

FAILURE OF HEARINGS TO PROCEED

The number of instances where hearings into IRS claims have not proceeded on the scheduled dates has steadily increased. The failure to proceed is most often caused by claimants or their counsel requesting a postponement, or failing to attend at the scheduled time. Requests for postponement also occur at the request of other participants (Canada, church entities) but significantly less so.

At this point, more than one in five hearings do not proceed as scheduled. Such failures to proceed have resulted in enormous waste of resources. They also seriously impede the Secretariat's ability to manage the hearing process effectively.

Through the Oversight Committee and the Supervising Courts, the Secretariat has been encouraged to put in place procedures to reduce the incidence of rescheduled hearings, including consideration of imposing financial consequences on claimant's counsel where a failure to proceed at the scheduled time could reasonably have been avoided.

The Secretariat has altered its procedures to assist adjudicators with respect to requests for adjournment of hearings.

These guidelines are intended to provide various measures to adjudicators and to encourage a consistent approach among adjudicators. As always, the decision-making authority rests with the adjudicator assigned to the case. This is not a directive; it is intended as guidance. This is not intended to address failure of attendance at scheduled hearings by self represented claimants.

The New Procedure

The procedure involves the following:

1. Scheduling the Hearing

- The current scheduling method will be continued.
- The new position of Registry Officer has been established. All requests to postpone or adjourn will go through the Registry Officer.
- The Registry Officer will retain and disseminate information, detailing and all current or past requests for postponement. A history of all postponement requests will begin upon the implementation of this procedure.
- The postponement history will be provided to the adjudicator if the adjudicator must deal with an adjournment request. This will take the form of a "Report on Hearing Postponements." Attached as Schedule 1 to these guidelines is a sample Report on Hearing Postponements.

2. Adjournment Requests received up to 10 weeks before the Hearing

- Any party may request adjournment with no negative consequences if the request is received before 10 weeks from the hearing date. For hearings set at 10 weeks or less from the hearing date, the parties have a 10 day –rescheduling window in which to reschedule.
- The request to reschedule must be emailed to the adjudicator, cc'ing the other parties, the Scheduler and the postponement-reporter@irsad-sapi.gc.ca account.
- The Scheduler will reschedule the hearing according to the availability of the adjudicator and the parties.

3. Adjournment Requests less than 10 weeks from the Hearing

- Where a request is received by the Registry Officer less than 10 weeks from the date of the hearing, adjournments will only be permitted on the direction of the adjudicator assigned to the claim.
- The request should include the reason for the adjournment request, along with any supporting documentation.
- If an adjudicator has not yet been assigned, the Chief Adjudicator's office will designate an adjudicator for the purpose of dealing with the request.
- The Secretariat shall provide an estimate of the costs thrown away.
- The adjudicator will consider the circumstances underlying the request for adjournment and either grant or deny the request. If an adjournment is permitted, the adjudicator may impose conditions. If an adjournment is denied, the hearing will proceed and, depending on the circumstances, the adjudicator may dismiss the claim, or stay the claim allowing the matter to be continued if certain conditions are met.

The following steps are recommended:

- a) If the request for adjournment is received by the adjudicator before he or she has travelled to the hearing location, the adjudicator will convene a teleconference either before or at the date and time of the scheduled hearing.
- b) If the request is received after the adjudicator has travelled to the hearing location, the adjudicator will convene the hearing at the time and place indicated in the Notice of Hearing. All parties, with the exception of RHSW and other support person or persons for the claimant, are expected to attend, unless their attendance is excused by the adjudicator, in which event the excused party may attend by teleconference.
- c) The adjudicator will consider the Registry Officer's report and take into account whether previous adjournments have been permitted.

