

**FINANCIAL AND CONSUMER SERVICES COMMISSION  
LOCAL RULE 15-501**

***PROCEEDINGS BEFORE THE TRIBUNAL***

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**FINANCIAL AND CONSUMER SERVICES COMMISSION  
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***PROCEEDINGS BEFORE THE TRIBUNAL***

**NOTE:** As of July 1, 2013 the New Brunswick Securities Commission is continued as the Financial and Consumer Services Commission. The Financial and Consumer Services Tribunal was established on July 1, 2013 and is an independent administrative tribunal. The adjudicative functions that were previously performed by the Securities Commission are now performed by the Tribunal. In addition, the Tribunal also performs adjudicative functions in relation to all other legislation administered by the Financial and Consumer Services Commission. In accordance with section 77 of the *Financial and Consumer Services Commission Act*, the former New Brunswick Securities Commission Local Rule 15-501 *Proceedings Before a Panel of the Commission* (LR 15-501), made under subsection 200(1)(qqq.3) of the *Securities Act*, applies with the necessary modifications to a hearing held by the Tribunal until a rule is made under the *Financial and Consumer Services Commission Act*.

**PART 1  
INTERPRETATION AND APPLICATION**

**1(1) Definitions – In this Rule**

“Appeal Proceeding” means a Proceeding relating to the appeal of a decision of the Superintendent of Insurance, the Superintendent of Pensions, the Superintendent of Credit Unions, the Superintendent of Loan and Trust Companies, the Inspector of Co-operative Associations or the Director of Consumer Affairs appointed under the *Financial and Consumer Services Commission Act*;

“Applicant” means a person who makes an application, commences a Proceeding or brings a motion;

“Commission” means the Financial and Consumer Services Commission;

“Electronic Transmission” means transmission by facsimile or e-mail;

“Enforcement Proceeding” means a Proceeding commenced by Staff of the Commission;

“*Financial and Consumer Services Commission Act*” means the *Financial and Consumer Services Commission Act*, S.N.B. 2013, c. 30, and the *Regulations* and *Rules* under the *Financial and Consumer Services Commission Act*;

“Financial and Consumer Services Legislation” means

(a) the *Financial and Consumer Services Commission Act*,

- (b) the *Auctioneers Licence Act*,
- (c) the *Collection Agencies Act*,
- (d) the *Commissioners for Taking Affidavits Act*,
- (e) the *Consumer Product Warranty and Liability Act*,
- (f) the *Co-operative Associations Act*,
- (g) the *Cost of Credit Disclosure Act*,
- (h) the *Credit Unions Act*,
- (i) the *Direct Sellers Act*,
- (j) the *Franchises Act*,
- (k) the *Gift Cards Act*,
- (l) the *Insurance Act*,
- (m) the *Loan and Trust Companies Act*,
- (n) the *Nursing Homes Pension Plans Act*,
- (o) the *Pension Benefits Act*,
- (p) the *Pre-arranged Funeral Services Act*,
- (q) the *Real Estate Agents Act*,
- (r) the *Securities Act*,
- (s) the *Securities Transfer Act*,
- (t) any other Act designated by regulation, and
- (u) any regulation or rule made under the Acts referred to in paragraphs (a) to (t);

“Holiday” means a Saturday or Sunday and New Year's Day, Good Friday, Easter Monday, Canada Day, Christmas Day, Victoria Day, New Brunswick Day, Labour Day, and any day appointed by any Statute in force in New Brunswick or by Proclamation of the Governor-General or of the Lieutenant-Governor as a general holiday within New Brunswick, and whenever a holiday other than Sunday falls on a Sunday, the expression "holiday" includes the following day;

“Panel” means a hearing panel of the Tribunal constituted to conduct a hearing pursuant to section 39 of the *Financial and Consumer Services Commission Act*;

“Party” means an Applicant, a Respondent, Staff or any person so designated by the Tribunal;

“Pleadings” means the specific submission by which the allegations of parties to a proceeding are presented in proper form; specifically the Statement of Allegations of Staff, the Response of a Respondent, and the Request for Hearing, plus any additional responses to those submissions that are authorized by law, but excludes evidence tendered in the course of a proceeding;

“Proceeding” means the entire process of a hearing, review, or appeal conducted before a Panel pursuant to the *Financial and Consumer Services Commission Act* or Financial and Consumer Services Legislation;

“Respondent” means the Respondent in a Proceeding;

“Review Proceeding” means a Proceeding relating to the review of a decision of the Executive Director of Securities appointed under the *Financial and Consumer Services Commission Act*, or of an exchange, a self-regulatory organization, a quotation and trade reporting system, a clearing agency or an auditor oversight body recognized under the *Securities Act*;

“*Securities Act*” means the *Securities Act*, S.N.B. 2004, c. S-5.5, and the *Regulations* and *Rules* under the *Securities Act*;

“Settlement Agreement” means an agreement that meets the requirements set out in Part 9;

“Settlement Panel” means a Panel of at least two (2) Tribunal Members constituted to approve an agreement to resolve a Proceeding commenced under Financial and Consumer Services Legislation;

“Staff” means Enforcement Staff of the Commission;

**1(2) Application** - This Rule applies to all Proceedings before a Panel where the Tribunal is required under Financial and Consumer Services Legislation or otherwise by law to hold a hearing, hear an appeal, review a decision, approve an agreement or provide a Party with an opportunity to be heard.

