



---

SECTION: Procedures - Hearings

INDEX NO.: P520-760

TITLE: Rules of Practice for Proceedings Under Section 89 of the Act: General, Pre-Hearing Conferences, Settlement Conferences, Disclosure, Written Hearings, Electronic Hearings

APPROVED BY: Procedures Sub-Committee of the Commission

PUBLISHED: Bulletin 6/3 (Winter-Spring 1996)

EFFECTIVE DATE: When Published [Information outdated - Feb. 2000]

---

Table of Contents

**Rule 1 - General**

- 1.1 Application of Rules
- 1.2 Definitions
- 1.3-1.7 General
- 1.8 Request for Hearing
- 1.9 Notice of Oral Hearing
- 1.10 Service and Filing
- 1.11 Motions
- 1.12 Notice of Constitutional Question
- 1.13 Time
- 1.14 Current Information
- 1.15 Change of Counsel or Agent
- 1.16 Sine die Adjournments

**Rule 2 - Pre-Hearing Conference**

- 2.1 Directing Pre-Hearing Conference
- 2.2 Notice
- 2.3 Documents, Pre-Hearing Submissions and Issues
- 2.4 Orders, Agreements, Undertakings
- 2.5 Matters not Addressed at Pre-Hearing Conference
- 2.6 Accessible to the Public

**Rule 3 - Settlement Conferences**

- 3.1 Direction to Attend Regarding Settlement
- 3.2 Notice of Settlement Conference
- 3.3 Not Accessible to Public

**Rule 4 - Disclosure**

- 4.1 Particulars
- 4.2 Disclosure of Documents or Things
- 4.3 Witness Statements
- 4.4 Expert Witnesses

**Rule 5 - Written Hearings**

- 5.1 Applications
- 5.2 When to Hold a Written Hearing
- 5.3 Notice of Written Hearings
- 5.4 Objections to Written Hearings
- 5.5 Submissions and Supporting Documents
- 5.6 Response
- 5.7 Reply
- 5.8 Questions and Answers
- 5.9 Evidence
- 5.10 Oral Examination
- 5.11 Hearing in the Absence of a Party

**Rule 6 - Electronic Hearing**

- 6.1 Application
- 6.2 When to Hold an Electronic Hearing
- 6.3 Notice of Electronic Hearing
- 6.4 Objections to Electronic Hearings
- 6.5 Contents of Notice of Objection
- 6.6 Procedure When Objection is Made
- 6.7 Terms and Conditions

**Schedule A**

Request for Hearing under  
Section 89 of the *PBA*

Rule 1 - General

**Application of Rules**

- 1.1(1) These rules apply to all proceedings of the Pension Commission of Ontario under s. 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 ("Act").
- (2) These rules are made under the *Statutory Powers Procedure Act* ("*SPPA*") and are subject thereto.

**Definitions**

- 1.2 In these rules, unless the context requires otherwise:

"Commission" means a quorum of the Commission under the Act or the *SPPA* as the context requires;

"document" includes a sound recording, videotape, file, photograph, chart, graph, map, plan, survey, book of account, and information recorded or stored by means of any device;

"hearing" means a hearing in a proceeding under s. 89 of the Act;

"holiday" means:

- (a) any Saturday or Sunday,
- (b) New Year's Day,
- (c) Good Friday,
- (d) Easter Monday,
- (e) Victoria Day,
- (f) Canada Day,
- (g) Civic Holiday,
- (h) Labour Day,
- (i) Thanksgiving Day,
- (j) Remembrance Day,
- (k) Christmas Day,
- (l) Boxing Day, and

(m) any special holiday proclaimed by the Governor General or the Lieutenant Governor,

and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday;

"party requesting the hearing" means the party requesting the hearing under s. 89 of the Act;

"person presiding at the pre-hearing conference" means a member of the Commission or other person designated by the Chair to conduct a pre-hearing conference;

"Registrar" means the Registrar of the Commission; and

"witness statement" means a statement signed by the witness or for any witness where such statement does not exist, a statement of the evidence that the witness is expected to give at the hearing.

