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# **Manitoba Clean Environment Commission**

## **PROCESS GUIDELINES RESPECTING PUBLIC HEARINGS**



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# **Manitoba Clean Environment Commission**

## **PROCESS GUIDELINES RESPECTING PUBLIC HEARINGS**





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# PROCESS GUIDELINES RESPECTING PUBLIC HEARINGS

## Preamble

These **Process Guidelines** have been prepared to provide information on how business will be conducted at the public hearings convened by the Manitoba Clean Environment Commission. They are intended to ensure that the hearings remain fair and open forums for the exchange of information and ideas, and that they provide a full opportunity for public involvement in the environmental management process in Manitoba.

These **Guidelines** will be reviewed and amended as appropriate to ensure that they remain relevant and responsive to changing public needs and aspirations.

## Part 1 - General

### 1.01 Authority

Subsection 6(8) of The Environment Act of Manitoba grants the Commission the authority to make rules governing its procedure.

Subsection 6(6) of the Act gives the Commission the same protection and powers, subject to the same requirements, as are conferred on Commissions appointed under Part V of The Manitoba Evidence Act.

### 1.02 Application of the Process Guidelines

These guidelines will govern all public proceedings – hearings or public meetings – conducted by the Commission.

Notwithstanding that it has adopted these guidelines, the Commission may adopt particular procedures for a given case, or vary these procedures for a given case.

### 1.03 Definitions

In these **Process Guidelines**,

“**Act**” means The Environment Act;

**“Chair”** means the Chair of the Commission and the member of the Commission who chairs any hearing, as the context may allow or require;

**“Commission”** means the Clean Environment Commission;

**“Commission Secretary”** means the individual appointed as Secretary to the Commission;

**“Director”** means an employee of the Department appointed as such by the Minister;

**“Document”** includes: written documentation, films, photographs, charts, maps, graphs, plans, surveys, books of account, transcripts, video tapes, audio tapes, and information stored by means of an electronic storage and retrieval system;

**“Hearing”** means a public hearing held by the Commission, at which parties provide submissions to the panel;

**“Minister”** means the Minister responsible for The Environment Act;

**“Motion”** means a request for a ruling or order in a proceeding;

**“Panel”** means the members of the Commission assigned to conduct the review as set out in the Minister’s reference;

**“Participant”** means a person or group of persons designated as such by the Commission, in accordance with *Practice Direction: Party Status*, in Appendix A to these Guidelines;

**“Party”** means an individual or organization granted standing in a proceeding on the terms set out by the Commission and may include, but is not limited to, the panel, the proponent, the Director, participants and presenters;

**“Presenter”** means any person wishing to make a presentation to the panel who is not designated as a participant, including members of the public who present their views to the panel;

**“Pre-hearing meeting”** means a meeting that precedes the hearing and is called by the Commission to deal with administrative and/or procedural matters;

**“Proceeding”** means all steps taken in a matter that is referred to the Commission for public review, beginning when the Commission receives the referral of the matter and ending when the Commission submits its report to the Minister;

**“Proponent”** means a person or group of persons proposing to undertake a development in Manitoba for which a licence is required under a statute of the Province;

**“Proprietary information”** means information or data provided to the Commission on a confidential basis, such as a trade secret and/or know-

how, but does not include the environmental effects or associated mitigation measures of a proposed undertaking;

**“Public meeting”** means a less-formal proceeding by the Commission, which involves presenters, but not participants and may or may not involve a proponent;

**“Public record”** includes any document filed or served in a proceeding, but does not include a document that the panel has ordered to be held in confidence and does not include the panel members’ notes or any information that cannot be made public under the terms of The Freedom of Information and Protection of Privacy Act (FIPPA);

**“Representative”** means a person engaged by a party to represent the party or a witness in a proceeding;

**“Submission”** means a written, visual, or oral presentation by participants or any other party who has registered with the Commission Secretary in accordance with the provisions established in these process guidelines;

**“Telecommunications link”** includes a connection via telephone, satellite or computer between a person and a public hearing.

#### **1.04 Commission Secretary**

All inquiries concerning the hearing process will be directed to the Commission Secretary.

#### **1.05 Communication with Panel**

For the entire duration of the proceeding, no party is to have direct contact with any member of the hearing panel.

Written communication to the panel will occur only through the Commission Secretary, and will be copied to all parties or their representatives.

Oral communication with the panel about a current proceeding will occur only in the presence, or with the consent, of all parties.

Where a participant has a representative, all communication between the panel and the participant will be through the representative, including notices of the hearing.

## **1.06 General Conduct of Proceedings**

### **1.06.1 Time Limits**

The Commission may extend or reduce the time specified for the performance of anything required by these guidelines. This may occur when and on such conditions as the Commission considers appropriate.

Where a party cannot meet a time limit required by these guidelines, the party will promptly request an extension from the panel and notify every other party of the request, where possible. The panel may invite submissions from the other parties before granting or denying the request.

### **1.06.2 Recording**

No person will make an audio or visual recording of any part of the proceeding without the permission of the Commission. Where permission is granted, the Commission will prescribe the conditions for recording.

The Commission will not permit any party to make a recording of any part of a proceeding if it considers that the making of the recording would cause undue prejudice to any party.

### **1.06.3 Media Coverage**

Radio, television, filming, videotaping or recording of Commission proceedings may be permitted at the discretion of the Commission, subject to any terms and conditions the Commission may impose.

Permission to do any of the above should be sought from the Commission Secretary prior to the beginning of the hearing.

### **1.06.4 Transcripts**

Under ss. 7 of the Act, the Commission records all public proceedings. Transcripts of the proceedings are made available to all parties and the public as soon after the day's proceedings as possible.

### **1.06.5 Public Access**

All Commission hearings are open to the public, with rare exceptions. Exceptions might include matters of public security or cultural

concern, or involving confidential proprietary matters or records that are subject to The Freedom of Information and Personal Privacy Act (FIPPA).

Members of the public are entitled to have full access to the Commission's public record, with the same rare exceptions noted above.

The Commission will place information filed with it during the proceeding on its website, at its discretion. All information may also be reviewed at the Commission office, by appointment.

#### **1.06.6 Interpreters and Other Accommodations**

If any party requires an interpreter and/or any other accommodation (e.g. services to assist the visually or hearing impaired) to enable meaningful participation at the hearing, the Commission will make every reasonable effort to accommodate the party's needs. The person requesting interpretation or other accommodation should notify the Commission Secretary as early in the proceeding as possible.

#### **1.06.7 Technical Sessions**

The panel may at any time during a proceeding and upon such terms as it deems appropriate, organize technical sessions or workshops or take other necessary steps to encourage the parties to communicate and attempt to resolve technical and other questions.

## **Part 2 - Pre-Hearing Procedures**

### **2.01 Commencement of Proceeding**

A proceeding begins when the Commission receives a reference of a matter from the Minister in accordance with the Act.

Typically, the reference directs the Commission to conduct public meetings or hearings into an application by a proponent for a licence under The Environment Act or another Manitoba statute. Alternatively, the reference may direct the Commission to investigate a specific environmental matter.

Proceedings may also involve appeals or consideration of other matters, as provided in The Contaminated Sites Remediation Act or The Drinking Water Safety Act.

### **2.02 Terms of Reference**

The reference to the Commission will include Terms of Reference providing guidance on the Commission's mandate. The Commission will conduct its proceedings in accordance with these terms.

### **2.03 Notice of Proceedings**

The Commission will, upon receipt of a reference from the Minister, post on its website a public notice of the proceeding. The notice will include a brief description of the development proposal.

Any member of the public is welcome to participate in the proceedings, as set out in these guidelines.

### **2.04 The Panel**

The panel will consist of a minimum of three members designated by the Commission Chair from those appointed to the Commission by the Lieutenant-Governor in Council. As a rule, the Commission Chair will also be the chair of the panel. If unable to do so, the Commission Chair will appoint one of the panel members to be chair.

## 2.05 Identification of Parties

The proponent, the Director and other designated government officials are automatically parties to a Commission proceeding. Those who attain participant status, as well as those who indicate that they want to be a presenter, are also designated as parties.

A request for participant status in a proceeding may be filed with the Commission within the time and on the terms specified by the Commission.

See Appendix A - *Practice Direction: Party Status*

## 2.06 Participant Assistance Program

The Minister responsible for The Environment Act may make funding available to assist certain parties in their participation in the proceedings. This funding will be administered in accordance with the Participant Assistance Regulation 125/91 and the CEC guidelines.

For more information about this program, see *Guidelines for the Participant Assistance Program*, available on the Commission website – [www.cecmanitoba.ca](http://www.cecmanitoba.ca) – or from the Commission office.

## 2.07 Pre-Hearing Meetings

The Commission may call one or more pre-hearing meetings with the proponent and other parties as deemed appropriate by the Commission in order to facilitate the following:

- (a) finalizing agendas and schedules;
- (b) outlining the procedures to be followed at the hearing;
- (c) determining the list of issues to be considered at the hearing, as well as seeking a clear description of the issues in a hearing;
- (d) setting the terms for the mutual exchange by the participants of documents and exhibits proposed to be submitted at the public hearing;
- (e) considering any matter that may aid in the efficient conduct of the hearing.

