



# Rules of Practice & Procedure

Amended and Restated  
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# Rules of Practice & Procedure

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# Rules of Practice & Procedure

## 1. Scope and Purpose

1. These rules apply to all public hearings held before the Commission.
2. These rules and procedures are founded upon the principles of natural justice and fairness.
3. The Commission's rules and procedures are intended to ensure:
  - (a) That all parties to a proceeding are afforded a reasonable opportunity to be heard;
  - (b) That arguments and evidence is disclosed and presented in a timely and efficient manner; and
  - (c) That proceedings before the Commission are conducted in a less formal manner than the Courts, and as expeditiously as circumstances permit.

## 2. Interpretation

1. These rules shall be liberally construed to secure the most just, expeditious, and efficient determination on the merits of every proceeding before the Commission.
2. Where procedures are not provided for in these rules, the Commission may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.
3. Unless the Commission otherwise directs, any amendment to these rules comes into force upon enactment by the Commission.

## 3. Time Limits are Peremptory

Unless the Commission grants an extension or an adjournment, all time limits for complying with these rules, and all dates set for a hearing, are final.

#### 4. Definitions

In these rules:

- a) “adjourn” means delaying a hearing to a later time;
- b) “affidavit” means a written statement made by a person under oath or affirmation to a lawyer, a commissioner of oaths, or a notary public, to be used as evidence;
- c) “affirmation” means to promise to tell the truth when testifying as a witness or making an affidavit;
- d) “amend” means altering a legal document such as an application, pleading, contract or law;
- e) “appellant” means the party who appeals the decision;
- f) “applicant” means a party who has filed an application;
- g) “certified true copy” means a document that is guaranteed to be an exact copy of an original;
- h) “Commissioner” means a full-time or part-time member of the Commission;
- i) “Chair” means the Chair, Vice-Chair or full-time Commissioner who is in charge of the Panel;
- j) “Commission” means the Island Regulatory and Appeals Commission established under section 2 of the *Island Regulatory and Appeals Commission Act*, RSPEI 1988 c I-11;
- k) “day” means a full business day as defined by the hours of operation of the Commission;
- l) “hearing” means a hearing before the Commission;
- m) “holiday” means Saturday and the days set forth in section 26(w) of the *Interpretation Act*, RSPEI 1988, c I-8;
- n) “in camera” means a hearing or a part of a hearing held in private;

- o) “intervener” means an individual or organization that is granted intervener status in accordance with these rules;
- p) “oral hearing” means a hearing that is conducted in person or held by teleconference, video-conference or any other electronic means.
- q) “Panel” means the Commissioners assigned by the Chair or Vice-Chair to preside over any aspect of an inquiry or a hearing;
- r) “party”, in respect of an application, means an applicant; “party”, in respect of an appeal, means an appellant, respondent or developer;
- s) “proceeding” means the process for the hearing;
- t) “respondent”, in respect to an appeal of a decision or order made by the Director of Residential Rental Property, means the party other than the “appellant”; “respondent”, in respect to all other appeals, means the original decision maker whose decision is under appeal;
- u) “witness” means a person who has taken an oath or affirmation to testify at a hearing.

## **GENERAL MATTERS**

### **5. Where a Procedural Question Arises That Rules Do Not Answer**

The Commission retains the authority to decide any matter of procedure not provided for by these rules.

### **6. The Commission May Amend or Vary These Rules**

The Commission may, in its sole discretion, dispense with, amend, vary, or supplement all or part of these rules.

## **7. The Commission May Extend or Abridge Time Requirements**

1. The Commission may extend or abridge the time requirements fixed by these rules or otherwise fixed by the Commission, and may do so on its own initiative or in response to a request by any party.
2. If a party fails to comply with a time limit specified in these rules or by the Commission for the filing of documentary evidence or other material, without satisfactory explanation, the Commission may disregard the documentary evidence or material.

