shall apply to the Hearing Panel. If the Hearing Panel agrees to the application, it will formally re-open the Hearing. As well, the Hearing Panel will not enter into correspondence or oral communication with any of the Parties about the case after the conclusion of a Hearing. All correspondence or contact with the Hearing Panel is done through the Secretary to the Commission. Anyone who files a document with the Hearing Panel should provide a copy of the document to the other Party involved or their counsel.

- 3.18 **The Decision** - The Hearing Panel is required, if requested by a Party, to give reasons for its decision in writing when a decision adversely affects the right of a person or company to trade in securities or exchange contracts (s.9(11)). However, the practice of the Commission is to give written reasons in all cases.

The decision of the Hearing Panel must be made without interference by any other persons. Neither the staff, Staff Counsel, the Respondent, anyone connected with the Respondent, nor any other Party shall have any involvement in the decision-making process or the writing of the reasons.

The Hearing Panel bases its decision only upon the evidence presented to it at the Hearing. The Hearing Panel is permitted, however, to take notice of matters of common every day knowledge which are generally accepted as true. It may also take notice of generally recognized matters in the securities industry which are beyond dispute. The Hearing Panel will normally indicate which facts or generally accepted principles it intends to accept.

- 3.19 **Penalties** - At the conclusion of a Hearing the Hearing Panel may impose one or more penalties upon the person or company, which could include the following:
- (a) imposing terms or conditions or restricting a registration pursuant to section 28;
  - (b) refusing to issue a receipt for a prospectus pursuant to section 70;
  - (c) issuing an order pursuant to section 134;
  - (d) issuing an order pursuant to section 135.1; and
  - (e) issuing an order to pay costs relating to the hearing pursuant to section 161.
- 3.20 **Notice of the Decision** - Once the Hearing Panel has reached its final decision, the Hearing Panel or the Director will send a copy of its decision, and its reasons, if any, to the Secretary. The Secretary will then forward a copy of the decision and reasons by mail to the Parties at the addresses shown on the records of the Commission and to any other person or company substantially affected by the decision (s.9(12)).

It is the practice of the Commission to publish all decisions on the Commission's Web site and to issue a press release with respect to decisions which the Commission determines should receive wider circulation than publication on the Web site.

#### **PART 4 REVIEW PROCESS**

- 4.1 **Notice or Request** - A request for a Review by the Commission is made by a written notice. Any person or company directly affected (the "Appellant") by a decision of either the Chairperson or the Director may file a request (s.10(2)). A person or company directly affected by a decision of a self-regulatory organization or an exchange in Saskatchewan may also request a review. (subsections 21(7) and 25(3)).

The notice may be sent either by ordinary or registered mail or filed with the Secretary.

The Commission may on its own motion hold a Review with respect to a decision of the Director:

- (a) refusing registration pursuant to section 28 of the Act; or,
- (b) refusing to issue a receipt for a prospectus pursuant to section 70 of the Act (s.10(1)(b)).

In such an instance the Commission will instruct Staff Counsel to prepare the appropriate notice and serve it on the persons and companies affected.

- 4.2 **Time for Filing** - A request for a Review must be received by the Secretary within 30 days from the date that the decision of the Chairperson or Director was sent by mail (s.10(2)).
- 4.3 **Filing Fee** - Each notice or written request for a Review must be accompanied by a filing fee of \$100.00, either in cash or by cheque or money order payable to the Minister of Finance (s.1(4)(1) of Table 1, Appendix A of the Regulations).
- 4.4 **Notice for Review** – A request for a review of a decision shall:
- (a) identify the decision in respect of which the review is sought;
  - (b) state the interest of the party filing the request;
  - (c) state in summary form the alleged errors in the decision and the reasons for requesting the review; and
  - (d) state the desired outcome.

A request for a review of a decision shall be served by the person or company making the request on every other party to the original proceeding and filed with the Secretary

- 4.5 **Counsel** - The Appellant and the Respondent are entitled to be represented at the Review by counsel at their own expense.
- 4.6 **Record** - Unless the Hearing Panel otherwise directs, the party requesting a review of a decision shall obtain from the Director, self regulatory organization or exchange involved, as the case may be, and file a record of the subject proceeding with the Secretary which shall include:
- (a) the application or other document, if any, by which the proceeding was commenced;
  - (b) the notice of any hearing;
  - (c) any intermediate orders made in the proceedings;
  - (d) any documentary evidence filed in the proceeding, subject to any limitation expressly imposed by any statute, regulation or rules on the extent to which or the purpose for which any such documents may be used in any proceeding;
  - (e) the transcript, if any, of the oral evidence given at the hearing; and
  - (f) the decision that is the subject of the review, and the reasons therefore, if reasons were given.

The parties may consent to the omission of any of these documents from the record.

The party requesting the review shall provide a copy of the record of the proceeding to any other party that requests a copy of the record.

- 4.7 **New Evidence** – If a person proposes to introduce new evidence at the review, that party shall, at least 10 days before the review, advise everyone other party as to the substance of the new evidence and shall deliver to every other party copies of all new documents that the party will rely on at the review.
- 4.8 **Order Dispensing with Transcripts** - The party requesting the review may make an application to the Hearing Panel for an order dispensing with a Transcript. If the Hearing Panel is satisfied that a Transcript is not necessary to effectively deal with the Review, it may so order.
- 4.9 **Stay of Decision** – A request for a review does not act as a stay of the original decision. All aspects of the decision remain in force until the Hearing Panel overrules the original decision. (10(5)). The party requesting the review may apply to the Hearing Panel before the review for an order staying the original decision until the review is concluded.
- 4.10 **Date** - When the Secretary has received the Record, including the Transcript, the Hearing Panel will fix a date for the Review. Notice of the time and date fixed by the Hearing Panel will be sent to all parties by Staff Counsel. The Notice will be published in the Commission's Web site.
- 4.11 **Statement of Fact and Law** – The party requesting a review shall serve on every other party and file a statement of the points to be argued and of the facts and law being relied on at least 10 days before the date fixed for the hearing.