The Commission will give the parties notice of a pre-hearing meeting. The notice will include the date, time and place of the meeting and a brief description of the agenda.

Pre-hearing meetings are open to the public.

See Appendix A - *Practice Direction: Pre-Hearing Meetings*

## **2.08 Motions**

The Commission will accept motions respecting procedural matters from the proponent and those designated as participants.

All motions must be prepared in writing and with sufficient copies to allow distribution to all panel members, and other parties as directed by the Commission Secretary.

Where possible, notices of motion should be prepared and delivered to the Commission before the opening of a hearing session.

The motion must set out: the precise relief sought; the grounds to be argued, including a reference to any statutory provisions or rules to be relied on; and the documentary evidence to be used or relied upon.

All motions will be presented before the panel. An opportunity will be provided for specified parties to respond.

On hearing of the motion, the Commission may allow, dismiss or adjourn the motion, in whole or in part, and with or without terms.

Motions will not be accepted following the close of the hearing.

See Appendix A - *Practice Direction: Motions*

## **2.09 Information Requests**

The Commission may seek information from any party to a proceeding at any time by way of a written information request.

Where deemed necessary by the Commission, parties to a proceeding may seek information, within the scope of the Terms of Reference for the proceeding, from other parties. This will be done through written information requests at a time and on terms fixed by the Commission.

All information requests will be submitted to the Commission for approval. Approval is at the discretion of the Commission. Approved requests will be forwarded to the appropriate party for response.

Copies of approved information requests, as well as the responses, will be placed on the public record and will be part of the record of the proceeding.

See Appendix A - *Practice Direction: Information Requests*

## **Part 3 - Hearing Procedures**

### **3.01 Application**

In this section the word “hearing” includes all public sessions of a proceeding, whether it is a public hearing, public meeting or a pre-hearing meeting.

### **3.02 Adoption of Procedural Rules**

Subject to the following clause, the Commission will conduct all public hearings in accordance with these *Process Guidelines*.

The Commission may, in any proceeding, dispense with, vary or supplement these guidelines by way of a direction on procedure.

### **3.03 Hearing Times and Locations**

The Commission will designate the times and places for hearings.

Where sessions of the hearing are held in a number of locations, the Commission may, in order to prevent undue repetition of evidence, decide that the evidence recorded at one location will be considered part of the evidence at another location.

### **3.04 Notice of Hearing**

Where the Commission undertakes to hold a hearing under The Environment Act, it will, at least thirty days in advance of that hearing, ensure that public notice of the date of a hearing is given to the parties and to the public.

The notice of hearing will include the following information:

- (a) the date, time, place and nature of the hearing;
- (b) the matters to be considered at the hearing;
- (c) the opportunity for members of the public to participate;
- (d) the date by which information to be considered in the hearing must be filed; and
- (e) any other information relevant to the conduct of the hearing.

### **3.05 Order of Proceedings**

While Commission hearings are not as formal as court proceedings, they are still reasonably structured and parties are expected to act appropriately. The degree of formality of a hearing may vary depending on the nature of the hearing. The format that will generally be followed is set out in a Practice Direction.

See Appendix A - *Practice Direction: Order of Proceedings*.

### **3.06 Submissions**

A participant will notify the Commission in the time specified in the notice of hearing that he/she intends to make a submission to the Commission at the hearing, and will file a copy of that submission with the Commission fourteen days before the beginning of the hearing.

A submission will:

- (a) set forth the name, address and telephone number of the participant,
- (b) describe the particular interest of the participant;
- (c) contain a clear and concise statement of the position to be taken by the participant; and,
- (d) contain a list of all documents that will be relied upon by the participant.

At the same time, participants will deliver a copy of the submission to the proponent, other participants, and other parties designated by the Commission. This may be in electronic format or hard copy.

#### **3.06.1 Reply to Submissions**

Within seven days of receiving a copy of a submission, the proponent or a participant may submit to the Commission a reply to the submission and will deliver a copy of the reply to the participant that made the original submission.

### **3.07 Production and Inspection of Documents**

At least fourteen days prior to the hearing date, participants will submit to the Commission any documents they intend to rely upon at a hearing.

Unless the Commission advises otherwise, the proponent and each participant will be responsible to ensure that all other designated parties will receive copies of all relevant information being presented at the hearing or that convenient access to that material is provided.

### **3.07.1 Failure to Produce on Time**

A participant may not put any document into evidence that was not filed with the Commission in time, unless the participant satisfies the Commission that there is sufficient cause for not complying with the deadline, and that no prejudice results to the other participants or the proponents as a result of the late filing.

See Appendix A - *Practice Direction: Disclosure, Witnesses and the Fourteen-Day Rule*

### **3.08 Service and Filing**

Any document may be delivered to a participant by personal delivery, registered mail, fax, e-mail or other means as determined by the Commission.

Any document, including proposals, notices, submissions and replies, may be filed with the Commission by personal delivery, registered mail, or e-mail to the Commission Secretary, or other means as determined by the Commission.

All material filed with the Commission **must** be in an electronic format. This includes submissions, documents to be used in a hearing, information requests, presentations and any other material designated by the Commission. Hard copies of material filed, in the numbers prescribed, will also be required.

### **3.09 Quorum**

Under the Act, the panel must have a quorum of at least three members in order to conduct a hearing. So long as this minimum is maintained, when one or more panel members cannot complete the hearing, the hearing may be completed by the remaining members.

### **3.10 Conduct of Hearings/Procedure at Hearing**

All public hearings of the Commission, while structured in nature, will be as informal as possible.

Hearings will be conducted in an orderly and professional manner.

Parties making submissions to the Commission will appear in person or through a designated representative.

Written submissions will be accepted under conditions prescribed by the Commission.

Hearings may be conducted with one or several of the parties participating in person, by way of videoconference or by telephone conference call.

Parties, members of the public and specialists presenting information in hearings will be subject to such questioning by the parties to the proceeding as the hearing panel may allow.

The Commission may set time limits for oral submissions and questions by any or all parties and participants at a public hearing.

### **3.11 Role of the Panel Chair**

The member of a panel who has been designated as Chair will be responsible for the general conduct of the hearing.

The Chair may

- a) exclude submissions or questions that, in the opinion of the Commission, are outside its Terms of Reference or are needlessly repetitive in nature;
- b) limit questioning where participants have similar interests in the proposed development;
- c) limit the duration of a submission;
- d) prescribe the manner in which a submission is to be presented;
- e) take any other actions necessary to carry on the business of the hearing.

### **3.12 Public Participation**

Any member of the public who wishes will be given a fair opportunity to present a case at a hearing.

### **3.13 Maintenance of Order at Hearings**

The Commission has the authority to make orders or give directions that it considers necessary for the maintenance of order at the hearing.

Furthermore, subsection 92 of The Manitoba Evidence Act provides that the Commission may call on the assistance of any peace officer to maintain order.

### **3.14 Truth in Proceedings/Swearing-in**

All persons making a submission to the Commission, including the proponent and participants, will be required to provide evidence that is truthful.

All persons making a presentation to the hearing panel will be asked to affirm that the evidence to be given will be true. Representatives making a presentation on behalf of a party will also be required to make this affirmation.

### **3.15 Representation**

A party has the right to self-representation, or to be represented by legal counsel or other advocate.

A party is required to notify the Commission of its intention to use a representative, as well as the name and contact information of the representative. The party must notify the Commission of any changes in this information as soon as possible.

### **3.16 Time Limits for Presentations**

Parties making a submission to the hearing will have fifteen minutes to make their presentation.

Any party needing more than fifteen minutes for the presentation of a submission is required to give notice to the Commission Secretary not later than seven business days prior to the opening of the hearing. This notice will include an estimate of the time required for the completion of the presentation.

### **3.17 Evidence**

At a hearing, the proponent and participants may:

- a) call and examine witnesses and present evidence and submissions; and
- b) conduct cross-examinations of witnesses at the hearing as required for a full and fair disclosure of relevant issues

The Commission may limit the presentation of evidence by:

- a) excluding any evidence that it considers irrelevant or unduly repetitious; and
- b) reasonably limiting further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

#### **3.17.1 Admissibility and Exclusion**

The rules of evidence that apply to a hearing before the Commission are less formal than those applied by a court.

Relevance is the primary consideration for the Commission when deciding whether to admit evidence.

The panel may admit any evidence that it considers relevant to the issues before it, if admitting the evidence would not be unfair to a party. The panel will not admit evidence that is privileged.

The panel may admit hearsay and circumstantial evidence if it is considered relevant.

The panel may also exclude evidence. This will normally occur when the evidence is of minimal relevance, is unreliable, may confuse the issues, may prejudice the other parties or is a repetition of evidence already presented.

#### **3.17.2 Written Briefs**

The Commission may direct that a written brief be submitted by a party, in addition to, or in lieu of, oral presentation. In such cases, the brief will be delivered to other parties as the Commission may direct.