## **8. On-Site Viewing**

The Commission, in its sole discretion and having informed the parties, may conduct an on-site view of lands or facilities to gain knowledge pertaining to any matter relevant to the disposition of a hearing. The on-site view will be considered part of the hearing and the parties may accompany the Commission during this visit.

## **9. Substance Prevailing Over Form**

No proceeding before the Commission shall be defeated or affected solely by any technical objection or by any objection based upon defects in form or procedure.

## **10. Failure to Comply**

If a party fails to comply with these rules or a direction of the Commission, the Commission may:

- a) make an order that it considers appropriate to ensure the fair determination of an issue;
- b) adjourn the hearing until it is satisfied that these rules or the direction of the Commission has been complied with; or
- c) proceed with the hearing.

## **APPLICATIONS AND APPEALS**

### **11. Acknowledgement of Applications and Notices of Appeal**

1. The Commission shall acknowledge receipt of an application or Notice of Appeal in a timely fashion and notify all parties to the application or appeal of:
  - a. any error or omission, known to the Commission, in the application or Notice of Appeal and any additional information required by the Commission; and
  - b. where appropriate, the availability of alternative dispute resolution.
2. The Commission may grant status to:
  - a. all named parties; and
  - b. an intervener in accordance with Rules 14 through 20.
3. When a hearing date has been selected, the Commission shall notify all parties of the hearing date and the method of hearing.

### **12. Appeals**

1. An appeal must be filed with the Commission within the statutory appeal period set out under the legislation which provides the right of appeal.
2. Section 23 of the *Interpretation Act*, RSPEI 1988, c I-8 applies to the calculation of the appeal period deadline.
3. A Notice of Appeal shall state:
  - a) the relief sought; and
  - b) the grounds of appeal
4. A Notice of Appeal must be signed and may be filed with the Commission in person or by mail, email, or fax.
5. A Notice of Appeal received by the Commission after 4:00 p.m. or on a holiday shall be deemed to have been filed on the next day that is not a holiday.

### **13. Applications**

1. Every application shall be made on the prescribed form and shall include the following:
  - (a) reasons for the application;
  - (b) the legislation under which the application is made;
  - (c) signature of the applicant or the applicant's representative;
  - (d) the full name, address, telephone and email information of the applicant or the applicant's representative;
  - (e) a clear and concise statement of the facts; and
  - (f) any other information that may be relevant to the application.

### **14. Interveners**

1. In these rules, the word:
  - (a) "Added Party Intervener" means an individual or organization, other than the parties to a proceeding, who has a distinct and substantial interest in the proceeding and intends to participate actively in the proceeding. Subject to any condition imposed by the Panel, an Added Party Intervener is vested with all of the rights of a party; and
  - (b) "Friend of the Commission Intervener" means an individual or organization who represents the public interest and can meaningfully contribute to the proceeding. A Friend of the Commission Intervener is not ordinarily vested with all of the rights of a party.
2. Any individual or organization may apply to the Commission for intervener status in any proceeding.

3. Interested individuals or organizations may either apply as an Added Party Intervener or as a Friend of the Commission Intervener.

#### **15. Application – All Interveners**

1. Every application for intervention shall include the following information:
  - (a) reasons for the application;
  - (b) whether the applicant is seeking to be an Added Party Intervener or a Friend of the Commission Intervener;
  - (c) the name of the legislation under which the application is made;
  - (d) the signature of the applicant or the applicant's representative; and
  - (e) the full name, address, telephone and email information of the applicant and, if applicable, the applicant's representatives;
2. Applications shall be served on each party and filed with the Commission.

#### **16. Application – Added Party Intervener**

1. In addition to Rule 15.0 (1), an applicant who wishes to intervene as an Added Party Intervener shall file a written submission including the following information:
  - (a) the nature of the applicant's interest in the proceeding and a concise statement indicating why that interest is distinct from the parties and adversely affected by the decision of the Commission;
  - (b) the nature and scope of the applicant's intended participation;
  - (c) the extent to which the intervention will add to the costs and complexity of the proceeding; and
  - (d) the facts that the applicant proposes to show in evidence at the proceeding.
2. The written submission shall be served on each party and filed with the Commission.

