

PROCEDURES
FOR THE CONDUCT OF HEARINGS BEFORE
THE PENSION COMMISSION OF MANITOBA

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PART 1
APPLICATION

1.1 These procedures are made under the authority of section 1.6 of the Pension Benefits Regulation and apply to all hearings required to be held by the Pension Commission under sections 8 and 37.2 of *The Pension Benefits Act* respecting an appeal of an order of the Superintendent or an appeal of a notice of administrative penalty.

PART 2
COMMENCEMENT AND ORDER OF PROCEEDINGS

2.1 Commencing Proceedings

2.1.1 A notice of appeal in the form as directed by the Commission shall be filed within the time period set out in section 8 or 37.2 of the Act, and shall be served by the appellant on:

- the Superintendent;
- all parties to the proceedings before the Superintendent; and
- all other persons upon whom the Commission may direct service.

2.1.2 A notice of appeal must contain the following information:

- Appellant name and contact information (inclusive of address for service daytime phone number, fax and email)
- Name of representative, if applicable, along with representatives contact information
- Date of decision or order being appealed along with copy of the order
- Reasons for appeal
- Relief or order sought
- Parties before Superintendent and other persons affected by order or decision being appealed.

2.1.3 After being served with a copy of the notice of appeal, the Superintendent shall provide the Commission with a copy of all materials relied upon by, or put before, the Superintendent, at the request of the Commission, subject to any specific directions of the Commission.

2.1.4 Within 30 days of receiving a notice of appeal, or within such other period of time the Commission directs, a party that has received a notice of appeal must file with the Commission any reply to the notice and shall serve the reply on the Superintendent, all parties to the proceedings before the Superintendent and all other persons upon whom the Commission may direct service.

2.2 Pre-hearing Conference

2.2.1 The Commission may direct the parties to participate in pre-hearing conferences to consider

- (a) the identification and simplification of the issues;
- (b) facts and evidence that may be agreed upon;
- (c) the dates by which any steps in the proceeding are to be taken or begun;
- (d) the estimated duration of and dates for the hearing; and
- (e) any other matters that may assist in the just and most expeditious disposition of the proceeding, including:
 - (i) exchanging documents among the parties;
 - (ii) identifying and resolving preliminary procedural issues including particulars, disclosure or production of documents, witness statements, expert witnesses, expert reports and exchanges of submissions;
 - (iii) deciding procedural issues including the dates by which any steps in the proceeding are to be taken or begun;
 - (iv) considering applications for party status; and

- (v) determining the form of the Notice of Hearing, who should give it and bear the costs for it, and to whom and in what manner the Notice should be given.

2.2.2 A pre-hearing conference may be held in person or electronically, provided that if the purpose of any such conference is not limited to dealing with procedural matters, it shall be held in person if a party satisfies the Commission that holding it electronically would be likely to cause that party significant prejudice.

2.2.3 The member of the Commission conducting a pre-hearing conference may make such directions as are considered necessary or advisable with respect to the conduct of the proceeding, including adding parties.

2.2.4 The Commission shall issue a pre-hearing conference memorandum setting out the results of the pre-hearing conference, setting forth directions, agreements and undertakings made at the pre-hearing, and setting out the dates of the hearing and the issues that are to be determined.

2.2.5 After the pre-hearing conference has been held, no substantive issues, other than those set out in the pre-hearing conference memorandum, may be raised or addressed without leave of the Commission.

2.2.6 Where a pre-hearing conference is to be held, written notice of the pre-hearing conference shall be given to the parties, to those who have applied for party status and to such other persons as the Commission determines.

2.2.7 The Notice of Pre-hearing Conference may require parties by specified dates to exchange or file documents, pre-hearing submissions or provide such other information as the Commission deems appropriate, and such notice shall include

- (a) the date, time, place, format and purpose of the pre-hearing conference;

- (b) notice that each party or person who has applied for party status, to whom the notice is given, is required to attend in person or through a representative who has binding authority to make agreements and undertakings on behalf of that party or person respecting the matters addressed at the pre-hearing conference;
- (c) notice that if a person to whom the notice is given does not attend in person or through a representative, the conference may continue in the absence of that person and that person will not be entitled to any further notice in the proceeding; and
- (d) notice that directions may be made at the pre-hearing conference that will be binding on all parties, including parties added at the pre-hearing conference, with respect to the proceeding, including setting the dates for a hearing.