**1(3) Time** - In this Rule, days between two events are counted by excluding the day on which the first event happens and including the day on which the second event happens; and if the time for doing an act under this Rule expires on a Holiday, the act may be done on the next day that is not a Holiday.

**1(4) Document** – In this Rule, references to the word document, where it applies, includes but is not limited to a film, photograph, video tape, chart, graph, map, plan, survey, book of account, recording of sound, or information recorded or stored by means of any device.

## **PART 2 INTERPRETATION AND TIMING**

**2(1) Construction** – This Rule should be construed to secure the most expeditious and least expensive determination of every Proceeding on its merits.

**2(2) Variation of rule** – The purpose of this Rule is to provide certainty and consistency in the administration of Proceedings. However, a Panel assigned to a matter may waive or vary any provision of this Rule and may issue general or specific procedural directions at any time, if it is of the opinion that to do so would be in the public interest or would otherwise be advisable to secure the just and expeditious determination of the matters in issue.

**2(3) Extension of time** – Any time period prescribed by this Rule may be extended or abridged by the Panel.

**2(4) Practice directions** - The Registrar may, from time to time, issue Practice Directions with respect to the application of this Rule. The Registrar shall publish the Practice Directions on the Tribunal's website.

## **PART 3 PARTIES**

**3(1) Appearance and representation** – In a Proceeding, a Party may appear on his or her own behalf, or may be represented by counsel.

**3(2) Current information** – In a Proceeding, when a person first appears or files materials on his or her own behalf, the person shall provide the Registrar with or otherwise state on the record, and keep current throughout the Proceeding, the person's name, address, telephone and facsimile numbers and e-mail address.

**3(3) Counsel information** – Counsel retained to represent a Party in a Proceeding shall immediately so advise the Registrar in writing and shall provide the Registrar with his or her address, telephone number, fax number and e-mail address as well as confirmation that he or she is authorized to accept service on behalf of the Party. Counsel shall keep this information current throughout the Proceeding.

**3(4) Change in representation** – A Party who is represented by counsel may change counsel or may elect to act in person by serving on the counsel, the Registrar and every other Party a written notice of the change of counsel or the intention to act in person and giving the name, address, telephone number, facsimile number and e-mail address of the Party or the new counsel.

**3(5) Withdrawal by counsel** – Counsel for a Party in a Proceeding may withdraw as counsel for the Party only with leave of the Panel upon providing a written notice of withdrawal and serving it on the Registrar, the Party represented by the counsel and every other Party. The written notice of withdrawal shall state, without disclosing any solicitor-client communication in which solicitor-client privilege has not been waived, all material facts and the reasons in support of the request for withdrawal.

**PART 4**  
**LANGUAGE OF PROCEEDING**

**4(1) Choice of language** – In a Proceeding a Party has the right to be heard in either official language.

**4(2) Respondent's choice of language** – A Respondent in a Proceeding, including a Respondent exercising their right to be heard under Financial and Consumer Services Legislation, must notify the Registrar of his or her choice of language as soon as practicable or as soon as specified in the served documents.

**PART 5**  
**SERVICE AND FILING**

**5(1) Service** – Any notice or document required under this Rule shall be sufficiently served if it is served by one of the following methods:

- (a) personal delivery to the Party;
- (b) delivery to the Party's counsel;
- (c) delivery to an adult person at the premises where the Party resides, is employed or carries on business, or where the Party's counsel carries on business;
- (d) if the Party is a corporation, leaving a copy with an officer, director or agent of the corporation;
- (e) sending to the Party by prepaid mail or courier at the last known address of the Party or the Party's counsel;
- (f) sending by Electronic Transmission to the Party or the Party's counsel; or
- (g) such other manner as the Panel may direct or accept.

**5(2) Date of effective service** – Service is deemed to be effective when delivered:

- (a) by personal delivery or by Electronic Transmission, on the date of delivery;
- (b) by mail, on the fifth day after the date of mailing;
- (c) by courier, upon receipt of confirmation of delivery; or
- (d) by any other means authorized by the Panel, on the date specified by the Panel.

**5(3) Proof of service** – Proof of service may be established by way of a sworn affidavit from the person who effected service, including particulars of the time, place and manner of service and, if the document was served personally, the basis upon which the identity of the person being served was ascertained.

**5(4) Filing** - A document required to be filed under this Rule may be filed by

- (a) personal delivery of the document to the Registrar;
- (b) delivery of the document by registered mail or courier to the Registrar;
- (c) delivery by Electronic Transmission to the attention of the Registrar in a format acceptable to the Registrar; or
- (d) such other manner as the Panel may direct.

**5(5) Electronic Transmission** - If a document is filed by Electronic Transmission, the original must also be delivered to the Registrar forthwith. Documents filed by facsimile transmission shall not exceed 25 pages, except with the prior consent of the Registrar.

**5(5.1) Electronic copies** - The Registrar may require a party to provide an electronic version in a format acceptable to the Registrar of any document required to be filed under this Rule.