## **17. Application – Friend of the Commission Intervener**

1. In addition to Rule 15.0 (1), an applicant who wishes to intervene as a Friend of the Commission shall file a written submission including the following information:
  - (a) a concise statement indicating:
    - (i) the public interest issue that arises in the proceeding;
    - (ii) the extent to which the applicant has a real, substantial and identifiable interest in the subject matter of the proceeding;
    - (iii) the proposed submissions of the applicant; and
    - (iv) how the proposed submissions will make a useful contribution to the resolution of the proceedings;
  - (b) the nature and scope of the applicant's intended participation, including the extent to which those submissions will differ from the parties;
  - (c) the extent to which the intervention will add to the costs and complexity of the proceeding; and
  - (d) the facts that the applicant proposes to show in evidence at the proceeding.
2. The written submission shall be served on each party and filed with the Commission.

## **18. Right to Reply – Parties**

10. Any party who wishes to reply to the application for intervention shall serve and file a written submission with the Commission. All other parties and the applicant shall be served.

## **19. Powers of the Panel**

1. The Panel, upon reviewing the application and any written replies, may, in its sole discretion:

- (a) grant the application;
- (b) grant intervener status with or without conditions, which includes the authority to grant a status that is different from the one requested; or
- (c) decline the application.

## **20. Factors to be Considered by the Panel**

1. In determining whether to grant status as an Added Party Intervener, the Panel may consider any factor the Panel deems relevant in the circumstances, including, but not limited to, the following:
  - (a) the nature of the applicant's interest in the proceeding, including whether the applicant has a distinct and substantial interest in the proceeding;
  - (b) the nature and scope of the applicant's intended participation, including whether the applicant intends to participate actively in the proceeding;
  - (c) the extent to which the proposed intervention will add to the costs and complexity of the proceeding; and
  - (d) whether the proposed submissions will assist the Commission in resolving the issues raised in the proceeding.
2. In determining whether to grant status as a Friend of the Commission, the Panel may consider any factor the Panel deems relevant in the circumstances, including, but not limited to, the following:
  - (a) the extent to which the issues raised by the proceeding have implications that extend beyond the parties;
  - (b) the extent to which the applicant is engaged with the subject matter of the proceeding;

- (c) whether the proposed submissions of the applicant will reproduce the submissions of the parties or other interveners;
- (d) whether the proposed submissions will assist the Commission in resolving the issues raised in the proceeding; and
- (e) the extent to which the proposed intervention will add to the costs and complexity of the proceeding.

## **FILING OF DOCUMENTS**

### **21. Methods of Filing**

1. A document may be filed with the Commission by any of the following methods:
  - (a) delivering a copy to the Commission office;
  - (b) mailing a copy to the Commission office;
  - (c) transmitting a copy to the Commission via fax or e-mail; or
  - (d) such other manner as the Commission may determine.
2. A document must be filed with the Commission during business hours between 8:30 a.m. and 4:00 p.m., every day except a holiday. A document received by the Commission after 4:00 p.m. or on a holiday shall be deemed to have been filed on the next day that is not a holiday.
3. Unless provided for in these rules or otherwise directed by the Commission, all documents must be submitted to the Commission no later than five (5) days prior to the commencement of a hearing.

### **22. Rejection by Commission**

The Commission may reject documents, other evidence, written submissions, and information requests which are not filed in accordance with any timelines set by the Commission.

## **SERVICE OF DOCUMENTS**

### **23. Methods of Service**

1. A document shall be served on a party in accordance with any statutory service requirement set out in the legislation that provides a right to the appeal or application. In the event no such service requirements are established under that legislation, these rules prescribe that documents be served:
  - (a) by personal delivery;
  - (b) by courier service or ordinary mail;
  - (c) by transmitting a copy to the party via fax or e-mail; or
  - (d) by such other manner as the Commission directs.
2. Where the party is represented, service of a document shall be directed to the party's representative.
3. Unless provided for in these rules or otherwise directed by the Commission, all documents must be served by one party on another party no later than five (5) days prior to the commencement of a hearing.