### **General**

- 1.3 The Commission may exercise any of its powers under these rules on its own initiative or at the request of a party.
- 1.4 The Commission may issue procedural directions relating generally to proceedings at any time, including before or during any proceeding.
- 1.5 The Commission may waive or vary any of these rules in respect of a proceeding if it is of the opinion that it would be advisable to do so to secure the just and expeditious determination of the real matters in issue.
- 1.6 These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding before the Commission on its merits.
- 1.7 No proceeding or step, document or order in a proceeding is invalid by reason only of a defect or other irregularity in form.

### **Request for Hearing**

- 1.8 Where a person requests a hearing by the Commission under s. 89 of the Act, the person shall complete and file with the Commission a document in the form of Schedule A attached to these rules.

### **Notice of Oral Hearing**

- 1.9(1) Unless the Commission directs otherwise, the Registrar shall give written notice of an oral hearing to the parties and to others as the Commission considers necessary.
  - (2) Written notice of an oral hearing shall include:
    - (a) a reference to the statutory authority under which the hearing is to be held;
    - (b) the date, time, place and purpose of the hearing;
    - (c) a statement that where a person is properly served with notice of a hearing and does not attend at the time and place appointed, the Commission may proceed in that person's absence and without further notice to that person;
    - (d) a statement that the hearing will be open to the public unless the Commission directs otherwise; and

- (e) any other information the Commission considers advisable.
- (3) The Commission may direct one or more of the parties to give notice of an oral hearing in a form and manner approved by the Commission.
- (4) Where a pre-hearing conference has been conducted in a proceeding and all parties were made aware of the hearing date at the pre-hearing conference, the Commission may direct the Registrar not to give written notice of an oral hearing.

### **Service and Filing**

- 1.10 (1) "Service" means the effective delivery of documentation to any person or to the person's counsel or agent.
- (2) Service is deemed to be effective when delivered to the person's last known address:
    - (a) by first class mail on the seventh day after the day of mailing;
    - (b) by fax on the same day as the transmission;
    - (c) by courier, including Priority Post, on the second full day after the document was given to the courier by the party serving; or
    - (d) where service is effected in another manner as directed by the Commission.
  - (3) Documents delivered after 4 p.m. shall be deemed to have been served on the next day that is not a holiday.
  - (4) Documents may be filed with the Commission by personal delivery of the documents to the offices of the Commission or by any of the methods of delivery set out in sub-rule 1.10(2).
  - (5) Documents filed by fax shall be filed by 4 p.m. and shall not exceed 10 pages, inclusive of cover sheet, except with leave of the Commission.
  - (6) The Commission may direct that a sworn statement be filed indicating who has been served, the manner of service and what documents have been served.
  - (7) A person who serves or files a document shall include with it a statement of the person's address, telephone number and the name of the proceeding to which the document relates.

### **Motions**

- 1.11 (1) Where a party intends to bring a motion prior to or at the commencement of the hearing, the party shall serve on all other parties and file with the Commission written notice of the motion.
- (2) Written notice of motion shall set out:
    - (a) the date the party seeks to have the motion heard;
    - (b) the grounds for the motion, in detail;
    - (c) the evidence to be relied upon; and
    - (d) the relief sought.
  - (3) Written notice of motion shall be served and filed at least 14 days before the date on which the party seeks to have the motion heard.
  - (4) Where written notice of motion is served and filed, the Commission, after reviewing the written notice of motion, may:

- (a) set a date for the hearing of the motion;
  - (b) direct that the motion be heard during a pre-hearing conference; or
  - (c) direct that the motion be heard at the hearing.
- (5) The Commission may require the parties to make written submissions in advance of the hearing of a motion.
- (6) Where, after the commencement of a hearing, a party intends to bring a motion, the party shall provide such notice to the parties and the Commission as is reasonable in the circumstances.

### **Notice of Constitutional Question**

- 1.12 (1) Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law, or where a party claims a remedy under sub-section 24(1) of the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be served on the other parties and the Commission as soon as the circumstances requiring notice become known and, in any event, at least 15 days before the question is to be argued.
- (2) Where the Attorneys General of Canada or Ontario intervene, they are entitled to adduce evidence and make submissions to the Commission regarding the constitutional question.