**5(5.2) Paper copies** - The Registrar may require a party to file an original and up to five (5) copies of any document required to be filed under this Rule.

**5(6) Filing after 5:00 p.m. (Atlantic Time)** – Documents filed after 5:00 p.m. shall be deemed to have been filed on the next day that is not a Holiday.

**5(7) Accompanying information** - A Party who serves or files a document shall include with it the following information:

- (a) the Party's name, address, telephone number, fax number and e-mail address;
- (b) the name of the Proceeding together with the Tribunal file number to which the document relates; and
- (c) if the Party has counsel, the name, address, telephone number, fax number and e-mail address of counsel.

## **PART 6 MOTIONS**

**6(1) When available** - Preliminary, procedural and other issues relating to a Proceeding which require resolution may be sought to be resolved by a Party by way of a motion before a Panel at any time during a Proceeding.

**6(1.1) Temporary relief** - Staff may bring a motion for temporary relief before a Statement of Allegations is filed in an Enforcement Proceeding.

**6(2) Challenge of jurisdiction** - A challenge of a Panel's jurisdiction in a Proceeding shall be made by way of motion prior to a hearing on the merits.

**6(3) Date for hearing of motion** - A Party who wishes to bring a motion before a Panel shall contact the Registrar, who may set a time and date for the hearing of the motion by the Panel.

**6(4) Notice** – The Registrar shall prepare a Notice of Hearing of Motion for the hearing of the motion and the Party bringing the motion shall serve the Notice of Hearing of Motion on the other Parties and, at least 10 days before the day the motion is to be heard, serve on the other Parties motion materials containing written notice of the relief sought, the grounds for the motion and the evidence to be relied upon.

**6(5) Evidence in support of motion** - Subject to subsection 6(5.1), all evidence in support of a motion shall be by way of sworn affidavit confined to:

- (a) facts within the personal knowledge of the deponent; and
- (b) statements as to the information and belief of the deponent, provided the source of the information and belief are stated.

**6(5.1) Oral testimony on motion** - The Panel may grant leave on any terms and conditions for:

- (a) a witness to give oral testimony in relation to an issue raised in the motion and cross-examination; and
- (b) cross-examination of a deponent to an affidavit.

**6(6) Response** – A Party served with a Notice of Hearing of Motion, who intends to provide evidence in reply, must serve on the person making the motion and on all other Parties an affidavit(s) in response, at least five (5) days before the day on which the motion is to be heard.

**6(7) Ex parte motion** – Staff may bring a motion without notice if the relief sought under the Financial and Consumer Services Legislation permits an *ex parte* motion or if the nature of the motion or the circumstances render service of a Notice of Hearing of Motion impractical or unnecessary or if the delay necessary to effect service might entail serious consequences.

**6(8) Member hearing procedural motion** – A Panel may direct that a single Panel Member decide a procedural motion or an *ex parte* motion.

**6(8.1) Motion proceeding in writing** - The Panel or single Panel member assigned to decide a procedural motion or an *ex parte* motion may elect to proceed on the basis of written submissions.

**6(9) Decisions on motions** – The Panel or single Panel Member assigned to decide the motion may issue the decision and reasons orally, by endorsing the record or in writing.



## **PART 7 DISCLOSURE**

**7(1) Disclosure by Applicant** – An Applicant in a Proceeding, including Staff in an Enforcement Proceeding shall, as soon as is reasonably practicable after service of a Notice of Hearing deliver to all Respondents copies of all Documents intended to be relied upon as evidence at the Proceeding;

**7(2) Disclosure by Respondent** – A Respondent shall, as soon as is reasonably practicable after service of a Notice of Hearing to the Applicant(s) and any other Respondents, provide copies of all Documents intended to be relied upon as evidence at the Proceeding.

**7(3) Privilege** – No disclosure is required to be made of information which is protected by privilege.

**7(4) Disclosure order** – At any stage in a Proceeding, the Panel may order that a Party:

- (a) provide to another Party and to the Panel any particulars that the Panel considers necessary for a full and satisfactory understanding of matters in issue in the Proceeding; and
- (b) make any disclosure required by this Rule within the time limits and on any conditions that the Panel may specify.

**7(5) Failure to disclose** – A Party who fails to make disclosure in accordance with this Part may not refer to the Document or introduce it in evidence at the Proceeding without leave of the Panel.

**7(6) Common law** – Nothing in this section derogates from Staff's obligation to make disclosure as required by common law.

## **PART 8 WITNESSES**

**8(1) Summons of witnesses** – The Panel may, at the request of a Party or on its own motion, summon a witness to attend a hearing and give evidence and/or produce Documents.

**8(2) Request for summons** – A Party wishing to summon a witness must provide the Registrar with a completed Form 15-501F1 *Summons to Witness*. The Summons will be executed by the Registrar and returned to the Party for service upon the witness.

**8(3) Conduct money** - At the time of service of the Summons to Witness, the witness shall be provided with conduct money as follows:

- (a) for each day of necessary attendance, an amount of \$50; and

- (b) if the witness resides outside of the municipality where the Proceeding is to be held, mileage between his or her residence and the location of the Proceeding at an amount set by the Tribunal and published in a Practice Direction issued by the Registrar.