### **24. Date of Service**

Unless otherwise stipulated by legislation, the date of service of a document is the day on which the person being served receives the document.

## **PRE-HEARING MATTERS**

### **25. Timeliness of Hearing Process**

1. A hearing will be held within a reasonable time after receipt of a Notice of Appeal.

2. If alternative dispute resolution is preferred by the parties, the hearing will be held in abeyance or suspended until such time as the dispute resolution process has been completed.

## **26. Notice of Hearing**

1. Notice of hearing must be given, within a reasonable time frame, to:
  - (a) all parties and interveners;
  - (b) all persons who have applied for party or intervener status whose status has not been determined by the Commission; and
  - (c) any other persons that the Commission deems appropriate.

## **27. Amendments**

1. A party may amend a Notice of Appeal or application at any time prior to fourteen (14) days before the hearing date, after which a Notice of Appeal or application may only be amended with the consent of the Commission.
2. An amendment to add a party may only be done with the consent of the Commission.
3. An amendment shall bear the date of the Notice of Appeal or application with the original title preceded by the word “amended”.
4. A party amending its Notice of Appeal or application shall indicate text added to the original by underlining it and text deleted from the original by striking through it.
5. When considering an amendment to the Notice of Appeal or application, the Commission may consider:
  - (a) any prejudice to a person or party;
  - (b) the timelines of notice to the opposite parties; and
  - (c) any other relevant factors.

6. A party that amends its Notice of Appeal or application shall file it with the Commission and serve a copy of that document on all parties.

## **28. Withdrawal of an Appeal or Application**

Prior to the hearing, the appellant or applicant may withdraw the appeal or application by notifying the Commission, in writing, of its decision to withdraw.

## **29. Abandonment of an Appeal or Application**

1. The Commission may deem an appeal or application to have been abandoned where, upon notice to the appellant or applicant, they have failed to:
  - (a) communicate with the Commission in a timely manner;
  - (b) respond to Commission inquiries, requests, or direction;
  - (c) file submissions or documentation with the Commission when directed to do so; or
  - (d) appear at a pre-hearing conference, preliminary hearing, or a hearing.

## **30. Postponements and Adjournments**

1. The Commission may postpone a hearing if it believes it is fair and reasonable to do so.
2. Prior to the date of hearing, if a party wishes to postpone the hearing to another date, the party shall contact the Commission to make the request.
3. On the date of the hearing, if a party wishes to adjourn the hearing, the party shall make a motion to the Commission for a decision to adjourn the hearing.
4. The Commission may postpone or adjourn a hearing in the event of inclement weather.

5. When considering a request for a postponement or a motion for an adjournment, the Commission may consider:
  - (a) prejudice to a person or party;
  - (b) the timing of the request or motion;
  - (c) the number of postponements or adjournments already granted;
  - (d) the public interest;
  - (e) the availability of witnesses;
  - (f) the efforts made to avoid the postponement or adjournment;
  - (g) the principles of fairness and natural justice; and
  - (h) any other factors the Commission considers relevant.

### **31. Hearing on Jurisdictional Issues**

1. The Commission may direct that a question of jurisdiction be heard, either through oral or written submissions, and determined prior to a hearing on the merits of the appeal or application.
2. Where the Commission determines it does not have jurisdiction, the Commission will decline to hear, and will dismiss, the application or appeal.