### 3.17.3 Expert Evidence

An expert witness is a person who, through experience, training and/or education, is qualified to give an opinion on certain aspects of the subject matter of the hearing. To be an “expert” the person must have knowledge that goes beyond “common knowledge”.

Any party intending to present expert evidence at a hearing is required to provide advance notice that an expert will be called to give an opinion. This notice will be given to the Commission, and all other parties, at least fourteen days before the hearing date the notice must include:

- a) a brief statement of the expert’s qualifications and areas of expertise;
- b) the opinion to be given at the hearing; and
- c) the facts on which the opinion is based.

### 3.17.4 Expert Report

If a party intends to produce a written statement or report by an expert(s) at a hearing, a copy of the statement or report must be provided to the Commission and all other parties before the statement or report is given in evidence.

Expert reports must be distributed **fourteen** days before the hearing date. The expert’s qualifications must be included with the report.

The purpose of advance notice of expert evidence is to give the other parties an opportunity to review and consider the expert evidence, and the facts on which it is based, in order to prepare questions to ask at the hearing and to consider whether to submit their own expert evidence.

#### 3.17.4.1 Failure to Comply

Failure to provide the required notice of expert evidence or expert reports may result in exclusion of the intended evidence.

### 3.17.5 Evidence Provided by Electronic Means

At the discretion of the Commission and with its prior approval, evidence may be provided during hearings by electronic means, including but not limited to telephone, videoconference, and webcast.

### **3.17.6 Proprietary Information**

At the request of a participant, the Commission may restrict public access to part of a hearing and treat all material or business information filed with the Commission during that part as confidential.

This will happen rarely and only if the Commission believes that the public interest will be best served by doing so.

### **3.17.7 Written Submissions**

The Commission will seek and accept written submissions relevant to the Terms of Reference for the hearings.

In the notice of hearing, the Commission will state the date by which written submissions must be made.

Written submissions will become part of the record of the hearings.

Written submission may be filed with the Commission by mail, email, fax, through the website or other means as designated by the Commission.

### **3.17.8 Audio-visual Requirements**

Any participant requiring the use of specialized equipment to make their presentation must inform the Commission Secretary at least seven days before the scheduled date of presentation.

## **3.18 Witnesses**

A witness at a hearing will be examined on oath or affirmation, unless the Commission directs otherwise.

At least fourteen days before the scheduled hearing date, a party will file with the Commission the name of every witness they intend to call to present evidence. This list will also be delivered to other parties as designated by the Commission.

Unless the Commission directs otherwise, a party who has not complied with this rule may not be permitted to call a witness.

### **3.18.1 Summons to Witness**

A participant to a hearing may request the Commission to compel the attendance of any person at the hearing as a witness. The Commission may, by subpoena or summons, require that witness to give evidence either orally or in writing, and to produce such documents and things as the Commission deems necessary to the full investigation of the matter it is hearing.

When a party requests the Commission to issue a subpoena or summons and the reason for the request is not clear, the panel may hear submissions from the parties before deciding whether or not to issue the subpoena or summons.

See Appendix A - *Practice Direction: Summons to Witness*

### **3.18.2 Witness Panels**

The Commission may permit evidence to be given by a number of witnesses sitting as a witness panel. This will normally be allowed when the testimony of two or more witnesses is interconnected and the evidence will be more understandable if they are able to give their evidence together.

## **3.19 Objections**

If a party wishes to object to something in the hearing (e.g. questions or evidence), that party may raise an objection. An objection should be made in a courteous fashion stating the reasons for the objection. The panel will provide the other party(s) with an opportunity to respond before making a decision on the objection.

## **3.20 Questioning**

Participants will be allowed to question the evidence of the proponent. Participants will be allowed to question other participants only if the evidence is adverse in interest to them. The proponent will be allowed to question the evidence of participants. Neither the proponent nor participants will be allowed to question presenters.

Members of the panel may question any other party regarding their evidence.

Questioning will be permitted to the extent necessary for a full consideration of the matter before the panel.

The Chair of the panel will determine the scope of questioning and may limit the examination if it is repetitive or irrelevant, or conducted in a disrespectful manner.

See Appendix A - *Practice Direction: Questioning*

### **3.21 Suspension of Proceedings**

The Commission may require a party to any proceedings to provide such information, particulars or documents as it may require and may suspend the proceedings until it receives the required information, particulars or documents.

### **3.22 Adjournments**

The Commission may adjourn a hearing from time to time, may reconvene a hearing and may grant extensions of time.

### **3.23 Closure of Record**

At the conclusion of the hearing, the record will be closed unless the panel directs otherwise. Once the record is closed, no additional evidence will be accepted.

## **Part 4 - Post-Hearing**

### **4.01 Decision**

Only those Commission members who sat on the panel during the proceeding will make the decision.

In making its decision, the panel members will consider all of the information presented during the proceedings. This will include all of the evidence presented during the hearings, as well as any written submissions filed.

### **4.02 Powers of Panel**

Under the Act, the panel has the authority to provide advice and recommendations to the Minister. Although the Minister is not bound to accept the advice and/or recommendations of the Commission, in issuing an environmental licence, the Minister will be strongly informed by the conclusions of the hearing panel.

### **4.03 Report**

Under the Act, the Commission must deliver its report to the Minister no later than ninety days from the closure of the record.

The Act stipulates that the report is to outline the Terms of Reference, the process, the dates and locations of the meetings or hearings that were held, a summary of the public response and opinions, and the advice and recommendations of the commission.

### **4.04 Maintenance of Records**

The Commission will maintain all of the records of the proceedings for an indefinite period of time. Initially, they will be kept in the offices of the Commission. In accordance with government archival directives, they will be transferred to the Manitoba Archives for permanent storage.

## Appendix A – Practice Directions

- *Party Status*
- *Pre-Hearing Meetings*
- *Motions*
- *Information Requests*
- *Order of Proceedings*
- *Disclosure, Witnesses and the Fourteen-Day Rule*
- *Summons to Witness*
- *Questioning*
- *Calculation of Time*
- *Representatives*
- *Copies*

## PARTY STATUS

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This Practice Direction describes the various parties to a Clean Environment Commission proceeding and sets out the rights and responsibilities of parties.

This Practice Direction is intended to help to ensure that hearings remain fair and open forums, while ensuring that they remain as informal as possible.

The Commission has established various levels of participation to ensure that all those interested in the proceeding can be involved. As outlined below, different levels of participation are available according to a person's needs and interests.

### **Code of Conduct**

All parties must be knowledgeable of, and agree to abide by, the Code of Conduct for parties and representatives.

### **1. Party**

A party is an individual or organization that plays a role in a proceeding, on terms set out by the Commission.

Parties may include: the panel, the proponent, the federal or provincial governments, participants, presenters and the public.

### **2. Panel**

In accordance with The Environment Act, the CEC Chair appoints a panel of at least three members to conduct the hearing. One of the members is designated to be chair of the panel.

The panel conducts the hearings, considers the evidence presented and reports to the Minister its advice and recommendations. It must conduct its hearings in accordance with the Terms of Reference given by the Minister.

### **3. Proponent**

The proponent is the corporation, organization or agency that has applied under the Act for an environmental licence to proceed with the proposed project.

The proponent is responsible for:

- Providing to the panel and the public an in-depth understanding of the proposed development and the effects the development may have on the environment, including the social, economic and cultural environments;
- Responding as completely as possible to any requests made by the Commission for the purposes of the proceeding;
- Responding as completely as possible to the requirements of the Terms of Reference for the proceeding; and
- Responding as completely as possible to any information requests made in relation to the proceeding.

In cases where the Commission is conducting an investigation into an environmental issue, there may be no proponent.

#### **4. Participants**

The Commission may name a person or group of persons to be a participant in all or part of a proceeding on such conditions as the Commission considers appropriate.

The following are participants:

- a) Persons or organizations that have applied for, and been granted, funding under the Participant Assistance Program;
- b) Persons or organizations that have applied for and been granted participant status by the panel for all or part of the proceeding, on such conditions as the panel considers appropriate.

#### **Applications**

Application must be made in the form prescribed by the Commission.

The application will clearly state why participant status should be granted and will outline any information or other assistance the applicant may provide to the Commission during the proceeding.

In considering the application, the panel may request additional information or clarification from any person before granting participant status.

In deciding whether to name a person or organization as a participant, the panel will consider, among other things:

- a) The degree to which an applicant's interests may be directly and substantially affected by the proposed project;
- b) The relevance of the applicant's proposed submission to the mandate of the hearing;
- c) The significance of the applicant's commitment to the entire hearing process; and
- d) Whether or not the applicant is likely to make a useful and distinct contribution to the panel's understanding of the issues in the proceeding.

Those not successful in attaining participant designation will be provided alternate opportunities to participate in the hearing process suited to their needs and capabilities as well as the needs of the panel.

### **Rights of a Participant**

Those granted participant status by the panel assume the fullest range of rights and responsibilities.

The panel may alter the procedural rights and obligations of a participant depending on the interests and resources of the participant.