**8(3.1) Witness expenses** - If the witness resides outside of the municipality where the Proceeding is to be held and is required to remain at the location of the Proceeding overnight, the Party calling the witness shall arrange for the witness to be provided, free of charge, with reasonable hotel accommodations.

**8(4) Witness list and summaries** – A Party to a Proceeding shall, at least 10 days before the scheduled date of a hearing, provide to every other Party and to the Registrar a list of the witnesses the Party intends to call to testify on the Party's behalf together with a summary of the evidence that the witness is expected to give.

**8(5) Witness summaries** – A witness summary shall contain:

- (a) the substance of the evidence of the witness;
- (b) reference to any Documents that the witness will refer to; and
- (c) the witness name and address or, if the witness address is not provided, the name and address of a person through whom the witness can be contacted.

**8(6) Failure to provide witness information** – A Party who fails to include a witness in their witness list or who fails to provide a summary of the evidence of a witness may not call that person as a witness without leave of the Panel.

**8(7) Expert witnesses** – A Party who intends to call an expert to give evidence at a hearing shall, at least 45 days before the scheduled date of the hearing, inform the other Parties of the intent to call the expert and the issue on which the expert will be giving evidence.

**8(8) Expert witness report** – A Party who intends to file a report by an expert shall, at least 45 days before the scheduled date of a hearing, provide to every other Party a copy of the report signed by the expert containing,

- (a) the name, address and qualifications of the expert;
- (b) the substance of the expert's evidence;
- (c) the facts and documents forming the basis of the expert's opinion and evidence; and
- (d) a list of the documents, if any, to which the expert will refer.

**8(9) Appointment of experts by Panel** – The Panel may, at any time, appoint one or more independent experts to inquire into and report on any question of fact or opinion relevant to an issue in a Proceeding.

**8(10) Swearing of witnesses** – Witnesses may give evidence under oath or solemn affirmation.

## **PART 9 SETTLEMENTS**

**9(1) Available any time** – Settlement discussions may occur at any time, and a Settlement Agreement can be entered into by Parties to a Proceeding at any time.

**9(2) Settlement Agreement** – A settlement shall be evidenced by a Settlement Agreement between Parties. A Settlement Agreement shall contain:

- (a) a full and accurate statement of the relevant facts admitted by the Respondent;
- (b) a joint recommendation on remedial or other order(s) to be imposed by the Tribunal;
- (c) the Parties' consent to the remedial or other order(s) being made based upon the facts set out;
- (d) an agreement with respect to the confidentiality of the Settlement Agreement pending approval by the Settlement Panel; and
- (e) subject to approval of the Settlement Agreement by the Settlement Panel:
  - (i) a waiver by the Respondent of a full hearing and any review or appeal rights;
  - (ii) a commitment by Staff not to initiate further action in relation to the subject facts, if applicable; and
  - (iii) an agreement by the Parties not to make public statements that are inconsistent with the Settlement Agreement.

**9(3) Approval required** – Settlements requiring the approval of a Settlement Panel pursuant to Financial and Consumer Services Legislation have no legal effect until so approved.

**9(4) Settlement procedure** – Upon receiving notification of a proposed Settlement Agreement, the Registrar shall prepare a Notice of Settlement Hearing. Staff shall then serve the Notice of Settlement Hearing upon the Parties to the Settlement Agreement. Copies of the Settlement Agreement will be distributed by the Registrar to the Settlement Panel at least five (5) days in advance of the date set for the settlement hearing.

**9(4.1) Settlement hearing in writing** - A settlement hearing may proceed in writing in accordance with Part 15.

**9(5) Confidentiality of Settlement Agreement** – The Settlement Agreement shall

not be made public prior to its approval by the Settlement Panel. Once approved, a Settlement Agreement may be published on the Tribunal's website.

**9(6) *In camera* hearing** – Unless the Settlement Agreement expressly provides otherwise, a settlement hearing shall not be open to the public without prior leave of the Settlement Panel.

**9(7) Settlement Agreement not approved** – If the Settlement Panel does not approve the Settlement Agreement, reasons may be provided at the request of a Party to the Settlement Agreement, orally or in writing, at the discretion of the Settlement Panel. The Settlement Agreement and the reasons for not approving the Settlement, if any, shall not be made public unless all Parties consent.

**9(8) Further settlement negotiations** – Failure to obtain approval of any Settlement Agreement does not preclude the Parties from completing a subsequent Settlement Agreement.

**9(9) Constitution of subsequent Panel** – Where any Settlement Agreement is not approved, no member of the Settlement Panel shall be a part of the Panel at a subsequent hearing in the Proceeding, except with the prior consent of the Parties to the Settlement Agreement.

**9(10) Reasons for approval of settlement** – A Settlement Panel may, in its sole discretion, issue reasons subsequent to its approval or disapproval of a Settlement Agreement.