### **32. Preliminary Hearing**

The Commission may, on its own initiative or at the request of any party, hold a preliminary hearing to deal with any matter that may aid in the disposition of the hearing, including but not limited to:

- (a) determine any relevant question as to the Commission's jurisdiction to hear the application;
- (b) determine any question as to the admissibility of any evidence;
- (c) clarify or simplify the issues;

- (d) consider the necessity or desirability of an amendment to the application;
- (e) consider the participation by interested parties;
- (f) consider a request for access to information in the custody or control of any party;
- (g) fix dates for the hearing and for any procedural steps to be completed by the parties;
- (h) make any directions for the pre-filing of witness lists or expert witness statements and reports, or direct further disclosure where necessary;
- (i) explore the possibility of a settlement of the matter, or
- (j) determine issues of confidentiality.

### **33. Prehearing Conference**

Commission staff may conduct a pre-hearing conference for the purposes of dealing with general and procedural matters pertaining to a hearing.

### **34. Interrogatories**

In any proceeding, the Commission may establish an interrogatory procedure.

### **35. Alternative Dispute Resolution**

1. The Commission or a party may suggest alternative dispute resolution to the parties in order to resolve the dispute.
2. Alternative dispute resolution may be conducted by Commission staff or by such a person agreed upon by the parties.
3. If the alternative dispute resolution process is successful, the Commission may issue an order incorporating any settlement agreement reached by the parties.
4. If the alternative dispute resolution process is unsuccessful, the hearing shall resume.

### **36. Consolidation of Applications and Appeals**

When two or more applications or appeals involve the same or similar questions of fact or law, or the evidence to be given is applicable to more than one application or appeal, the Commission may order that the applications or appeals be consolidated and heard together.

## **HEARINGS**

### **37. Hearings are Public**

1. Unless otherwise ordered by the Commission, hearings shall be open to the public.
2. The Panel Chair may impose such conditions and procedures as the Panel Chair considers necessary in order to facilitate public access to a hearing conducted by electronic means.

### **38. Hearing Hours**

Unless the Commission directs otherwise, hearings before the Commission will be held from 9:30 a.m. to 4:00 p.m.

### **39. Informal Hearings**

The Commission may relax the strict rules of procedure as required.

### **40. Method of Hearing**

The Commission may, at its discretion, conduct a hearing or a preliminary hearing in person, in writing, by teleconference or video conference, or by any other electronic means.

### **41. Written Submission Hearings**

1. The Commission may, at its discretion, determine a matter without an oral hearing.
2. When the Commission proposes to determine a matter without an oral hearing:

- (a) notice shall be given to the parties, and written submissions may be made on the matter; and
- (b) upon review of the written submissions, the Commission may:
  - (i) make a final determination of the matter without an oral hearing; or
  - (ii) proceed to an oral hearing.

#### **42. Representation by Counsel**

A party may be represented before the Commission by legal counsel at the party's own expense.

#### **43. Special Arrangements**

Any party requiring special arrangements for a hearing shall immediately notify the Commission.

#### **44. Oral Hearing Format**

1. The Panel will consist of a minimum of two Commissioners, at least one of whom must be a full-time Commissioner. The Panel Chair will be responsible for conducting the hearing.
2. Unless otherwise directed by the Chair, the hearing will proceed in the following manner:
  - (a) The Chair will give opening remarks at the beginning of the hearing that will state the manner in which the hearing will proceed;
  - (b) Any witness appearing before the Panel is required to give their testimonies under oath or solemn affirmation;
  - (c) Each party may make opening remarks to the Panel at the outset of the hearing, beginning with the appellant or applicant;

- (d) Each party will then present their case, beginning, in most instances, with the appellant or applicant, following, in turn, with the respondent, intervener or other such parties to the hearing. Each party may present their position by providing oral and written evidence, calling witnesses, and if available, presenting expert evidence. All parties involved are given the opportunity to respond to evidence and cross-examine witnesses. The Panel may also ask questions of the parties or any witnesses;
- (e) After the Panel hears all the evidence, each party will be given the opportunity to make closing oral submissions, or file written submissions, at the discretion of the Panel;
- (f) Subject to Rule 44.0(g) and following the completion of the hearing, the Panel will deliberate in private, determine the matter, and produce a written decision;
- (g) At the sole discretion of the Panel, an oral decision may be given, either during the hearing on an issue arising, or at the conclusion of the hearing concerning the outcome of the matter.

