

**Listening and Responding to the Future of Virtual Court:**  
A Report on the future of virtual courts in Canada

Nova Scotia Court of Appeal  
Cowan Internship Project

George Philp  
[g.philp@dal.ca](mailto:g.philp@dal.ca) / [george.philip@courts.ns.ca](mailto:george.philip@courts.ns.ca)  
August 2022

*Courts across Canada have been hearing cases virtually, in some form over the last couple of years. The purpose of this report is to inform the Bench with respect to the future of virtual courts in Canada in a post-pandemic era.*

*This report provides a comparative analysis of the use of virtual proceedings in the superior courts across Canada as pandemic restrictions ease / are removed entirely. It also considers what policies are in place in other Canadian jurisdictions for the use of virtual proceedings, and in particular the process and criteria for selecting the method of hearing (virtual versus in-person). The report also offers an analysis of the types of cases and parties at the trial and appellate level that are best suited for virtual court and what amendments should be made to the rules to accommodate virtual hearings.*

*This report canvasses the challenges encountered by various participants in the justice system (judges, counsel, parties, media, etc.) with respect to virtual proceedings and the possible solutions to overcome or minimize the impact of these challenges on the administration of justice. In particular, this report addresses how virtual hearings affect the ability of marginalized groups to access courts because of a lack of required technology to participate. Finally, this report addresses whether a virtual hearing can be an “in-person” proceeding under the Criminal Code by considering what constitutes an in-person hearing and what changes should be made to the Criminal Code to accommodate virtual hearings.*

## Table of Contents

1.0 Introduction .....	6
2.0 Analysis .....	8
2.1 Policies & Protocols for the Use of Virtual Courts in Canadian Superior Courts .....	8
2.1.1 Newfoundland and Labrador.....	9
Supreme Court of Newfoundland and Labrador .....	9
Court of Appeal of Newfoundland and Labrador.....	11
2.1.2 Nova Scotia .....	12
Supreme Court of Nova Scotia.....	12
Nova Scotia Court of Appeal.....	19
2.1.3 Prince Edward Island .....	22
Supreme Court of Prince Edward Island .....	22
Prince Edward Island Court of Appeal.....	23
2.1.4 New Brunswick.....	24
Court of Queen’s Bench of New Brunswick.....	24
Court of Appeal of New Brunswick.....	29
2.1.5 Quebec.....	30
Quebec Superior Court of Justice.....	30
Court of Appeal of Quebec.....	31
2.1.6 Ontario.....	33
Ontario Superior Court of Justice.....	33
Ontario Court of Appeal .....	41
2.1.7 Manitoba.....	43
Manitoba Court of Queen’s Bench.....	43
Manitoba Court of Appeal.....	45
2.1.8 Saskatchewan .....	47
Saskatchewan Court of Queen’s Bench.....	47
Saskatchewan Court of Appeal.....	51

2.1.9 Alberta .....	52
Court of Queen's Bench of Alberta.....	52
Court of Appeal of Alberta.....	55
2.1.10 British Columbia .....	57
Supreme Court of British Columbia.....	57
British Columbia Civil Resolution Tribunal .....	61
Court of Appeal for British Columbia.....	62
2.1.11 Nunavut .....	65
The Nunavut Court of Justice .....	65
Nunavut Court of Appeal .....	66
2.1.12 Northwest Territories .....	67
Supreme Court of the Northwest Territories .....	67
Court of Appeal of the Northwest Territories .....	69
2.1.13 Yukon .....	70
Supreme Court of Yukon.....	70
Yukon Court of Appeal .....	71
2.1.14 Federal Court.....	72
2.1.15 Federal Court of Appeal.....	74
2.1.16 Tax Court of Canada .....	75
2.1.17 Supreme Court of Canada .....	77
2.1.18 Comparative Analysis: Conclusions .....	79
2.2 Challenges and Opportunities Presented by Virtual Courts .....	82
Problems Encountered with Virtual Court .....	82
2.2.2 The Digital Divide: Exacerbating Disparities in Access to Justice ...	83
2.2.3 Access to Digital Infrastructure .....	84
2.2.4 The Impact of Virtual Court on Indigenous Peoples .....	90
2.2.5 The Solemnity of Court and Court Decorum .....	92
2.2.6 Unreliable Technology .....	95
2.2.7 Procedural Fairness.....	98

2.2.8 Witness Credibility and Perceptions of Accused Persons .....	101
2.2.9 Managing Appearances for Accused Persons .....	105
2.2.10 Open Court Principle .....	108
2.2.11 Privacy Concerns .....	113
2.2.12 The Impact of Virtual Proceeding on Family Division Courts ....	115
2.2.13 Intrinsic Benefits of In-Person Proceedings .....	117
2.2.14 The Impact of Virtual Proceedings on Jury Trials .....	119
2.2.15 Benefits Encountered with Virtual Court .....	120
2.3 Virtual Trials in the Context of the Criminal Code.....	124
2.3.1 Can “present in court” in s.650(1) Include Virtual Presence? .....	125
2.3.2 Can Virtual Trials Proceed without the Consent of the Accused? .....	130
2.3.3 Conflicting Interpretations Regarding Changes Potential for Virtual Trials.....	131
2.4 Types of Cases Best Suited for Virtual Court .....	134
2.5 The Future of Virtual Court.....	139
3.0 Recommendations and Conclusion .....	143
Recommendations .....	143
3.1 Best-Case-Ontario and the Not-so-Wild West: Streamlining Processes..	144
3.2 Employing a Flexible Approach .....	148
3.3 Measuring and Consulting .....	149
3.4 Establishing Guidelines.....	151
3.5 Transformative Justice Requires a Holistic Approach, Digital Platforms	155
Conclusion.....	156
Bibliography .....	158
Legislation .....	158
Jurisprudence.....	159
Secondary Material.....	161
Protocols & Practice Directives.....	169
Parties Consulted.....	172

