



SECTION: Procedures - Hearings

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Pre-Hearing Conference Procedures

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These procedures apply to all pre-hearing conferences held before the Pension Commission **except** those held pursuant to section 89 of the *PBA*. Rules of practice for proceedings under section 89 are found at P520-760.

The Reason for Pre-Hearing Conferences

The Commission recognizes the need for timely hearings that are both procedurally sound and efficiently run. Therefore, the following is designed to shorten the length of hearings and minimize delays, interruptions and adjournments while ensuring that the rights and interests of those affected are protected.

Where documentation is complete and the Commission has no questions, it may choose to decide a matter without a hearing. All matters that proceed to an oral hearing will be preceded by a pre-hearing conference. However, not all pre-hearing conferences will lead to an oral hearing as it may be determined that the hearing be done by way of written submission.

Purpose of the Pre-Hearing Conference

The pre-hearing conference does not constitute day one of the hearing. No evidence will be given and no opening statements made. The pre-hearing conference will:

- (1) resolve preliminary matters;
- (2) identify and simplify the matters in issue; and
- (3) establish procedures for the hearing.

It may also set hearing dates. Attempts at settling the matter will not be undertaken by the presiding member at the pre-hearing conference.

I Resolve Preliminary Matters

All preliminary matters are to be raised at the pre-hearing conference, including objections or questions relating to notice, jurisdiction, disclosure of documents, bias, standing or adjournments. The presiding member at the pre-hearing conference will not determine matters of substance. However, the presiding member will identify such issues and set out the method by which they will be resolved.

Objections or questions relating to preliminary matters will be entertained by the hearing panel during the hearing only if the circumstances relating to the objections or questions are unknown and cannot be reasonably foreseen at the time of the pre-hearing.

II Identify and Simplify Matters in Issue

Matters in issue will be settled, simplified and narrowed. The presiding member will identify those issues that the parties will be permitted to develop during the hearing.

III Establish Procedures for the Hearing

The presiding member shall consider any procedural matter that may assist in the just, most expeditious and least expensive disposition of the proceeding. Commission policy on common procedural matters is set out below.

Transcripts

Commission policy is to conduct pre-hearings and hearings without court reporters. Parties may choose to hire their own. The Registrar shall assist with any physical arrangements necessary to accommodate court reporting. All costs associated with the service are to be borne by those engaging the reporters.

Evidence at the Hearing

As is apparent from the diagram of the Commission decision making process (XTRB-01) also found at the end of this procedure, all documentation must be complete before a matter will be considered by the Commission.

It is Commission policy to hear no oral evidence, apart from that of experts (discussed below), thus evidence of witnesses shall be by way of affidavit. (Opposing parties may privately arrange for cross examination on affidavit and provide a transcript of the same to the presiding member or hearing panel.) Questions of witnesses by the hearing panel will normally be by way of written interrogatory. Answers are to be in writing and copied to all parties.

Any evidence that comes to light after the documentation is complete must be fully disclosed immediately to all parties and to the Commission.

Expert Evidence at the Hearing

It is Commission policy to accept expert evidence by way of written report submitted in advance of the hearing. A party who intends to present an expert report at the hearing shall, not fewer than 15 days before the pre-hearing conference, serve upon the other parties a summary signed by the expert setting out the expert's name, address, qualifications, a list of the issues which the expert's report will address and a summary of the expert's proposed evidence in respect of each issue. No fewer than 30 days before the hearing, the expert report(s) shall be served upon all parties and the Commission.

No expert report will be accepted at the hearing, except in exceptional circumstances and with leave of the Chair, unless the requirements described in this section have been met.

At the hearing, the party calling an expert shall file the expert report and shall be permitted to examine the expert in chief. Usual rights of cross-examination and reply questioning will follow. It is to be noted, however, that the evidence led shall not differ materially from that contained in the filed report.