- d) The adjudicator will hear and consider the request for adjournment and decide the matter.
- e) The adjudicator will consider the following:
 - o Was the notification of the hearing delivered correctly and in a timely fashion?
 - o Are there any unusual circumstances surrounding the scheduling of the hearing that may have made it difficult for any party to attend?
 - o Is the request reasonable under the circumstances?
 - o Has claimant's counsel requesting the adjournment taken all reasonable steps to ensure attendance of the claimant?
 - o If any other party is requesting the adjournment, have all reasonable alternatives been considered that would avoid the adjournment?

The Adjudicator's Order

The adjudicator may:

- 1. Grant the request;**
- 2. Grant the request with conditions.**

The conditions may include the following:

- In the case of a party other than the claimant, and with the consent of the claimant, on the adjourned date the hearing will proceed regardless of any further non-attendance.
- Where an adjournment is at the claimant's request, if the claimant does not attend on the adjourned date, the hearing will proceed and, in the absence of evidence to support the claim, the claimant's application will be dismissed.
- If counsel bears the responsibility for the adjournment, it may be taken into account in assessing fairness and reasonableness of legal fees.
- Subject to the discretion of the adjudicator, any legal fee adjustment can reflect the costs "thrown away".
- The adjudicator may direct that there be no re-assignment of the claim to another adjudicator.

- The adjudicator may direct that all future notice of assignment of hearings (known as a "Hearing Set Notification") be mailed directly to the claimant as well as emailed to counsel.
- The hearing may not be re-scheduled until a minimum of 6 months from the scheduled date has elapsed.

3. Deny the Request;

- The Adjudicator may deny the request and convene the hearing. In the absence of evidence to support the claim, it will be dismissed.

4. Deny the Request with conditions.

- The adjudicator may deny the request and convene the hearing. If the result would be dismissal of the claim because of lack of evidence, the adjudicator may stay the claim, permitting the claimant to request, no sooner than 6 months and no later than 18 months from the date of the hearing, rescheduling of a hearing into his or her claim. If such a request has not been made upon the elapsing of 18 months from the date of the hearing, the claim will stand dismissed. The adjudicator may adjust this time frame to accommodate the ending of the IAP or as the circumstances may require.
- The adjudicator may impose financial penalties on counsel as indicated above.

Post-Hearing

Following the decision to grant or deny the adjournment, the adjudicator will write a report to all parties, including the Registry Officer, as to that decision.

If the decision results in a dismissal, the adjudicator will write a decision setting out the circumstances and the reasons for the dismissal.

