

# Best Practices for Remote Hearings

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Collaboratively developed by the joint E-Hearings Task Force of The Advocates' Society, the Ontario Bar Association, the Federation of Ontario Law Associations, and the Ontario Trial Lawyers Association



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## **Best Practices for Remote Hearings**

### **1) Introduction**

#### **a) Purpose and Overview**

1. The purpose of these Best Practices is to provide guidance to anyone who is considering preparing for and participating in a remote hearing.
2. These Best Practices are intended to apply to any remote hearing and to be platform-neutral. However, the guidance in these Best Practices is subject to the discretion of the judge hearing the matter and to the province-wide and regional Practice Directions, Notices to the Profession and Rules of Court, as applicable.
3. These Best Practices are intended to apply only to hearings that are legally and logistically appropriate for a remote hearing. They do not address when it is appropriate to have a remote instead of an in-person hearing. While remote hearings can be an efficient and accessible way to proceed, there may be statutory, security or other impediments to having a remote hearing in certain matters, particularly criminal and child protection matters or other matters dealing with sensitive information. Further, remote hearings may be inappropriate due to a party's personal circumstances (for example, particular sensory impairments, disabilities, translation needs or caregiver responsibilities) or a lack of access to the necessary technology (for example, in remote areas where internet access and bandwidth can be a challenge).
4. Although these Best Practices were developed during the suspension of the courts' regular operations due to the COVID-19 pandemic, their applicability is not limited to that emergency situation. However, holding remote hearings during the COVID-19 pandemic is particularly important to preserve the rule of law and access to justice while ensuring the safety of all participants. While remote hearings facilitate these objectives, they must also ensure procedural and substantive fairness to the parties and take into account any accessibility issues that the parties or counsel may have.
5. These Best Practices describe what counsel and parties should do in the context of remote hearings, where practicable. However, in certain cases, it may not be possible or appropriate to implement all of them due to factors such as: (a) the nature or complexity of the matter, and (b) parties' or counsel's circumstances or resources. Further, the courts may show flexibility and creativity when determining the requirements of a particular matter, which may facilitate the holding of a remote hearing.
6. These Best Practices will be reviewed periodically to take into account developments related to remote hearings, including evolving knowledge, experience and best practices stemming from the increased use of remote hearings during the COVID-19 pandemic and beyond.

#### **b) Interpretation and Definitions**

7. While these Best Practices relate primarily to video hearings, many of them may be adapted to telephone hearings.
8. These Best Practices should be read by lawyers and paralegals in conjunction with their applicable Rules of Professional Conduct.

9. The term “counsel” is intended to apply to a lawyer, paralegal, student-at-law or other licensing candidate representing a party to the proceeding. Where the term “party” is used, the principles apply to the party directly and to any counsel acting on their behalf.

10. Where the term “judge” is used, reference is to the judicial officer, adjudicator or decision-maker hearing the matter, including, but not limited to, a judge or master.

### **c) Reminder to Consult Practice Directions**

11. Parties must consult the Practice Directions and Notices to the Profession applicable to the Court and judicial region in which the remote hearing will take place before planning the hearing.

12. Regularly reviewing Practice Directions and Notices to the Profession is particularly important during the COVID-19 situation because the courts are continually updating their procedures and guidance.

### **d) Self-Represented Litigants**

13. While these Best Practices were primarily developed for counsel, self-represented litigants may also find them helpful.

14. [Section 3](#) below includes principles directed at lawyers, paralegals or students-at-law/other licensing candidates where their matter includes a self-represented litigant.

15. [Appendix C](#) includes resources for self-represented litigants and other resources.

## **2) Civility – Cooperation – Collaboration**

16. Remote hearings require civility, professionalism, cooperation, communication and collaboration between parties, both before and during the hearing.

17. Parties should be willing to adapt and cooperate in good faith in the preparation and conduct of remote hearings to achieve the just, most expeditious (fastest) and least costly resolution of proceedings.

18. If this is not already the case, counsel should become familiar with the technology used for remote hearings, understand how it works, and, where practicable, have the necessary hardware and software to participate meaningfully. Where it is not possible to access the required technology, counsel should consider how they can facilitate a remote hearing using alternate tools or raise the issue with opposing parties and the court.

19. Notwithstanding that the parties are engaged in an adversarial process, judges are entitled to expect that counsel will assist the court by facilitating fair and efficient hearings proportionate to the matters in issue.

20. Parties should avoid unnecessary judicial interventions by negotiating agreements with opposing parties. They should consult before the remote hearing to resolve as many hearing details as possible.

21. Parties must be flexible regarding technical difficulties or other challenges that other participants may experience. This is particularly important during the COVID-19 pandemic as participants will generally be working from home, which may result in challenges, including technology issues and child and elder care in close quarters.

22. Parties should not take unfair advantage of the fact that the hearing is held remotely. In particular, they should not take advantage of, or act upon, slips, irregularities, technical issues or mistakes, or inadvertence.

23. Counsel have discretion to determine the accommodations to be granted to opposing counsel and litigants in all matters that do not affect the merits of the case or prejudice the client's rights. Counsel should not accede to a client's demands that counsel act in an unreasonable or uncooperative manner.

### **3) Counsel's Responsibilities in Matters with Self-Represented Litigants**

24. Counsel's responsibilities in matters involving self-represented litigants are unchanged in a remote hearing. Counsel are officers of the court and must be mindful of their professional obligations when dealing with self-represented litigants. Counsel should also have regard to the Canadian Judicial Council's [Statement of Principles on Self-represented Litigants and Accused Persons](#).

25. Counsel should not attempt to gain a benefit for their client solely because a litigant is self-represented. They should cooperate with the court in ensuring that a self-represented litigant receives a fair hearing.

26. Some self-represented litigants may be unable to participate in remote hearings due to disability, lack of access to the required technology, internet connectivity issues and/or other legitimate reasons. Accordingly, counsel should, in collaboration with affected self-represented litigants, consider recommending possible alternatives and/or accommodations to the court to ensure a fair hearing.

27. In addition, counsel should:

- (i) not take advantage of a self-represented litigant's unfamiliarity with rules of practice and procedure, and, if practicable, point them to sources of information and advice to help them understand their obligations, including duty counsel services, where available;
- (ii) where possible, consider providing other assistance (including technical assistance) to a self-represented litigant when doing so will not prejudice or conflict with their client obligations, will move the case forward, and will not result in significant costs; and
- (iii) be alert to the potential for self-represented litigants to be "left behind" during a remote hearing, and take reasonable steps to ensure that self-represented litigants are following the proceeding.

#### 4) Pre-Hearing Preparation

##### a) Collaboration with Opposing Parties

28. A successful remote hearing requires early discussion and cooperation with opposing parties. Counsel should therefore take instructions from their clients as early as practicable.

29. Parties should discuss and agree upon the following well in advance of the hearing, subject to the judge's discretion:

- (i) the hearing format, including whether certain issues may be effectively argued in writing, with oral submissions at the judge's request only;
- (ii) any training needs on the relevant technology platform(s).<sup>1</sup> Where appropriate, parties should coordinate to ensure that all members of their teams are trained at the same time on the programs and procedures to be used;
- (iii) the need for any language interpretation, court reporting, or other services. Parties must ensure that these services are able to access the technology platform(s);
- (iv) the format of documents and a timetable, procedure and technology for document exchange, including reasonable arrangements for electronic service and, where appropriate, the use of a common platform from which documents can be downloaded;
- (v) in cases involving documents subject to publication bans, sealing orders, or pertaining to particularly confidential or sensitive matters, whether such documents require special treatment when being transmitted or filed;
- (vi) the preparation of a draft order to be provided to the judge, if appropriate; and
- (vii) the hearing protocol (an agreement on procedures for the hearing) described below.

30. A hearing that is proceeding remotely is ideally conducted by video. Where a party is not able to participate by video, all parties should generally proceed by teleconference hearing. However, if the parties are satisfied that no unfairness will result, the hearing may proceed by video with one or some parties participating by telephone only, subject to the judge's discretion.