2.3 Notice of Hearing

2.3.1 The Commission shall set the hearing dates and determine the location and format of the hearing.

2.3.2 The Commission shall provide, or direct the giving of, a written Notice of Hearing to the parties and other persons as the Commission determines or requires. The service of the notice shall be made not less than fourteen days prior to the hearing.

2.3.3 A Notice of Hearing shall include

- (a) a reference to the statutory authority under which the hearing is being held;
- (b) a statement of the dates, time, place and the purpose of the hearing;
- (c) a statement that if a party does not attend or participate at the hearing, the Commission may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding;

- (d) if appropriate in the circumstances, a statement relating to persons not named as parties, setting out their right to request party status by a certain date, the manner of making such a request, and their rights regarding attending or participating in the hearing if such status is not obtained; and
- (e) any other information the Commission considers necessary for the proper conduct of the hearing.

2.4 Adjournments

- 2.4.1** The Commission may adjourn a hearing on such conditions as it considers appropriate.

2.5 Withdrawal

- 2.5.1** An appellant may withdraw a Notice of Appeal before the Commission

- (a) prior to the hearing, by filing a letter of withdrawal signed by the party or his or her representative and serving the letter on the other parties; or
- (b) during the hearing, by bringing a motion with the permission of the Commission.

- 2.5.2** A party may discontinue participation in a proceeding

- (a) prior to the hearing, by filing a letter of discontinuance, signed by the party or his or her representative, and serving the letter on the other parties; or
- (b) during the hearing, by bringing a motion with the permission of the Commission.

- 2.5.3** The Commission may impose conditions on any withdrawal or discontinuance as it considers appropriate.

2.5.4 Where a proceeding is ongoing, evidence received by the Commission from a responding party that has discontinued shall remain on the record.

2.6 Summary Dismissal

2.6.1 Where a party who has initiated a proceeding has taken no step in the proceeding for an undue period of time or has missed a deadline set out in these procedures or imposed by the Commission at a pre-hearing conference, the Commission may give that party notice of intention to dismiss the proceeding, without a hearing, as frivolous, vexatious or commenced in bad faith, if proper steps are not taken within 30 days of the giving of the notice.

2.6.2 Where a party has initiated a proceeding that, in the opinion of the Commission, is,

- (a) frivolous, vexatious or commenced in bad faith;
- (b) relates to matters that are outside the jurisdiction of the Commission; or
- (c) some aspect of the statutory requirements for bringing the proceeding has not been met,

the Commission may give notice of intention to dismiss the proceeding without a hearing, to all parties, setting out the reasons for the proposed dismissal and advising the parties to which the notice is given of the right to make written submissions.

2.6.3 A party who is entitled to notice shall have the right to make written submissions to the Commission with respect to the dismissal of the proceeding within 30 days of the giving of the notice.

2.6.4 After having given notice and after considering any submissions the Commission may dismiss the proceeding, as frivolous, vexatious or commenced in bad faith, if the party to whom the notice was given has not taken the steps specified in the notice within

the 30 day period and, in that event, the Commission shall give notice of dismissal of the proceeding to the party to whom notice was given.

2.6.5 After having given notice and after considering any submissions, the Commission may dismiss the proceeding, on any of the grounds specified in the notice, and, in that event, the Commission shall give notice of dismissal of the proceeding to the party or parties to whom notice was given.

PART 3 PARTIES AND PARTICIPATION

3.1 The Parties on an Appeal

3.1.1 The parties to an appeal from an order of the Superintendent are the person who has commenced the appeal, the Superintendent, the other parties in the proceeding before the Superintendent, and such other persons as the Commission may, by order, add as parties.

3.1.2 A person who is not a party and is interested in actively participating in an appeal as a party shall file a written application for party status and serve it on the other parties

- (a) before the scheduled date of any pre-hearing conference, so that the Application can be dealt with at that conference; or
- (b) in accordance with the terms of the Notice of Hearing.

3.1.3 A party who objects to party status being granted to a person shall file and serve an objection in the form and content as directed by the Commission stating the reasons for the objection, and the person may respond to the objection.