Appendices .....	176
Appendix 1: Table Summarizing Existing Practices, Policies, and Rules re Virtual Court across Canada’s Superior Courts (Current as of 30 June 2022) .	176
Appendix 2: Protocols (current as of 30 June 2022) .....	176
Appendix 3: Criteria for Granting Audioconference or Videoconference Appearances Under the Criminal Code .....	176
Appendix 4: Standardized Interview Questions .....	177

## 1.0 Introduction

The onset of the COVID-19 global pandemic (the “pandemic”) presented many challenges to the efficient and effective administration of justice that could not have been foreseen before March 2020. The pandemic ‘spring boarded’ courts across Canada into the digital age by necessitating video and audio conferencing to safeguard public health and ensure that justice could continue to be administered and accessed. The pace at which many jurisdictions moved to develop virtual proceedings was unparalleled regarding its limited resources, capacity, and planning involved—especially in the context of government initiatives. As one interviewee suggested: “the pandemic did what a thousand working groups and committees couldn’t do—it brought the administration of justice into the 21<sup>st</sup> century”.

As pandemic restrictions now ease in mid-2022 courts are acknowledging the opportunities and shortcomings of virtual proceedings. Virtual proceedings can and will continue to help administer more accessible justice in jurisdictions across Canada by allowing participants to be “present” in court without traveling to a courthouse—particularly for those situated furthest from major urban centres.

This report seeks to examine the future of virtual court in Canada and the extent to which virtual proceedings will be used beyond the pandemic. To address this central research question, I conducted a survey of current and future practices of Canada’s superior courts, interviews with numerous sitting judges and court

administrators (including those at the trial (family division and district courts) and appellate level), and a review of Canadian academic literature, mainstream news articles, and grey literature (i.e. materials and research produced by organizations outside of the traditional commercial or academic publishing and distribution channels) regarding the challenges and long-term opportunities presented by the virtual administration of justice. When I refer to “virtual court” and “virtual proceedings” throughout this report, I am referring to the various means by which participants in a court proceeding (e.g. trials, chambers, bail hearings, sentencing hearings, appeal hearings, etc.) including the parties, lawyers, presiding judges, media, and observers can appear for the whole or parts of the proceeding without being physically present in the courtroom (i.e. by telephone, audioconference, or videoconference). The scope of the following analysis is limited to Canadian superior courts and is therefore not representative of all courts, particularly provincial trial courts in Canada.

To forecast the future of virtual court in Canada, this report examines and compares the protocols, practice directives, and other approaches of the Canadian superior courts, Federal Court, Federal Court of Appeal and Tax Court of Canada for virtual proceedings. While the approaches vary by jurisdiction, most courts are continuing to rely on virtual proceedings and have indicated their intention to do so, to varying degrees, in the longer term. The report proceeds to examine the main

challenges and opportunities to the delivery of virtual proceedings and possible solutions to minimize any deleterious impacts thereof.

The analysis also examines the extent to which virtual trials are permitted under the *Criminal Code* and reviews the conflicting jurisprudence as to what constitutes an accused being “present in court”. The analysis referenced above supports the culmination of this report which addresses the appropriate uses of and protocols for virtual proceedings beyond the pandemic.

## **2.0 Analysis**

### ***2.1 Policies & Protocols for the Use of Virtual Courts in Canadian Superior Courts***

This section provides a comparative analysis of the various protocols, practice directives, and approaches of the superior courts across all provinces and territories, the Federal Court, Federal Court of Appeal, Tax Court of Canada, and the Supreme Court of Canada. The details of this analysis reflect the operations of the respective courts in June 2022. For ease of reference, a table comparing the protocols and the criteria used to determine the method of appearance is appended (Appendix 1). Common themes and conclusions are gleaned from these current protocols below in the discussion of the future of virtual courts, the extent to which they will be used as pandemic restrictions ease, and the types of cases that are best suited for virtual court in the later part of this section.



### 2.1.1 Newfoundland and Labrador

#### *Supreme Court of Newfoundland and Labrador*

The Supreme Court of Newfoundland and Labrador (NLSC) General and Family Division continues to rely heavily on hybrid and fully virtual proceedings. Despite this, most civil trials and all criminal proceedings (save for minor matters) are held in-person with the potential for some virtual appearances by witnesses.<sup>1</sup> While the method of appearance is at the discretion of the court and the NLSC permits the use of in-person proceedings, the court recommends counsel and parties identify trials, hearings, and participants that could be held/appear remotely.<sup>2</sup> In addition, except for urgent criminal and family proceedings, the NLSC is not scheduling new in-person hearings and all conferences and chambers continue to be held virtually.<sup>3</sup> The Family Division of the NLSC continues to hold all proceedings (except for trials and urgent matters) virtually as there is not enough space for physical distancing at its Family Court.<sup>4</sup>

Under the Court's practice directives, parties can request their preferred method of appearance, but ultimately the method of proceeding is at the Judge's discretion and depends on the availability of a courtroom, and the availability of

---

<sup>1</sup> Andre Clair, personal communication (verbal), May 2022.

<sup>2</sup> Supreme Court of Newfoundland and Labrador, "Notice to the Profession and General Public: Supreme Court Operations for General Division and Family Division Judicial Centres May – June 2022 (Revised)" (May 13, 2022).

<sup>3</sup> *Ibid.*

<sup>4</sup> Clair, *supra* note 1.

parties.<sup>5</sup> The NLSC has generally accommodated SRLs seeking an in-person appearance, especially when access to reliable technology and internet connectivity are in question – although this has rarely presented as an issue.<sup>6</sup>

The Newfoundland and Labrador *Rules of the Supreme Court, 1986* contemplate remote appearances and in absence of the Court's practice directives the Court *may* consider the following criteria when determining whether to permit or order a remote appearance:<sup>7</sup>

- a) the general principle that evidence and argument are best presented orally and in person in open court;
- b) the nature of the evidence to be offered during the appearance and its importance to determining the issues in the case;
- c) the importance, in the circumstances of the case, of observing demeanor and whether the observation might be hampered by a remote appearance;
- d) the impact such an appearance might have on the court's ability to make findings, including credibility assessments;
- e) whether a party, lawyer for a party, or witness is unable to attend because of infirmity or illness;
- f) the cost and inconvenience of requiring the participant to attend the Court proceeding in person;
- g) whether the other parties consent to such an appearance; and
- h) any other relevant consideration.

