

**IIROC HEARING COMMITTEE
BEST PRACTICES FOR ELECTRONIC PROCEEDINGS
(September 2020)**

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A. Introduction

1. Due to social distancing and other public health measures in response to COVID-19, IIROC in-person hearings were postponed or converted to electronic proceedings, either by telephone or videoconference. As the situation continues to evolve, the IIROC Hearing Committee remains committed to ensuring that proceedings are conducted in the public interest in a manner that is timely, fair and safe. This requires that hearings be conducted electronically until such time as in-person hearings become feasible.
2. This document provides guidance on hearings proceeding electronically at IIROC.
3. It is expected that electronic hearings will become an alternative to conventional hearings going forward, provided it is both fair and efficient to do so.

B. Electronic Hearings, Generally

4. IIROC’s Consolidated Enforcement, Examination and Approval Rules (**Consolidated Rules** or **Rules**) contemplated that a hearing may proceed electronically ([Rules 8402 “electronic hearing” and 8409](#)). The relevant provisions were developed prior to the COVID-19 pandemic with due regard for the principles of natural justice.

5. An “electronic hearing” means a hearing held by telephone conference or another form of electronic technology that allows persons to hear one another.
6. A “participant”, as used in this document, includes the parties to a proceeding, their legal counsel, agents, support staff, witnesses, hearing panel members, a court reporter and registrar, but does not include a “host” and members of the public or media who have been admitted to a virtual hearing room to observe the proceeding, although they may find the guidance to be of assistance.
7. A “host” is the person, typically the National Hearing Coordinator (**NHC**) or a person designated by the NHC, who initiates and controls the admission to the conference, manages the handling of documents and otherwise assists on technical and administrative matters during the proceeding.
8. When a proceeding under the Rules is being scheduled, parties should discuss, as far in advance as possible, the appropriate form of a hearing. One or both parties (if proceeding on consent) may submit to the NHC a request to proceed electronically.
9. If a party objects to proceeding by way of an electronic hearing, the party must state the reasons for the objection, including any prejudice an electronic hearing may cause and the facts on which the party relies, accompanied by evidence to substantiate the objection.
10. A hearing panel may make a determination regarding the form of a hearing at a prehearing conference, on motion by a party or, subject to an objection by a party, on its own motion at any stage of the proceeding.
11. A hearing panel has wide discretion in determining the appropriate form of a hearing. In assessing when a hearing may proceed electronically, a hearing panel may, without limitations, consider:
 - a. the nature of the hearing
 - b. the subject matter of the hearing
 - c. the issues to be addressed, including whether the hearing involves the issues of fact, law or procedure
 - d. the evidence to be presented, including whether the facts are in dispute or credibility is an issue
 - e. the costs, efficiency and timeliness of the proceeding
 - f. the fairness of the hearing process to, and the convenience of, each of the parties and
 - g. accessibility of the proceeding to the public.
12. Once it is clear that the proceeding is to be conducted electronically, the parties should discuss a protocol for their electronic hearing. The protocol may include parties’ and their counsel’s regular and alternative contact details, a list of their participants, handling of documents, time estimates and a plan of action if technical issues arise during the hearing. If the parties are unclear as to the appropriate protocol or wish to obtain confirmation from the hearing panel, they may seek guidance at a prehearing conference.
13. Where the parties anticipate the proceeding to include confidential information, they are expected to discuss it in advance of the hearing and agree on the procedure to be followed in handling the information during the electronic hearing. Where a confidentiality order is granted,

the parties must advise the hearing panel and the host before they start a confidential portion of the hearing. On instructions from the hearing panel, the host will send the individuals who are not entitled to receive the confidential information to the “lobby” (as discussed below) and allow them to return once the confidential portion of the hearing is completed.

14. As soon as possible or 14 days before the first scheduled hearing date, each party should endeavour to provide the NHC with a complete list of their participants for technology testing and training purposes as may be required. The list must include each participant’s full name and user name, if joining by videoconference, together with email and telephone number to be used in the event of technical difficulties during the hearing.
15. At the beginning of each electronic hearing, the host will confirm that all required participants are present before the hearing panel joins the session. The Chair of the hearing panel may take a roll call before the hearing commences to confirm that the parties and other required participants are present and ready to proceed. All individuals joining the conference individually or sharing a room with a participant must identify themselves before the commencement of the hearing.