A participant to the proceeding before the panel may:

- a) Bring motions;
- b) Be a witness at the hearing;
- c) Be questioned by the panel, the proponent and other participants;
- d) Call witnesses at the hearing;
- e) Cross-examine witnesses presented by the Commission, the proponent or other participants;
- f) Make submissions to the panel, including final argument; and
- g) Receive copies of all documents exchanged or filed by the proponent and other participants.

Where allowed and on terms set by the panel, a participant may request information from the proponent and other participants.

A participant may not question a presenter.

### **Responsibilities of a Participant**

Participants will be highly committed and engaged in the entire hearing process and are expected to, among other things, compile existing or perform original research and analysis; compile expert opinion; and present their findings to the panel.

Participants will adhere to all procedural matters set by the panel, including but not restricted to participating in pre-hearing meetings and abiding by disclosure deadlines.

Participants will co-operate with each other in matters such as scheduling, disclosure, procedure and agreements on undisputed facts to the fullest extent that is compatible with their interests.

Participants are expected to keep abreast of hearing activities, either by attending all hearings or reading the transcripts. The purpose of this is to avoid duplication of questions or submissions.

## **5. Presenters**

The panel may, upon application, name a person who has an interest in the subject matter of the proceeding to be a presenter on such conditions as the panel considers appropriate.

Application to be a presenter must be made in the form prescribed by the Commission.

The panel may direct persons who have similar interests to designate one person to act as their representative or to co-ordinate their participation in the proceeding.

A presenter is not a participant in the proceeding.

### **Rights of a Presenter**

A presenter:

- a) Will present his or her relevant evidence at a pre-arranged time;

- b) May provide the panel with a written statement as a supplement to oral testimony; and
- c) May be questioned by the panel.

A presenter in a hearing may not:

- a) Call witnesses;
- b) Question witnesses;
- c) Bring motions;
- d) Make opening and/or closing statements at the hearing; or
- e) Be guaranteed to receive a copy of documents exchanged by the parties that are relevant to the presenter's interests.

### **Responsibilities of a Presenter**

A presenter need only attend at the hearing when presenting evidence.

Presenters will adhere to all procedural matters set by the panel, including but not restricted to participating in pre-hearing meetings and meeting disclosure deadlines.

Presenters will co-operate with each other in matters such as scheduling, disclosure, procedure and agreements on undisputed facts to the fullest extent that is compatible with their interests.

## **6. General Public**

This Practice Direction does not limit the general public from participating in the hearing process.

There will be times designated during the hearing in which members of the public may participate in the proceeding, without having to have applied for status as a participant or presenter.

### **Statements**

A member of the public may make a statement regarding the subject under consideration.

Such statements must be relevant and must not exceed fifteen minutes in length.

The public presenter may be questioned by panel members following the presentation.

### **Notice**

Persons wishing to make a statement must make their intentions known to the Commission Secretary before the period designated for public statements. This may occur at the meeting at which the statement is made.

### **Questions**

At specific, designated times, members of the public will be allowed to ask the proponent questions relevant to the subject matter of the proceeding.

## PRE-HEARING MEETINGS

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### ***What is a pre-hearing meeting?***

A pre-hearing meeting is a public meeting for the Commission to consider preliminary and procedural matters before holding a formal hearing to review a development project.

The main purpose of the pre-hearing meeting is to resolve a variety of issues before the hearing process. This saves time and expense for all parties involved in the review by preventing procedural problems during the hearing itself.

The pre-hearing meeting provides an opportunity for interveners to become involved early in the review process and to participate in shaping that process.

### ***What happens at a pre-hearing meeting?***

The pre-hearing meeting addresses the appropriate scope and jurisdiction of the review, the location and timing of a hearing and deadlines for filing hearing submissions. There are also discussions of the major issues to be examined at the hearing and of hearing procedures.

### ***Who can participate in the pre-hearing meeting?***

A pre-hearing meeting is a meeting of all the parties in a proceeding, including:

- The panel members
- The proponent
- The Director, or designate
- All participants (Each party designated by the Commission as a participant must have at least one representative at the pre-hearing meeting)
- Commission staff
- The public.

### ***Notice of a pre-hearing meeting***

The Commission will publish a notice of the pre-hearing meeting on its website, as well as notifying all identified parties by email. This notice will state the date, time and place for the meeting and may contain a list of topics to be addressed.

The proponent, the Director and participants are automatically invited to attend the pre-hearing meeting.

Members of the public who wish to participate should notify the Commission of their intention to do so as soon as possible after the public notice of the pre-hearing meeting is posted on the website.

### ***What is the format of the pre-hearing meeting?***

While the pre-hearing meeting is less formal than a court proceeding, it does have a structured format.

The meeting begins with opening remarks by the panel Chair, followed by preliminary matters such as procedural or legal issues. Participants will be given an opportunity to present their concerns addressing each agenda item.

The proponent may respond to any of the concerns raised.

The Chair is responsible for the general conduct of the meeting.

### ***At the pre-hearing meeting***

Business at the pre-hearing meeting may include:

- Reviewing the process and procedures related to the public hearing.
- Reviewing agendas and schedules for the hearing, including discussion of the anticipated length of the hearings;
- Determining the list of issues to be considered at the hearing, as well as seeking a clear description of the issues in a hearing;
- Setting the terms for the mutual exchange by the participants of documents and exhibits proposed to be submitted at the public hearing;
- Providing information about expert witnesses to be called for the hearings.
- Any matter that may aid in the simplification and disposition of the hearing.

### ***What's not part of a pre-hearing meeting?***

At a pre-hearing meeting the Commission does not hear submissions regarding the effects of a proposed project. Those submissions are considered at the hearing, following the pre-hearing meeting.

### ***How to prepare for the pre-hearing meeting***

- Familiarize yourself with aspects of the project that interest you.
- Read the relevant legislation, Commission procedural guidelines and practice directions to learn about the review process.
- Speak with Commission staff members if you need clarification.
- Prepare arguments on the scope and kinds of issues the public hearing should address.

- Consult with other interveners. If you share common concerns, you could form a coalition.

***What to bring to the pre-hearing meeting***

Please come to the pre-hearing with the following material:

- A list of the issues to be addressed in the hearing.
- A list of documents you require from the other parties and reasons why you require the documents.
- A list of expert witnesses you intend to use, if any, and why.
- Description of issues on which you disagree with other parties.

***Need for legal counsel and experts***

While it is not necessary, parties are free to retain the services of a lawyer, expert or other agent to represent their interests at a pre-hearing meeting or hearing.

## **Internal Guidelines - Pre-Hearing Procedure**

### **Pre-Meeting**

All parties attending and wishing to participate in the meeting will register with Commission staff.

### **Meeting**

#### **1. Opening Remarks**

- Statement of the purpose of the pre-hearing meeting.
- Introduction of panel and staff.
- Discussion of agenda.

#### **2. Preliminary Matters**

- Discussion of procedural, legal or other similar matters.

#### **3. Agenda Items**

- The proponent and each participant may comment on each agenda item.
- The panel may ask questions.

#### **4. Scheduling of Hearing**

- Discuss dates, time and locations of public hearings.
- Participant may provide comment.

#### **5. Closing**

The panel Chair will usually announce deferral of any required decisions.

#### **6. Report**

The Chair will provide a report of the pre-hearing meeting to the parties as soon as possible.

## MOTIONS

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Section 2.08 of the *Process Guidelines* allows the Proponent and designated Participants to file motions in respect of procedural matters.

In the past, such motions were handled on an ad hoc basis. This Practice Direction sets out further regulation for the process for dealing with motions.

### **Who**

For the purpose of the Motion process, the Proponent and designated-Participants may submit Notices of Motion to the Commission.

The party filing a Notice of Motion must serve it on the Commission, the Proponent and all designated-Participants in accordance with the deadlines set out in this PD.

### **When**

The Notice of Motion is to be filed no later than 12 Noon eight (8) calendar days prior to the date set for the hearing of the Motion.

The responding party must provide a Response to the Motion no later than 12 Noon four (4) calendar days prior to the date set for the hearing of the Motion.

The Commission may extend or abridge any time prescribed by these rules, on such terms as the Commission determines to be fair and reasonable. The Proponent or a designated Participant may make such a request – in writing and in a timely manner.

### **What**

A Notice of Motion must contain the following:

1. The name of the proceeding.
2. The name of party making the Motion.
3. State the precise relief sought from the Commission.
4. State the grounds for the Motion. Specify the grounds to be argued, including a reference to any statutory provisions or rules to be relied on.

5. A comprehensive list of the documentary evidence to be used at the hearing of the motion.
6. A clear and concise statement of the facts relevant to this Motion and which should be considered by the Commission.
7. Copies of documents or information in support of the Motion must be attached.
8. Date; name, address, telephone number, email address of the moving party's lawyer or the moving party; signature of lawyer or other representative of the moving party.

***How***

The Commission may, at its discretion, combine motions which are similar in nature, hearing them as one motion.

The Commission will limit the amount of time allowed for oral argument during a motions hearing. The time-limit will vary depending on the nature of the motion to be heard.