### **Time**

- 1.13 (1) In the computation of time under these rules or an order, except where a contrary intention appears:
- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens;
  - (b) where a period of less than seven days is prescribed, holidays shall not be counted; and,
  - (c) where the time for doing an act under these rules expires on a holiday, the act may be done on the next day that is not a holiday.
- (2) The Commission may, before or after expiration of a time period prescribed by these rules and on such terms as it considers advisable, extend or abridge the time prescribed for the performance of any obligation under these rules.

### **Current Information**

- 1.14 A party, or where a party is represented by counsel or agent, the counsel or agent, shall file with the Commission and keep current during the proceeding the party's address, telephone number and fax number of the party, counsel or agent, as the case may be.

### **Change of Counsel or Agent**

- 1.15 After commencement of the hearing, a party may change its counsel or agent only with leave of the Commission, which may be on such terms and conditions as the Commission considers just.

### ***Sine die* Adjournments**

- 1.16 Where the Commission adjourns a proceeding without a fixed date, the Commission shall:
- (a) specify a time period for the adjournment in its adjournment order; and
  - (b) provide in its adjournment order that the proceeding is terminated at the end of the time period, unless within the time period;

- (i) one of the parties makes a written request to the Commission that the proceeding continue, or
- (ii) one of the parties obtains an order from the Commission extending the time period.

### **Rule 2 - Pre-Hearing Conferences**

#### **Directing Pre-Hearing Conference**

- 2.1 (1) The Commission may direct the parties or their counsel or agent to participate in one or more pre-hearing conferences for the purpose of considering any matter that may assist in the just and most expeditious disposition of the proceeding, including the:
- (a) identification of parties and other interested persons, the scope of their participation at the hearing and notice to such persons;
  - (b) issues relating to disclosure, witness statements, expert witnesses, particulars, examination of parties and the exchange of submissions;
  - (c) identification and simplification of issues;
  - (d) identification of preliminary motions;
  - (e) procedural issues including the dates by which any steps in the proceeding are to be taken or begun, the estimated duration of the hearing and the date that the hearing will begin;
  - (f) identification of facts or evidence that may be agreed upon; and
  - (g) order of proceeding among the parties.
- (2) A pre-hearing conference may be held in person, in writing or electronically.
- (3) Settlement shall not be considered at a pre-hearing conference.
- (4) Where the person presiding at the pre-hearing conference is a Commission member, that Commission member may sit as a member of the panel of the Commission which conducts the hearing.

#### **Notice**

- 2.2 (1) Where a pre-hearing conference is to be held, the registrar shall give written notice of the pre-hearing conference to the parties and to such persons as the Commission directs.
- (2) The notice of a pre-hearing conference shall include:
- (a) the date, time, place and purpose of the pre-hearing conference;
  - (b) whether parties are required to exchange or file documents or pre-hearing submissions as prescribed by sub-rule 2.3 and, if so, the issues to be addressed and the date when they are required;
  - (c) whether parties are required to attend in person, and
    - (i) if so, that they may be represented by counsel or agent; or
    - (ii) if not, that their counsel or agent must be given authority to make agreements and undertakings on their behalf respecting the matters to be addressed at the pre-hearing conference;
  - (d) a statement that if a person other than a party does not attend at the pre-hearing conference, the proceeding may continue in the absence of that person and the person will not be entitled to any further notice in the proceeding;
  - (e) a statement that orders which will be binding on all parties with respect to the proceeding may be made at the pre-hearing conference; and
  - (f) a statement that if a party intends to call expert evidence at a hearing the party must comply with sub-

rule 4.4(1) failing which the party may not call the expert witness without consent of the Commission under sub-rule 4.4(4).

### **Documents, Pre-Hearing Submissions and Issues**

2.3 The Commission may direct the parties to exchange or file by a specified date documents or pre-hearing submissions and may prescribe the issues to be addressed at the pre-hearing conference.