C. Technical Requirements

(a) Platform

16. Electronic hearings proceed via [Cisco Webex](#) or other electronic platform or technology as may be approved by IIROC (**Platform**).
17. All electronic proceedings are conducted through the Platform, unless participants are prevented from using the Platform by extenuating technical or personal circumstances and permitted by a hearing panel to join by telephone or other means.
18. All participants are required to install the Platform on their devices and familiarize themselves with its functions in advance of the hearing.
19. The NHC administers all proceedings and is in charge of scheduling electronic proceedings. Once hearing dates are set, the NHC will provide connection details (either an electronic link or dial-in numbers) for the hearing to all participants.

(b) Equipment & Connection

20. The minimum technical requirements for electronic hearings are outlined in **Appendix A**.
21. Each participant is responsible for ensuring that they have proper:
 - a. hardware (desktop or laptop computer, tablet, telephone, built-in or external microphone and speakers or earphones/headset, and built-in or external camera for videoconferencing)
 - b. software (*i.e.* [Webex](#) app)
 - c. reliable Internet connection
 - d. training and technical support as may be required and
 - e. access to a suitable venue

so that they can fully participate and the hearing can proceed in an orderly fashion.

(c) Training and Testing

22. Where possible, the NHC will arrange a demo/training session for all required participants. Each of the parties should discuss and, where possible, arrange attendance of their participants for the demo/training session in advance of the hearing.
23. In all electronic hearings, it is critical that participants test their equipment and Internet connectivity well in advance in the location they will be participating from on the day of the hearing.
24. Participants should also test, and have available during the proceeding, an alternative method of connection in case of technical difficulties. Such backup options may include connecting through another electronic device (another desktop or laptop computer, tablet, mobile phone), using a landline phone (for audio connection) and connecting to the Internet through an alternative local area network (**LAN**) cable, Wi-Fi, a mobile hot spot or Internet stick.

(d) Technical Matters

25. To improve the audio and video quality, participants may have to disconnect from a virtual private network (**VPN**), if used and close all unnecessary programs.
26. Where possible, connecting to the Internet through the LAN cable should be preferred over a Wi-Fi network. If Wi-Fi is unavoidable, participants are encouraged to find a location with a strong Internet signal.
27. In case of audio breakups, latency and echoing, participants may choose to connect their audio via a landline or cell phone (instead of using a computer audio) which could improve the sound quality for them and other participants. If switching audio sources during the hearing, immediately disconnect from the first source as having two or more audio sources in the same room may create audio feedback which makes conversation inaudible.
28. The devices participants use to connect to the remote hearing should be placed on a stable surface and not held. Movement requires more bandwidth and reduces both video and audio quality.
29. The connection may be improved if participants have sole use of the bandwidth and by limiting other audio and video streaming not related to the hearing.
30. In the event of a loss of connectivity or other technology-related interruptions that prevent either the panel members, the parties, their counsel or witnesses (if giving evidence) or the court reporter from participating, an electronic hearing may be adjourned until such time these required participants are able to meaningfully participate in the proceeding.
31. If technical difficulties that cannot be resolved in real-time arise during a hearing or the hearing panel determines that the electronic hearing is not working as anticipated, is otherwise inadequate or prejudicial to any party or to the integrity of the proceeding, the hearing panel may

adjourn the hearing and, where appropriate and practical, may permit the parties to deliver post-hearing submissions in writing.

32. In case of technical difficulties, participants should immediately communicate with the NHC at NHC1@iroc.ca.

D. Hearing by Teleconference

33. Certain hearings may proceed by teleconference. Whether a teleconference is appropriate is determined upon assessment of the factors set out in the Rules.