Furthermore, the NLSC's *Rules* permit parties/counsel to appear remotely without the prior permission of the Court in limited situations involving procedural matters (uncontested applications, case management meetings, pre-trial conferences,

---

<sup>5</sup> Supreme Court of Newfoundland and Labrador, *supra* note 2.

<sup>6</sup> Clair, *supra* note 1.

<sup>7</sup> *Rules of Supreme Court*, S.N.L. 1986, c. 42, r. 47A.04.

status updates, applications for directions) by informing the Court (general division) in advance.<sup>8</sup>

It is highly likely that the NLSC will continue to use virtual proceedings after the pandemic.<sup>9</sup> Although the degree to which virtual proceedings/appearances will continue is undetermined, the NLSC has invested significantly in the technological infrastructure at its courthouses to accommodate virtual/hybrid proceedings.<sup>10</sup> These investments are suggestive of the court's continued use of virtual appearances, which has allowed the court to accommodate out of province parties, counsel, and witnesses saving counsel and parties significant travel costs.<sup>11</sup>

### *Court of Appeal of Newfoundland and Labrador*

The Court of Appeal of Newfoundland and Labrador (NLCA) is operating as it did before the pandemic.<sup>12</sup> The court is hearing all appeals and applications in-person, unless the parties are notified otherwise.<sup>13</sup> However, the court does permit individuals who cannot appear before the court in-person due travel or other constraints to appear by video or teleconference.<sup>14</sup> Pursuant to the NLCA's *Civil Procedure Rules* parties, counsel, or witnesses seeking to appear virtually or who

---

<sup>8</sup> *Ibid* at r. 47A.02, F41.

<sup>9</sup> Clair, *supra* note 1.

<sup>10</sup> *Ibid*.

<sup>11</sup> *Ibid*.

<sup>12</sup> Court of Appeal of Newfoundland and Labrador, "Notice to the Profession and General Public: Court of Appeal Operations" (May 16, 2022).

<sup>13</sup> *Ibid*.

<sup>14</sup> Court of Appeal of Newfoundland and Labrador, Court Registry, personal communication (verbal), May 2022.

are electing a fully virtual proceeding must notify the NLCA in writing (by email) indicating the reason for their interest in appearing virtually.<sup>15</sup> The Court's *Rules* also stipulate a case will only be heard by teleconference if videoconferencing is not practically available.<sup>16</sup> Further, a party appearing virtually must ensure their location is free of distraction and noise.<sup>17</sup>

The NLCA *Rules* nor practice directives do not offer any specific criteria for judges in considering whether to grant a request for a virtual appearance. Approval of such requests are subject to the approval of the NLCA Registry.<sup>18</sup> In speaking with the Court's registry, virtual appearances are used almost exclusively by participants who cannot appear in-person for reasons such as travel constraints (e.g. persons incarcerated outside Newfoundland and Labrador).<sup>19</sup>

### 2.1.2 Nova Scotia

#### *Supreme Court of Nova Scotia*

Most matters at the Supreme Court of Nova Scotia (NSSC) have resumed being heard in-person. However, while the future of virtual court at the NSSC is undetermined, it is evident virtual proceedings will continue to be a "tool" at the court's disposal to be deployed "appropriately". In the immediate term, any matter

---

<sup>15</sup> Nfld. Reg. 38/16, s. 21(1).

<sup>16</sup> *Ibid* at 21(2)(c).

<sup>17</sup> *Ibid* at 21(5).

<sup>18</sup> Court Registry, *supra* note 14.

<sup>19</sup> *Ibid*.

can proceed in-person but the court continues to hear matters virtually where appropriate and has articulated virtual appearances “continue to be helpful options”.<sup>20</sup> Counsel, parties, and the presiding judge will discuss the method of proceeding at the pre-trial conference and the presiding judge will consider the circumstances and the wishes of the participants to determine the appropriate method of proceeding on a case-by-case basis.<sup>21</sup>

The NSSC published criteria in its practice directives to allow for virtual appearances. The General division makes virtual court available for matters in all its districts provided that:

- (1) all parties are represented by counsel;
- (2) the matter can be dealt with in three days or less, and
- (3) all parties consent – or as a judge may otherwise order.<sup>22</sup>

In contrast, the Family division has offered a more “disciplined approach” to the use of technology and offers virtual options as deemed appropriate by the court on a case-by-case basis.<sup>23</sup> While parties are no longer required to establish their matter is urgent or essential to proceed in-person and jury trials have resumed, the court routinely allows virtual chambers appearances and witness testimony, particularly for expert witnesses.<sup>24</sup>

---

<sup>20</sup> Supreme Court of Nova Scotia and Nova Scotia Court of Appeal, “COVID-19 Restrictions in the Nova Scotia Courts will Remain in Effect During Phase 3 of Reopening Plan” (March 18, 2022).

<sup>21</sup> *Ibid.*

<sup>22</sup> “Virtual Court: Criteria for Virtual Court Hearings” (2022), online: *The Courts of Nova Scotia* <courts.ns.ca> [perma.cc/76QP-B3ZV].

<sup>23</sup> *Ibid.*

<sup>24</sup> Supreme Court of Nova Scotia, *supra* note 20.

In advance of the Court's pandemic related practice directives, the Nova Scotia *Civil Procedure Rules* provide for a broad use of virtual proceedings/appearances and include criteria for permitting virtual attendance. These *Rules* allow for: virtual witness testimony, cross-examination, and providing of evidence in a chambers motion and permits judges, at the prehearing conference, to inquire as to the parties' preferred method of proceeding.<sup>25</sup> The *Rules* also grant judges the authority to permit participants to appear by video conference for a hearing when satisfied that:

1. it is impractical or unfair to require personal attendance;
2. attendance by video conference will save significant expense; *and*
3. the courtroom has been equipped with an audiovisual system of sufficient quality that the person is as good as physically present in the courtroom.