## **EVIDENCE**

### **45. All Relevant Evidence Admissible**

The Commission is not bound by the formal rules of evidence and may receive all evidence it deems relevant, even though such evidence may not be admissible in a court of law.

### **46. Commission May Request Further Evidence**

The Commission may request parties to file any further information, material or documents that the Commission considers necessary for a complete understanding of an issue in a hearing.

#### **47. Documents Filed During a Hearing**

1. Documents are expected to be filed in accordance with Rule 21(3). If a party wishes to file a document during a hearing, then the party may only do so with the approval of the Panel Chair. If another party objects to the filing, then the Panel shall determine whether the document may be filed.
2. When the Panel Chair directs that a document is permitted to be filed during a hearing, a party shall provide sufficient copies, paper or, if directed by the Panel Chair, by electronic means, for each of the Panel members, the Commission clerk, and the other parties.
3. When a hearing is conducted by electronic means, the Panel Chair may direct the method for filing a document during the hearing.
4. Parties filing a document in a hearing conducted by electronic means shall do so in a format that allows each Panel member and the other parties to view and retain a copy of the document.

#### **48. Commission May Order the Exchange of Documents**

The Commission may order the exchange of documents between parties or interveners.

#### **49. Party Unable to File Documentary Evidence**

If a party is unable to file all of its documentary evidence prior to the commencement of a hearing, the party may, at the direction of the Commission:

- (a) file such documentary evidence as is available at the time; and
- (b) file a statement identifying the remaining documentary evidence to be filed and indicate when that evidence will be filed.

## **50. Documents Filed to Become Part of Public Record**

All documents filed in respect of a hearing, including any submissions or other documents filed prior to the commencement of or during the hearing, shall become part of the public record.

## **51. Request for Confidentiality of Documents**

1. A party may request that all or any part of a document be held in confidence by the Commission.
2. Any request for confidentiality shall:
  - (a) include a summary of the nature of the information in the document;
  - (b) state:
    - i. the reasons for the request, including the details of the nature and extent of the specific harm that would 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
  - (c) be filed with the Commission and served on the parties.
3. Where a party has made a request under Rule 51.0(1), the document may, at the discretion of the Commission, be held in confidence.
4. A document that is determined by the Commission to be held in confidence may be considered by the Commission in determining the application or appeal.

## **52. Objection to Request for Confidentiality**

1. A party may object to a request for confidentiality by filing an objection and serving the objection on the parties.
2. An objection shall state the reasons:
  - (a) why the party requires disclosure of the document; and

(b) why disclosure would be in the public interest.

3. The party claiming confidentiality will have an opportunity to reply to any objection.

### **53. Factors Considered**

When deciding a request for confidentiality, the Commission shall consider:

- (a) whether the document may disclose matters involving public security;
- (b) whether the document may disclose sensitive financial, commercial or personal matters in relation to which the desirability of avoiding disclosure in the interest of any person affected outweighs the desirability of adhering to the principle that documents be available to the public; or
- (c) such other matters the Commission deems appropriate.

### **54. Power of Commission Respecting Confidentiality of Evidence**

The Commission may:

- (a) order that the document be held in confidence by the Commission;
- (b) order that the document be placed on the public record;
- (c) order that an abridged version of the document be placed on the public record;
- (d) order that the document be made available to a party to the proceeding, who has a good faith interest in accessing the confidential information and who would not otherwise be in conflict of interest, on such terms as the Commission considers appropriate, including the signing of a confidentiality form approved by the Commission;
- (e) order that the document be withdrawn; or
- (f) make any other order the Commission may deem to be in the public interest.