## **PART 10 PRE-HEARING CONFERENCES**

**10(1) When available** – After the issuance of a Notice of Hearing but prior to a hearing date, the Panel may, at the request of any Party or on its own motion, direct that the Parties appear before the Panel for a pre-hearing conference to consider:

- (a) simplification of the issues,
- (b) the possibility of obtaining admissions and agreement on documents and other evidence which may facilitate any hearing,
- (c) the estimated duration of any hearing,
- (d) the provision of directions by the Panel with respect to the conduct of any hearing, and
- (e) any other matters that will promote fairness and efficiency.

**10(2) One Member can hold** – A pre-hearing conference may be held with the Chairperson of the Panel or another Panel Member selected by the Chairperson.

**10(3) Orders or agreements** - At the conclusion of a pre-hearing conference, the

Panel or the member assigned to hold the pre-hearing conference may issue an order or a memorandum of the agreements reached, directions provided and any other matters resolved at the pre-hearing conference.

## **PART 11 REVIEW OR APPEAL PROCEEDINGS**

**NOTE:** The procedure for an appeal of a decision of the Superintendent of Insurance, the Superintendent of Pensions, the Superintendent of Credit Unions, the Superintendent of Loan and Trust Companies, the Inspector of Co-operative Associations or the Director of Consumer Affairs, is set out in Practice Direction No. 7 – Procedure for an Appeal, which can be obtained from the Registrar's office or the Tribunal's website: <http://fcnbtribunal.ca>.

**11(1) Requesting a review** – A person wishing to have a decision of the Executive Director of Securities or of an exchange, a self-regulatory organization, a quotation and trade reporting system, a clearing agency or an auditor oversight body reviewed by the Tribunal must file with the Registrar a Request for Hearing within 30 days of the decision.

**11(2) Content of Request for Hearing** – A Request for Hearing shall contain:

- (a) the Applicant's name, address, telephone number, fax number and e-mail address;
- (b) the name, address, telephone number, fax number and e-mail address of the Applicant's legal counsel;
- (c) particulars of the decision in respect of which the review is being sought;
- (d) particulars of how the Applicant is directly affected by the decision;
- (e) the alleged errors in the decision and the reason(s) for requesting the review;
- (f) the relief sought; and
- (g) particulars of the official language in which the Applicant wishes to be heard.

**11(3) Assignment of file number** – Upon the filing of a Request for Hearing the Registrar shall assign a file number to the Request for Hearing and return a copy of the Request for Hearing to the Applicant.

**11(4) Record of the decision-making process** – Upon receipt of a copy of the filed Request for Hearing, the Applicant shall obtain from the Executive Director of Securities, or from an exchange, a self-regulatory organization, a quotation and trade reporting system, a clearing agency or an auditor oversight body, as the case may be, a record of the decision-making process relating to the decision that is the subject of the review, which shall include unless all the parties consent to the omission of any of the following documents from the record or the Panel otherwise directs:

- (a) the application or other Pleadings, if any, by which the decision-making process was commenced;
- (b) the notice of any hearing and the transcript, if any, of the oral evidence given at the hearing, if any;
- (c) any intermediate orders made in the decision-making process;
- (d) any documentary or other evidence considered in the decision-making process, subject to any limitation expressly imposed by any statute, regulations or guidelines on the extent to which or the purpose for which any such documents may be used; and
- (e) the decision that is sought to be reviewed together with any reasons.

**11(5) Time for delivery of record** – The Executive Director of Securities, or an exchange, a self-regulatory organization, a quotation and trade reporting system, a clearing agency or an auditor oversight body, as the case may be, shall provide the Applicant with the record as specified in subsection 11(4) within 30 days from the date of request, or in the event such provision is impractical shall so advise the Applicant within 30 days and provide an estimate of when the provision of the record is likely to take place.

**11(6) Filing of record** – Upon provision of the record as specified in subsection 11(4) to the Applicant, the Applicant shall serve the Request for Hearing and the record upon every other Party to the decision and shall file the record, together with proof of service of both the Request for Hearing and the record, with the Registrar.

**11(6.1) Time for service and filing of record** - The Applicant must file the Request for Hearing and proof of service in accordance with subsection 11(6) within 30 days from the date of receipt of the record from the Executive Director or from an exchange, a self-regulatory organization, a quotation and trade reporting system, a clearing agency or an auditor oversight body.

**11(7) Setting of date for hearing** – Upon the filing of the record and proof of service, the Registrar shall in consultation with the Applicant and the other Parties to the review, set a date for the hearing of the matter and issue a Notice of Hearing.

**11(8) Commencement of Review Proceeding** – A Review Proceeding commences when the Registrar receives the Request for Hearing and assigns a file number.

**11(9) Publication of Notice and record** – Upon a date being set for a hearing, the Tribunal may publish the Request for Hearing and the Notice of Hearing on its website.

**11(10) Stay of the decision under review** – The Panel may grant a stay of the decision under review. An application for a stay shall be made by way of motion.

## PART 12 OPPORTUNITY TO BE HEARD PROCEEDINGS

**12(1) When available** – The procedure in this Part applies to those provisions of Financial and Consumer Services Legislation which require that the Tribunal extend an opportunity to be heard before making a decision.

**12(2) Written or oral hearing** – An opportunity to be heard can be exercised either through written submissions in accordance with Part 15, or by an oral hearing in accordance with Parts 13 and 14.