Commission policy is to exclude expert witnesses from the hearing until they have given evidence. Where a party requires the attendance throughout the hearing of one or more expert witnesses, that expert witness or witnesses may remain in attendance. In such a circumstance, the expert witness or witnesses shall normally give evidence before any other witness is called on behalf of the party. No expert witness of a party shall remain in attendance when another expert witness for the same party is testifying.

The Commission reserves the right to call its own expert. In such an event, all parties shall be advised of the name, address and qualifications of the expert being retained and the nature of the issues to be addressed by the expert. Any report prepared by the expert shall be circulated to all parties as soon as is practicable after its receipt by the hearing panel.

The Order of Proceeding

The Applicant shall go first. The order of proceeding among the respondents shall be set by agreement of the respondents failing which as determined by the presiding member.

Observers

Hearings are open to the public.

IV Set Hearing Dates

Following submissions on the amount of time reasonably needed to make each party's case, the presiding member at the pre-hearing shall set such time limits as is deemed necessary and appropriate. For example, the hearing may be restricted to argument and the time allowed for argument may be specified.

The presiding member may set the date, time and place of the hearing. Counsel are expected to attend with full particulars of their availability for hearing dates.

If, after consultation at the pre-hearing, it is not possible to schedule the hearing dates within a reasonable period of time, the dates will be assigned. Every attempt will be made to schedule the hearing within 60 days of the pre-hearing conference. Once hearing dates are set, adjournments will not be permitted except in extraordinary circumstances and with leave of the hearing panel.

V Participants at the Pre-Hearing Conference

All those wishing to participate in the hearing or their counsel, if any, shall attend the pre-hearing. Those attending must be authorized to make binding agreements concerning the matters set out above. It is expected that counsel representing the parties at the hearing will be the counsel present at the pre-hearing conference.

Those persons who wish to participate in the hearing should file notice of such intention containing their name(s), address(es) and the nature of their interest(s) with the Registrar not later than 15 days before the date of the pre-hearing. The Registrar will serve copies of such notices on all parties.

Where notice of a pre-hearing conference has been given and a party does not attend, the presiding member may proceed in that party's absence and that party is not entitled to any further notice of the proceedings unless the presiding member

otherwise directs.

VI Location and Duration of the Pre-Hearing Conference

After consultation with the parties, the Registrar will assign a date for a pre-hearing conference and, generally, pre-hearing conferences will be held at the Pension Commission of Ontario offices at 250 Yonge Street, 29th Floor, Toronto ON M5B 2N7. Upon application and with the consent of all parties, pre-hearing conferences may be held by conference telephone call.

The normal time allocated for a pre-hearing conference will be 3 hours. Longer time needs should be brought to the attention of the Registrar at the time of scheduling of the pre-hearing.

VII Conduct of the Pre-Hearing Conference

The pre-hearing conference will be conducted by one member of the Commission. With the consent of all parties, conveyed in writing to the Registrar at least 10 days before the pre-hearing, the presiding member at the pre-hearing may serve as a member of the hearing panel.

Counsel to the hearing panel may be present at the pre-hearing. If so, all parties will be so advised in advance of the pre-hearing.