The Nova Scotia *Rules* provide a strong foundation for the continued use of virtual appearances/proceedings beyond the pandemic (and the associated use of the Court's practice directives) as compared to trial courts in other jurisdictions.<sup>26</sup>

The NSSC is in the process of identifying those proceedings most appropriate for virtual court.<sup>27</sup> Justice Christa Brothers of the NSSC General Division acknowledged publicly that the pandemic allowed the Court to realize "the changes we previously thought improbable were not just possible, but for some types of

---

<sup>25</sup> *Nova Scotia Civil Procedure Rules*, r. 5.18(1)(c), 23.08(1)(c), 51.08, 53.05, 56.

<sup>26</sup> Appendix 1.

<sup>27</sup> Jennifer Stairs, personal communication (verbal), June 2022.

matters, preferable”.<sup>28</sup> Generally, there is consensus among the bench that intake court, certain types of procedural motions (e.g. chambers matters, crown side), consolidation, and bail hearings lend themselves better to virtual proceedings.<sup>29</sup> Among members of the NSSC bench interviewed for this report, matters most suitable for virtual court tend to involve (1) submissions only, (2) where there are issues having witnesses present in the court room (e.g. privacy concerns, coercive control concerns, participants engaged in active treatment) and/or (3) where no credibility issues are at stake (e.g. witnesses or experts only speaking to establish a foundation for evidence).

After speaking with several judges from the NSSC, it is apparent that virtual proceedings, which were forced upon the Court by the pandemic, improved access to justice, which some judges indicated as a reason for the continued use of virtual proceedings beyond the pandemic.<sup>30</sup> These findings are consistent with other jurisdictions and academic, grey literature, and mainstream media publications regarding the benefits of virtual proceedings and are discussed in further detail later in this report. The benefits experienced by the Court and its participants through virtual proceedings included:

---

<sup>28</sup> Justice Christa Brothers, Supreme Court of Nova Scotia, “Removing Barriers to Virtual Court”, *Nova Voce* 39:2 (Summer 2021) 6.

<sup>29</sup> Stairs, *supra* note 27.

<sup>30</sup> *Ibid.*

- eliminating transportation costs and time, especially for rural participants, Nova Scotians without a driver's license, and out-of-province counsel and witnesses (e.g. restationed RCMP officers, expert witnesses);
- alleviating concerns/costs regarding missing work, childcare, and/or eldercare;
- efficiency of proceedings, particularly for procedural matters which result in time and cost savings for counsel which are passed onto clients;
- increasing media coverage of court proceedings as journalists can more easily report on multiple proceedings in a day by calling into multiple courtrooms;
- providing a safer access to the courts regarding COVID-19 for older/more vulnerable participants;
- avoiding adjournments by allowing judges to assist in hearing matters in other geographical locations;
- preventing over crowding and security concerns (especially at the NSSC family division court in Halifax where space is limited); and
- improving participants' level of focus (as reported some judges/counsel).

Overall, many judges acknowledged that the benefits of virtual court rationalize the continued use of virtual proceedings/appearances for matters *where appropriate*.<sup>31</sup>

While there are instances where virtual proceedings may be more appropriate and even preferable to in-person appearances, there are many matters, namely those of a substantive nature, that necessitate in-person hearings. These challenges led to an underlying preference toward in-person proceeding among members of the bench who participated in this research. Such findings are consistent with other jurisdictions and literature regarding the limits of virtual proceedings and are discussed in further detail later in this report. Throughout the pandemic, the NSSC

---

<sup>31</sup> Supreme Court of Nova Scotia, *supra* note 20.



and its users have experienced challenges in determining which proceedings require in-person hearings. Such challenges include:

- technological mishaps (cutting out, video and audio connection issues, etc.) creating delays, garbled transmission, and inhibit the smooth operation of court proceedings thereby costing clients and draining court resources;
- connecting participants with poor or no internet access and/or without reliable digital technology (e.g. computer, tablet, smartphone) during videoconferencing;
- providing effective translation services for ESL participants;
- conflicting responsibilities for participants providing childcare/eldercare at home;
- participants more distracted when not physically present in a courtroom;
- issues for accused persons in custody regarding communicating with counsel;
- issues with decorum and controlling the environment for participants (ensuring no one else present with them, preventing the recording/reproduction of a proceeding, children hearing the proceedings from another room in family matters, accused persons outside custody);
- concerns regarding the solemnity of court (loss of respect for institution, judges, and the gravitas of court when participating remotely),
- lack of visual cues challenging interactions between participants (harder for judges to ask questions and interject without interrupting counsel);
- difficulty ascertaining credibility, evaluating demeanor, and connecting with witnesses;
- issues with parties “feeling as though they are participating [in the justice system] in a meaningful way”;
- compounding the stresses of appearing in court for SRLs;
- restrictions on the ability of counsel/parties to engage with judge and opposing counsel; and
- lack of edification opportunities for junior members of the bar.

The imperative of virtual proceedings during the pandemic has plainly revealed the limits of virtual courts and helped shape their appropriate place in the NSSC moving forward. One judge summarized the challenges imposed by virtual proceedings by saying; “just because you *can* do something virtual doesn’t mean

you *should* do something virtual”. The judge further stressed the court must exercise caution in relying on virtual proceedings and consider “what’s at stake” and whether the subject matter itself is appropriate to proceed virtually before proceeding virtually.

Evidently, virtual proceedings are not a panacea and must be used appropriately to improve the administration of justice at the NSSC. The members of the bench who participated in this research stressed the importance of using virtual proceedings effectively, as a “tool” to best accommodate those with *real* barriers to accessing justice—before considering the interests of the court and the Bar. Judges stressed the importance of ensuring court proceedings flow smoothly in the interest of all parties to preserve court resources and help abate legal fees where possible—especially in civil and family matters. This requires leveraging virtual proceedings in matters limited to legal argument and or procedural matters; virtual proceedings should not be used when substantive issues are at play and/or multiple parties or complex evidence is involved. Judges also cautioned against reducing the medium of court to a telephone that lacks “meaning and significance” to those involved.