3.1.4 In deciding whether to make an order granting a person party status, the Commission must determine whether the person is affected by order of the Superintendent. The Commission may consider

- (a) the nature of the proceeding;
- (b) the issues;
- (c) whether the person has a material interest in the outcome of the proceeding;
- (d) the likelihood of the person being able to make a useful and different contribution to the understanding of the issues;
- (e) any delay or prejudice to the parties; and
- (f) any other matter it considers relevant.

3.1.5 Applications for party status may be dealt with by the Commission based on the material filed.

3.2 Levels of Participation

3.2.1 The Commission may, by order, grant party status to a person who has applied for such status, but may, by the terms of the order, restrict or impose conditions upon that person's participation as a party.

3.2.2 A person who participates in a proceeding shall comply with any restrictions or conditions set by the Commission in granting party status.

3.3 Parties Acting in a Representative Capacity

3.3.1 Where a party is a union, a union local, another organization or a group of individuals, acting, in whole or in part, in a representative capacity, that party is subject to all of the rights and responsibilities of a party, including the right to enter into a

definitive settlement agreement in respect of any or all of the matters at issue in the proceeding, as if the party were acting in a purely personal or non-representative capacity.

PART 4 MOTIONS

4.1 Any matter that arises during a proceeding and that requires a preliminary or interim order or direction of the Commission shall be brought before the Commission by motion.

4.2 A notice of motion shall set out the relief sought, the grounds for the motion, and the evidence to be relied upon, and a copy of the material filed shall be served on the parties.

4.3 The Commission may direct the procedure to be followed for hearing the motion and set applicable time limits.

4.4 A party wishing to respond to the motion shall file and serve a response on the other parties and on the person who brought the motion, within fourteen days or such further time as the Commission allows, of receiving the notice of motion.

4.5 The Commission may make an order based on the material filed where the motion is made on consent or in any other appropriate circumstances.

4.6 A motion may be made prior to, or during, a hearing and shall be disposed of at such time and in such manner as the Commission considers appropriate.

PART 5
EVIDENCE AND WITNESSES

5.1 Disclosure and Production of Documents

5.1.1 Each party has an obligation by the date by which it has agreed to do so, or by which the Commission has directed it to do so, to

- (a) disclose to the other parties all documents that it proposes to tender as evidence in the proceeding
- (b) produce to the other parties all other documents that are in its possession or control and are relevant to any issues in dispute in the proceeding; and
- (c) file and serve on the other parties a list of relevant documents that it refuses to produce, together with the reason for the refusal.

5.1.2 Where a party has failed to produce a relevant document, any other party may file and serve a notice upon that party to produce the document.

5.1.3 Where a party has not produced a relevant document, after proper notice from another party to do so, that other party may file and serve a notice of motion to have the Commission determine that production should be required.

5.2 Documentary Evidence

5.2.1 A party who relies on documentary evidence shall serve that evidence on the other parties as directed by the Commission.

5.2.2 The Commission may direct a party to submit evidence in a specific format. The Commission may also refuse to consider evidence not served or submitted in accordance with these procedures, or may direct that the evidence be tendered in a

different manner or that the evidence shall only be considered on such conditions as the Commission may specify.

5.3 Limitations on Evidence

5.3.1 Except by consent of the Commission, evidence and argument before the Commission shall be limited to matters specifically raised in the notice of appeal.

5.3.2 Without the permission of the Commission, no party to an appeal shall enter, file or rely upon any evidence in the appeal that was not before the Superintendent.

5.3.3 The Commission may allow new evidence in an appeal, subject to any terms and conditions that the Commission may impose, provided that in the case of a party tendering it at the time the Superintendent considered the matter, the evidence was not reasonably available to the party, and the evidence is significant to the issues raised in the appeal.

5.4 Witnesses

5.4.1 Where the Commission has allowed for the appearance of witnesses at a hearing, the witness shall be examined under oath or affirmation, unless otherwise directed by the Commission.

5.4.2 As directed by the Commission, a party who is allowed to call a witness shall provide the other parties with the name of the witness that the party intends to call to present evidence and shall serve on the other parties a witness statement or statement of evidence the witness will give.

5.4.3 The Commission may order that

(a) any particular facts be proved by affidavit;

- (b) the affidavit of a witness be read at an oral hearing; and
- (c) a witness be examined under oath or affirmation before the hearing.

PART 6 PUBLIC RECORD

6.1 Public Record

6.1.1 All documents that are filed in a proceeding pursuant to a filing required under, or imposed under, these procedures or that are received in evidence in a proceeding, shall be placed on the public record.