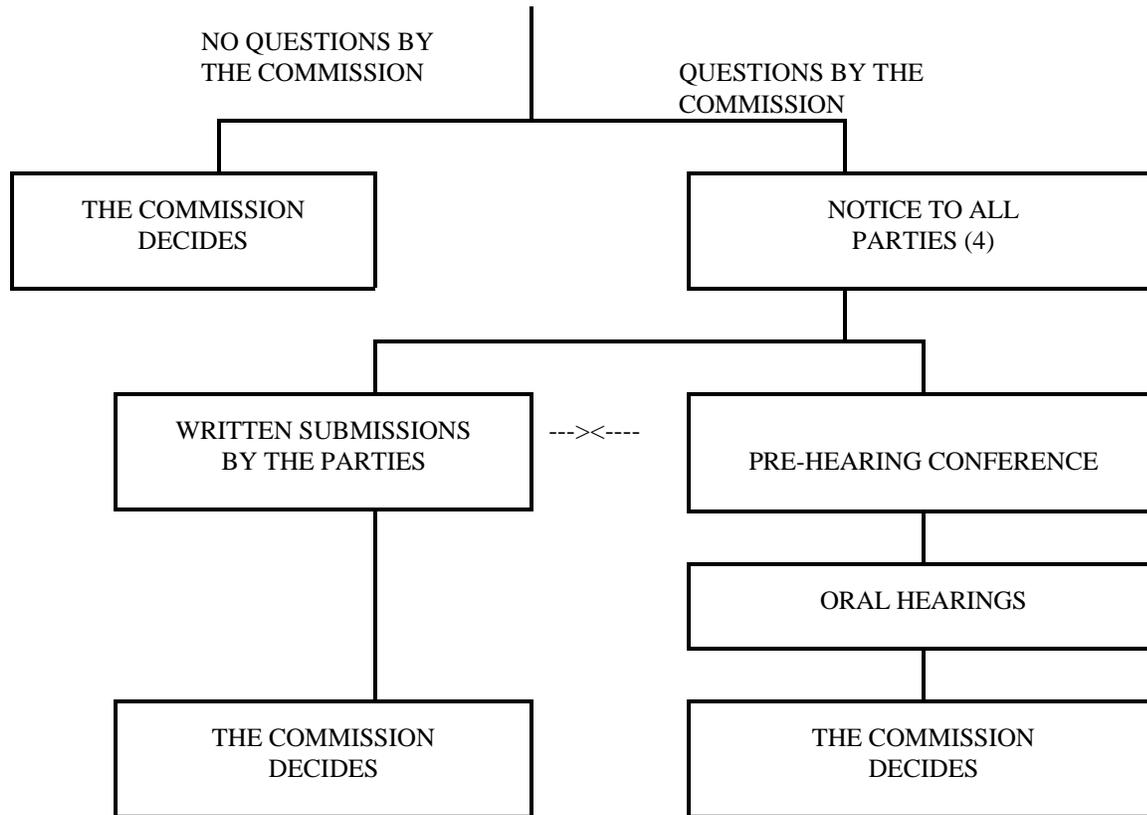
VIII Results of the Pre-Hearing Conference

At the conclusion of the pre-hearing conference the presiding person shall report, orally or in writing or both, the results of the pre-hearing conference. The report binds all parties to the pre-hearing conference. A copy of the report shall be placed before the hearing panel.

The report may form the basis for an order or orders of the Commission, which order(s) shall govern the conduct of the proceedings unless the Commission otherwise orders.

THE COMMISSION (1)
DECISION MAKING PROCESS (2)

DOCUMENTATION COMPLETE (3)



Explanatory Notes to the Commission - Decision Making Process

1. The "Commission" denotes the Commission tribunal, not the staff of the PCO.
2. This diagram does not apply to hearings held pursuant to s. 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8.
3. All documentation is to be complete and in writing, and prepared by all parties. Documentation is not complete until a staff report is prepared by the staff of the PCO, provided to all parties and responses, if any, have been received by the staff. A staff report shall not be prepared until all documentation has been submitted by all parties. Documents that are normally part of the applicant's submissions include:
 - (i) an application;
 - (ii) all relevant documents and evidence;
 - (iii) responses, if any, to submissions of other parties;
 - (iv) comments on the staff report, if any;
 - (v) submissions on law, if any; and
 - (vi) a brief of authorities, if any.
4. If the Commission decides it needs further information before making its decision, the parties will be served with notice of the same. The notice will either request the parties to address specific questions by way of written submissions, or advise that the Commission has determined that a pre-hearing ought to be held. Where the notice indicates that a pre-hearing conference is to be held, it will indicate generally the purposes to be achieved through the pre-hearing conference.

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