As the court works to develop its path forward for the use of virtual proceedings long term, some NSSC judges expressed their desire to ensure the applicable *Rules*/policies (1) preserve the discretion of the presiding judge regarding the method of appearance/proceeding and (2) provide for some consistency and

transparency so parties/counsel can have predictability in the expectations of the court in this regard. Overall, NSSC judges were consistent in their recognition of the benefits of virtual court which provide a strong indication virtual court will continue to have a role in the administration of justice at the NSSC where appropriate.

### *Nova Scotia Court of Appeal*

The Nova Scotia Court of Appeal (NSCA) is hearing most appeals in-person. However, the assigned panel retains discretion over the method of proceeding.<sup>32</sup> When determining the method of proceeding for appeal hearings the panel will often seek the wishes of the parties and consider, among other things:

1. the nature and complexity of the case;
2. whether there are liberty interests at stake; and
3. whether the appeal relates to a matter of public interest.<sup>33</sup>

Chambers applications are heard by telephone or in-person.<sup>34</sup> Requests for in-person chambers applications are accommodated by the NSCA where possible with priority given to:

- motions for bail pending appeal,
- motions for stays,
- motions re publication bans,
- motions for state-funded counsel, and
- any other matter the chambers judge considers should proceed in-person.<sup>35</sup>

---

<sup>32</sup> Nova Scotia Court of Appeal, “Practice Directive: Appeal Proceedings during the COVID-19 Pandemic” (Updated: March 7, 2022).

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

The NSCA provides this guidance to its users exclusively through its practice directives as the Nova Scotia *Civil Procedure Rules* do not contain provisions regarding virtual proceedings at the NSCA.

Moving forward, it is anticipated the NSCA will exercise flexibility regarding the continued use of virtual proceedings. One NSCA judge acknowledged that as most appeals are a matter of legal argument, *most* appeal hearings lend themselves to being conducted virtually as opposed to the trial level, unless a participant lacks access to the technology or if there is fresh evidence being taken. On a similar note, the Court's Registrar indicated: "the horse is out of the barn" regarding virtual court.<sup>36</sup> She further acknowledged that participants see the benefits and challenges, but allowing for virtual appearances at the NSCA is unlikely to go away—particularly for shorter appearances including chambers matters and uncontested appearances where participants have expressed a preference for telephone appearances.<sup>37</sup>

It is unlikely the NSCA will develop a rigid approach toward a party/counsel's method of appearance. Rather, the integrity of the appeal will continue to guide the Court regarding the method of proceeding. The Court is likely to continue providing participants with an *option* to appear virtually where the Court deems it appropriate

---

<sup>36</sup> C. McInnes, personal communication (verbal), May 2022.

<sup>37</sup> *Ibid.*

on a “reasoned, thoughtful basis”—particularly for SRLs. The Court aspires to create access points for virtual appearances outside of a courthouse that would allow NSCA proceedings to become more accessible—especially for SRLs outside the Halifax Regional Municipality (HRM) to abate travel costs to and from the NSCA’s only location in Halifax.

The NSCA recognizes that providing options to participants to appear virtually beyond the pandemic provides greater flexibility and access to justice for some of its users. As one member of the bench indicated, such benefits include reduced cost associated for lawyers (which is passed on to client)—particularly in the case of out-of-province counsel and for chambers appearances—and parties (travel, childcare, less time off work). Additionally, virtually appearances help promote the health and safety of court participants as COVID-19 infections continue. Some participants have reflected on the improved ability to see the panel in a virtual setting (especially with in-court plexiglass that was in place until June 2022).<sup>38</sup>

Despite the advantages of virtual court, the NSCA is keenly aware of the challenges it imposed on the court and its users, which reinforces its flexible outlook on the future use of virtual courts. The following challenges reinforce counsel’s preference for in-person appearances for appeal hearings:

- a lack of reliable internet connectivity in many parts of rural Nova Scotia;

---

<sup>38</sup> *Ibid.*

- a lack of reliable technology (laptop, tablet, smartphone) among less affluent parties (of which the court has rarely encountered);
- technological challenges with the reliability and ease of use causing delays and impeding participation for some;
- difficulty for lawyers in interacting with the panel (harder to get justices' attention, harder for panel to interject to ask questions compared to in-person proceedings which are more natural and provide a more immediate sense of how one's argument is being received by the panel);
- lack of interaction between counsel and clients and counsel and opposing counsel (detrimental to professional development, community building, and advancement of a matter); and
- inability of inmates to be in the presence of family/friends for emotional support during their hearing.

As one NSCA judge acknowledged: virtual court is “not a panacea” and “when discussing benefits [of virtual court], it’s important to not lose sight of the fact that it’s an option that has a host of benefits, but that’s not for everybody”. Overall, this judge emphasized that despite virtual courts being cheaper and more secure (avoids transport of inmates), the court must “keep the human centered piece of it very much in the foreground” as to not lose sight of the advantages offered by in-person proceedings.

### 2.1.3 Prince Edward Island

#### *Supreme Court of Prince Edward Island*

The Supreme Court of Prince Edward Island (PESC) has resumed hearing most matters in-person.<sup>39</sup> However, the PESC continues to consider requests for a virtual proceeding/appearance. Ultimately, the Court has the discretion to determine

---

<sup>39</sup> Shelly Nicholson, personal communication (verbal), May 2022.

the method of appearance.<sup>40</sup> The Court grants permission for a virtual appearance/proceeding on a case-by-case basis and has not released any information in its *Rules* or practice directives on the criteria for determining the method of appearance.<sup>41</sup> However, the PESC continues to exercise flexibility in accommodating requests for virtual appearances for both pre-trial motions and trials.<sup>42</sup>

The PESC reported few challenges to virtual proceedings as the court experienced a quick transition to virtual proceedings at the onset of the pandemic. In part, this was because PESC only operates three court houses and was able to quickly install the required technological infrastructure.<sup>43</sup>

### *Prince Edward Island Court of Appeal*

The Prince Edward Island Court of Appeal (PECA) has resumed hearing most matters in-person but continues to rely on hybrid hearings. The PECA continues to entertain requests for a virtual proceeding with a determination on the method of appearance at the discretion of the Court.<sup>44</sup> Under the Court's normal protocols, the PECA grants permission for virtual appeal hearings on a case-by-case basis and has

---

<sup>40</sup> "P.E.I. courts to maintain COVID-19 Restrictions", *The Guardian* (7 April 2022), online: <[saltwire.com/prince-edward-island/](https://saltwire.com/prince-edward-island/)> [perma.cc/UT7S-FC96]; Prince Edward Island Court of Appeal, Supreme Court, and Provincial Court, "Notice to the Profession, the Public and the Media regarding COVID-19 Update" (April 6, 2022).