***Other***

Notices of Motion of a substantive nature – e.g. to delay the start of the hearings; to challenge the Terms of Reference; etc. – must be filed no later than 15 days prior to the date scheduled for the commencement of the hearings. This will allow for the motion to be heard prior to the hearings.

(Please note that this is different from the 8-day period prior to a scheduled Motion Hearing date.)

## INFORMATION REQUESTS

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The *Process Guidelines* allow the Commission to implement a formal information request (IR) process in certain proceedings.

The purpose of an IR process is to ensure that parties to the proceeding have access to all of the information necessary for the review of the matter before the hearing panel.

The decision to implement an IR process is solely at the discretion of the Commission. An IR process will not, necessarily, be a part of all proceedings.

The Commission will set the time-frame and the terms for the process.

### ***What***

An IR is a written request by any party to receive information from a designated party in a proceeding. Such a request is issued through the Commission. The party that receives the IR is required to provide the Commission with a written response that satisfactorily addresses the questions or issues raised by the IR.

The subject matter of information requests will be restricted to issues that the Commission has identified for consideration at the hearing. The scope of IRs will be confined to information that is relevant and necessary to assist the inquiring party to be reasonably informed about the issue under consideration.

IRs must be relevant to:

- the Terms of Reference for the proceeding, as issued by the Minister;
- the assessment report filed by the proponent; and/or
- material filed by a participant to be used in a hearing.

### ***Who***

For the purpose of the IR process, designated parties include the proponent and participants, but not presenters.

In certain cases and at its discretion, the Commission may limit the flow of information requests to be only between the proponent and participants and not from participant to participant.

## ***How***

All information requests will be submitted to the Commission for approval. Approval is at the discretion of the Commission and will be based on factors such as relevance, repetition and redundancy. Approved requests will be forwarded to the appropriate party for response.

The Commission may issue its own IRs, as well as those originating from designated parties.

If the Commission receives more than one IR asking for the same information, it can amalgamate them into one IR to prevent redundancy.

The Commission will establish a process for tracking the information requests.

## ***Guidelines***

In carrying out the information request process, parties will be guided by the following:

1. The parties shall engage in the IR process in a prompt and co-operative manner, in order to ensure full and timely disclosure with the minimum amount of effort and cost.
2. Parties shall provide detailed, responsive and complete answers to information requests, along with copies of all related documentation.
3. Where a receiving party is unable to answer an information request without further clarification or direction from the inquiring party, it shall promptly communicate with the inquiring party in order to resolve the difficulty.
4. Where a dispute arises regarding information requests, or the answers to information requests, the parties shall promptly communicate with each other in order to resolve the dispute in a co-operative and efficient manner.
5. In the event that such disputes cannot be resolved by the parties, the Commission will determine the matter in a summary fashion. This may include ordering the parties to meet and exchange information in order to satisfy any outstanding requests.
6. A party that is unable or unwilling to provide a full and adequate response to an information request will file and serve a response:

- a) setting out specific reasons why the party contends that the request is not relevant;
  - b) setting out reasons why the information needed for an answer is unavailable, and providing alternative available information that would be useful for the party making the information request;
  - c) setting out the reasons why the information being sought is considered confidential and any harm that would be caused by making it public; or
  - d) otherwise explaining why a full response cannot be given to the information request.
7. To the extent possible, the process of making and responding to information requests should be completed before the beginning of the hearing of evidence.

### ***Format***

For each IR, please submit your request in the following format:

#### ***Reference***

Identify the source document, and where specifically in the document (e.g. section number, page number, table number, appendix number, etc.) your request originates.

If there is more than one source, list them individually.

#### ***Preamble:***

Describe why you are making the request. Is the source document unclear? Are there inconsistencies or errors in the document? What will you do with the response? Why, specifically, do you need to know this information? Please be thorough and clear with your reasons.

#### ***Request:***

What information do you want? What exactly is the recipient being directed to do or provide? One party may ask another party, for example, to:

- a) Provide document X.
- b) Explain why you did (whatever), as opposed to ....
- c) Explain your rationale for the number you stated in...

## ORDER of PROCEEDINGS

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While Commission hearings are not as formal as court proceedings, they are still reasonably structured and parties are expected to act appropriately. The chair of the panel is addressed as “Mister or Madam Chair or Chairperson”. Surnames should be used when addressing or referring to the other panel members or parties.

### **What Happens at a Hearing?**

For the most part, hearings are held during day-time business hours – from 9.00 a.m. to 5.00 p.m., with breaks for meals and refreshments. There will be some sessions held in evenings to accommodate those who wish to participate, but are unable to make day-time hearings.

At the hearing, the order of business will, typically, be as follows:

#### **1. Opening Remarks**

##### **Panel Chair**

- Welcome
- Statement of the purpose of the hearing
- Introduction of panel and staff
- Discussion of procedural, legal or other similar matters.

(less than ½ hour.)

#### **2. Preliminary Matters**

##### **Director, Environmental Approvals Branch**

- Report on the steps in the proceeding, from the filing of the application for a licence leading up to the hearing

##### **Commission Secretary**

- Filing of exhibits and written submissions
- Other introductory matters

(½ - 1 hour.)

### **3. Presentations**

In making presentations before the panel, the proponent will make the initial presentation, followed by participants in the order pre-determined by the Commission Secretary.

In the examination of witnesses, the panel will go first, followed by the proponent and then participants in the same order noted above.

### **4. Opening Statements**

At the outset of the hearing, the proponent and participants will make a brief opening statement describing the issues the party will address during the hearing. The statement should include an outline of evidence to be introduced, a list of witnesses and the topics to be covered.

(1 – 2 hours.)

### **5. Project Overview**

#### **Proponent**

The proponent will make a comprehensive presentation describing the proposed project.

This will include a fairly detailed presentation on the findings of the Environmental Impact Statement relating to the project.

Following its presentation, the proponent's witnesses will be examined in the following order, first by panel members and then by participants.

Please note: At specified times, persons who have registered as presenters, as well as members of the public, will be given an opportunity to ask questions of the proponent relevant to the proposal. This questioning will be limited to fifteen minutes per person.

In certain circumstances, witnesses may be examined after their presentations, rather than at the end of the proponent's presentation.

(Depending on the specific proposal, this presentation may take from a few hours to a few days.)

## **6. Submissions**

### **6.01 Participants**

Participants will make their presentations in the order determined.

For each submission:

- Documents are registered as exhibits
- Witnesses are introduced and credentials presented
- The submission is highlighted by the witnesses
- Witnesses are examined

The time allowed for participant presentations will be determined before the hearings. This will be done in consultation between each participant and the Commission Secretary. The panel will make the final decision in this regard.

Following its presentation, the participant's witnesses will be questioned in the following order:

- Panel members
- Proponent
- Other participants

Following questioning, the party making the presentation may present additional clarifying information.

(This step may take from a few hours to a week or more.)

### **6.02 Presenters and General Public**

At specified times, persons who have registered as presenters, as well as members of the public, will be given an opportunity to make an oral presentation, preferably supported by a written submission.

These presentations are limited to fifteen minutes in length.

Presenters may be examined by panel members, followed by the proponent.

There will be evening sessions to accommodate public presentations.

(This step may take from a few hours to a day or two.)

## 7. Rebuttal

### **Proponent** only

At the conclusion of all participant presentations, the proponent may submit rebuttal evidence to address points raised during the submissions of other parties.

Examination of this evidence by participants is permitted, but only on the additional evidence presented.

(Participants are not allowed rebuttal as their submissions are made after the proponent and they have opportunity at that time to rebut the proponent's submission.)

(This step may take a few hours to a day or two.)

## 8. Final Argument

**Participants** in same order as submissions

**Proponent** last

Following all of the submissions of evidence, the participants and the proponent will have an opportunity to make a final argument, stating what they believe to be the most important aspects of the matters under consideration and the reasons for the conclusions they believe the panel should come to.

No new evidence will be accepted in the closing statement.

The amount of time allowed for individual final arguments will be determined by the panel, in consultation with all participants.

Please note: While there is no examination of the final arguments, it is always open to panel members to ask any relevant question to any of the parties throughout the proceedings.

## 9. Closing of the Record

At the conclusion of the hearing, the record will be closed.

Typically, this will occur on the final day of the public hearings.

At the discretion of the panel, this may be extended a few days for the submission of additional evidence. An extension will be granted only where

the evidence is material and there is good reason for the failure to produce it during the hearing period.

Once the record is closed, no additional evidence will be accepted.

#### **10. Report**

Once the record is closed, the panel has ninety days to reach its decisions and prepare a report to the Minister.

## DISCLOSURE, WITNESSES & the FOURTEEN-DAY RULE

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### **Purpose of Disclosure**

The purpose of the Commission's disclosure practices is to give the panel, the proponent and the participants a chance to:

- understand what the party's case is about;
- assist the parties in their preparation for the hearing;
- consider if certain matters can be resolved before the hearing;
- prepare documents of the evidence so that all parties have the same information for the hearing; and,
- identify other information that may be needed at the hearing.