31. Parties should make efforts to identify and narrow the issues to be dealt with at the remote hearing in advance so that it is focused and effective. This should include ensuring that each side understands the issues that the other side intends to address orally.

32. Parties should ensure that all transcripts, evidence and documents necessary for the hearing, including relevant materials in the court file (e.g., pleadings, past endorsements and

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<sup>1</sup> See [Appendix B](#) for links to user tutorials and training videos for various platforms.

orders), are assembled and available electronically in an organized and easily accessible format. Recognizing the need to prepare and the fact that judges, counsel and parties have varying levels of comfort with technology, parties should agree to serve the relevant documents on opposing parties and send them to the judge well in advance.

#### **b) Agreement on Hearing Procedures**

33. Parties should agree on the procedures for the hearing itself (often called a “protocol”), subject to the judge’s discretion. This protocol should be discussed with the judge either before or at the start of the hearing. Parties should discuss the issues identified in [section 5](#) below (“Issues to Discuss with Judge Before or at the Start of the Hearing”) amongst themselves before any discussion with the judge.

34. Where possible, parties should consult with court staff to determine applicable technological capabilities or restrictions.

35. The hearing protocol should set out what parties should do if technological issues arise during the hearing and how they will be addressed. Participants in the hearing should exchange email addresses and telephone numbers that can be used to communicate in the event of a disruption to the hearing. Parties may specifically designate an individual on each team or retain an outside service for technological support throughout the hearing.

36. The protocol should address whether and how it will be appropriate to send additional documents or cases to be relied on in argument, subject to the judge’s discretion, as well as draft orders as applicable. Parties should avoid sending additional documents or authorities at the last minute.

37. Where there will be oral witness evidence, the protocol should address how documents will be presented to the witness during examination-in-chief and cross-examination. For instance, parties could agree in advance on a list of documents to which the witness is likely to be referred, and arrange for them to be sent electronically to the witness and the judge. Where appropriate, opposing counsel, parties and witnesses may be asked to undertake not to look at documents until they are presented to the witness during the examination or cross-examination; alternatively, the documents can be password-protected, with the password being provided only at the time of the examination or cross-examination.

#### **c) Preparing Yourself for the Hearing – Testing the Technology and Planning Effective Participation<sup>2</sup>**

38. Technology does not always cooperate and run smoothly. All participants in a remote hearing should prepare their computer, screens, microphone, camera and phone ahead of time to ensure that they are functioning properly and are fully charged and/or plugged in.

39. Parties should request technology access details at least two days before the hearing, if not sooner, to allow time for:

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<sup>2</sup> This section should be read in conjunction with [“Appendix B — Recommended Hardware and Software”](#).



- (i) installation of software. The relevant software should be downloaded and installed well in advance to the device that the participant will use for the hearing;
- (ii) testing of camera and microphone configuration settings;
- (iii) addressing any security restrictions on their systems that may prevent access to certain software, and making reasonable efforts to adapt their systems and/or to find a way to access the platform(s) and software used by the court and the other parties; and
- (iv) familiarizing themselves with the software and the settings and navigating through the software program's menu options by hovering over the buttons. It is important to understand how the software works, and particularly how to adjust and turn video and audio on and off, as well as how to leave a meeting.

40. Participants should test their internet connection ahead of time at least once, and preferably twice, from the places where they will participate in the remote hearing.<sup>3</sup> Participants should avoid using public Wi-Fi because connection speeds are slow, and security is unknown. If possible, participants should use a hard-wired internet connection instead of Wi-Fi. If the internet connection in their location is slow, participants should consider using a phone as the audio connection to the hearing and the computer system for video streaming only. If participants are sharing an internet connection with others in their household, the connection may be improved if they have sole use of the bandwidth and by limiting other audio and video streaming not related to the hearing. Most mobile phones have a tethering option (linking of a computer to a smartphone to connect to the internet) that can be used, but additional data rates may apply. A Wi-Fi dongle (a device that allows internet access) can also be used.

41. Parties should ensure that they have a system for their own use during the hearing that will allow them to both: (a) be connected to the video and audio stream of the hearing, and (b) view the documents they need during the hearing.

42. Where possible, two screens are recommended for the hearing: one screen to view and participate in the hearing, and a second screen to view documents locally. A second device (computer or tablet) to view documents locally is another option.

43. Parties should consider how they will take notes throughout the hearing (e.g., paper or tablet/computer). Parties should not type on their keyboard while their microphone is unmuted, as the sound is distracting.

44. Counsel should consider a way to communicate with clients and co-counsel privately during the hearing (e.g., email, text messages, WhatsApp, Jabber, etc.) in a manner that ensures confidentiality, is separate from communication channels with opposing parties, and allows counsel to keep a record of client instructions. Parties should avoid using the chat function of the video platform for such communications because they may be recorded or viewed by the judge or other participants in the hearing.

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<sup>3</sup> See [Appendix B](#) for information regarding required internet speed.

45. If applicable, parties should also discuss with their witnesses how they will communicate after the start of the hearing, in conformity with the relevant Rules of Professional Conduct.<sup>4</sup>

46. Participants should consider installing the relevant software on a secondary device such as a smart phone or tablet as a back-up if the connection to the hearing is lost.

47. The devices from which participants 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.

48. Participants should minimize background noise. Using a wired or Bluetooth headset with a microphone is recommended. If the headset runs on a battery, it should be sufficiently charged. Using the microphone installed on a computer is not recommended, as it may pick up background noise and can muffle the sound of the participant's voice.

49. Participants should close all applications on their computer that are not needed for the hearing. They should mute any notifications, such as those for email or other messaging applications, and their phone and other devices (such as home electronic systems) during the hearing.

#### **d) Test Run in Advance of the Hearing**

50. At least one day in advance, parties should conduct a joint test run to familiarize themselves with the agreed-upon process and the technology. Parties should deal with any foreseeable technical issues before the hearing to avoid delays at the hearing itself.

51. All counsel and parties who will be participating in the remote hearing should participate in the test run.<sup>5</sup> They should do so from the location from which they plan to attend the hearing so that potential lighting, noise, background and other issues are addressed. Participants should configure the equipment in the exact way that they will use it at the hearing. This will reduce the likelihood of logistical or technical difficulties at the hearing.

52. Typical things that are covered during a test run include:

- (i) confirming the name, location and method of connection of each participant;
- (ii) ensuring that the technology is functioning properly for everyone;
- (iii) testing the video and/or audio feed of each party, including video clarity and audio quality;

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<sup>4</sup> See, in particular, the restrictions set out in rule 5.4-2 of the [Rules of Professional Conduct](#) regarding communications with witnesses giving evidence.

<sup>5</sup> If all parties to the remote hearing are experienced in participating in remote hearings using the same technology platform that will be used, a test run may take very little time.

- (iv) ensuring that the participants have a base level of familiarity with the process and the software;
- (v) discussing and trying the functions that may need to be used (e.g., mute, chat, breakout rooms, document display);
- (vi) confirming the procedures to follow and any directions issued by the presiding judge, and ensuring that all participants have read and understood them;
- (vii) confirming the procedure to follow if a participant's connection to the hearing is lost;
- (viii) ensuring that all participants have access to all necessary materials for the hearing; and
- (ix) if applicable, confirming that all arrangements required by the rules of procedure and relevant Practice Directions with respect to self-represented litigants participating in the hearing have been made.

53. Where the matter is complex, requires a particular set-up or will take place on a platform not regularly used by the court, parties should contact the court before a test run to inquire whether the judge or registrar/judicial assistant wishes to participate in the test run.

54. If the judge or court personnel are participating in the test run, business attire is required for all participants.

## **5) Issues to Discuss with Judge Before or at the Start of the Hearing**

55. After the parties have discussed the matters listed in sections [4a\)](#) and [4b\)](#) above, the judge and all parties should discuss how the remote hearing will proceed. This discussion may take place either at a case conference before the hearing or, if it is not possible to do so, at the start of the hearing. It should deal with the practicalities of the hearing to the extent that they are not dealt with in existing guidance from the relevant court.