<sup>41</sup> Shelley Nicholson, *supra* note 39.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> *Supra* note 40.

not released any information in its *Rules* or practice directives on the criteria for determining the method of appearance.<sup>45</sup> The Court has illustrated its flexibility in granting requests for virtual appearances by out-of-province counsel, for parties who have caused decorum issues in the past (security, masking concerns, etc.), and/or for participants who are exposed to or recovering from COVID-19.<sup>46</sup>

Virtual proceeds are likely to continue to some degree at the PECA at the request of the parties or the discretion of the Court.<sup>47</sup> The Deputy Registrar of the PECA acknowledged that virtual proceedings have proved to save costs and ease the burden on participants attending procedural matters.<sup>48</sup> The Deputy Registrar indicated the PECA experienced some challenges relating to virtual proceedings including for SRLs and rural participants and in some instances has made arrangements for participants to appear virtually from the courthouse nearest to them to ensure adequate virtual connectivity.<sup>49</sup>

#### 2.1.4 New Brunswick

##### *Court of Queen's Bench of New Brunswick*

Most matters are proceeding in-person at the Court of Queen's Bench of New Brunswick (NBQB). However, virtual proceedings are continuing at the Court in a

---

<sup>45</sup> Prince Edward Island Court of Appeal, "Practice Directions" at 7(d).

<sup>46</sup> Shelia Gallant, personal communication (verbal), May 2022.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*



limited capacity. Parties can request to appear virtually to the presiding judge.<sup>50</sup> This is most common for bail hearings, settlement conferences, and administrative appearances.<sup>51</sup> The New Brunswick *Rules of Court* have allowed for virtual proceedings/appearances by motion or direction of a judge in advance of the pandemic.<sup>52</sup> However, as in other jurisdictions, the use of virtual appearances pre-pandemic was limited by a lack of standardization of remote technologies, which hindered quality and reliability.<sup>53</sup> As such, pre-pandemic, the NBQB used remote technology primarily for participants with sophisticated video conferencing systems (e.g. correctional facilities, larger law firms, business enterprises) and its use was restricted to expert witnesses, vulnerable witnesses, detainees and incarcerated individuals, and in cases where all parties and the judge agreed.<sup>54</sup>

It is likely virtual proceeding/appearances will continue in some capacity at the NBQB after the pandemic because of the benefits it offers to the Court and its participants. This is because of the NBQB's uptake and acceptance of remote appearances during the pandemic that have advanced the quality, reliability, multipoint capability, and ease of use of virtual connectivity.<sup>55</sup> Moreover, comments made to the media by the Court's Chief Justice at the onset of the Pandemic indicate

---

<sup>50</sup> Court of Queen's Bench of New Brunswick, "Notice to Profession and Public – Updated COVID-19 Directive" (March 14, 2022).

<sup>51</sup> Donald Higgins, personal communication (written), May 2022.

<sup>52</sup> N.B. Reg. 82-73, s. 4.1.02.

<sup>53</sup> Higgins, *supra* note 51.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

the Court’s intention to leverage the benefits of virtual proceedings to enhance access to justice for New Brunswickers.<sup>56</sup> Chief Justice DeWare commented that the enhancements and increased uptake of virtual proceeding/appearances were a “electronic fling and hearings, they state that “presentation of evidence and argument orally in open court will no longer be considered the default or even a superior mode”; instead, in accordance with the principle of proportionality, “[t]he default should be the mode that is most expeditious and affordable, having regard to the nature of the case.” lining of the pandemic” and “the push needed to start seriously using technology to make the [justice] system more accessible”.<sup>57</sup> DeWare also expressed her hope that virtual appearances will help include people who can’t physically be in court – including those who’s transportation to court is impeded by the province’s “terrible winters”.<sup>58</sup> Justice DeWare’s sentiments toward the future of virtual proceedings at the NBQB as in a May 2022 roundtable discussion with the CBA she remarked that among the judiciary, “there is no resistance whatsoever to embrace new technologies and recognize that’s [virtual court] the path forward”.<sup>59</sup>

The NBQB’s embrace of virtual technologies throughout the pandemic as an important tool for the justice system in the longer term is emblematic of the benefits

---

<sup>56</sup> Hadeel Ibrahim, “Top trial judge says COVID-19 reveals value of remote justice”, *CBC News* (16 April 2020), online: <[www.cbc.ca/news](http://www.cbc.ca/news)> [perma.cc/E6RK-U8DY].

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid*; Higgins, *supra* note 51.

