

POSTPONEMENT OF APPEAL HEARINGS

1. Policy Purpose

This postponement policy will:

- provide a background and the reasons for its development;
 - provide general principles;
 - identify the Office of the Commissioner of Review Tribunals' (OCRT) criteria for review when considering postponement requests; and
 - identify the procedure to be followed for postponement requests.
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2. Effective Date

This policy is effective April 1, 2009.

3. Legislation

Section 82 (8) of the *Canada Pension Plan*.

4. Background

The OCRT values an appeals system which follows the principles of procedural fairness; a system which must balance the importance of parties being prepared for a hearing with the Tribunal's duty to provide a timely hearing and resolution of the issue being appealed. Delays from postponements and adjournments impact the Tribunal's ability to provide timely hearings. While the reasons for postponements and adjournments vary, the postponements and adjournments often lead to increased administrative costs and unfair delays for other appeals.

All postponement requests will be considered by the OCRT. The OCRT requires that parties and their representatives act in accordance with the principles and guidelines outlined in this policy.

5. General Principles

5.1. Fairness vs. Efficiency

Postponement requests will be assessed by weighing fairness and efficiency for all parties, and the OCRT.

5.2. Providing Reasons for Postponements

Parties must make an effort to request the postponement at the earliest possible opportunity. The OCRT also expects parties to fully explain their reasons for seeking a postponement.

5.3. Representation

Appellants and Added-Parties are informed at the beginning of the appeals process of their right to retain representation; this provides a reasonable opportunity to retain representation. When considering postponement requests, the OCRT will consider the amount of time and notice already provided to retain representation.

If Legal Counsel cannot attend on scheduled hearing date, it is his/her duty to make efforts to arrange for a replacement. If a replacement is not available, Counsel is expected to provide details before a postponement will be considered. These details should include an expected date of readiness to proceed to a hearing should the postponement occur.

5.4. Scheduling

Due to the large volume of appeals received by the OCRT, scheduling of hearings may be done with or without consultation with the parties or their representatives to determine availability.

In situations where the parties have been contacted and have confirmed their availability, the OCRT expects the parties to proceed to the hearing as scheduled. Parties who have not been consulted and are unavailable to attend on the scheduled hearing date are expected to notify the OCRT as soon as possible.

When requesting a postponement, parties should be aware that appeals that have been postponed can take a number of months to reschedule. This causes a delay not only to the person requesting the postponement but also to other parties awaiting a hearing date.

The OCRT may replace a postponed hearing with another appeal if sufficient notice is provided. To ensure fairness to other appeals, the OCRT expects parties to attempt to submit postponement requests at least 30 days before the hearing.

5.5. Consent

The OCRT may request the views of other parties to an appeal before making a decision to grant or deny a postponement request.

Consent of the parties is among a variety of factors that the OCRT considers when deciding to grant or deny a postponement request. Parties should not assume that consent to the request will lead to a granted request.

5.6. Requests in Exceptional Circumstances

In exceptional circumstances, the OCRT will generally grant a postponement request from any party to the appeal as well as representatives and key witnesses.

Exceptional circumstances include:

- Death;
- Accident;
- Sudden or Severe Illness;

- Hospitalization; or
- Severe weather.

5.7. Timeframe of Response to Postponement Requests

The OCRT will respond to all requests within two business days of receiving the request. Should this not be possible, the OCRT will notify the person requesting the postponement.

6. Criteria for Review

When considering a request to postpone, the OCRT may assess some or all of the following:

- (a) Whether previous postponements or adjournments were granted and the reasons thereof;
- (b) Whether the request was made at the earliest reasonable opportunity;
- (c) Whether the reason of the postponement will contribute to the resolution of the appeal;
- (d) Whether the postponement would unjustly delay the resolution of the appeal;
- (e) Whether the prejudice to the other parties if the postponement is granted is greater than the prejudice to the applicant if the postponement is not granted;
- (f) When a representative, if applicable, was retained;
- (g) Whether the parties had sufficient time to prepare and whether they had sufficient notice of the hearing;
- (h) Whether the request is that of an exceptional circumstance (death, illness, hospitalization, accident, or weather); and/or
- (i) Any other factors which may be relevant.

7. Procedure for Requesting a Postponement

7.1. Requests Received 30 or More Days Prior to the Hearing

The OCRT must be advised by telephone or in writing of a postponement request. The request must include the following:

- Name, Address, Contact Phone/Fax Numbers of the Requestor, Appeal Name and Number, and Hearing Date;
- Reason(s) for the request; and
- Expected date of readiness to proceed.

7.2. Requests Received 29 or Less Days Prior to the Hearing

The OCRT must be advised immediately by telephone of a postponement request. The request must include the following:

- Name, Address, Contact Phone/Fax Numbers of the Requestor, Appeal Name and Number, and Hearing Date;
- Reason(s) for the request; and
- Expected date of readiness to proceed.

7.3. Requests Received Same Day of the Hearing

Requests made the same day of the hearing will be forwarded to the Review Tribunal. Parties are expected to attend the hearing and be prepared to proceed. The Review Tribunal will make a determination whether to adjourn at the hearing.

7.4. OCRT's Response to Postponement Requests

The OCRT's decision to grant or deny a postponement request will be communicated to the person requesting the postponement by telephone and then followed up in writing to all parties except as noted below.

If the request is granted, all parties will receive notice of a new hearing date when set.

If the request is denied or if time does not allow the OCRT to notify all parties of the request prior to the commencement of the hearing, parties will be expected to attend the scheduled hearing and be ready to proceed. An adjournment can be requested, with reasons, at the hearing. The Review Tribunal will assess the reasons and make a determination to adjourn at the hearing.

March 26, 2009
Date

(S) Philippe Rabot
Philippe Rabot
Commissioner
Office of the Commissioner of Review Tribunals CPP/OAS