56. The following is a non-exhaustive list of issues that parties may wish to raise with the presiding judge (or such other person as the judge may designate), should the judge wish to discuss such matters:<sup>6</sup>

### **a) The Substance of the Hearing**

- (i) agreements between the parties as to facts or law and the areas on which evidence or submissions will focus
- (ii) issues on which parties intend to rely on written submissions, subject to questions by the judge at the hearing

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<sup>6</sup> The parties should give careful consideration to which issues in the list apply to their case, and create a tailored list of issues adapted to their situation.

## **b) The Virtual Environment During the Hearing**

- (i) any directions from the judge regarding etiquette and formality that differ from Notices to the Profession or Practice Directions or the best practices outlined in [section 9](#) below
- (ii) how to ensure that the parties can see the judge at all times during the hearing
- (iii) whether microphones and cameras should be on or off when a participant is not speaking, and whether the court would like participants to have a photograph rather than just their name as their screen identifier when their video is off
- (iv) display names and how participants will be identified on the platform (e.g., J. Smith for the D Acme Inc.)
- (v) whether breakout rooms will be available for counsel on recess
- (vi) attendance of the clients

## **c) The Logistics of the Hearing**

- (i) structure of the hearing, including the order of presentation, turn-taking, time limits, and any need for participants to take a break to attend to personal matters (particularly during the COVID-19 pandemic)
- (ii) how participants should alert the judge if they encounter any technical difficulties, including if they are disconnected during the hearing
- (iii) how counsel or a self-represented litigant can make it known that they want to speak or object
- (iv) a mechanism by which a self-represented litigant can indicate to the judge a lack of understanding or need to interrupt for clarification
- (v) whether the judge will have the technological resources available to allow viewing the hearing while simultaneously navigating electronic documents
- (vi) the use of condensed books (see [section 8c](#)) below)
- (vii) a standard approach to referencing documents during the hearing (see [section 8e](#)) below)
- (viii) how documents referenced in the hearing will be shared with the court and the other parties (e.g., by sharing a screen or by reference to the electronic materials in the possession of parties and the court)
- (ix) if applicable, how any private or sensitive information will be referred to and protected during the hearing (see also [section 8d](#)) below)
- (x) if applicable, the practicalities surrounding the testimony of witnesses, including:
  - exclusion of witnesses

- appropriate instructions to be given to witnesses with respect to communications, including in cases where some witnesses are appearing remotely from the same office or household
- how the court can see the witness to ensure they are alone in the physical room in which they testify
- whether witnesses should be in a separate virtual waiting room before joining the hearing to give their testimony
- the administration of the oath or affirmation
- how a witness can be excluded to deal with an objection
- the provision of documents to witnesses and, where applicable, the procedure to be followed for documents or exhibits that are not capable of being reduced to an electronically-stored format
- marking of exhibits, and
- how exhibits will be housed electronically
- (xi) the logistics of the attendance and participation of expert witnesses, including whether counsel require expert witnesses to attend the full hearing or the testimony of the opposing party's expert witness
- (xii) the logistics of interpreters' participation (including sign language interpreters, where applicable) and how to facilitate their involvement, including the choice of platform for their participation. The interpreter should also be consulted about this
- (xiii) whether, how and when participants can distribute a document or legal authority that has not been circulated before the hearing

#### **d) Recording and Public Access**

- (i) whether the proceedings will be recorded or otherwise transcribed and available to the parties after the hearing
- (ii) how interested non-participants will be permitted to access the proceeding and evidence filed during the hearing, where appropriate

### **6) Best Practices for Counsel to Prepare Clients**

57. Where their clients' attendance is not mandatory, counsel must seek instructions as to whether their clients wish to attend a remote hearing.

58. Counsel must instruct and prepare their clients as to appropriate behaviour and etiquette in a remote hearing, and any specific requirement imposed by the judge regarding their participation.

59. Counsel should discuss the following with their clients in advance of the hearing:

- (i) whether clients have the right to speak during the hearing and, if so, when and how they can do so;
- (ii) the process and the technology. Counsel should keep in mind that some clients may be anxious about taking part in a remote hearing without being physically in the same room as their counsel and having to deal with unfamiliar technology;
- (iii) potential technology-related issues that may arise during the hearing, the best way of avoiding such issues and ways of handling them (see [section 4c](#) above);
- (iv) keeping instructions regarding any contingency plans (e.g., alternative dial-in instructions) nearby throughout the course of the hearing;
- (v) how clients will be able to communicate with one another and with counsel privately during the hearing (e.g., email, secure instant or text messaging) while maintaining lawyer-client privilege;
- (vi) where applicable, how clients will access the documents used in the hearing;
- (vii) the potential audience who may view the proceeding; and
- (viii) [section 9](#) and [Appendix A](#) of these Best Practices (“Court Etiquette and Dignity During the Hearing” and “On-Screen Tips for Counsel, Parties and Witnesses”).

## 7) Witnesses

60. The applicable Rules of Professional Conduct and rules of practice and procedure should be referred to in all dealings with witnesses. Counsel’s obligations and responsibilities remain the same regardless of the technology used to communicate with witnesses. Self-represented parties should consult the resources in [Appendix C](#) to obtain assistance in understanding the rules of practice and procedure that apply to witnesses.

### a) Preparation

61. Parties should ensure that the summons (form that compels attendance at the hearing) served on a potential witness contains all information required for a witness to join the scheduled remote hearing. If that information is not available when the summons is served, parties should provide that information to a witness as soon as it is available.

62. Parties should:

- (i) prepare witnesses as to appropriate behaviour and etiquette in a remote hearing, and any specific requirement from the court regarding their participation;
- (ii) explain the hearing process to their witnesses;
- (iii) take steps to familiarize witnesses with the technology and software before the hearing. It is ideal to do a test run using the technology with witnesses beforehand;

- (iv) draw a witness's attention to the need to pause before answering a question to allow for any objections that may be raised. This is especially important when using video technology because the format may impede opposing parties' ability to object;
- (v) discuss the witnesses' preferred method of taking the oath or affirmation and whether the witnesses require any religious items to be on hand for that purpose;
- (vi) ensure that witnesses have copies of all relevant documents to which they may be referred during their examination. Parties should discuss with witnesses the procedure that will be used during the hearing to show them documents (e.g., screen sharing, reference to an electronic joint book of documents, etc.);
- (vii) make witnesses aware of the potential audience who may view the proceeding; and
- (viii) review [section 9](#) and [Appendix A](#) of these Best Practices ("Court Etiquette and Dignity During the Hearing" and "On-Screen Tips for Counsel, Parties and Witnesses") with witnesses.

63. Subject to applicable Rules of Professional Conduct, counsel should arrange for a method to communicate with their witnesses during the hearing to keep witnesses informed of the anticipated timing of their evidence as the hearing progresses.

64. If witnesses are concerned about using their own personal devices to participate in the remote hearing or have connectivity issues, parties may consider providing witnesses with devices to use for the hearing, including devices equipped with 4G capabilities.

#### **b) Attendance at the Hearing and Access to Documents**

65. Witnesses must be ready to join the hearing at the time they are assigned. Unless otherwise instructed by counsel or a summons, they should join the hearing as close as possible to the time at which it is estimated that they will give evidence.

66. Witnesses should be alone in a secure room with the doors closed. They should make all reasonable efforts to prevent interruptions or distractions for the duration of their appearance at the hearing.

67. When witnesses are giving evidence, they must always keep their camera and microphone on unless the judge instructs otherwise. The camera should be positioned so that the judge and parties can clearly see the witness, particularly their whole face and their hands if possible.

68. Witnesses should have recently read all affidavits or statements that they made in the proceeding. During their testimony, they should have with them only a copy of those documents and any document briefs that were filed for the hearing. They should not have any other documents, unless the court permits otherwise.