The purpose of advance notice of expert evidence is to give the other parties an opportunity to review and consider the expert evidence, and the facts on which it is based, in order to prepare questions to ask at the hearing and to consider whether to submit their own expert evidence.

### **Application**

With some exceptions, these disclosure requirements apply to participants.

### **Disclosure**

All disclosure requirements require filing no later than fourteen days prior to the commencement of the hearings.

All material is to be filed with the Commission, the proponent and all other participants.

All newly generated material and, to the extent possible, all existing documents are to be filed in electronic form. Where an electronic version is not available, high-quality copies are to be provided.

### **Disclosure requirements include:**

#### **1. Submissions**

Participants intending to make a presentation to the Panel must provide a submission that:

- a) sets forth the participant's name, address and telephone number;
- b) describes the participant's particular interest;
- c) contains a clear and concise statement of the participant's position; and,
- d) contains a list of all documents that the participant will rely upon.

## **2. Documents**

In addition to the list required with the submission, copies of all documents that a participant intends to rely upon at a hearing are to be filed.

## **3. Witnesses**

Any party intending to call non-expert witnesses to present evidence will file the names of all such witnesses.

## **4. Experts**

Any party intending to present expert evidence at a hearing is required to provide advance notice that an expert will be called to give an opinion. The notice must include:

- d) the name of the expert(s);
- e) a brief statement of the expert's qualifications and areas of expertise;
- f) the opinion to be given at the hearing; and,
- g) the facts on which the opinion is based.

## **5. Expert Report**

Any party intending to produce a written statement or report by an expert(s) at a hearing is required to provide a copy of the statement or report.

The expert's qualifications must be included with the report.

Where the proponent calls a witness or an expert who is not an employee of the proponent, notice must be given in accordance with the fourteen-day rule.

It is the responsibility of the party calling the witness or expert to make all arrangements for their appearance at the hearing.

**Failure to Produce on Time**

Where a party fails to comply with the disclosure requirements and the fourteen-day rule, that party may not put into evidence any document not filed in time, nor call any witness or expert whose names were not filed in time.

Where the party satisfies the hearing panel that there is sufficient cause for not complying, the rule may be waived.

In considering if it will waive the rule, the hearing panel may consider any relevant factor, including:

- the reasons for not meeting the fourteen-day rule;
- the extent to which the substance of the information or testimony lies within the knowledge of the other party;
- whether the other party opposes the new evidence or testimony;
- the relevance of the documents or testimony to an issue in dispute; and,
- whether the other party will be prejudiced by the introduction of the new evidence or documents.

## SUMMONS to WITNESS

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### **Powers to Summon Witnesses**

Under The Manitoba Evidence Act, the Commission has the power to summon witnesses to appear before a hearing and to require those witnesses to give evidence on oath or affirmation and to produce specified documents or other things.

The Commission will exercise this power to issue a subpoena or summons only where it is convinced that the evidence cannot be obtained in any other manner and that it is essential to the full investigation of the matter before the panel.

### **Procedure**

1. A party wishing to summon a person to give testimony or to produce documents at a hearing will apply in writing to the hearing panel as early as possible before the hearing so that a summons can be served on the witness in time to allow him or her to arrange to attend the hearing.
2. The written request will include the following information:
  - a) the name of the witness and his or her address for service of the summons;
  - b) a brief summary of the evidence to be given by the witness;
  - c) an explanation of why the evidence of the witness would be relevant and necessary;
  - d) details of any documents or things which the witness should be required to bring to the hearing; and
  - e) why the summons is required.
3. After considering the information submitted by the requesting party, the Commission may decide not to issue a summons.
4. Where the Commission has issued a summons, it may decide that the summons should be cancelled or varied or, if the witness is present, that the witness should be excused from the remainder of the hearing.
5. Where the Commission has issued a summons, it may direct that the party who requested the summons serve it personally on the person summoned.
6. A witness who is summoned may object to the summons by applying to the Commission to have it cancelled or varied.

7. Where the witness objects to the summons, the Commission may cancel or vary the summons if the witness satisfies the Commission that the evidence sought is not relevant or is privileged, or if the witness is not able to supply the evidence sought.
8. If the person summoned fails to comply with the summons, the Commission may issue a warrant for the arrest of the person.

## QUESTIONING

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The *Process Guidelines* allow certain parties to question the evidence of, or ask questions of, other specified parties.

### Questioning

Those designated as participants will have the opportunity to question the evidence of the proponent as well as other participants in specific cases. The proponent may question participants. Neither the proponent nor participants will be allowed to question presenters.

Members of the panel may ask questions of any party regarding their evidence.

Where relevant, and with leave of the panel Chair, the proponent may ask questions of clarification of presenters. At specified times, members of the public will have the opportunity to ask questions of the proponent. These questions must be relevant to the evidence presented by the proponent.

### Rules about Questioning

Questioning will be permitted to the extent necessary for a full consideration of the matter before the panel.

Questioning must always be done in a respectful manner and with no intent to embarrass another party.

Following are some directives on how to conduct questioning:

- Engage in questioning only when this will achieve a clear benefit (such as directly contradicting or undermining the persuasiveness of the evidence or arguments of another participant).
- Try to be direct, particularly when dealing with technical and scientific information. The panel is after the best information it can get. Convoluted questions aimed at disclosing apparent inconsistencies in answers have limited value.
- Questioning should only be done when the answer to be obtained will be directly helpful to the panel. Questioning of minor details or peripheral matters is unlikely to be helpful.

- Be familiar with the other parties' submission before engaging in questioning, since the question raised may already have been answered. There is no merit in repeating another participant's questions.
- Questions directed at submissions with which you are in agreement, since these generally do not assist the panel, will be discouraged. Questioning of participants by other participants will only be allowed if it is adverse in interest (contradicts rather than is in agreement with a participant's position).
- All parties may not reach the same conclusions; focus questions on matters of fact rather than on interpretation.
- Questioning should not be used as a means of presenting final argument, nor should it be turned into a debate.

The Chair of the panel will determine the scope of questioning and may limit questions if they are repetitive or irrelevant, or conducted in a disrespectful manner.

## CALCULATION of TIME

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### **How Time is Counted**

On occasions when a period of time is referred to, such as when there is a deadline for submissions or responses, a standard method of counting the time will be used. Where there is a reference to a number of days, the days are calendar days, not business days, and are counted by excluding the first day of the first week and including the last day of the last week.

Where an action is to be done within a specified number of weeks, time is counted by excluding the first day of the first week and including the last day of the last week. For example, materials for a Wednesday hearing must be delivered by the Wednesday two weeks before the hearing.

Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

### **Changing Time Periods**

The Commission or the panel may vary the time for performing any act on such conditions as it considers appropriate.

## REPRESENTATIVES

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While it is not required, parties have the right to be represented by another person during proceedings before the Commission. Such representatives may include lawyers, advocates or other agents.

There are no specific qualifications required of a representative. However, they must abide by the Commission's Process Guidelines respecting Public Hearings and the relevant Practice Directions.

### **Notice of Representation**

When a party retains a representative for a proceeding, the party must notify the Commission in writing at the earliest opportunity, but no later than fourteen days before the beginning of the hearings.

This notification must include the representative's postal address, telephone and fax numbers.

If a representative ceases to act for a party, the party or the representative must promptly file a written notice with the Commission and send a written notice to every other party.

### **Code of Conduct**

Representatives must be knowledgeable of, and agree to abide by, the Code of Conduct for parties and representatives.

## COPIES

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This *Practice Direction* sets out the obligations for parties to file copies of their submissions.

Please note that these obligations apply differently depending on your party status, i.e. participant, presenter or member of the public.

### **General Obligation**

All parties are required to provide a minimum number of copies prior to and at the hearing.

All parties making a presentation at a hearing are to provide the Commission Secretary, within the mandated deadlines:

- At least one hard copy of your submission; and
- An electronic copy of the submission (e-mail, CD or flash drive).

This rule is mandatory for those designated as participants or presenters. An exception to this rule will be allowed for members of the public who have only a hand-written presentation.

Participants are also required to make copies available to the proponent and all other participants at the same time as they file with the Commission. And, they must have a minimum number of copies available for other parties at the hearing at which they make their presentation.

Presenters must file copies with the Commission and the proponent seven days prior to their presentation.

It is a good idea to have some copies for the media and the audience or at the very least contact information where they can get one. These copies may be deposited at the registration table.

The Commission will advise parties, well in advance of the hearings, as to the number of copies that will be required.

## **What is the advantage of providing these copies?**

The copy delivered to the Commission Secretary will go on the official file and become part of the permanent record of the hearings. It may also be posted on the Commission website. In this way, it is available for future reference. Please provide clean copies for this purpose.

Printed copies of your submission play a significant role during the hearings and are of great help to many of the parties:

- Following along on a printed copy of your presentation helps the panel understand your case, as well as tracking points they may wish to ask when your presentation is finished. Printed copies may also act as reminders about important items to consider when the panel begins developing recommendations.
- In like manner, this will help the contractors/advisors engaged by the Commission or the proponent to understand technical concepts and figures you may have in your submission.
- The Commission uses court reporters to record everything said at a hearing. Often the subject matter is technical and there are words that are unfamiliar. If the court reporters have a copy of your presentation for reference there is a better chance that the transcripts will be correct.