## **55. Request for In Camera Testimony**

1. A witness may request that all or any part of his or her testimony be given *in camera* before the Commission and not form part of the public record.
2. Any request for in camera testimony shall be made to the Commission in writing at least seven (7) days prior to the hearing date, stating the reasons for the request, including the details of the nature and extent of the specific harm that would result if the testimony was publicly disclosed.
3. Where a witness has made a request under Rule 55.0(1), all parties to the appeal will be informed of the request and may file an objection in writing with the Commission.
4. Upon considering a request under Rule 55.0(1), and any objections filed, the Commission shall determine if *in camera* testimony is necessary and inform the parties accordingly.
5. The Panel Chair may impose such conditions and procedures as the Panel Chair considers appropriate for any part of a hearing that is conducted *in camera*.

## **56. Witnesses**

1. The Panel will permit the parties to call and examine witnesses and cross-examine witnesses called by other parties. At the sole discretion of the Panel, a party may submit witness statements in writing.
2. The Commission, upon request of a party or on its own initiative, may issue a subpoena compelling the attendance of witnesses at a specified location and the production of documents and other evidence.

3. The Panel, upon the request of a party or on its own initiative, may at its discretion permit a witness to appear by teleconference, video-conference, or by other electronic means.

#### **57. Testimony Under Oath or Affirmation**

Each witness shall give their testimony under oath or affirmation.

#### **58. Expert Reports**

1. Expert reports shall include or be accompanied by supplementary material that includes the following:
  - (a) the expert's acknowledgement that the duty of the expert is to advise the Commission impartially on matters within the expert's area of expertise, and that duty overrides any duty to the party that has called this expert;
  - (b) the expert's curriculum vitae including his or her training, education, and experience that qualifies him or her to produce the report;
  - (c) an account of the nature of the request or direction received from the party to prepare the report;
  - (d) the facts and assumptions on which the report's conclusions are based;
  - (e) disclosure of any matters that fall outside the expert's area of expertise; and
  - (f) identification of any literature or other materials specifically relied upon in support of the opinions.
2. Unless otherwise directed by the Commission, a party or intervener who intends to introduce an expert report shall file with the Commission and serve the expert report on all other parties to the appeal or application at least (14) days before the commencement of the hearing.

## **59. Expert Witness at the Hearing**

1. At the commencement of his or her testimony, the expert may be formally qualified as an expert witness in the following manner:
  - (a) the expert witnesses' curriculum vitae are made an exhibit;
  - (b) the party who has called the expert witness will ask questions intended to establish the witness's credentials as an expert in a particular field;
  - (c) other parties may oppose the qualifying of the witness as an expert; and
  - (d) the Panel may rule either to not qualify the witness or to qualify the witness.
2. At the hearing, the expert shall provide a concise summary of the key points of the expert's report, if filed, but shall not read the report into the record.
3. The expert shall be subject to cross-examination by the other parties and to questions from the Panel.

## **60. Independent Expert**

The Panel may, at any time, call as a witness, and have qualified, an independent expert to inquire on any relevant question of fact or opinion contained in an expert's report or raised in the hearing record.

# **MOTIONS**

## **61. Parties May File Motions**

1. If a matter arises prior to a hearing that requires a decision or order of the Commission, a party may bring the matter before the Commission by filing a motion no later than five (5) days prior to the commencement of the hearing.
2. This motion shall:
  - (a) be in writing;

- (b) describe the grounds on which the motion is made and the decision or order sought;
  - (c) be accompanied with any documents that may support the motion; and
  - (d) be served concurrently upon the other parties.
3. The other parties shall have the right to respond to the motion in writing. Unless otherwise directed by the Commission, a written response shall be filed with the Commission and served on the other parties no later than two (2) days prior to the commencement of the hearing.
  4. Where a matter arises during a hearing that requires a decision or order of the Panel, the party will put the matter before the Panel accompanied by any supporting documents, other parties will have the right to be heard in response, and the Panel will either render or reserve a decision on the matter.