69. Witnesses should not communicate with anyone outside the remote hearing room during their testimony.

70. Witnesses must leave the remote hearing room once they are excused. They must not remain to observe the proceeding, unless otherwise allowed by the judge.

## **8) Documents**

### **a) Recommended Format and Naming of Documents**

71. The recommended format for documents used at the hearing is a searchable PDF that is bookmarked.<sup>7</sup>

72. Parties should hyperlink authorities in their written argument to the judgment databases found on the websites of Canadian courts or [www.canlii.org](http://www.canlii.org), and where not available on these, to LexisNexis Quicklaw or WestlawNext Canada.

73. Before the hearing, the parties should agree on how the documents used in the hearing should be named (often called “naming conventions”). Parties should consult the relevant Practice Directions in their regions to confirm whether the court has implemented naming conventions. For example, see [The Guide Concerning the e-Delivery of Documents in the Ontario Superior Court of Justice](#) (“SCJ e-Documents Guide”).

74. Where no Practice Direction or judicial direction for document naming is in place, the parties should follow the SCJ e-Documents Guide.

### **b) Preparation of a Joint Brief of Documents**

75. Where appropriate, all parties should cooperate in the timely preparation of an electronic joint brief of documents (“JBD”) to facilitate the management of documentary evidence by the court, witnesses and parties/counsel.

76. A JBD should be prepared well in advance of the hearing so that the parties can use the brief to prepare.

77. The parties should discuss how the documents in the JBD will be treated for the purpose of the hearing, including whether the authenticity of the documents is admitted, whether the documents are admitted for the truth of their contents, and whether there are any documents in the JBD that a party wishes to treat as exceptions to the general agreement on the treatment of the documents in the JBD.<sup>8</sup>

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<sup>7</sup> Electronic bookmarks work in much the same way as paper tabs in printed briefs. They are simply shortcuts to specific sections of a document which, when clicked, will take the reader directly to that section. Once added to a PDF document, bookmarks appear in a navigation panel, typically on the left-hand side of the screen.

<sup>8</sup> See *Girao v Cunningham*, [2020 ONCA 260](#), with respect to JBDs generally.



### **c) Preparation for the Hearing**

78. Where the nature of the case calls for it, and to make documents more easily accessible to the judge and all participants during the hearing, parties are encouraged to exchange and file a condensed book (a brief) containing only the documents and excerpts from transcripts and authorities (including the title of proceeding and any headnote) to which they will refer during oral argument. A condensed book must reference and reproduce documents as they are contained in the court record by preserving all original page numbering and indicating where the document comes from to ensure the ability to cross-reference and avoid confusion. It is ideal for the parties to file a joint condensed book so that the judge only has to refer to one such document.

79. Parties should adapt their arguments to account for the fact that the judge may not have access to paper copies of materials and may have difficulty navigating between the electronic documents referred to and finding the relevant document or excerpt easily and quickly.

80. Before the hearing, parties should download onto their own devices a complete copy of all documents filed with the court for use at the hearing. This will avoid delays during the hearing and ensure that the parties have local access to all documents for ease of use.

81. PDF and any other software that will be used to review or display documents should be tested in advance to ensure complete functionality at the hearing.

82. Parties should be comfortable with any software that will be used at the hearing and should be able to move efficiently from document to document. Counsel with a speaking role should have sufficient skills and take all reasonable steps (including rehearsing in advance and/or having real-time technical support) to ensure that the hearing proceeds smoothly.

### **d) Sensitive and Private Matters**

83. Some proceedings involve documents that contain information that is sensitive or private to a party or a witness. If no specific disclosure restrictions apply (such as a statutory provision or a publication ban), parties should discuss before the hearing how to identify and refer to such evidence during the hearing, especially in cases involving webcasting or other electronic transmission. For example, parties may agree that it is unnecessary to display a specific document or page that contains detailed medical or financial information about an individual, and that parties may instead refer to the page number and the information without displaying or expressly mentioning the details.

84. If the parties cannot agree, the issue should be raised with the judge before or at the start of the hearing for direction, before sensitive information is used or referenced.

### **e) Management of Documents at the Hearing**

85. During the hearing, examining parties should ensure that they refer to documents clearly for the record and for all participants to follow along, including the document name, the tab number and the page number in the JBD or other PDF document where the document is located and/or the document number. Parties should refer to the PDF page number as opposed to the paper copy page number.

86. Parties should never use a “screen sharing option” to display a document onto everyone’s screen during the hearing without the judge’s permission. They must identify for the record the precise document to be shared on the screen.

87. Where the hearing involves the testimony of witnesses, parties should consider the use of a separate compendium of documents (a brief) for use in examining a witness. This compendium should be provided to the court and all other parties in advance. If the court is using a document platform for the hearing, this could be as simple as a folder for a witness in that platform.

88. Where a party puts a document to a witness that is not in the JBD, the party should ensure that all participants can see the document and, if the judge admits the evidence, that the document is marked as an exhibit.

#### **f) Marking Exhibits**

89. The party who enters an exhibit is responsible for providing an electronic copy of the document clearly named “Exhibit #” to all parties and the court.

### **9) Court Etiquette and Dignity During the Hearing**

90. Remote hearings remain court hearings. Insofar as is possible, the etiquette of a court hearing should be maintained, and steps should be taken to avoid detractions from the dignity of a proceeding.

91. Parties should join the hearing at least 15 minutes before the actual start time to ensure that there are no technological issues that could create a delay.

92. Any conferences with clients or meetings between parties should take place before the hearing. All participants to the remote hearing (other than excluded witnesses) should join the hearing before the judge.

93. Professional etiquette should be maintained. In particular:

- (i) Business attire is required for anyone with a speaking role. Counsel should dress as if they were attending court, pursuant to current Practice Directions.<sup>9</sup>
- (ii) Participation in the hearing should be from appropriate surroundings.
- (iii) Reasonable steps should be taken to reduce the risk of interruptions during the hearing.
- (iv) Participants should ensure that the background visible on the screen is appropriate for a court hearing. The background should be as neutral as possible and may be replaced by an appropriately dignified artificial digital background.

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<sup>9</sup> By Practice Direction, the requirement to gown has been suspended during the COVID-19 pandemic. See [Appendix C](#) for links to the Practice Directions.

- (v) Participants should not move away from the screen or turn off their cameras during the hearing without permission of the judge.
- (vi) The usual restrictions on eating and drinking in a courtroom apply. Parties may therefore have water available to drink, but nothing else unless the judge allows otherwise.
- (vii) The judge and counsel should be addressed as if they were in a physical courtroom.
- (viii) Unless directed otherwise by the court, it is not necessary to stand when a judge joins the hearing or when addressing a judge. In lieu of bowing to the judge, counsel may nod or bow their heads when the judge enters the video.
- (ix) Background noises should be reduced to a minimum and avoided where at all possible. Participants should mute their home and mobile phones, and turn off notifications on any digital devices. It is ideal to use a headset and microphone to reduce background noise and for clarity of audio.
- (x) Participants should speak one at a time, and remember to pause and speak slowly and clearly, especially where there is any audio/video lag.
- (xi) Participants should look at the camera when they are speaking, if possible.
- (xii) Participants should ensure that they are adequately lit to allow their face to be seen. They should remember that they always have a camera on them and be mindful of their facial expressions even when they are not speaking.
- (xiii) If applicable, participants should select an appropriate display name. The display name should be the participant's first initial and last name. Counsel should also indicate in their display name the name of the party that they represent or an abbreviation thereof (e.g., "P" for plaintiff and "D" for defendant).
- (xiv) Unless addressing the judge, or otherwise requested to speak, all participants should have their microphones muted.

## 10) Recording the Hearing

94. Unless authorized by the judge or a Practice Direction, participants shall not make any recording (audio, video or otherwise) of the proceedings, and shall not take photos or screen captures of the proceedings.<sup>10</sup>

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<sup>10</sup> See [section 136](#) of the *Courts of Justice Act*, RSO 1990, c C.43. See also the [Consolidated Provincial Practice Direction regarding the use of electronic devices in the courtroom](#) which permits counsel, self-represented parties, the media and journalists to use electronic devices to make an audio recording of the proceeding for note-taking only.