If you do not provide the required number of copies, your presentation may be delayed or rescheduled until they are available.

## **Who makes the copies?**

Participants are required to make copies at their expense. (Note that most, if not all, participants will have received assistance through the Participant Assistance Program.)

For presenters or individuals, it may be difficult to provide a large number of copies. The Commission can help you, but requires early warning.

If your presentation is five pages or less, copies can be made at the hearing. You must request this of Commission staff at least one hour before your presentation. If your presentation is more than five pages, staff will require advance notice.

## **Other Requirements**

Printed copies of your presentations and any other documents should clearly indicate your name and/or organization at the top of the page or on the title page.

Do not include personal information such as your address, e-mail or phone number.

CDs or flash drives containing your presentation should clearly display your name and/or organization.

If you do not wish to have your information posted on the CEC website please indicate this in writing on your documents.

**Appendix B – Tip Sheets**

- Some Tips on APPEARING before a CEC PANEL
- Some Tips for REPRESENTATIVES

## Some Tips on Appearing before a CEC Panel

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These tips are intended to assist anyone wishing to participate in Clean Environment Commission proceedings by expressing their views on the matter before the panel.

There are two significant parts to this tip sheet: Preparing your Submission and Making your Presentation.

Please note that, while most tips apply to all parties, some apply differently depending on your party status, i.e. participant, presenter or member of the public.

### **Introduction**

#### **What is the purpose of the public hearing?**

The public hearing allows individuals, coalitions with a common position, interest groups and others to make submissions and examine the evidence presented by other parties to assist the Clean Environment Commission in assessing the potential environmental impacts of the proposal.

#### **Why is public participation in the process important?**

Public participation helps ensure that the Commission has access to relevant and reliable information from different perspectives when preparing its advice and recommendations to the Minister responsible for The Environment Act.

#### **Who should make a submission at a public hearing?**

You should make the submission if you believe you have information that will assist the Commission in reaching a decision. This is particularly true for those who might be directly affected by a proposed process.

It is open to anyone to participate in Commission hearings. As there are different levels of participation, you should familiarize yourself with the document *Practice Direction: Party Status* in Appendix A.

## Preparing your Submission

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### 1. What is a submission?

A submission may be written, oral or a combination of both.

- A. **Written** - You may submit a written document that expresses your views on the proposed project. Written submissions become a part of the record of the hearings and are treated as seriously as presentations made at the hearings.
- B. **Oral** - You may choose to appear before the hearing panel to present your views in person. For participants and presenters, it is a requirement to bring to the hearing a written version of your presentation. For members of the public, it is preferable.
- C. **Written and Oral** - A third option is to submit a detailed written presentation, and to appear before the panel to highlight orally the key elements in your submission.

Those who appear in person will be subject to questioning from some of the other parties to the proceeding.

### How should you prepare?

- Make sure you understand the mandate of the Clean Environment Commission, as well as the Terms of Reference for the proceeding in which you are interested.
- Obtain and read the *Process Guidelines respecting Public Hearings*. Take note of the relevant Practice Directions, as well as the *Code of Conduct for Parties and Representatives*.
- Decide on which of the above options you wish to pursue.
- Then, advise the Commission of your intention to participate.
- Become familiar with those aspects of the project application that are of interest to you.
- Prepare your submission.

**What may a submission include?**

Your submission may include expert or lay evidence, a response to or a critique of the application, or opinions on what decision the Commission should reach.

Ensure your issues are relevant to the project being reviewed and structure your presentation to deal with each issue in logical sequence.

Ensure that your position is consistent and clear. Don't leave the panel members guessing about inconsistent statements.

Don't feel that you have to deal with each issue in detail to the point of repeating what others have said. Your submission may agree with or add to those of other participants. Simply note this agreement.

An oral presentation may not be necessary if your position and evidence are clearly stated in the written submission.

Coordinate your efforts with other participants. You may, for example, share technical studies with another participant even if your positions are not exactly the same.

**2. Preparing a written submission**

Clearly write or type your submission.

Submissions should be focused and concise.

Clearly state your evidence, assumptions and conclusions or position on the project, highlighting any economic, social or environmental effects (positive or negative) you believe the project would have on you, your community or our province.

If your concerns are related to a specific component of a project only, please point this out.

Supply any facts, information or documents that support your views. The panel is best supplied with proven facts and figures. Expert testimony is considered factual. Personal experience and opinions play a role in the presentation of a case but are best used to support the factual information. If your submission includes a technical report or material, provide the qualifications or credentials of the technical expert.

Make any suggestions that would help the panel in making its decision. You may, for example, suggest conditions that would make a project acceptable or unacceptable to you, alternatives to the project, or suggestions on how to relieve or reduce impacts.

There is no limit to the length of written submissions, but you should make every effort to make it as clear, comprehensive and concise as possible.

### 3. Filing of submission:

Filing responsibilities differ depending on a party's hearing status.

#### Participants

Participants are responsible to file their submission – in both electronic and paper format – with the Commission no later than **fourteen** days before the start of the hearings.

At the same time, electronic or paper copies are to be filed with the proponent and parties officially designated as participants.

Notification of the number of copies to be filed will be made at the pre-hearing meeting.

Participant submissions must include:

- An overview that identifies the major issues addressed in your submission and the conclusion you have reached on each issue;
- A list of exhibits and a copy of each exhibit to be tendered;
- A list of witnesses and/or experts to be called at the hearing;
- The identity and qualifications of any party who assisted with the preparation of the submission.
- Your signature, your name, address, telephone number and email address. This should be on a separate title page.

Indicate if you will be represented by a lawyer or other agent.

Advise Commission staff of any scheduling concerns for technical experts and witnesses and include this information in your submission.

Participants **MUST** provide an estimate of how much time you expect your presentation will take, including the witness testimony and examination. You may be asked to limit your presentation to a specific amount of time.

**Presenters**

Those designated as presenters are responsible to file their submissions – in both electronic and paper format – with the Commission no later than **seven** days before the date of their presentation.

**Public**

Members of the public need not file their submissions until the beginning of the hearing on the day of their presentation.

A paper copy of your presentation must be filed with the Commission Secretary before your presentation. You should also make every effort to file an electronic copy.

**Please note:** presenters and members of the public can file their written presentations through the Commission website by using the “Upload a Written Submission or Presentation” function.

**General**

Presenters and members of the public who are not able to provide additional copies should see the section in the Practice Direction document about “Copies”.

Failure to provide all of the required information may result in the disqualification of your submission, as well as losing your opportunity to present.

All written submissions/presentations should include – on a separate title page – your signature, your name, address, telephone number and email address.

Parties are advised that any material sent to the Commission will become a public document. So do NOT include private information except on the title page.

## Making your Presentation

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### 1. Time

#### How long should my submission be?

As noted above, when filing their submission, participants are required to provide an estimate of how much time they expect their presentations to take. This will include oral presentations, as well as evidence given by any expert witnesses.

Participants will be informed at a pre-hearing meeting how much time will be allocated to their presentations.

Presenters and members of the public are limited to fifteen minutes. If you are going to need more than this, you must apply to the Commission Secretary at least **seven** days prior to your presentation. A short extension may be granted.

### 2. PowerPoint

Visual aids (PowerPoint) are very common in presentations today. However, you should make sure that it actually helps your presentation and doesn't make it more confusing. A poorly constructed, hard-to-read slide show will take away from the points you are trying to make.

#### Some pointers:

- Do not fill the screen with a large amount of text, especially closely spaced small print.
- Use the screen to identify the highlights of your presentation. Don't try to include everything on the screen. Provide the details when you speak or in your written submission.
- Make sure that your pictures or diagrams are easy to read. Keep them simple, even if you have to remove non-essential information.
- Test your presentation on a "neutral" audience. This will help you to fine-tune your production to ensure that it is clear, understandable and not too technically complicated.
- Avoid dark, solid coloured backgrounds for your slides. Remember that your slides will be copied on a black-and-white printer. They may look great in colour on the screen but be very difficult to read in paper form.
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### 3. The hearing

#### **Prior to the hearing:**

Review the overviews of other submissions to identify where you may avoid duplication or unnecessary conflict. Also, identify the participants and issues that may be adverse to you and you may wish to question.

If it is your intention to question the proponent or other participants, prepare your questions in advance.

If you intend to present a final argument, start preparing this in advance of the hearing.

#### **Presenting your submission at the hearing:**

Oral presentations are limited to the time limit prescribed by the panel.

Presentations should highlight the most important evidence and arguments in the submission. The panel members will have read your written submission in advance.

Ensure your issues are relevant to the project being reviewed and structure your presentation to deal with each issue in logical sequence. Focus on a few key points.

Ensure that your position is consistent and clear. Don't leave the panel guessing about inconsistent statements.

Don't feel that you have to deal with each issue in detail to the point of repeating what others have said. Your submission may agree with or add to what others have said; simply note this agreement.