### **Orders, Agreements, Undertakings**

- 2.4 (1) Orders, agreements and undertakings made at a pre-hearing conference shall be recorded in a memorandum ("pre-hearing conference memorandum") prepared by or under the direction of the person presiding at the pre-hearing conference.
- (2) Copies of a pre-hearing conference memorandum shall be provided to the parties and to the Commission and to such other persons as the person presiding at the pre-hearing conference directs.
- (3) The orders, agreements and undertakings in a pre-hearing conference memorandum shall govern the conduct of the proceeding and are binding upon the parties to the proceeding unless otherwise ordered by the Commission.

### **Matters Not Addressed at Pre-Hearing Conference**

- 2.5 (1) Where a pre-hearing conference is held in a proceeding, a party may not raise any matter, issue, or motion at the hearing which was not raised at the pre-hearing conference without the consent of the Commission.
- (2) The consent of the Commission may be on such terms and conditions as the Commission considers just.

### **Accessible to Public**

2.6 A pre-hearing conference shall be open to the public unless the person presiding at the pre-hearing conference directs that it be held in the absence of the public.

## **Rule 3 - Settlement Conferences**

### **Direction to Attend Regarding Settlement**

- 3.1 (1) At any time prior to the commencement of the hearing, the Commission may direct the parties or their counsel or agent to participate in one or more conferences for the purpose of considering settlement of any or all of the issues ("settlement conference").
- (2) A settlement conference may be held in person, in writing or electronically.

### **Notice of Settlement Conference**

3.2 Where the Commission directs that a settlement conference be held, the Registrar shall give notice as the Commission directs.

(1) Where a settlement conference is held:

(a) the person conducting the settlement conference may meet with each party separately to encourage

- settlement;
- (b) statements made without prejudice at the settlement conference may not be communicated to the panel of the Commission which conducts the hearing;
- (c) where the person presiding at the settlement conference is a Commission member, that Commission member may not sit as a member of the panel of the Commission which conducts the hearing unless all parties consent; and
- (d) an agreement to settle any or all of the issues binds the parties to the agreement but is subject to approval by the Commission.

### **Not Accessible to Public**

- 3.3 A settlement conference shall be held in the absence of the public.

### **Rule 4 - Disclosure**

#### **4.1 PARTICULARS**

##### **Order for Particulars**

- (1) At any time in a proceeding, the Commission may order any party to provide to it or to any other party such particulars as are necessary for a satisfactory understanding of the issues in the proceeding.

##### **Content of Particulars**

- (2) Particulars shall include:
- (a) the remedy or order requested;
  - (b) the grounds upon which the remedy or order is sought; and
  - (c) a general statement of the material facts.

##### **Particulars Not Binding on Commission**

- (3) Particulars provided by any party do not limit the jurisdiction of the Commission under sub-section 89(9) of the Act.

##### **Amendment of Particulars**

- (4) At any time in a proceeding the Commission may order that particulars be amended.

#### **4.2 DISCLOSURE OF DOCUMENTS OR THINGS**

##### **Requirement to Disclose**

- (1) Each party to a hearing shall make disclosure to all other parties of all of the evidence that the party intends to produce or enter as evidence at the hearing including the delivery to every other party of copies of all documentary evidence:
- (a) by the date specified for that purpose by the Commission or the person presiding at the pre-hearing conference, or
  - (b) where no date for the delivery of such documents is specified by the Commission or the person presiding at the pre-hearing conference, at least 14 days before the hearing is scheduled to commence.



### **Disclosure by Superintendent**

- (2) The Superintendent shall make available for inspection by every other party all documents and things which are in his possession or control, other than privileged information and those documents referred to in sub-rule 4.2(1), that are relevant to the hearing and, at the party's expense, provide copies or permit the inspecting party to make copies of the documents:
  - (a) by the date specified for that purpose by the Commission or the person presiding at the pre-hearing conference, or
  - (b) where no date for the delivery of such documents or things is specified by the Commission or the person presiding at the pre-hearing conference, at least 14 days before the hearing is scheduled to commence.

### **Failure to Disclose Document or Thing**

- (3) A party who fails to make disclosure of a document or thing in compliance with sub-rule 4.2(1) may not refer to the document or thing or introduce it in evidence at the hearing without leave of the Commission, which may be on such terms and conditions as the Commission considers just.