95. Counsel should advise their clients and witnesses that, absent permission of the judge, they shall not video record, audio record, photograph or screen capture the proceedings in any manner.

#### **11) Post-Hearing**

96. If technical issues arise during the remote hearing or the dynamics of the hearing are challenging or distracting, the parties may consider asking the court for permission to deliver post-hearing submissions in writing.

## **APPENDIX A: On-Screen Tips for Counsel, Parties and Witnesses**

1. This section should be read together with [section 9](#) above (“Court Etiquette and Dignity During the Hearing”).

### **a) Appearance on the Virtual Platform**

2. Your name should appear, as well as who you represent, or whether you are a party litigant or a witness. Shortforms must be used to fit in the screen (e.g., J. Smith, counsel for D ABC Ltd; J. Smith, P; or J. Smith, witness for D ABC Ltd.). This will ensure that, throughout the hearing, the judge knows the role of each speaker.

3. Still photographs that appear on the screen when the camera is turned off, if any, should be professional and appropriate.

### **b) Background, Camera, Lighting and Quality of Video**

4. Be mindful of what is behind you. Choose a solid neutral wall if possible and remove any clutter or personal items that may distract others. Alternatively, many virtual platforms have a feature that allows you to put up a neutral background. If using one, however, ensure that it is tasteful and not distracting. A high-resolution background is preferable.

5. Sit close enough to the camera so that your face appears clearly. Position the camera at eye level or slightly above eye level.

6. If using two screens, the webcam should be installed on the screen with the video feed. Look straight into the camera so that you appear as though you are face-to-face with others in the hearing.

7. Check the lighting to ensure that it does not limit visibility. Light from a window behind you might blind the camera, making you difficult to see. Light above you in the center of a room might cast shadows. Ideally, position a lamp, or sit facing a window, where light is directly on your face. Placing a light behind the camera will help illuminate the area in front of the camera.

### **c) Attire and Etiquette**

8. Observe all normal court etiquette and procedures in the virtual courtroom environment.

9. If not directed to robe, wear neutral, muted or solid coloured business clothing. Avoid plaids, stripes, polka dots, very bright colors, and the colors white or red — they can cause distracting effects on screen.

10. Even though you will be seated throughout the hearing (unless directed otherwise by the judge), you should still wear appropriate clothing from the waist down in the event you are required to suddenly stand up or your video is not off when you take a break or convene for the day.

11. Whether you are speaking or not, if your video is on, be wary of unwanted facial expressions.

12. Drinking should be limited to water and you should use a clear drinking glass to avoid any unnecessary distractions.

**d) Communicating Effectively**

13. When speaking, remember to look directly at the webcam, not at the screen.

14. However, when making submissions or asking questions, do your best to also see the judge to understand their body language and non-verbal cues.

15. If possible, use a set of headphones with a microphone as your voice will come through clearer and louder than if you are speaking into your computer microphone a foot or two away. This will also reduce the amount of background noise.

16. Speak directly into the microphone. Do not turn your head from side to side while talking or your voice will fade in and out.

17. Avoid moving around or making sudden gestures as that can make the video choppy. Avoid shuffling papers or making other distracting noises like tapping on a keyboard while your microphone is unmuted.

18. Refrain from speaking over other participants to assist with the court's transcription. Be mindful of any lag in the audio to ensure that a participant is done speaking before you begin to speak. Consider pausing at regular intervals during your argument or examination to ensure that other participants have an opportunity to speak if necessary and appropriate.

19. While it is recommended that an independent way to communicate with those involved (including co-counsel and clients) be set up so that you can confer easily throughout the hearing, ground rules must be set to ensure that you are not distracted by unnecessary messages.

**e) Referring to Documents**

20. Work with the documents electronically as much as you can. It is much easier if the parties and the court are using the same medium for reviewing documents during the hearing.

21. For case authorities, refer to the relevant footnote in your factum (written legal argument), which should include a hyperlink to the case, if available.

## APPENDIX B: Recommended Hardware and Software

### **Hardware**<sup>11</sup>

#### ***General Comments***

You will require a device capable of carrying the video and audio feed of the hearing. The video feed *may* display documents from time to time, so the device's screen should be large enough for you to read text when documents are displayed (this may be difficult if you use a smartphone to view the feed).

The optimal arrangement is either: (a) a computer carrying the feed, and a separate device (i.e., a second computer or tablet) on which to view the documents referred to in the hearing, or (b) a computer carrying the feed, with a second monitor to facilitate viewing documents.

You will need to be able to broadcast both audio and video. The built-in webcams in most computers are adequate for the video feed, but many built-in microphones are inadequate to ensure that you will be heard clearly and loudly enough in the audio feed. You should test the quality of your computer microphone and, if necessary for audio clarity, either: (a) purchase a separate USB microphone or headset (earphones and microphone) for your computer, or (b) where applicable, use your smartphone for the audio stream with high-quality earphones with built-in microphones (such as those that are included with iPhones, including Apple AirPods).

#### ***Recommendations***

The following recommendations are broken into the categories "Required" (i.e. the minimum required to participate in remote hearings) and "Optional But Recommended" (i.e. devices that will enhance and make participating in remote hearings easier). Following each recommendation, the technical requirements for various platforms are indicated.

#### **A. Required**

##### **1. High-speed internet**

##### **○ Zoom:**

- For 1:1 video calling:
  - 600 kbps (kilobytes per second) (up/down) for high quality video
  - 1.2 Mbps (megabits per second) (up/down) for 720p HD video
  - Receiving 1080p HD video requires 1.8 mbps (up/down)

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<sup>11</sup> NOTE: Quoted technical specifications and links are as of April 2020 and may change over time as hearing software platforms are updated. Consult the hearing software provider's website before your hearing to ensure your devices are adequate.

- Sending 1080p HD video requires 1.8 mbps (up/down)
- For group video calling:
  - 800 kbps/1.0 Mbps (up/down) for high quality video
  - For gallery view and/or 720p HD video: 1.5 mbps/1.5 mbps (up/down)
  - Receiving 1080p HD video requires 2.5 mbps (up/down)
  - Sending 1080p HD video requires 3.0 mbps (up/down)
  - For screen sharing only (no video thumbnail): 50-75 kbps
  - For screen sharing with video thumbnail: 50-150 kbps
- **Microsoft Skype** recommends a download / upload speed of 300 kbps for video calls (but recommends 1.2 mbps for high-definition video)
- **Microsoft Teams:**
  - For peer-to-peer audio calling: 30 kbps
  - For peer-to-peer audio calling and screen sharing: 130 kbps
  - For peer-to-peer quality video calling 360p at 30fps: 500 kbps
  - For peer-to-peer HD quality video calling with resolution of HD 720p at 30fps: 1.2 mbps
  - For peer-to-peer HD quality video calling with resolution of HD 1080p at 30fps: 1.5 mbps
  - For group video calling: 500kbps/1mbps
  - For HD group video calling (540p videos on 1080p screen):1mbps/2mbps
- **Cisco Webex** recommends a download / upload speed of 0.5 mbps
- **CourtCall:**
  - Test bandwidth, connectivity and audio / visual equipment: <https://demo.courtcall.com/troubleshooting/webrtc/>
- **CaseLines** recommends a connection speed of 200 kbps
- You can test your internet speed for free (regardless of which internet service provider you use) at the following sites:
  - <https://www.speedtest.net/>



- CourtCall: <https://demo.courtcall.com/troubleshooting/webrtc/>

2. Computer / other device capable of meeting the memory / processing requirements of the software used to conduct the hearing

- **Zoom:**

- Processor—single core 1Ghz or higher dual core 2Ghz or higher (i3/i5/i7 or AMD equivalent)
- RAM—4Gb recommended

- **Microsoft Skype:**

- Windows:
  - RAM: 512 MB
  - Processor speed: 1GHz
- Mac:
  - RAM: 512 MB
  - Processor speed: 1GHz