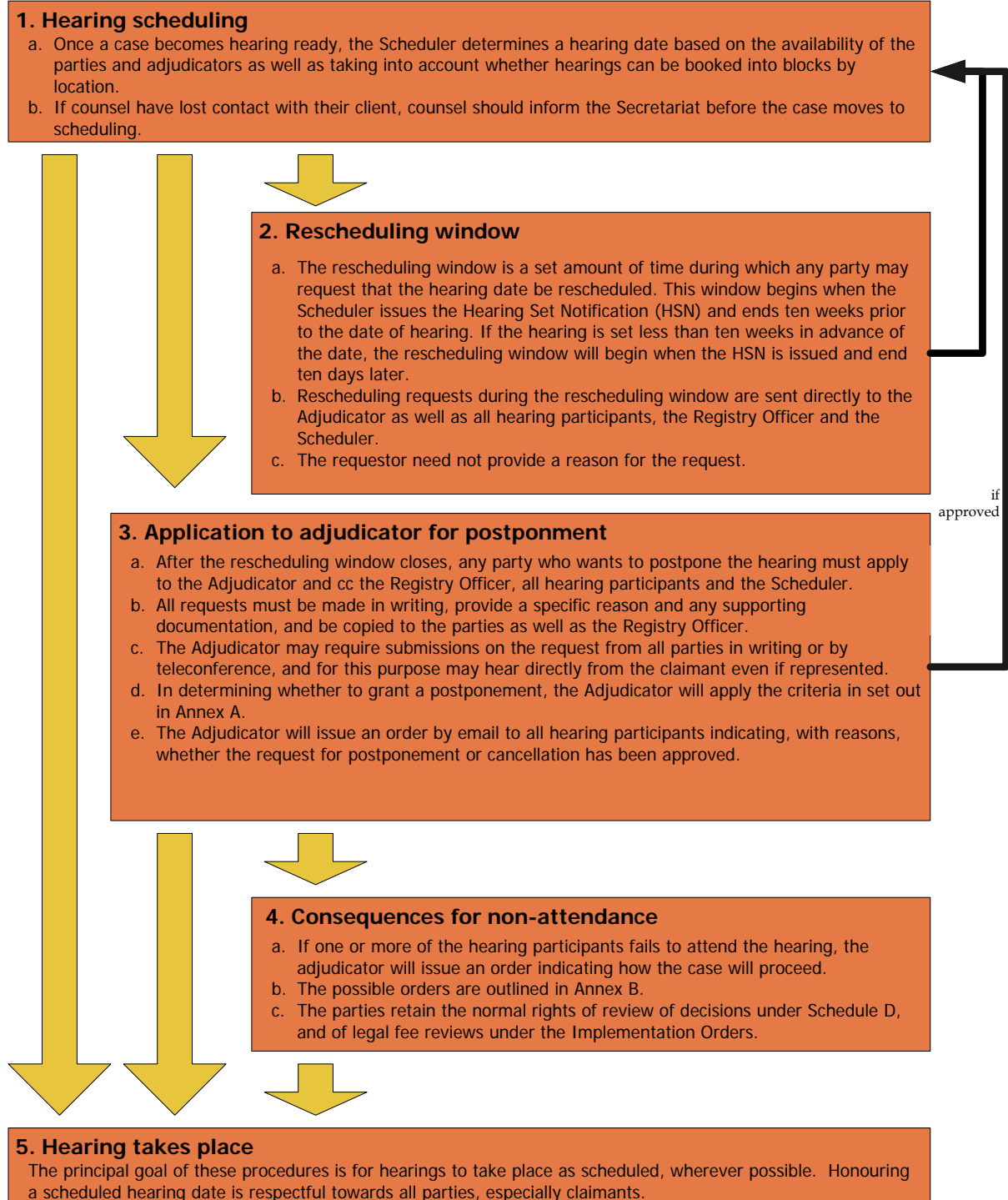
If the adjudicator issues a stay of the claim, allowing for re-scheduling of a hearing into the claim, the adjudicator will deliver a report to the parties, including the Registry Officer. If a request for re-scheduling is not received upon expiration of the time allowed, the adjudicator will provide a decision to the parties.

Concluding Guidance

Adjudicators have the responsibility to manage the hearing: page 9, (e) (ii) of the IAP Model. This includes dealing with adjournments as well as providing direction to the parties as to the process to be followed once a hearing date and time has been scheduled.

The Secretariat has reached the estimated mid-point of the IAP. Extra measures must be taken to reduce the number of lost hearing days, while also maintaining a process that is fair to all parties.

VISUAL - HEARING POSTPONEMENTS



CRITERIA FOR DETERMINING WHETHER TO GRANT A POSTPONEMENT AFTER THE RESCHEDULING WINDOW HAS CLOSED

1. Was the hearing properly scheduled?
Did the parties properly update their availability with the Secretariat?
Was the Hearing Set Notification properly sent?

2. Is the postponement request reasonable in the circumstances?
Has the requestor exhausted other alternatives to their participation in the hearing?
In cases of illness/accident/bereavement/family crisis/etc., what options were available to the requestor to find alternative means of retaining the hearing date, such as sending a qualified colleague or attending by videoconference?
When a hearing postponement is requested for reasons relating to the claimant's health or availability, has the claimant's counsel acted appropriately? Expected actions include referral to the Resolution Health Support Program, demonstrated contact with the claimant before the hearing, and documented preparation of the claimant for the hearing process.

3. Was the postponement requested in a timely manner?
Was the Secretariat notified as soon as possible or practicable?
Was the request made early enough to allow for the hearing date to be transferred to another waiting claim?