### **Disclosure where Section 8 of the SPPA Applies**

- (4) If the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party making the allegations shall provide to all other parties particulars of the allegations:
  - (a) by the date specified for that purpose by the Commission or the person presiding at the pre-hearing conference, or
  - (b) where no date for the delivery of such particulars is specified by the Commission or the person presiding at the pre-hearing conference, at least 14 days before hearing is scheduled to commence.

### **Order for Disclosure**

- (5) The Commission may order a party to disclose in advance of the hearing any document or thing, other than privileged information, which is:
  - (a) identified by the party requesting the order with reasonable specificity, and
  - (b) relevant to the subject matter of the proceeding which may be admissible at the hearing.

## **4.3 WITNESS STATEMENTS**

### **Witness Statement to be Provided**

- (1) A party shall provide to the other parties a witness statement for each witness it intends to call at the hearing:
  - (a) by the date specified for that purpose by the Commission or the person presiding at the pre-hearing conference, or
  - (b) where no date for the delivery of such statement is specified by the Commission or the person presiding at the pre-hearing conference, at least 14 days before the commencement of the hearing.

### **Content of Witness Statement**

- (2) A witness statement shall contain;

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

#### **Failure to Provide Witness Statement**

- (3) If a party fails to provide a witness statement in accordance with the provisions of Sub-rules 4.3(1) and 4.3(2) the party may not call the person as a witness without the consent of the Commission which may be on such terms and conditions as the Commission considers just.

#### **Incomplete Witness Statement**

- (4) A party may not call a witness to testify to matters not disclosed in the witness statement without the consent of the Commission which may be on such terms and conditions as the Commission considers just.

#### **Witness at Hearing**

- (5) A party that provides a witness statement to the other parties in accordance with this rule is not obligated to call the witness to whom the witness statement relates at the hearing.

### **4.4 EXPERT WITNESSES**

#### **List of Issues at Pre-Hearing Conference**

- (1) Where a pre-hearing conference is conducted in a proceeding, a party that intends to call an expert witness at the hearing shall furnish to the other parties at least two days prior to the pre-hearing conference the name and area of expertise of the expert and a list of the issues on which the expert is expected to testify.

#### **Report of Expert Witness**

- (2) A party that intends to call an expert witness at a hearing shall provide to every other party a written report signed by the expert containing the name, address and qualifications of the expert and the substance of the expert's proposed evidence including a list of all the documents to which the expert will refer:
  - (a) by the date specified for that purpose by the Commission or the person presiding at the pre-hearing conference, or
  - (b) where no date for the delivery of such report is specified by the Commission or the person presiding at the pre-hearing conference, at least 14 days before the hearing is scheduled to commence.

#### **Failure to Comply**

- (3) If a party fails to comply with the provisions of sub-rules 4.4(1) and 4.4(2) the party may not call the expert witness without the consent of the Commission which may be on such terms and conditions as the Commission considers just.

#### **Expert Evidence at Hearing**

- (4) Where the Commission allows into evidence a report from an expert, the Commission may reasonably limit examination or cross-examination of the expert where the Commission is satisfied that the report from the expert or the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

### **Rule 5 - Written Hearings**

#### **Application**

- 5.1 The rules in respect of written hearings do not apply to the admissibility, at an oral hearing, of written evidence admissible under section 15 of the *SPPA* or to the conduct of written pre-hearing conferences.

#### **When to Hold a Written Hearing**

- 5.2 (1) The Commission may conduct, at any time, a proceeding or part of a proceeding by means of a written hearing, unless a party objects.
- (2) In deciding whether to hold a written hearing, the Commission may take into account any factors it considers relevant, which may include:
- (a) the suitability of a written hearing format considering the subject matter of the hearing, including the extent to which the facts are in dispute;
  - (b) whether the nature of the evidence is appropriate for a written hearing, including whether credibility is an issue and the extent to which the facts are in dispute;
  - (c) the extent to which the matters in dispute are questions of law;
  - (d) the convenience of the parties;
  - (e) the cost, efficiency and timeliness of proceedings;
  - (f) avoidance of unnecessary length or delay;
  - (g) ensuring a fair and understandable process;
  - (h) the desirability or necessity of public participation or public access to the Commission's process;
  - (i) any other consideration affecting the fulfilment of the Commission's statutory mandate.
- (3) The Commission may continue a written hearing as an oral or electronic hearing.
- (4) If the Commission decides to convert a written hearing into an oral or electronic hearing format, it shall notify the parties of its decision and may make directions as to the holding of the hearing and the procedures set down in these rules for such a hearing will apply.
- (5) The Commission may continue an oral hearing as a written hearing with the consent of the parties.