34. Teleconferences are not suitable for proceedings that require presentation of oral evidence and lengthy submissions. However, teleconferences may be suitable for less document-heavy proceedings, such as prehearing conferences, motions or applications on procedural issues and hearings on agreed facts.

35. Teleconferences are scheduled using the Platform dial-in numbers in order to permit an easy conversion into videoconferences if required.

36. All participants in teleconferences should keep their microphones on mute until they are ready to present.

37. Participants should identify themselves before speaking unless their identity is obvious from the context (*e.g.* answering a question directed to a particular individual).

E. Hearing by Videoconference

38. Videoconferences may be appropriate in contested proceedings where oral evidence is required, either through fact witnesses or experts, and/or which may have a document-heavy record.

39. All participants must connect to the videoconference at least 15 minutes before the scheduled time to ensure they have no connectivity or other technical issues before the hearing commences.

(a) Key Functionalities

40. The following functions are used to facilitate a proceeding by videoconference:

- a) “waiting room” may be available upon joining the conference and can be used to test and address any technical issues
- b) “lobby” and “breakout room” is administered by the host and may be used to permit private discussions or to exclude participants from the virtual hearing room where necessary, for example, to allow the hearing panel to deliberate, or to excuse witnesses until ready to testify or while relevance or admissibility of their evidence is argued
- c) “document share” is used to display documents during a proceeding by the host, who has control over the document sharing functions and displays documents on directions of the participant presenting evidence or making submissions

- d) “chat” may be used for group messaging only (despite this option being available through the Platform, IIROC cannot guarantee privacy of communications through this function; participants are therefore encouraged to use other secure channels for private/privileged communications).

(b) Presentations

- 41. Panel members, parties to the proceeding, their counsel and witnesses should keep their cameras on at all times but mute their microphones (on a computer or telephone) when not speaking. All other participants and observers, unless asked to speak, must keep their cameras and microphones turned off at all times.
- 42. Participants should avoid typing on their keyboard while their microphone is unmuted.
- 43. When presenting in a videoconference, participants should:
 - a) always keep their camera and microphone on unless the hearing panel instructs them otherwise
 - b) ensure that they have sufficient lighting in the room and avoid back lighting causing a dark reflection on the screen
 - c) position their camera so that all conference participants can clearly see the speaker, particularly their whole face, shoulders and hands if possible
 - d) speak directly and audibly into the microphone
 - e) to the extent possible, avoid turning frequently side to side while speaking (it is expected that participants may need to consult materials) as the audio may fade in and out.

(c) Necessary Interruptions and Adjournments

- 44. A participant who wishes to speak when entitled to (for example, to raise an objection or a point of procedure or privilege) should wave a hand in front of their camera or promptly say that they have an “objection”. The Chair of the hearing panel may pause the session and ask the person to verbalize the objection when appropriate. If for technical reasons the objection could not be raised prior to the witness answering the question, provided that the party objects to the question as soon as reasonably possible, the hearing panel may rule on it at that time.
- 45. If the hearing is adjourned on the same day for either a break, panel deliberations or any other matter, the hearing panel will advise the participants when and how the hearing will resume. When possible, participants should mute their microphones and turn their cameras off during breaks instead of disconnecting from the session. If the participants suddenly become disconnected, they should use the same connection link to rejoin the session. If the hearing is adjourned to another day, the NHC will provide new connection details to all participants in advance of the new date(s).
- 46. If a participant needs to leave the session for any reason while the hearing is ongoing, they should advise the hearing panel and seek their permission to do so as soon as possible.

F. Documents

(a) Submitting Documents for Electronic Hearings

47. As soon as possible or at least seven days before the scheduled electronic hearing, parties should submit to the NHC all documents, together with a list of those documents, they intend to refer to and will require the host to display during the hearing. These documents are not considered to be “filed” pursuant to the Rules and do not form part of the hearing record unless entered into the record at the hearing.
48. Documents should be submitted electronically to NHC1@iiroc.ca clearly identifying the matter in which the documents will be used. Documents should be submitted via a secure encrypted document transfer system or on an encrypted and password protected USB drive.