- **Microsoft Teams:**

- Windows:
  - RAM: 4 GB RAM; 2 GB RAM (32-bit)
  - Processor speed: 2.0 GHz
- Mac:
  - RAM: 4 GB RAM
  - Processor speed: Intel processor

- **Cisco Webex:**

- Processor speed for resolution of 360p:
  - Sending: 1 GB of RAM and a dual-core processor
  - Receiving: 1 GB of RAM and a dual-core processor
- Processor speed for resolution of 720p:
  - Sending: 2 GB of RAM and a quad-core processor

- Receiving: 2 GB of RAM and a dual-core processor
- **CourtCall:**
  - Test equipment compatibility here:  
<https://demo.courtcall.com/troubleshooting/webrtc/>
- **CaseLines:**
  - No specific requirements: any computer generally capable of reliably streaming internet video will suffice

### 3. Webcam

- Computer built-in camera if available
- External if built-in webcam is not available
  - Zoom provides a list of recommended webcams:  
<https://support.zoom.us/hc/en-us/articles/201362023-System-Requirements-for-PC-Mac-and-Linux>

### B. Optional But Recommended

The following optional equipment will allow you to participate and present in the hearing more efficiently and effectively. Note that products referenced here are not endorsed by the E-Hearings Task Force or the court. They are simply examples of available options that members of the E-Hearings Task Force have used and found appropriate for use in remote hearings.

1. Second device (computer or tablet) or monitor to review electronic versions of hearing materials
2. External USB microphones or headset (i.e. earphone and microphone combination)
  - Zoom provides a list of USB microphones / speakerphones:  
<https://support.zoom.us/hc/en-us/articles/201362023-System-Requirements-for-PC-Mac-and-Linux>
3. Apple earphones and AirPods (for iPhones and iPads) provide good-quality audio signal (use if connecting to the hearing software platform via smartphone rather than computer audio)
4. Noise-cancelling headphones to reduce distractions during the hearing (most good-quality USB microphones also require headphones to connect to the microphone, allowing you to hear your voice as it sounds to others in the audio feed)

## **Software**<sup>12</sup>

### ***General Comments***

The device you use to join the hearing must meet the hearing software's minimum operating system requirements to function properly.

These Best Practices make no representations as to the safety or security of the programs described herein. Parties should ensure that their devices employ standard security features (e.g., virus protection software), and that they review the security and privacy information and follow recommendations made by the vendors to ensure privileged and confidential information remains secure.<sup>13</sup>

### ***Recommendations***

The following recommendations are broken into the categories "Required" (i.e. the minimum required to participate in remote hearings) and "Optional But Recommended" (i.e. devices / programs that will enhance and make participating in remote hearings easier). Following each recommendation, the technical requirements for various platforms are indicated.

#### **A. Required**

##### **1. Hearing software designated by the court<sup>14</sup>**

##### **○ Zoom:**

- Download / subscribe: <https://zoom.us/>
- User tutorials: <https://support.zoom.us/hc/en-us/articles/206618765-Zoom-Video-Tutorials>

##### **○ Microsoft Skype:**

- Download / subscribe: <https://www.skype.com/en/>
- User tutorial: <https://support.skype.com/en/skype/all/start/>

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<sup>12</sup> NOTE: Quoted technical specifications and links are as of April 2020 and may change over time as hearing software platforms are updated. Consult the hearing software provider's website before your hearing to ensure your devices are adequate.

<sup>13</sup> Refer to the National Security Agency's document "[Selecting and Safely Using Collaboration Services for Telework](#)" for more information on internet-based collaboration tools.

<sup>14</sup> At time of writing, no platform has been designated by the Ontario Superior Court of Justice, but several hearings have been conducted by the Court via Zoom. For the purposes of this Appendix, we presume that the platform most likely to be used is Zoom, but have, where possible, provided information concerning commonly used alternative platforms.

- **Microsoft Teams:**

- Download / subscribe: <https://www.microsoft.com/en-ca/microsoft-365/microsoft-teams/group-chat-software>
- Training videos: <https://support.office.com/en-us/article/microsoft-teams-video-training-4f108e54-240b-4351-8084-b1089f0d21d7>

- **Cisco Webex:**

- Download / subscribe: <https://www.webex.com/>
- User tutorial: <https://help.webex.com/en-us/>

- **CourtCall:**<sup>15</sup>

- Register: <https://courtcall.com/>
- Schedule appearance / test: <https://courtcall.com/what-is-courtcall/remote-appearance-platform/>

- **CaseLines:**

- Registration and demonstration video: <https://caselines.com/>

## 2. Operating system meeting the hearing software's minimum requirements

- **Zoom:**

- macOS X with macOS 10.7 or later
- Windows 10 (Windows 10 Home, Pro, or Enterprise; S Mode is not supported)
- Windows 8 or 8.1
- Windows 7
- Windows Vista with SP1 or later
- Windows XP with SP3 or later
- Ubuntu 12.04 or higher
- Mint 17.1 or higher

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<sup>15</sup> For a hearing in the Court of Appeal for Ontario, see the "[Notice Regarding Videoconference and Teleconference Appearance Technology \(CourtCall\)](#)".

- Red Hat Enterprise Linux 6.4 or higher
- Oracle Linux 6.4 or higher
- CentOS 6.4 or higher
- Fedora 21 or higher
- OpenSUSE 13.2 or higher
- ArchLinux (64-bit only)
- **Microsoft Skype:**
  - Windows Desktop:
    - Windows 10 Version 1507 or above
    - Windows 8.1
    - Windows 8
    - Windows 7 (32-bit and 64-bit versions supported)
  - Windows 10:
    - Version 12—Windows 10 (version 1607 and 1703)
    - Version 14—Windows 10 (version 1709) or higher
  - Mac:
    - Mac OS X 10.10 or higher
- **Microsoft Teams:**
  - Windows:
    - Windows OS: Windows 10 SAC, Windows 8.1, Windows Server 2019 or Windows Server 2016
  - Mac:
    - One of the three most recent versions of macOS; when a new version of macOS is released, the macOS requirement becomes one of the then-current three most recent versions: the new version of macOS and the previous two versions
- **Cisco Webex:**
  - Windows—any of:

- Windows 10
- Windows XP SP3
- Windows Vista (32-bit/64-bit)
- Windows 7 (32-bit/64-bit)
- Windows 2008 Server (64-bit)
- Mac—any of:
  - Mac OS X 10.6 Snow Leopard
  - Mac OS X 10.7 Lion
  - Mac OS X 10.8 Mountain Lion
- Smartphone
  - Apple iPhones and iPads: iOS 5.0 and later
  - Android devices: Android 2.1 and later
- **CourtCall:**
  - Test equipment compatibility here:  
<https://demo.courtcall.com/troubleshooting/webrtc/>
- **CaseLines:**
  - Windows: Windows 8 or higher
  - Mac: OS X 10.6 Snow Leopard or higher
  - Apple iPhone/iPad iOS 5.0 or higher
  - Android: 2.1 or higher

### 3. PDF software to read documents filed in the proceeding

- Adobe Acrobat
  - Home page: <https://www.adobe.com/ca/>
  - Support: <https://helpx.adobe.com/ca/support/acrobat.html>
  - User guide: <https://helpx.adobe.com/ca/acrobat/user-guide.html>
- Nuance: <https://shop.nuance.com/store/nuanceus/Custom/pbpage.resp-imaging-int-pdf-pro>

4. Microsoft Word to read factums filed in the proceeding in Word format (if ordered by court)

- Word help & learning: <https://support.office.com/en-us/word>

B. *Optional But Recommended*

The following optional software may assist you in participating and presenting in the hearing more efficiently and effectively. Note that products referenced here are not endorsed by the E-Hearings Task Force or the court. They are simply examples of available options that members of the E-Hearings Task Force have used and found appropriate for use in remote hearings.