**12(3) Application to the Registrar** – When Staff is seeking a decision of the Tribunal and Financial and Consumer Services Legislation requires an opportunity to be heard by the Tribunal, Staff shall file an Application with the Registrar which sets out the relief and remedies sought by Staff, the grounds for the Application, and the evidence upon which Staff will rely.

**12(4) Notice of Application** – Upon the filing of the Application by Staff, the Registrar shall issue a Notice of Application. The Notice of Application will provide notice:

- (a) of Staff's request for a decision in the matter set out in the Application, subject to the outcome of the person's exercise of the right to be heard;
- (b) that the person affected may exercise their right to be heard by making written submissions and/or requesting a hearing before the Tribunal;
- (c) that the person affected must advise the Registrar within 15 days of the date of the notice that he/she wishes to be heard by the Panel with respect to the intended decision; and
- (d) that if no response is received from the person affected within 15 days of the date of notice, a decision will be made without further notice.

**12(5) Service of Notice of Application** – Staff shall serve the Notice of Application, Application and documents intended to be relied upon as evidence on all affected Parties as soon as possible after the issuance of the Notice of Application.

**12(6) Request to be heard** – If the Registrar receives notice that any Party affected wishes to be heard, the Registrar will contact that Party to ascertain whether they wish to make written submissions in accordance with Part 15 and/or request a hearing in accordance with Parts 13 and 14. The Registrar will then, in consultation with Staff and the Party requesting to be heard, set deadlines for written submissions and/or set a hearing date. If a hearing is to be held, the Registrar shall then issue a Notice of Hearing.

**12(7) No request to be heard** – If an affected Party, after having been duly served, fails to provide notice to the Registrar that they wish to be heard, a decision will be issued without further notice.

## **PART 13 ENFORCEMENT PROCEEDINGS**

**13(1) Statement of Allegations** – Staff may commence an Enforcement Proceeding

by filing a Statement of Allegations with the Registrar. A Statement of Allegations shall contain:

- (a) a brief statement of the facts and allegations made against the Respondent(s);
- (b) any statutory provisions relied on; and
- (c) the relief or penalty sought against the Respondent(s).

**13(2) Notice of Hearing** – Once a Statement of Allegations has been filed by Staff, the Registrar shall assign a file number and issue a Notice of Hearing. A Notice of Hearing shall contain:

- (a) the name of the Respondent(s) to whom the notice is addressed;
- (b) the time, date, place and purpose of the hearing;
- (c) a caution that the hearing may proceed if the Respondent(s) fail(s) to attend and that relief may be granted or penalties imposed in the Respondent's(s') absence;
- (d) a provision that the Respondent(s) may be represented by counsel; and
- (e) a provision that the Respondent(s) may be heard in either official language.

**13(3) Commencement** – An Enforcement Proceeding commences when the Registrar receives a Statement of Allegations and assigns a file number.

**13(4) Service of Notice** – Staff shall serve the Statement of Allegations and Notice of Hearing as soon as possible on all the Parties.

**13(5) Response** – Upon being served with a Statement of Allegations, a Respondent who wishes to oppose the relief sought by Staff shall, within 20 days after being served with the Statement of Allegations, file with the Registrar and serve on all other Parties a response outlining:

- (a) which of the allegations made by Staff that the Respondent does not dispute;
- (b) which of the allegations made by Staff that the Respondent does dispute and on what basis; and
- (c) any additional facts upon which the Party relies in opposing the relief sought by Staff.

**13(5.1) No response received** - Where a Respondent fails to file a response within the period set out in subsection 13(5), Staff may, upon filing with the Registrar proof of service of the Statement of Allegations upon the Respondent, request that the Panel proceed against that Respondent on the basis of written submission. The scheduled hearing date shall be retained for oral submissions.



**13(6) Identification of Non-Parties**– In order to preserve the privacy of non-Parties referred to in a Statement of Allegations and any response to the Statement of Allegations, the names and other identifying facts regarding non-Parties must be replaced with alphabetical, numerical or alphanumeric characters that with respect to a name, are not the initials or an abbreviation of the non-Party's name or general descriptions. In such a case, the Parties to the Proceeding shall be provided with a confidential identification list, clearly identifying the replaced names and identifying facts, which shall be served with the Notice of Hearing and shall be kept strictly confidential.

**13(7) Publication of Notice of Hearing** – The Tribunal may publish the Notice of Hearing, Statement of Allegations and response filed under this Part, with the exclusion of any identification list, on its website.

## **PART 14 PROCEEDINGS GENERALLY**

**14(1) Pre-hearing submission** – All Parties to a hearing may file and serve upon all other Parties a concise pre-hearing submission containing the relevant facts and applicable law and argument in support of a Party's position. A pre-hearing submission must be filed no later than five (5) days before the scheduled date of the hearing.

**14(2) Agreed Statement of Facts** – The Panel expects Parties to agree on the evidence that is not in dispute and to file an Agreed Statement of Facts no later than five (5) days before the scheduled date of the hearing.

**14(3) Recording of evidence** – All oral evidence at a hearing shall be taken down in writing or otherwise preserved as the Panel may direct.