(b) Format

49. Documents to be used in an electronic proceeding should be prepared and submitted to the NHC in the following format:
- a) as a single Portable Document Format (**PDF**) file containing a table of contents linked to appropriate sections and bookmarked to tabs if briefs contain multiple documents
 - b) minimum resolution of 300 dpi for PDFs whether the original format was paper or electronic
 - c) clean, legible and unmarked/unannotated
 - d) using clear names and document ID numbers (*e.g.* “Staff’s Compendium_EN001” and “Respondent’s Compendium_RN001”) for proper identification and quick reference
 - e) paper documents scanned to text using Optical Character Recognition (**OCR**) technology
 - f) Excel documents in both native format and searchable PDF
 - g) audio and video files in their native format
 - h) where redactions are required, ‘burned in’ (to remove any underlying text) with redactions clearly identified by a black box (white boxes should not be used as it is not possible to determine where the redactions start and end).
50. The NHC may require a new copy of the document from the party where the document appears to be illegible, imperfect or corrupt on its face.
51. Parties are not required to provide paper copies of their materials unless specifically requested by the hearing panel and/or the NHC.
52. In their written submissions and arguments, to the extent possible, parties should hyperlink authorities cited to the cases posted online and available on websites of IIROC, relevant Securities Commissions, Canadian courts or CanLII. Parties may continue to include copies of the relevant authorities in support of their submissions.

(c) Document Presentation/Sharing

53. As directed by the hearing panel and/or the presenting party, the host will display documents on the screen through the “document share” function. Documents may be enlarged, annotated or highlighted as they are presented on the screen.
54. Participants should refer to documents by the document name and/or document ID, tab number and/or page number, and refer to PDF page numbers rather than paper copy page numbers.

G. Witnesses

55. In preparation for a proceeding, parties and/or their counsel are expected to advise their witnesses of any protocol they agreed to and practices set out in this document.
56. Witnesses will be asked to make themselves available at a scheduled date and time. As typically a witness has to be excluded from a hearing before their testimony, they may have to wait until invited into the virtual hearing room by the host.
57. At the beginning of their testimony, witnesses are sworn in and asked to confirm that, while giving evidence, they would not:
- a) be accompanied by anyone in the room except as permitted by the hearing panel
 - b) refer to any notes or script
 - c) review any documents or access the Internet or any other electronic resources other than the documents put to them by the host during their examination or as they may be permitted to review and
 - d) communicate with any person about the substance of their testimony (except to the extent permitted by the law societies’ code/rules of professional conduct).
58. If the witness’s testimony is interrupted for technical or other reasons, the witness would be cautioned not to discuss the testimony during the break and asked to confirm that is the case when returning to complete the testimony.
59. Where relevance or admissibility of the evidence is raised, witnesses may be excused at the request of a party and at the discretion of the hearing panel. Normally, the witness is not required to leave the session, but may be sent into the “lobby” and allowed to return to the hearing when appropriate.

H. No Recording

60. No recording of proceedings (either audio or video recording, photos or screen captures) is allowed except by a court reporter, for the preparation of an official transcript, or as may be permitted or directed by the hearing panel.
61. A registrar or a host is responsible for marking documents entered into the hearing record.

I. Public Access

62. Where a proceeding is open to the public, members of the public or media interested to attend the electronic hearing should contact the NHC via NHC1@iroc.ca or register via a registration link, where applicable, at least two business days in advance of the hearing. Along with the request, a requestor will be asked to provide their name and contact information for registration and connectivity purposes. The NHC will confirm the registration and provide connection details.
63. Members of the public or media are able to observe but not participate in electronic hearings. They will have their microphones muted and cameras turned off for the duration of the proceeding.