4. What is the impact on parties and other hearing participants?
Will a postponement increase the risk that a claimant will lose the opportunity to provide testimony? Will the postponement cause the claimant undue stress or anxiety? Age, health status, and length of time since the claimant applied for compensation may be taken into account.
Will any of the parties (or the alleged perpetrator in the case of a POI hearing) be prejudiced by the postponement?

5. Have previous postponements been granted on this case? If so, under what circumstances?

6. Are there any other relevant factors?

AVAILABLE CONSEQUENCES FOR FAILURE TO ATTEND A HEARING

In the order, the adjudicator may do one or more of the following:

Any participant	a. Order that a new hearing date be set.
Canada or a church organization	b. Proceed with the hearing without the defendant present.
Alleged perpetrator, witness, or counsel for same	c. Proceed to decision based on the available evidence.
Claimant	<p>d. Order that a new hearing date be set, and indicate that if the claimant does not attend the new hearing, their case may be decided on available evidence.</p> <p>e. Place the file on hold pending a written attestation from the claimant that they are ready to proceed or apply a time penalty before which a subsequent hearing may not be scheduled.</p> <p>f. If the claimant fails to attend a rescheduled hearing, the adjudicator may write a decision based on the available evidence.</p>
Claimant's counsel	<p>g. Direct that all clients of a particular legal counsel receive notification of hearing dates directly from the Adjudication Secretariat, and require the legal counsel to provide the necessary contact information.</p> <p>h. Inform the claimant of their right to choice of counsel in the IAP.</p> <p>i. Provide the claimant with the option of proceeding with the hearing on a self-represented basis.</p> <p>j. Factor the hearing non-attendance into the legal fees. The legal fees would be calculated in the usual way, after which an amount equal to the average cost of a postponed hearing is deducted from the total legal fees payable. An additional penalty may be applied for each postponement of the same case.</p> <p style="padding-left: 20px;">l The Secretariat will publish costs 'thrown away' with respect legal fee deductions.</p>
Any participant, where an adjudicator finds that non-attendance is an abuse of process, or has had a significant adverse impact on the claimant or other parties	<p>k. Cause a formal complaint to be made to the appropriate Law Society.</p> <p>l. Cause a formal complaint to be made to the person's employer.</p> <p>m. Refer the file to the Chief Adjudicator with a recommendation that the Chief Adjudicator file a complaint of civil contempt with a supervising court.</p>

REPORT ON HEARING POSTPONEMENTS – SCHEDULE 1

Requestor:	
File number:	
Claimant's Initials:	
Hearing Date:	
Date of Request:	

I have reviewed the available data on this file, and report the following:

1. Secretariat scheduling activity on the file

Was the Hearing Set Notification sent to all participants?	<input type="checkbox"/> Yes <input type="checkbox"/> No - details provided below
Was the Rescheduling Window properly observed by the Secretariat?	<input type="checkbox"/> Yes <input type="checkbox"/> No – details provided below
Was a change to the hearing requested in the Rescheduling Window?	<input type="checkbox"/> Yes - details provided below <input type="checkbox"/> No
Is a copy of the Hearing Set Notification attached to this Report?	<input type="checkbox"/> Yes <input type="checkbox"/> No – reason provided below

Details about scheduling activity:

2. Postponement history – this file. Have there been any previous postponement requests on this file?

- Yes
 No

Details of postponement history:

3. Postponement history – this requestor.

Has this requestor made any previous postponement requests?	<input type="checkbox"/> Yes – details below. <input type="checkbox"/> No
How many requests have been made?	
How many requests have been approved?	
Details of reasons for approved requests	
How many requests have been denied?	
Details of reasons for denied requests	

Information provided by:

Name:

Title:

Date:

Contact:

Attachments:

- Copy of Hearing Set Notification
- Copies of hearing postponement denials for file number E5442-10- (if applicable)
- Estimate of Costs Thrown Away (if applicable)