## **MISCELLANEOUS**

### **62. Unacceptable Conduct**

1. All persons in attendance at a hearing, including persons participating by electronic means, are expected to conduct themselves in an appropriate and respectful manner.
2. Without limiting the generality of the foregoing, the Panel may regard the following as unacceptable conduct:
  - (a) failure to attend or re-attend a hearing;
  - (b) refusing to take an oath or affirmation;
  - (c) refusing to answer a question;
  - (d) failure to produce a document or other required material;
  - (e) failure to comply with an order or direction of the Commission; and

- (f) behaviour shown toward the Commission, other parties and witnesses that is disrespectful, intimidating or otherwise inappropriate.

### **63. Failure to Comply**

If a party or witness is found to have conducted themselves unacceptably, or has failed to comply with these rules or a direction of the Commission, the Panel may:

- (a) order the person to attend or re-attend, as the case may be, at his or her own expense;
- (b) order the person to answer a question;
- (c) disregard all or part of the person's evidence;
- (d) order a person to remove themselves from the hearing;
- (e) dismiss the proceeding;
- (f) order the person, or the party on whose behalf the person is being examined, to pay the costs for them to return;
- (g) adjourn the hearing until such time as these rules, or the direction of the Commission, has been complied with;
- (h) find the person in contempt and make application to a Justice of the Supreme Court of Prince Edward Island to compel obedience in the same manner as for contempt of court; or
- (i) make such other order that the Commission considers appropriate in the circumstances.

### **64. Communication with Panel**

No party, witness or other participant at a hearing shall communicate with a Panel member outside of the hearing with respect to the subject matter of the hearing except:

- (a) in the presence of all other parties or their representatives; or

- (b) in writing by sending the written communication to Commission staff and a copy of the written communication to all parties who are participating in the hearing.

## **65. Record of Hearing**

1. The Commission shall compile a record of every hearing.
2. The record shall contain the following:
  - (a) every document filed with the Commission office under these rules in respect of the hearing or a step in the proceeding;
  - (b) the notice of a hearing;
  - (c) any orders made throughout the hearing;
  - (d) the final decision and order rendered by the Panel and the reasons for the decision; and
  - (e) an audio recording of the hearing.
3. Subject to the rules pertaining to confidentiality of documents and in camera testimony, the record of a hearing is a public record.

## **DECISIONS**

### **66. Decision and Reasons in Writing**

1. The Panel will ordinarily render its final decision in writing and include reasons for its decision in an order.
2. Parties to a hearing shall receive a copy of the order.
3. The order will be public and posted on the Commission's website and other legal research websites.

## MEDIA

### 67. Media Attendance

The Commission has adopted the following policy with respect to media attendance:

- a) Unless otherwise determined by the Commission, public hearings are open to the media.
- b) An audio broadcast of the hearing is available to the media. Therefore, third party microphones and other recording devices are not permitted to be used in the hearing room during a hearing.
- c) Any hearing or portion of a hearing that is held *in camera* shall not be broadcast.
- d) The audio broadcast will provide access to all Commission microphones in the hearing room.
- e) Media interviews shall not be conducted in the hearing room during a hearing, including any recess or break during the hearing.
- f) Cameras are not permitted beyond the front row of the public area.
- g) Cameras are not to take close up video or photos of notes on tables used by the parties, legal counsel, Commission Panel or staff.
- h) Cameras may only be used prior to the commencement of the hearing and during the opening statement made by the Chair and not otherwise.
- i) The Commission broadcasts hearings that, in the Commission's view, have interest or implications for a broader audience than may be present for the hearing.
- j) The Panel Chair may impose such additional conditions and restrictions as the Panel Chair considers advisable to facilitate media coverage of hearings conducted by electronic means.
- k) The Panel Chair is in charge of the hearing room and decisions of the Panel Chair regarding this policy are final.

- l) In addition to public hearings this policy applies to all other proceedings held by the Commission including, but not limited to, public meetings or sessions held where the Commission presides.