J. Etiquette, Attire and Decorum

64. The formality, solemnity and propriety of the in-person hearing process remains and should be observed in electronic proceedings.
65. When joining a virtual hearing session, participants may be prompted to select a display name. An appropriate display name may contain their first name or first initial and their last name.
66. All participants presenting by videoconference should be dressed in appropriate business attire.
67. To the extent possible, participants should use a neutral background. Virtual backgrounds use up bandwidth, often causing pixilation or audio interruption and therefore should not be used.
68. Participants should refrain from eating and limit their beverage intake to water or other soft beverages, which are to be consumed in a manner that avoids attracting undue attention.
69. Typically, electronic hearing sessions are open in advance of the scheduled time and may have frequent breaks as agreed by the parties and directed by the hearing panel. All participants are expected to be punctual and ready to proceed on time.
70. If joining an electronic hearing from home or public space, participants should eliminate or at least minimize all possible interruptions. Participants may need to advise their household members about the timing and duration of the hearing, remove all unnecessary objects from the room, avoid crowded or public places and turn off notifications on electronic devices.

Appendix A - Minimum Technical Requirements

Software	<ul style="list-style-type: none"> • Webex app <https://www.webex.com/downloads.html>
Hardware	<ul style="list-style-type: none"> • Electronic device (desktop/laptop computer or tablet) • Camera (built-in or external) • Microphone (built-in or external) or landline phone • Speakers or earphones (headset recommended) • Phone (iPhone/iPad iOS 10 or later and Android OS 5.1 or later)
Operating System	<ul style="list-style-type: none"> • Windows 7 – Windows 10 • Mac OS X 10.9 (Mavericks) – Mac OS 10.15 (Catalina) • Android OS 5 (Lollipop) – Android OS 9 (Pie)
Web Browser	<ul style="list-style-type: none"> • Google Chrome, version 59 or later • Mozilla Firefox, version 58 or later • Internet Explorer, latest version • Microsoft Edge, latest version • Apple Safari, latest version
Internet Connection	<ul style="list-style-type: none"> • LAN (recommended), Wi-Fi or LTE network • High Definition Video: 2.5 Mbps (Receive) and 3.0 Mbps (Send) • High Quality Video: 1.0 Mbps (Receive) and 1.5 Mbps (Send) • Standard Quality Video: 0.5 Mbps (Receive) and 0.5 Mbps (Send)

Appendix B - E-Hearing Preparation Checklist

No.	Item	Check
Prior to the electronic hearing		
1	Confirm that you and all your participants have: <ul style="list-style-type: none"> a) the minimum technical requirements as outlined in Appendix A b) training and technical support (if required) c) access to a suitable venue 	
2	Discuss the protocol with the other side as soon as practicable and seek guidance from the hearing panel if required	
3	As soon as practicable or 14 days before the hearing, provide the list of your participants and their phone numbers and email addresses to the NHC in the event of technical difficulties	
4	As soon as practicable or at least seven days before the hearing, provide all documents you intend to refer to the NHC for the host to display during the hearing	
5	Ensure you have connection details for the hearing (either an electronic link or dial-in numbers)	
6	Schedule a demo/test session(s) for yourself and all your participants	
7	Have a back-up plan for technical issues (<i>i.e.</i> another device [desktop or laptop computer, tablet or mobile phone]; use a landline or mobile phone for audio connection; connect via an alternative LAN or Wi-Fi network, mobile hot spot or Internet stick)	
8	Ensure that your witnesses and other participants are aware of the protocol and best practices	
Day of the electronic hearing		
9	Close all programs not needed during the electronic hearing, mute all messaging and phone notifications, and remove all other background noise	
10	Test your Internet speed	
11	Test private alternative communications with your client, legal team and opposing counsel	
12	Log-in 15 minutes earlier and test that audio and video connections are clear	
During the electronic hearing		
13	Present yourself and identify any other persons present at your location	
14	For videoconferencing, keep your camera on but mute your microphone when not speaking	
15	When speaking, look at the camera and speak directly into your microphone	
16	To have a document displayed by the host, ensure to call the correct name, tab and page number	
17	To raise an objection or a point of procedure or privilege, raise your hand in front of your camera or state that you have an “objection”	
18	Tell the hearing panel and the host if you, your witness or other participants need to be excused or sent to a “lobby”/”break-out room”	
19	During breaks, mute your microphone and turn off your camera and return to the session when the hearing is scheduled to resume	
20	Advise the hearing panel and the host in advance if you must leave the session earlier	