<sup>59</sup> Tracy DeWare, “Atlantic Roundtable for COVID-19 and Beyond” (Guest Panelist delivered CBA Atlantic, Fredericton Online, May 31, 2022).

gleaned by the court and its users. Virtual proceedings reduce costs for the NBQB and government as it eases security staffing needs, avoids scheduling conflicts that often result in adjournments, and eliminates travel for police officers now stationed outside of New Brunswick.<sup>60</sup> Virtual proceedings also abate security concerns regarding persons in-custody including reducing the risk of an incident or serious violent event, and reducing the risk of an inmate returning to custody with contraband.<sup>61</sup> Several members of the New Brunswick Bar have also indicated that virtually technology helps make the justice system more efficient, improves access to justice, and saves clients, counsel, and witnesses time and money—especially for counsel/parties residing in rural New Brunswick.<sup>62</sup>

Despite the advantages of virtual court, the NBQB bench remain hesitant to proceed virtually in some circumstances. There is continued reluctance on the part of both the Bar and the judiciary to hear matters virtually where the credibility or assessment of the demeanor of the parties or witnesses is at issue.<sup>63</sup> Also, connecting participants from multiple simultaneous endpoints remains technically problematic, as has the handling of evidence/exhibits.<sup>64</sup> The Court remains concerned with the risk of undue influence of persons off-camera, the quality of connectivity of users,

---

<sup>60</sup> Higgins, *supra* note 51.

<sup>61</sup> *Ibid.*

<sup>62</sup> Zena Olijnyk, “Law Society of New Brunswick’s aim to drive modernization of province’s rules of court”, *Canadian Lawyer* (22 April 2022), online <[canadianlawyermag.com](http://canadianlawyermag.com)> [pema.cc/TB2M-C587].

<sup>63</sup> Higgins, *supra* note 51.

<sup>64</sup> *Ibid.*

the etiquette of participants, and the technological competence of parties and court officials regarding virtual proceedings.<sup>65</sup> Such challenges have partially been abated by the Court's detailed, user-friendly guidelines for virtual proceedings written in plain language.<sup>66</sup>

Moving forward it is clear virtual proceedings will be leverage in circumstances that improve the efficiency and cost-effectiveness of the administration of justice at the NBQB. This includes matters where witness credibility is not at stake or where there are a limited number of endpoints connecting to a proceeding.<sup>67</sup> Chief Justice DeWare has expressed it is preferable to proceed virtually that in matters with sophisticated counsel, hearing testimony from expert witnesses, or where it would help mitigate cost for parties struggling to afford counsel.<sup>68</sup> She also emphasized the need for the Court to be flexible in accommodating the population it serves—including those lacking basic literacy skills and/or who must travel long distances to appear in court. In doing so, Chief Justice DeWare articulated the efficacy of tele-conferencing for participants who lack appropriate technologies/internet to take part by videoconference and/or for

---

<sup>65</sup> *Ibid.*

<sup>66</sup> Court of Queen's Bench of New Brunswick, "Guide to Virtual Proceedings in New Brunswick" (2022).

<sup>67</sup> Higgins, *supra* note 51.

<sup>68</sup> DeWare, *supra* note 59.

SRLs who have concerns about appearing in court beyond the challenges of video conferencing.<sup>69</sup>

### *Court of Appeal of New Brunswick*

The Court of Appeal of New Brunswick (NBCA) is an outlier among appellate courts as it continues to hear most proceedings by videoconference.<sup>70</sup> Interestingly, the NBCA is open to the public.<sup>71</sup> Scheduled motions and status hearings are held by telephone unless the motion judge or Chief Justice determines otherwise.<sup>72</sup> While the Court retains discretion as to the method of hearing, counsel may request to appear by video or teleconference if their appeal is scheduled to be in person.<sup>73</sup>

There is an indication that virtual proceeding will remain in some capacity at the NBCA under certain, yet to be determined, circumstances.<sup>74</sup> Such is clear from:

1. the Court's use of virtual proceeding (to a lesser extent) before the pandemic for participants outside the Fredericton region;
2. the Court is well set up technologically for virtual hearings; and
3. the Court has also experienced few issues with access to technology and/or reliable internet, including for SRLs, since the onset of the pandemic and has reverted to telephone participation to accommodate issues with the functionality of technology.<sup>75</sup>

---

<sup>69</sup> *Ibid.*

<sup>70</sup> Caroline Lafontaine, personal communication (verbal), May 2022.

<sup>71</sup> *Ibid.*; Court of Appeal of New Brunswick, "Updated Directive – Court of Appeal of New Brunswick" (March 14, 2022).

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

Furthermore, while there is some discussion among the Court of revising Rules 62 and 63 of the New Brunswick *Rules of Court* (re the appeals to the Court of Appeal), the current *Rules* do allow the Chief Justice to direct any matter be heard by videoconference.<sup>76</sup>

### 2.1.5 Quebec

#### *Quebec Superior Court of Justice*

At the beginning of June 2022, Quebec lifted the requirement that all proceedings without testimonial evidence be heard virtually. The Quebec Superior Court of Justice (QCCS) has resumed hearing nearly all its proceedings in-person.<sup>77</sup> The Quebec *Code of Civil Procedure* and *Code of Penal Procedure* allow for the hearing of witnesses, applications, motions, and prehearing conferences virtually with advance notice and application to the court.<sup>78</sup> The province's code of procedure nor its practice directives offer criteria for granting an application to proceed/appear virtually. I was unable to speak with an English-speaking representative of the QCCS to discuss the future of virtual courts beyond the pandemic and the challenges encountered by the Court in this regard.

---

<sup>76</sup> N.B. Reg. 82-73, s. 62.02.1.

<sup>77</sup> Superior Court of Quebec, "Lift of the rule according to which the parties must proceed exclusively by virtual hearings" (June 2, 2022).

<sup>78</sup> C.Q.L.R. c. C-25.01, r. 0.2.3., s. 26-27; Rules of Practice of the Superior Court of the Province of Quebec, Criminal Division, S.C. 2002, c. 13, s. 17; C.Q.L.R. c. C-25.01, r. 5, s. 14.