Every other party to a review shall serve on every other party and file a statement of points to be argued and of the facts and law being relied upon by the party at least 5 days before the date fixed for the review.

- 4.12 **The Review** - Section 3.9 of Part 3 of this policy statement sets out the manner in which a Review will be conducted, except as modified in this paragraph.

At the Review, the Appellant and the Respondent will present argument to the Hearing Panel and either party may seek leave to present new evidence. The Hearing Panel is also provided with:

- (a) the request or notice for a Review;
- (b) the Record;
- (c) the Transcript, unless dispensed with by the Hearing Panel;
- (d) the Brief of each party;
- (e) written argument of each party, if any;
- (f) any briefs filed at the original hearing.

4.13 **Recording of Proceedings and Adjournments** - The provisions set out in sections 3.11 and 3.12 of Part 3 of this policy statement apply to a Review.

4.14 **Procedure at the Review** - Section 3.9 of Part 3 of this policy statement sets out the procedure at a Review, except as modified in this paragraph.

The Chairperson will describe the manner in which the Review will be conducted. The procedure is generally to:

- (a) hear the applications, if any, from the Appellant and from the Respondent with respect to the introduction of new evidence;
- (b) if leave has been granted, hear evidence from the Appellant and from the Respondent regarding the issues;
- (c) hear arguments;
- (d) consider all the new evidence, review the Record and Transcript, and reach a decision;
- (e) send a copy of the decision to all parties.

4.15 **Amendments** - The Appellant may apply to the Hearing Panel to amend its request or notice for a Review or its statement of points to be argued prior to the Review.

The Appellant may also make application at any time during the Review to amend its request or notice for a Review or its statement of points to be argued. Leave to amend will normally be granted, provided the Respondent is given sufficient opportunity to prepare a response to the amendment.

4.16 **Documents, Evidence and Cross-Examination** - Section 3.14, 3.15 and 3.16 of Part 3 of this policy statement sets out the manner in which documents, evidence and cross-examination will be dealt with at a Review.

4.17 **Argument** - After the parties have presented their evidence, if any, they will make argument with respect to the decision under appeal. The Appellant presents argument first and the Respondent is entitled to present argument last.

The onus is on the Appellant to convince the Hearing Panel that the decision being reviewed is wrong. The Appellant will request the Hearing Panel to quash or vary the decision or to make another decision that it considers proper. Argument should include a review of any new evidence and should emphasize, explain and urge certain findings. Additional new evidence should not be introduced during argument.

Any of the parties may file a written brief of argument at the conclusion of their case. The Hearing Panel may also allow written briefs of argument to be filed after the conclusion of the Review and before a final decision is rendered. Any Party filing a brief or seeking leave to do so, shall provide copies to all Parties prior to the filing or the application for leave to file.

At the conclusion of the Review the Hearing Panel usually reserves its decision and considers the request or notice for a Review, any briefs filed at the original hearing, the Record, the Transcript, the Briefs and any briefs of law and briefs of argument which have been accepted for filing. The Hearing Panel will not accept additional information, evidence or documents from any of the parties or from any other person, unless the Review is formally re-opened before a decision is rendered. As well, the Hearing Panel will not enter into correspondence or oral communication with any of the parties about the case after the conclusion of a Review.

- 4.18 **The Decision and Notice of the Decision** - On a Review the Hearing Panel may confirm, quash or vary the decision under review or make any other decision that it considers proper (s.10(3)). Sections 3.18 and 3.20 of Part 3 of this policy statement set out the manner in which the Hearing Panel will make its decision and how notice of the decision will be communicated.

**PART 5 FURTHER APPEALS**

A further appeal by any person or company directly affected by a decision of the Commission, other than a ruling pursuant to subsection 83(1) of the Act, may be made to the Court of Appeal (s.11(1)).

To commence an appeal the Appellant must serve on or send by registered mail to the Director a notice of motion/appeal within thirty days from the day on which the written notice of the Commission's decision was mailed to or delivered to him (s.11(2)). The Appellant should then file the notice of appeal/motion with the Court of Appeal. The Court of Appeal may confirm the decision under appeal, or direct the Commission to make any decision, or to do any other act that the Commission is authorized and empowered to do (s.11(6)). It should be noted that, notwithstanding that a person or company has filed an appeal, the decision under appeal takes effect immediately, unless and until the Commission or the Court of Appeal grants a stay of the decision until disposition of the appeal (s.11(8)).

Adopted by the Commission effective this 6th day of December, 1990.

Amended by the Commission effective this 16th day of February, 1996

"Marcel de la Gorgendière"

Marcel de la Gorgendière, Q.C.  
Chairperson

Amended by the Commission effective this 11<sup>th</sup> day of July, 2003

Amended by the Commission effective this 12th day of May, 2005

Amended by the Commission effective this 13<sup>th</sup> day of April, 2006

"Dave Wild"

Dave Wild, Chair