1. **Duet** app to convert iPad into external monitor with touchscreen functionality (as an alternative to purchasing an external monitor): <https://www.duetdisplay.com/>
2. **Trial presentation software.** For hearings in which the court grants parties permission to share their screens, parties may simply use PDF software to display documents. Alternatively, they may wish to use specialized presentation software that provides an enhanced presentation experience with features such as callouts, highlighting, or the ability to play short videos (e.g. accident recreation videos). The following are examples of currently available presentation programs:
  - **TrialPad:** <https://www.litsoftware.com/trialpad>
  - **ExhibitView:** <http://www.exhibitview.net/>
  - **eTrial Toolkit:** <https://www.etrialtoolkit.com>
  - **On Cue:** <http://www.oncuetech.com/>
  - **TrialDirector 360:** <https://iprotech.com/trialdirector-360/>
  - **CaseLines:** <https://www.caselines.com/>
3. **Chat apps** to facilitate privileged communication with a client joining from a different location than counsel, taking the place of caucusing with a client in person, or to facilitate communication with other participants in the hearing (e.g., co-counsel, witnesses). (Do not use the chat function in Zoom; the program provides the session host a transcript of even one-on-one communications made during the hearing at the end of the session.) The following are examples of commonly used chat platforms:
  - **WhatsApp Messenger** (available for iOS, Android, Mac, Windows and via browser): <https://www.whatsapp.com/>
    - Features:
      - End-to-end encryption
      - Audio and video calling

- Group messaging
- Group calling
- **Signal** (available for iOS, Android or Windows): <https://signal.org/>
  - Features:
    - End-to-end encryption
    - Audio and video calling
    - Group messaging
    - Group calling
    - Self-destructing chats (configure this setting properly to not lose messages)



## APPENDIX C: Resources

### I. ONTARIO COURT POLICIES AND PRACTICE DIRECTIONS

#### A. Ontario Superior Court of Justice

[Practice Directions and Policies](#)

[Notices and Orders – COVID-19](#)

#### B. Ontario Court of Justice

[Practice Directions, Policies and Local Protocols](#)

[COVID-19 Notices and Updates](#)

#### C. Court of Appeal for Ontario

[Practice Directions and Guidelines](#)

[Practice Directions and Notices regarding COVID-19](#)

### II. RESOURCES FOR SELF-REPRESENTED LITIGANTS

#### A. Get Legal Advice

[Legal Aid Ontario](#)

[Pro Bono Ontario Free Legal Advice Hotline](#)

[Law Society Emergency Family Law Referral Telephone Line](#)

Toll-free: 1-800-268-7568 / Toronto: 416-947-3310

[Law Society Referral Service](#)

[Family Law Limited Scope Services project](#)

[Justice for Children and Youth](#)

#### B. Get Legal Information

[Ontario Legal Information Centre](#)

[Steps to Justice: Your guide to law in Ontario](#)

[Steps to Justice COVID-19: Updates on the law and legal services](#)

[CliquezJustice.ca](#)

[Justice Ontario](#)

[Justice for Children and Youth Legal Rights Wiki](#)

### III. **ELECTRONIC FILING OF COURT DOCUMENTS**<sup>16</sup>

[Superior Court of Justice: File civil case documents online](#)

[Notice to the Profession – Divisional Court](#) (see D.3. Filing Electronic Documents for Hearings)

[The Guide Concerning the e-Delivery of Documents in the Ontario Superior Court of Justice](#)

[Guidelines for Filing Electronic Documents at the Court of Appeal for Ontario](#)

### IV. **GENERAL GUIDANCE ON CIVILITY IN LITIGATION**

[Principles of Civility and Professionalism for Advocates](#)

### V. **GENERAL GUIDANCE ON PAPERLESS TRIALS**

[Paperless Trials Manual](#)

### VI. **COURT GUIDANCE FOR REMOTE HEARINGS**

[Suggested Protocol for Telephonic and Video Conference Motions on the Commercial List during COVID-19 Period](#) and [Sample Notice of Motion](#)

[Court of Appeal of Alberta Reference and Etiquette Guide for Electronic Hearings For Counsel/Self-Represented Parties](#)

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<sup>16</sup> Parties should also refer to the specific Practice Directions, Notices and guidelines released for the COVID-19 pandemic period which may supplement or alter the general guidelines.

[Alberta Court of Queen's Bench Webex Remote Hearing Protocol](#)

## APPENDIX D: Checklists

### Preparing Your System for a Remote Hearing

| No.   | Item   | Check |
|---|--|-------|
| <b>As soon as the remote hearing is scheduled</b> |  |       |
| 1.  | Confirm everyone involved has the hardware and software required, including clients if they are participating.   |       |
| 2.  | Confirm file formats for documents and ensure everyone has the software needed to access documents (e.g., Word, PDF).  |       |
| 3.  | If applicable, determine who will present the documents on-screen and what software will be used.  |       |
| <b>A few days before the remote hearing</b>       |  |       |
| 4.  | Receive technology access details, ideally at least two days before the hearing.   |       |
| 5.  | Schedule a test run 1-2 days in advance of the hearing with all parties and, if they wish to participate, the judge and/or the registrar/judicial assistant, to go through the checklist.  |       |
| 6.  | For the test run, prepare computer, screens, microphone, headset, camera, phone, battery chargers, power adapters, and confirm they are functioning properly.  |       |
| 7.  | Install and test relevant software to make sure there are no restrictions preventing its use.  |       |
| 8.  | From the space where you will be working during the hearing, test camera to ensure a clear line of sight and test microphone settings to ensure clear audio.   |       |
| 9.  | Prepare a secondary device such as a phone or tablet by installing and testing relevant software as a back-up in the event the primary device fails.   |       |
| 10.   | Understand the software functions, such as adjusting video and audio on and off as well as how to leave the meeting room.  |       |
| 11.   | Discuss and try out software functions such as break-out rooms and document display.   |       |
| 12.   | Close programs not needed during the hearing and mute messaging and phone notifications.   |       |
| 13.   | Test internet speed: <a href="https://www.speedtest.net/">https://www.speedtest.net/</a><br><b>TIP:</b> use hard-wired internet connection if possible.<br><b>TIP:</b> sit as close as possible to the internet modem / router if using Wi-Fi.<br><b>TIP:</b> request sole access of internet bandwidth or limit use of bandwidth by others.<br><b>TIP:</b> use your phone for the audio portion of the hearing and computer for video streaming if the internet connection is slow.<br><b>TIP:</b> do not use public Wi-Fi because connection speeds are slow, and security is unknown. |       |
| 14.   | Check location of documents you may need to access to confirm you have what you need.  |       |
| 15.   | Confirm with all parties how documents will be called and efficiently located in materials.  |       |
| 16.   | Confirm with all parties how documents will be shared during the hearing.  |       |
| 17.   | Be prepared for internet connections to fail and confirm what procedures to follow if a participant's connection drops, and they cannot log back into the hearing room.  |       |
| 18.   | Plan and set-up how you will communicate privately with your client, your team, and opposing counsel.  |       |
| <b>Day of the remote hearing</b>                  |  |       |
| 19.   | Arrive 15-30 minutes early and test that audio and video connections are clear.  |       |
| 20.   | Ensure devices are plugged into power outlets and wireless devices are fully charged.  |       |
| 21.   | Close all programs not needed during the trial and mute messaging and phone notifications.   |       |
| 22.   | Change your display name on screen and follow agreed naming protocol.  |       |
| 23.   | Test internet speed and use a hard-wired internet connection if possible.  |       |
| 24.   | If using Wi-Fi, sit as close to the Wi-Fi access point as possible.  |       |
| 25.   | Check any folders with documents needed for the hearing.   |       |
| 26.   | Test private communications with client, team, and opposing counsel.   |       |