When there are conflicting opinions from experts, establish that for the panel, and if you are convinced you can help through additional expert information or questions, do so.

Don't try to win the day on the basis of the quantity of words; stress quality.

Be cooperative with other participants, not only in terms of procedure, but in dealing with the actual issues. If you are prepared to make a concession or to negotiate with respect to an issue, say so.

Identify for the panel those conditions that would assist in addressing your concerns if the project were to be approved.

**See also:** *Practice Directions: Cross-Examination & Questions; Disclosure, Witnesses & the Fourteen-Day Rule; and Copies.*

## Some Tips for Representatives

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### **Before the hearing**

1. Take early action.
2. File documents by the deadlines. Failure to do so may result in the inability to use that information at the hearing.
3. Review and know the entire file.
4. Understand your client's position.
5. Stay in touch with your client in the period leading up to the hearing date.
6. Prepare your client and witnesses.

### **At the hearing**

#### The opening statement

1. Always offer an opening statement.
2. Describe the position your client is taking, identifying, among other things, the issues you will address and the questions for which you seek answers.
3. Don't give your closing remarks in your opening. Remember, the opening is not argument, it is your way of helping the panel follow your presentation through the evidence and your argument. A good opening will also help the panel to deal effectively with any difficult objections about evidence.
4. Keep it brief.

#### Examination of witnesses

1. Know before you call a witness what your objective is – why are they testifying, and what do you expect them to say? It is critical that you interview witnesses before the hearing day to help you prepare your evidence completely.
2. Have a plan and share it with the panel. In a complicated case where your witness will be providing lengthy testimony, let the panel know before the witness testifies what subject matter you intend to cover, but don't give your witnesses' evidence for them,.
3. Make your questions relevant and to the point.
4. Pay attention to the panel's questions and address any potential misunderstanding in your re-examination of the witness.
5. Questions are questions, not statements. Questioning is not an opportunity to state your client's case or give evidence.

### **Closing argument**

1. Provide a summary of the points you intend to make.
2. Avoid reading at length from reports and memos in the file, or from your written submissions if you have prepared them.
3. Pace your submissions. Watch the panel's pens and make sure they are keeping up with your argument.
4. Address evidence that has been given that runs counter to your client's position. All cases have strengths and weaknesses. Acknowledge this and explain why the panel should accept your client's position.
5. Invite questions from the panel.

**Appendix C – Code of Conduct for Parties**

## **CODE OF CONDUCT FOR PARTIES & REPRESENTATIVES**

### **PART I – INTRODUCTION**

#### **1.01 Preamble**

The mandate of the Manitoba Clean Environment Commission is to enable environmental issues to be put forward for full public discussion, and to encourage wide participation in the expression of views and exchange of opinions.

In order to enhance public confidence in the integrity and fairness of its proceedings, the Commission has adopted a Code of Conduct that establishes rules governing the professional and ethical responsibilities of all parties to Commission proceedings.

This Code is intended to alert all parties and representatives involved in a proceeding of the Clean Environment Commission to the minimum standards of behaviour.

Parties and Representatives are expected to know and abide by this Code.

#### **1.02 Application of the Code**

##### **Parties**

This Code applies to all individuals or organizations granted standing in a proceeding by the Clean Environment Commission, including, but not limited to, the panel, the proponent, participants and presenters.

##### **Representatives**

Parties appearing before the Commission are not required to have representation, but may do so at their discretion. This Code applies to any person engaged by any party to the proceeding to act as a representative of the party or of a witness in a proceeding.

This Code recognizes that any person representing a party has certain obligations and responsibilities toward their client, as well as to the hearing panel.

### 1.03 Core Values and Principles

Parties and representatives abide by the values and principles in the Code of Conduct for Members of the Commission.

These include, but are not limited to, acting with integrity and respect at all times.

### 1.04 Definitions

#### In this Code of Conduct,

**“Act”** means The Environment Act;

**“Chair”** means the person appointed as Chair of the Commission, as well as a member of the Commission appointed to chair a panel conducting a hearing or public meeting;

**“Commission”** means the Clean Environment Commission;

**“Commission Secretary”** means the individual appointed as Secretary to the Commission, who acts as the senior administrative person for the Commission;

**“Code”** means this Code of Conduct;

**“Hearing”** means a public hearing held by the Commission, at which parties provide submissions to the panel;

**“Member”** means any person appointed as a member of the Commission, including the Chair;

**“Panel”** means the members of the Commission assigned to conduct the review as set out in the Minister’s reference;

**“Participant”** means a person or group of persons designated as such by, and on the terms set out by, the Commission;

**“Party”** means an individual or organization granted standing in a proceeding on terms set out by the Commission. This includes, but is not limited to, the panel, the proponent, the director, participants and presenters, as well as representatives engaged to represent a party or a witness in a proceeding.

**“Pre-hearing conference”** or **“meeting”** means a meeting called by the Commission prior to the hearing to deal with administrative and/or procedural matters;

**“Proceeding”** means all steps taken in a matter that is referred to the Commission for public review, beginning when the Commission receives the referral of the matter and ending when the Commission submits its report to the Minister;

**"Proponent"** means a person or group of persons proposing to undertake a development in Manitoba for which a licence is required under a statute of the Province;

**"Public meeting"** means a less-formal proceeding by the Commission, which involves presenters, but may or may not involve a proponent or participants.

## **PART II – OBLIGATIONS OF PARTIES AND REPRESENTATIVES**

Parties and representatives participating in a Commission proceeding abide by the following obligations at all times:

### **2.01 Conduct**

- Parties and representatives behave with courtesy and respect toward all parties involved in a proceeding.
- Parties and representatives behave with courtesy and respect in all written correspondence, including written submissions.
- Parties and representatives act with candour and fairness.
- Parties and representatives act with integrity. They do not put forward any information known to be untrue, nor will they be dishonest or misrepresent facts.
- Parties and representatives are prepared. Being prepared includes being familiar with the proposal or issue under review, gathering evidence and preparing their presentation.
- Parties and representatives do not engage in personal attacks on any other party.
- Parties and representatives refrain from any behaviour that the panel considers to be an abuse of process.

### **2.02 Procedure**

- Parties and representatives are knowledgeable of, and abide by, the Commission's *Process Guidelines respecting Public Hearings*, as well as the practice directives.
- Parties and representatives meet all deadlines prescribed by the panel, including those for the submission of written presentations, witness lists, summaries of oral presentations etc.
- Parties and representatives attend all pre-hearing conferences or meetings prescribed by the panel.

**2.03 Bias/Conflict/Fairness**

- Parties and representatives bring forward, at the earliest opportunity, any information that may give rise to a reasonable apprehension of bias or conflict of interest on the part of a panel member. Such allegations must not be made frivolously or in a fashion that diminishes confidence in the integrity of Commission decision-making.
- Parties and representatives raise, at the earliest opportunity, any concern regarding a possible breach of procedural fairness for consideration by the panel conducting the hearing/review.

**2.04 Confidentiality**

- Parties and representatives respect the confidentiality of any information presented in confidence; and do not use the information for other purposes without the consent of the other parties and the Commission.

**2.05 Communication**

- Parties and representatives do not attempt to contact any panel member outside the normal hearing process, unless the panel invites or instructs them to do so. Parties/representatives wishing to communicate with a panel should do so during a public session by making arrangements with the Secretary.
  - If the matter is confidential, the party should contact the panel chair through the Commission Secretary. The chair will arrange for an *in camera* hearing with other parties present, as necessary.

**2.06 Post-Hearing**

- Following the close of hearings and the date for submission of final presentations, parties and representatives do not write to or otherwise contact the panel concerning the decision.
- Following the release of the Commission's report to the public, any request for clarification, correction, or reconsideration must be sent to the Commission Secretary.

### **PART III – ADDITIONAL OBLIGATIONS OF REPRESENTATIVES**

- 3.01** The following additional or expanded rules apply to representatives:
- Representatives seek instructions from their client before proceeding.
  - Representatives instruct their client and witnesses about appropriate conduct in a hearing and in written correspondence, including submissions, and about the requirement for courtesy and civility to the panel and all other parties. Representatives are expected to take whatever steps are necessary to dissuade clients and witnesses from disrupting a hearing.
  - Representatives are prepared to present the case at hand. Being prepared includes being familiar with the proposal or issue under review, gathering evidence and preparing their presentation. It also includes consulting with their clients as to directions and instructions.
  - Representatives conduct their business affairs so as to enable Commission staff to be able to contact them readily.

### **PART IV – REMEDIES**

- 4.01** The Commission panel will investigate breaches of this Code that are brought to its attention. Panels may also address breaches of this Code directly during the course of oral hearings and/or in their written decisions.
- 4.02** If a party and/or representative refuses or fails to comply with the requirements of this Code, or if there is a pattern of behaviour that continues over time, the panel may take whatever action is necessary, up to and including suspending the party from further participation in the proceeding.
- 4.03** Where the representative is a lawyer, the panel may refer the matter to the Law Society of Manitoba.