6.1.2 A party or an interested party may bring a motion for an order that all or any part of a document filed with the Commission, or served on the parties, be held in confidence, provided that the motion is brought at the earliest opportunity.

6.1.3 A party or an interested person who moves that all or part of a document be held in confidence may request that the Commission

- (a) consider the motion before the document is served on the parties, or
- (b) direct that only a summary of the document be served before the motion is heard and decided.

6.1.4 Any motion to hold a document in confidence shall

- (a) address:
 - (i) the reasons for the request including the nature and extent of the specific harm that might result if the document were publicly disclosed; and

- (ii) any objection to placing an abridged version of the document on the public record and the reasons for such an objection;

and

- (b) be filed and served on the parties.

6.1.5 Where a motion has been made under these procedures to hold a document in confidence, if a party, or any person who was served with the motion, has received a copy of a document, that party, or other person, shall treat the document as if it were confidential until the Commission has made a decision in respect of the motion.

6.1.6 Any person may object to a motion for confidentiality by filing a response and serving it on the parties and the person who brought the motion.

6.1.7 After giving the person claiming confidentiality an opportunity to reply to an objection, the Commission may order that

- (a) the document be placed on the public record;
- (b) the document be held in confidence;
- (c) the document be provided to certain parties and/or their representatives upon filing an undertaking of confidentiality; or
- (d) an abridged version of the document be placed on the public record;

and may make such other order as it considers just.

6.1.8 Where the Commission orders a document to be held in confidence, the portion of the hearing that deals with the document will be held in the absence of the public.

6.2 Recording of Hearing and Transcripts

6.2.1 A party at its own expense may arrange a court reporter to record all or any part of a hearing with the leave of the Commission, all or any part of a pre-hearing conference or a hearing on a motion or the hearing.

6.2.2 Where all or any part of a hearing or a hearing on a motion has been recorded by a court reporter, a party may obtain a copy of all or a portion of the transcript at its own expense from the court reporter.

6.2.3 A party or parties who have ordered all or a portion of a transcript must provide the Commission with a copy thereof, and such additional copies as may be required by the Commission, at no cost.

6.2.4 No person shall make a visual or audio recording of any part of a proceeding before the Commission unless authorized by the Commission.

PART 7

FILING AND SERVICE OF DOCUMENTS

7.1 Documents should be filed in quadruplicate.

7.2 A document may be filed with the Pension Commission at its office with the Superintendent by

- (a) hand delivery;
- (b) courier service;
- (c) registered mail;
- (d) facsimile or other electronic transmission.

7.3 Where documents are filed by facsimile or other electronic transmission, the original and all copies required shall be delivered on the next business day unless the Commission otherwise directs.

7.4 A party shall forthwith serve all other parties with a copy of all documents filed with the Commission.

7.5 Service may be made by

- (a) hand delivery;
- (b) courier service.

7.6 Service will be effective if the document is delivered by hand or courier on the same day that the delivery is made;

7.7 The Commission may direct a person who has served a document to file an affidavit of service that indicates, how, when, and on whom service was made.

PART 8 GENERAL

8.1 Where procedures are not provided for in these procedures, the Commission may do whatever is necessary and permitted by law to effectively determine the matter before it, including making a procedural order.

8.2 The Commission may exercise any of its powers on its own initiative or at the request of a party.

8.3 A defect in form or other technical breach in a proceeding or in any step, document or order in a proceeding will not make the proceeding or the step, document or order in the proceeding invalid.

8.4 The Commission may issue Practice Directions pertaining to certain types of proceedings or with respect to any matter the Commission deems appropriate.

8.5 The Commission will determine the procedural issues before it by order and may make an order subject to such conditions as it considers appropriate.

8.6 The Commission may make or amend its procedures at any time in a proceeding.

8.7 Where a party to a proceeding has not complied with a requirement of these Rules, the Commission may

- (a) grant relief, subject to such conditions as the Commission considers just;
- (b) stay the proceeding until it is satisfied that the requirement has been complied with; or
- (c) make such other order as it considers just.

8.8 Where a party cannot meet a time limit prescribed by these procedures, or proposes the abridgement of such a time limit, the party shall promptly file a request for an extension or abridgement of time, including the reason why it is necessary, the specific relief sought, and an indication of whether the other parties consent or oppose the request.