### Counsel Preparation in Advance of Meeting with Adjudicator

|  | Matter   | Follow up/Issues/Solutions  | Responsible Party | Done |
|--|--|---|-------------------|------|
| <b>Hearing Format and General Issues</b> |  |   |                   |      |
| 1.                                       | Method: video or teleconference for oral submissions   |   |                   |      |
| 2.                                       | Practice Directions identified and consulted   |   |                   |      |
| 3.                                       | Local court capabilities identified  |   |                   |      |
| 4.                                       | Identify training needs for counsel and parties  |   |                   |      |
| 5.                                       | Identify the need for any language interpretation, court reporting, or other services during the hearing   |   |                   |      |
| 6.                                       | Identify issues for oral submissions   |   |                   |      |
| 7.                                       | Identify issues for written submissions  |   |                   |      |
| <b>Documents</b>                         |  |   |                   |      |
| 8.                                       | Ensure that all transcripts, evidence and documents necessary for the hearing are available electronically |   |                   |      |
| 9.                                       | Method of document exchange (email, cloud, etc.)   |   |                   |      |
| 10.                                      | Document format to be used   | Searchable PDF that is bookmarked for records and briefs<br>Word for written submissions  |                   |      |
| 11.                                      | Naming and numbering convention – Consider Practice Directions, if any                                     | <a href="https://www.ontariocourts.ca/scj/practice/practice-directions/edelivery-scj/">https://www.ontariocourts.ca/scj/practice/practice-directions/edelivery-scj/</a> . |                   |      |
| 12.                                      | Timetable for document exchange  |   |                   |      |
| 13.                                      | Joint Brief of documents brief prepared  | Content<br>Due date   |                   |      |

|                         |  |   |  |  |
|-------------------------|--|---|--|--|
| 14.                     | Hyperlinked authorities in written submissions   |   |  |  |
| 15.                     | Software for viewing and marking of documents in oral argument   | Minimum required: PDF software and Word |  |  |
| 16.                     | Prepare condensed book with table of concordance to JBD  |   |  |  |
| 17.                     | How will sensitive docs be dealt with  |   |  |  |
| <b>Hearing Protocol</b> |  |   |  |  |
| 18.                     | How will technical difficulties be dealt with  |   |  |  |
| 19.                     | Exchange of email addresses and phone numbers by all participants  |   |  |  |
| 20.                     | Review list of issues in section 5 of the <i>Best Practices for Remote Hearings</i> and create a tailored list of issues adapted to the case |   |  |  |
| 21.                     | Discuss list of issues with other parties and agree on a way to proceed (subject to the court's discretion)                                  |   |  |  |
| <b>Test Run</b>         |  |   |  |  |
| 22.                     | Schedule in advance among counsel  |   |  |  |
| 23.                     | All counsel and parties to participate   |   |  |  |
| 24.                     | If appropriate, inquire whether the judge or registrar/judicial assistant wishes to participate in the test run                              |   |  |  |
| 25.                     | Test quality of connections, video and audio   |   |  |  |
| 26.                     | Try out the software   |   |  |  |
| 27.                     | Test likely functions to be used, switch screens   |   |  |  |
| 28.                     | Confirm all protocols/judicial direction/how tech issues to be dealt with/all materials are in hand  |   |  |  |

| <b>Client Preparation</b> |  |  |  |  |
|---------------------------|--|--|--|--|
| 29.                       | Will client attend   |  |  |  |
| 30.                       | Will client speak at the hearing and, if so, how and when                |  |  |  |
| 31.                       | Review etiquette, conduct and judicial directions                        |  |  |  |
| 32.                       | Review process and technology to be used                                 |  |  |  |
| 33.                       | What to do if tech issues encountered                                    |  |  |  |
| 34.                       | How to communicate during the hearing and ethical issues                 |  |  |  |
| 35.                       | How to access documents  |  |  |  |
| 36.                       | Appropriate location   |  |  |  |
| 37.                       | Ensure that client has functioning and appropriate hardware and software |  |  |  |

### Matters to Consider Reviewing with Judge In Advance of Hearing

| <b>SUBSTANCE OF THE HEARING</b> |   | <b>DECISION</b> |
|---------------------------------|---|-----------------|
| 1                               | Issues in the case  |                 |
| 2                               | Parties' agreements re facts or law   |                 |
| 3                               | Issues for parties' written submissions, subject to questions by the judge at the hearing   |                 |
| 4                               | The areas on which evidence or submissions will focus at the hearing  |                 |
| <b>LOGISTICS OF THE HEARING</b> |   |                 |
| 5                               | Platform to be used   |                 |
| 6                               | Test run  |                 |
| 7                               | Directions regarding etiquette and formality that differ from Notices to the Profession, Practice Directions or the Best Practices  |                 |
| 8                               | Are microphones and cameras on or off when a participant is not speaking  |                 |
| 9                               | Should participants have a photograph or name only as their screen identifier when their video is off   |                 |
| 10                              | Display names and how participants will be identified on the platform (e.g., J. Smith for the D Acme Inc.)  |                 |
| 11                              | Structure of the hearing: <ul style="list-style-type: none"> <li>• order of presentation</li> <li>• turn-taking</li> <li>• time limits</li> <li>• any need for participants to take a break to attend personal matters (particularly during the COVID-19 pandemic)</li> <li>• how to signal interjections to speak or object</li> </ul> |                 |
| 12                              | How to notify judge if technical difficulties are encountered (including disconnection)   |                 |
| 13                              | How a self-represented litigant may indicate to the judge a lack of understanding or need to interrupt for clarification  |                 |
| <b>DOCUMENTS AND EXHIBITS</b>   |   |                 |
| 14                              | Naming and numbering conventions for documents to be used at the hearing  |                 |
| 15                              | Time lines for and manner of delivery of Joint Brief of Documents (JBD), condensed books, documents that are not shared (e.g., for use in cross-examination only)   |                 |
| 16                              | Hyperlinked written argument – time line for delivery   |                 |
| 17                              | How referenced documents will be viewed by the court and the other parties (e.g., by sharing a screen or by reference to the electronic materials in the possession of parties and the court)   |                 |



|   |   |  |
|---|---|--|
| 18  | How will electronic marking of exhibits be captured and stored  |  |
| 19  | How any private or sensitive information will be referred to and protected during the hearing   |  |
| 20  | Whether, how and when participants can distribute a document or legal authority that has not been circulated prior to the hearing   |  |
| 21  | Costs submissions   |  |
| <b>WITNESSES (IF APPLICABLE)</b>                |   |  |
| 22  | Should witnesses be in a separate virtual waiting room before joining the hearing for their testimony   |  |
| 23  | Instructions to witnesses about communications and being alone in the room (consider cases where some witnesses are appearing remotely from the same office or household) |  |
| 24  | Exclusion of witnesses  |  |
| 25  | Administration of the oath or affirmation   |  |
| 26  | How a witness can be excluded to deal with an objection   |  |
| 27  | How witnesses will be shown or referred to documents  |  |
| 28  | The procedure to be followed for documents or exhibits that cannot be reduced to an electronically-stored format  |  |
| 29  | Expert witnesses: how to allow attendance for all or part of the hearing  |  |
| 30  | Interpreters: how to best facilitate their involvement (interpreters should be consulted)   |  |
| <b>PUBLIC ACCESS TO THE HEARING / RECORDING</b> |   |  |
| 31  | Will the proceedings be recorded or transcribed and available to the parties after the hearing  |  |
| 32  | How interested non-participants will be permitted to access the proceeding and evidence filed during the hearing  |  |
| <b>OTHER MATTERS</b>                            |   |  |
|   |   |  |
|   |   |  |
|   |   |  |
|   |   |  |

## **APPENDIX E: Acknowledgements**

These Best Practices were developed by the E-Hearings Task Force which was established by the Ontario Bar Association, The Advocates' Society, the Federation of Ontario Law Associations and the Ontario Trial Lawyers' Association, in co-operation with the Ontario Superior Court of Justice, to work with the Superior Court of Justice to assist the bench and bar in implementing remote hearings in Ontario. The E-Hearings Task Force is comprised of members with significant technical knowledge related to e-hearings and lawyers from across the province, from all judicial regions and a wide variety of practice areas, including civil, criminal, family and public sector advocates.

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