**14(3.1) Transcripts** - Official transcripts of a Proceeding are prepared by a reporter retained by the Tribunal. Any Party who wishes to obtain a copy of the transcripts may do so directly from the reporter, and at their own expense.

**14(4) Non-appearance of Party** – If a Notice of Hearing has been duly served on a Respondent or any other person required to be served and the Respondent or other person does not attend a hearing, the hearing may proceed in his or her absence and the Respondent is not entitled to any further notice of any step in the Proceeding.

**14(5) Adjournment request** - The Panel may adjourn a hearing on its own motion or at the request of any Party. A Party requesting an adjournment shall, as soon as practicable, advise the Registrar and all other Parties in writing of the adjournment request and adequate reasons for the adjournment request.

**14(5.1) Adjournment with consent** - If all Parties consent to an adjournment request, the requesting Party shall file a written notification with the Registrar advising of the consent, and the Panel may adjourn the hearing.

**14(5.2) Adjournment without consent** - If all Parties do not consent to a request for an adjournment, the requesting Party must file with the Registrar and serve on all other parties a motion for the adjournment.

**14(6) Notice of constitutional question** – If a constitutional question is raised or is intended to be raised in a Proceeding, the Party who raises or intends to raise the question may give notice to the Attorney General for New Brunswick and the Attorney General for Canada.

## **PART 15 PROCEEDINGS IN WRITING**

**15(1) Consent required** - Subject to subsections 6(8.1) and 13(5.1), a Proceeding or motion may be dealt with by the Panel on the basis of written submissions made by the Parties if all Parties agree in writing.

**15(2) Applicant's written submission** – If a Proceeding or motion is to be dealt with in writing, the Applicant shall file with the Registrar, and serve upon all Parties, a written submission containing:

- (a) the grounds upon which the request for a remedy or order is made;
- (b) a statement of facts relied on;
- (c) the evidence relied on; and
- (d) any law and/or argument relied on.

**15(3) Respondent's written submission** – Upon receipt of the Applicant's written submission, a Respondent may file with the Registrar, and serve upon all Parties, a written response substantially in the same form as the Applicant's written submission.

**15(4) Evidence** – The evidence in a written hearing shall be in affidavit form or in such other form as the Panel may direct, subject to the format being acceptable to the Registrar.

**15(5) Timeline** - The Panel may set a timeline for the filing of submissions.

## **PART 16 PROCEEDINGS, PLEADINGS AND OTHER DOCUMENTS**

**16(1) Public access to documents** – Subject to the provisions in Part 9 and to subsection 16(2), Pleadings shall be available to the public. Other documents will remain confidential until the start of the hearing. Public documents may be inspected during normal business hours at the Tribunal's office or copies may be obtained upon request and upon payment of the applicable fees as set out in the Commission's Local Rule 11-501 *Fees*.

**16(2) Request for confidentiality** – On the application of a Party and after providing the Party with an opportunity to be heard, the Panel may order that any document filed with the Registrar, any document received in evidence or any transcript of a Proceeding be kept confidential.

**16(2.1) Restricting access to documents** - The Panel may, if it is of the opinion that

there are valid reasons for restricting access to a document or to the transcript of a Proceeding, declare the document or transcript confidential and make any such other orders as it deems appropriate.

**16(3) Public access to Proceedings** – Subject to the provisions in Part 9 and to subsections 16(2) and 16(2.1), a hearing is open to the public unless the Panel orders that some or all of the hearing be held in private to protect a substantial and compelling privacy interest of one or more of the persons attending the hearing and that to do so would not be prejudicial to the public interest.

**16(3.1) Use of mobile devices** - While in the hearing room, anyone attending a hearing must turn off cellular phones, pagers and similar sound emitting devices which may interfere with the hearing.

**16(4) Media coverage** – Subject to Part 9 and except where the Panel orders a hearing to be held in private, the media may cover a hearing subject to the direction of the Panel.

**16(5) Visual or audio recording** – Visual or audio recording of any part of a hearing is not permitted.

## **PART 17 DECISIONS**

**17(1) Issuance of decision** – At the conclusion of a hearing or hearings in a Proceeding, a Panel may reserve its decision or may indicate its decision orally.

**17(2) Reasons for decision** – The Panel shall issue reasons for its decision either at the same time as or subsequent to the issuance of the decision.

**17(3) Interim decision** – Unless requested by a Party, a temporary decision in a Proceeding need not be accompanied by reasons.

**17(4) Service of decision** – Decisions and accompanying written reasons, if any, will be served by Staff on every other Party to the Proceeding as soon as practicable after a decision has been rendered.

**17(5) Publication of decision** – Decisions and accompanying reasons, if any, will be posted on the Tribunal's website.

**17(6) Proceedings on sanctions** – Unless the Parties to a Proceeding agree to the contrary or if a Respondent or Respondents do not contest the Proceeding despite receiving notice, a separate hearing shall be held to determine the matter of sanctions and costs. Following the issuance of the reasons for the decision on the merits, the Registrar shall set a date for a hearing on sanctions if such a hearing is necessary.