#### **Notice of Written Hearing**

- 5.3 (1) The Commission shall provide a notice of written hearing which shall include:
- (a) a reference to the statutory authority under which hearing is to be held;
  - (b) a statement of the purpose of the hearing;
  - (c) a statement that the hearing will be conducted in accordance with these rules;
  - (d) a statement that:
    - (i) a party may object to the hearing being held as a written hearing by filing an objection with the Commission within 7 days after receiving the notice of the written hearing; and
    - (ii) where a party objects to the hearing being held in writing, the Commission will hold an oral or electronic hearing and the Commission may supply directions as to the holding of that hearing;
  - (e) a statement that if a party does not participate in accordance with the notice, nor object, then the Commission may proceed without the party's participation and the party will not be entitled to any further notice of the proceeding;

- (f) a statement of the number of copies of documents the parties are to file in the written hearing; and
- (g) any other information the Commission considers advisable.

### **Objections to Written Hearings**

- 5.4
- (1) A party may file and serve an objection to the hearing being held as a written hearing within 7 days after receiving notice of the written hearing.
  - (2) If a party objects to a written hearing, the Commission shall notify the parties of the objection and provide a notice of oral or electronic hearing.

### **Submissions and Supporting Documents**

- 5.5
- (1) The party requesting the hearing shall, within 21 days after receiving notice of the written hearing, file and serve on all other parties its written submissions setting out,
    - (a) the grounds upon which the request for the remedy or order is made;
    - (b) a statement of the facts relied on in support of the remedy or order requested;
    - (c) the evidence relied on in support of the remedy or order requested; and
    - (d) any law relied on in support of the remedy or order requested.
  - (2) The Commission may require the party requesting the hearing to file and serve further information in addition to its written submissions.

### **Response**

- 5.6
- (1) If a party wishes to respond, the party shall do so by filing and serving on every other party a written response within 14 days after the applicant's submissions and supporting documents are served on the party.
  - (2) The response must set out the party's submissions relating to the matter before the Commission and be accompanied by a statement of the facts and any evidence and any law relied on in support of the response.

### **Reply**

- 5.7
- (1) The party requesting the hearing may reply to a response by filing and serving on every other party a written reply within 7 days after a response from a party is served on the applicant.
  - (2) The reply must set out the position of the party requesting the hearing to the response and be accompanied by any additional facts, evidence and law that the applicant relies on in support of the reply.

### **Questions and Answers**

- 5.8
- (1) If a written hearing involves evidentiary issues, the Commission may direct that,
    - (a) the party requesting the hearing and any responding party may ask such questions of the other as are reasonably necessary for the purpose of clarification of the other's evidence by filing and serving on every other party written questions within such time as is directed by the Commission; and
    - (b) the party to whom the questions are directed shall file and serve on every other party, written answers to such questions within such time as is directed by the Commission.

### **Evidence**

- 5.9 (1) The evidence shall be in writing or, when electronic transmission is permitted, it shall be in the form directed by the Commission.
- (2) The evidence shall identify the person giving the evidence and shall either be in certified form or in affidavit form.
- (3) Evidence shall include all documents and things a party is relying on to support the remedy or order requested.

#### **Oral Examination**

- 5.10 (1) There shall be no oral examination unless ordered by the Commission.
- (2) If a party requests, the Commission may order that a party present a witness to be examined or cross-examined upon such conditions as the Commission directs.

#### **Hearing in the Absence of a Party**

- 5.11 If a party does not object or participate the Commission may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding.

### **Rule 6 - Electronic Hearings**

#### **Application**

- 6.1 The rules in respect of electronic hearings do not apply to the admissibility, at an oral hearing, of electronic evidence admissible under section 15 of the *SPPA* or to the conduct of electronic pre-hearing conferences.

