



ENFORCEMENT DISCLOSURE POLICY

1. OBJECTIVE

To articulate the Enforcement Department's legal obligation to disclose relevant information to a Respondent who is subject to formal disciplinary action.

2. UNDERLYING RATIONALE

The duty to disclose is fundamental to the principles of fairness and natural justice in administrative law proceedings.

According to the Supreme Court of Canada, there are three underlying reasons in support of disclosure:

1. To ensure that justice is better served by eliminating the element of surprise;
2. To ensure that the defending party knows the case to be met and is able to make full answer and defence; and
3. To facilitate the early resolution of cases, thereby reducing delays.

The duty to disclose is also consistent with the public interest mandate of the Corporation's Enforcement Department. The Enforcement Department has a mandate to protect the investing public through the timely prosecution of Dealer Member firms and individual registrants. The Department's role is not a private one where the ultimate goal is winning a case. The role of the Department is to obtain a fair result and to view the facts and proceedings with a fair and objective mind. Disclosing relevant information to the Respondent facilitates the Enforcement Department's public interest mandate by resulting in a more fair proceeding.

3. APPLICABLE DISCLOSURE STANDARD

The Enforcement Department will apply the disclosure standards as first enunciated in *R. v. Stinchcombe* [1991] 3 S.C.R. 326. The courts have repeatedly recognized that the principles underlying the *Stinchcombe* standard are fundamental to concepts of fairness and natural justice and therefore have applied this standard to various administrative proceedings including securities regulatory matters.

4. GENERAL STATEMENT OF DUTY

The Enforcement Department shall disclose to the Respondent, or Respondent's counsel, all relevant information in its possession whether inculpatory or exculpatory and whether or not it intends to introduce it at the disciplinary hearing.

4.1 Legal Obligation to Disclose all Relevant Documents to Respondent

IIROC often receives information from foreign regulatory agencies or domestic securities commissions in the course of an investigation. In such cases counsel must inform the relevant agencies in writing before disclosing the information to a Respondent in a discipline prosecution. The letter will describe our legal obligation to disclose all potentially relevant documents, which includes their information.

(a) Definition of Relevant Information

Information is relevant for disclosure purposes if there is a reasonable possibility that it may be useful to the Respondent in making full answer and defence. This includes not only information that the Enforcement Department intends to rely upon to prove its case, but also information relating to the credibility of witnesses, the nature of the department's investigative process or any other issue that may be relevant to the Respondent's defence.

(b) Exceptions to the Duty to Disclose

The Enforcement Department shall not disclose information that is:

- (i) Privileged;
- (ii) Clearly irrelevant; or
- (iii) Not in the possession or control of the Corporation.

(c) Timing of Disclosure

The obligation to disclose will be triggered by the Respondent's request. A Respondent is entitled to request disclosure upon the issuance of the Notice of Hearing. In order to ensure that the Respondent is aware of such a right, he/she should be advised of this right in writing at the time he/she is served with the Notice of Hearing.

The duty to disclose is an on-going one. If at any time subsequent to providing the initial disclosure, the Enforcement Department becomes aware of additional information in its possession or has new information come into its possession that is relevant to the matters at issue, this information must be disclosed to the Respondent in a timely manner.