**17(7) Submissions on sanctions** – Staff shall file submissions at least 10 days before a hearing on sanctions, Respondent(s) shall file submissions at least five (5) days before a hearing on sanctions and Staff shall file any reply submissions at least two (2) days before a

hearing on sanctions.

**PART 18**  
**FURTHER DECISION PURSUANT TO SUBSECTION 195(7) OF THE *SECURITIES ACT***  
**OR REVOCATION OR VARIATION OF A DECISION PURSUANT TO**  
**SECTION 42 OF THE *FINANCIAL AND CONSUMER SERVICES COMMISSION ACT***

**18(1) Application** – An Applicant for a further decision pursuant to subsection 195(7) of the *Securities Act*, or for an order revoking or varying a decision of the Tribunal pursuant to section 42 of the *Financial and Consumer Services Commission Act* must serve on every other Party to the original Proceeding, and must file with the Registrar, an application:

- (a) identifying the decision in respect of which the request is being made;
- (b) stating the interest in the decision of the Party filing the request;
- (c) stating the factual and legal grounds for the request and the evidence in support of any factual grounds (new material or significant change in circumstances) to be relied upon not already before the Panel); and
- (d) stating the relief sought.

**18(2) Hearing on application** – Upon reviewing the application filed in accordance with subsection 18(1), the Panel may:

- (a) grant the application;
- (b) refuse to grant the application;
- (c) request written submissions from the Parties in accordance with Part 15; or
- (d) decide to hold an oral hearing in accordance with Parts 13 and 14 to consider the application.

**18(3) New evidence** – If a Party proposes to introduce new evidence in support of written submissions or at the oral hearing of the 18(1) application, the Party must, at least 10 days before the deadline for filing written submissions or at least 10 days before the oral hearing, provide every other Party with a copy of the new evidence and must deliver to every other Party copies of any new document that the Party will rely on.

**PART 19**  
**EFFECTIVE DATE**

**19(1)** This Rule comes into force on 9 July 2008.



**Docket:**

PROVINCE OF NEW BRUNSWICK  
FINANCIAL AND CONSUMER SERVICES  
TRIBUNAL  
*[Insert name of Act]*

BETWEEN:

***[Name of Party],***

Applicant,

-and -

***[Name of Respondent]***

Respondent

**Dossier :**

PROVINCE DU NOUVEAU-BRUNSWICK  
TRIBUNAL DES SERVICES FINANCIERS ET DES  
SERVICES AUX CONSOMMATEURS  
*[Insérer nom de la loi]*

ENTRE :

***[Nom de l'appelant],***

Requérant,

- et -

***[Nom de l'intimé],***

Intimé

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**SUMMONS TO WITNESS  
Form 15-501F1**

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**TO:**

*[Insert Name]*  
*[Insert Address]*

You are required to attend at the hearing of this matter to give evidence at the request of *[insert name of party]*,

**TIME:** *[enter time of hearing]*  
**DATE:** *[enter date of hearing]*  
**PLACE:** Suite 300, 85 Charlotte Street  
Saint John, New Brunswick

and to remain in attendance until excused. You are required to bring with you all records and things in your possession or control relating to:

*[enter required information]*

You may give evidence in the English or French language. You must advise the Registrar of the Tribunal immediately whether you would like to be examined in English or in French. If you do not indicate a preference, *[enter name of party]* intends to examine you in *[enter language]*.

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**ASSIGNATION À TÉMOIN  
Formulaire 15-501F1**

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**DESTINATAIRE :**

*[Insérer Nom]*  
*[Insérer Adresse]*

Vous êtes tenu[e] de comparaître à l'audition de la présente affaire afin de témoigner à la demande de *[insérer le nom de la partie]*,

**HEURE :** *[indiquer heure de l'audience]*  
**DATE :** *[indiquer date de l'audience]*  
**LIEU :** 85, rue Charlotte, bureau 300  
Saint John, Nouveau-Brunswick

et de demeurer présent[e] jusqu'à la fin de l'interrogatoire. Vous êtes également tenu[e] d'apporter avec vous tous les documents et toutes les choses en votre possession ou sous votre contrôle se rapportant à :

*[indiquer l'information nécessaire]*

Vous pouvez présenter la preuve en français ou en anglais. Vous devez aviser le greffier du Tribunal sans délai de votre langue de choix (français ou anglais) pour votre interrogatoire. Si vous n'indiquez pas de préférence, *[insérer nom de la partie]* a l'intention de vous interroger en *[indiquer langue]*.

If you fail to attend or remain in attendance as required by this Summons, you may be liable for contempt.

**DATED** at the City of Saint John this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Si vous ne vous présentez pas ou si vous ne comparez pas pendant toute la durée requise par la présente assignation, vous pourriez être condamné pour outrage au tribunal.

**FAIT** dans la ville de Saint John, le \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Christine M. Bernard,  
Registrar/Greffière

The party causing this Summons to Witness to be served on you is:

*[enter name of party, party’s counsel, if any, address, email address, telephone and fax numbers]*

Voici le nom de la partie qui vous a fait signifier la présente assignation :

*[indiquer le nom de la partie, le nom du représentant de la partie, cas échéant, adresse, adresse de courrier électronique, numéros de téléphone et télécopieur ]*