#### **When to Hold an Electronic Hearing**

- 6.2 (1) The Commission may conduct, at any time, a proceeding or part of a proceeding by means of an electronic hearing, unless a party objects.
- (2) In deciding whether to hold an electronic hearing, the Commission may take into account any factors it considers relevant, which may include:
- (a) the suitability of the electronic technology for the subject matter of the hearing;
  - (b) whether the nature of the evidence is appropriate for an electronic hearing, including whether credibility is in issue and the extent to which facts are in dispute;
  - (c) the extent to which the matters in dispute are questions of law;
  - (d) the convenience of the parties;
  - (e) the cost, efficiency and timeliness of proceedings;
  - (f) avoidance of unnecessary length or delay;
  - (g) ensuring a fair and understandable process;
  - (h) the desirability or necessity of public participating or public access to the Commission's process; and
  - (i) any other consideration affecting the fulfilment of the Commission's statutory mandate.
- (3) The Commission may continue an electronic hearing as an oral hearing whenever the Commission deems it appropriate or as a written hearing with the consent of the parties.
- (4) If the Commission decides to convert an oral hearing into a written or electronic hearing, it shall notify the parties of its decision and may make directions as to the holding of the hearing and the procedures set down in these rules for such a hearing will apply.

- (5) The Commission may continue an oral hearing as an electronic hearing.

### **Notice of Electronic Hearing**

- 6.3 (1) Notice of an electronic hearing shall include:

- (a) a reference to the statutory authority under which the hearing is held;
- (b) a statement of the time and purpose of the hearing and details about the manner in which the hearing will be held;
- (c) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
- (d) if clause (c) does not apply, a statement that the party notified may, by satisfying the Commission that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, require the Commission to hold the hearing as an oral hearing, and an indication of the procedure to be followed for that purpose;
- (e) a statement that if the party notified neither acts under clause (d), if applicable, nor participates in the hearing in accordance with the notice, the Commission may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding; and
- (f) any other information the Commission considers advisable.

### **Objections to Electronic Hearings**

- 6.4 A party that objects to the hearing being held as an electronic hearing shall file and serve a written notice of objection within 21 days of receiving notice of the electronic hearing.

### **Contents of Notice of Objection**

- 6.5 In a notice of objection, the objecting party shall:

- (a) set out its reasons for the objection; and
- (b) state all facts upon which the party relies and provide in affidavit form the evidence on which the party relies in relation to the objection.

### **Procedure When Objection is Made**

- 6.6 (1) If the Commission receives an objection, it may:

- (a) accept the objection, cancel the electronic hearing and either schedule an oral hearing or, with consent of the parties, schedule a written hearing;
- (b) if the Commission is satisfied that this will cause no significant prejudice, reject the objection without inviting responses from the other parties and proceed with the electronic hearing; or
- (c) provide all other parties with an opportunity to respond to the objection by filing and serving a written response, and, after considering the objection and all responses, proceed with the electronic hearing, schedule an oral hearing, or with consent of the parties, schedule a written hearing.

- (2) For the purposes of clause (1)(c), the Commission shall provide directions for the form and timing of their responses and for the reply, if any, of objecting parties to these responses.

### **Terms and Conditions**

- 6.7 The Commission may, in an order that a hearing be held electronically, impose terms and conditions including

specifying who will make the arrangements for the electronic hearing and requiring that a party requesting an electronic hearing pay all or part of the cost of providing the facilities necessary for the conduct of the electronic hearing.

**Request for Hearing Under PBA - Section 89**

(Schedule A)

Name of Party Requesting Hearing:

Name, Address, Telephone Number  
and Facsimile Number of Counsel  
or Agent, if any:

Name, Address, Telephone Number  
and Facsimile Number of Party  
Requesting Hearing, if Unrepresented  
by Counsel or Agent:

Order Sought:

Grounds for Order:

Other persons who the applicant  
believes may have an interest  
in the matter:

\_\_\_\_\_  
Signature of Requesting Party or Authorized  
Representative

Dated:

Made under Rule 1.8 of the Rules of Practice for Proceedings under Section 89 under section 89 of  
the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (P500-760).