The legal commentary in Quebec have remarked upon the advantages and disadvantages of virtual proceedings realized during the pandemic. Such benefits included increased accessibility and affordability of court proceedings, improved safety for parties (especially for survivors of physical/domestic violence), and a reduction in the backlog of cases.<sup>79</sup> According to the President of the Quebec Bar, “semi-virtual [hybrid] proceedings are here to stay”.<sup>80</sup> However, challenges also exist and include:

- barriers for mental health patients in hospital in communicating with lawyers;
- dehumanization of defendants;
- frustration of the symbolic function (sanctity) of court; and
- limited nonverbal communication that is possible during in-person proceedings

### *Court of Appeal of Quebec*

While the Court of Appeal of Quebec (QCCA) has resumed appeal hearings in-person, hybrid appearances are permitted with counsel/parties having the choice of appearing in-person or virtually by videoconference.<sup>81</sup> Nevertheless, in some circumstances the Court may deem an appeal or application not appropriate for virtual appearances and request parties appear in-person.<sup>82</sup>

---

<sup>79</sup> Luis Millan, “Quebec accelerating legal modernization drive”, *Law in Quebec* (13 July 2020), online: <lawinquebec.com> [perma.cc/WW2U-43D2]; Luis Millan, “Unintended consequences of virtual hearings”, *Law in Quebec* (28 September 2020), online: <lawinquebec.com> [perma.cc/HHV6-H26K].

<sup>80</sup> *Ibid.*

<sup>81</sup> Court of Appeal of Quebec, “COVID-19 Pandemic – New arrangements for hearings” (March 4, 2022).

<sup>82</sup> *Ibid.*

In absence of the Court’s practice directives, the *Rules of the Court of Appeal of Quebec in Criminal, Civil, and Penal Matters* allow a party to request a virtual appearance to the clerk. In criminal matters this requires the written consent of the accused and in all cases associated costs are assumed by the moving party.<sup>83</sup> Similarly, parties can consent to the hearing of a motion by virtual means in criminal and penal matters.<sup>84</sup> Despite this, no guidance exists in the *Rules* or practice directives as to when the Court may/should authorize a request for a virtual appearance. The Court is however in the process of amending its *Rules* regarding remote hearings with an anticipated completion of Fall 2022.<sup>85</sup>

Moving forward it is anticipated the QCCA will continue providing parties/counsel with the option to appear virtually or in-person.<sup>86</sup> Virtual appearances are more common for motions for leave to appeal, nevertheless more lawyers are opting to appear in-person—especially more senior counsel and/or for appeal hearings.<sup>87</sup> This is because counsel prefer to interact and observe the reaction of judges “on the spot, not through a screen”.<sup>88</sup> In-person proceedings also avoid the technical difficulties experienced by participants with limited technological

---

<sup>83</sup> CQLT c. C-25.01, r. 10 s. 39; *Rules of the Court of Appeal of Quebec in Criminal Matters*, S.I./2018-96, s. 43; O.C. 1186-2019, 27 November 2019, s. 32.

<sup>84</sup> *Rules of the Court of Appeal of Quebec in Criminal Matters*, S.I./2018-96, s. 55; O.C. 1186-2019, 27 November 2019, s. 53.

<sup>85</sup> Annick Nguyen, personal communication (verbal), May 2022.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*



capabilities and/or poor internet connectivity and issues with last minute filing of documents as experienced by the QCCA during virtual proceedings.<sup>89</sup>

#### 2.1.6 Ontario

##### *Ontario Superior Court of Justice*

The Ontario Superior Court of Justice's (ONSC) current practice directive provides detailed guidance regarding the default method of appearance for all criminal, family, child protection, and criminal matters.<sup>90</sup> Generally matters of a procedural nature including assessment hearings, case conferences, bail hearings, and judicial pre-trials, are conducted virtually.<sup>91</sup> However, the final determination regarding the method of proceeding is at the discretion of the Court. Yet, the court recognizes the importance of in-person interaction and hearings for “more substantive attendances”.<sup>92</sup> By default, judge alone trials, jury trials, long motions, and other matters on their merits are conducted in-person.<sup>93</sup> A full list of the default method of proceeding is appendix at 2(I). This appendix also includes the method and criteria for judges to employ in substituting the default method of proceeding.

The ONSC provides both general and proceeding-specific (e.g. bail hearings, contested motions, etc.) criteria for judges in making an order directing the method

---

<sup>89</sup> *Ibid.*

<sup>90</sup> Ontario Superior Court of Justice, “Notice to the Profession Parties, Public and the media (March 14, 2022).

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

of attendance at a hearing or step in the proceeding in its practice directive, *Criminal Proceeding Rules*, and *Rules of Civil Procedure*. This criteria is available to the public and is *clearly* articulated in the Court's practice directives to assist parties in determining the method of proceeding. Per the ONSC practice directive, in determining whether to vary the method of hearing a proceeding from its default the Court will consider:

- the issues in the proceeding;
- the expected length of the hearing;
- the evidentiary record, the status of parties (e.g. self-represented litigants) and
- access to technology (including virtual capacity at institutions and courthouses).<sup>94</sup>

On a proceeding-specific level, the Court will consider factors including:

- the position of the parties;
- the complexity of the legal/factual issue;
- whether viva voce evidence will be heard; and/or
- whether the outcome of the motion/application is legally or practically dispositive of a material issue in the case for contested motions and applications at a civil level.<sup>95</sup>

In criminal proceedings, including bail hearings and assignment conferences, the Court will consider whether the accused is self-represented, in custody, the number of accused persons involved, and the availability of a virtual suite from the custodial

---

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

institution.<sup>96</sup> See Appendices 1 and 2(I) for a detailed list of the criteria used by the ONSC in determining the method of appearance.

In addition to the enumerated criteria described above, the ONSC provides general principles with descriptions for determining the appropriate method of proceeding, which favour in-person proceedings. Such principles include

- access to justice and ensuring participants can fully participate in a remote hearing (i.e. accommodating through technologies and for disabilities and/or caregiver responsibilities);
- the circumstances of SRLs including the delays in assistance from court staff and duty counsel, requiring support to utilize technology, the importance of in-person hearings and advocacy to efficiently manage a case and allow for meaningful participation; and
- security and statutory impediments to remote hearings for several matters.<sup>97</sup>

Law firms have indicated these guidelines and principles “strike a balance between expedience and access to justice through virtual hearings with the importance of in-person hearings for more substantive matters”.<sup>98</sup>

In advance of the pandemic the ONSC relied on Rule 1.08 of Ontario’s *Rules of Civil Procedure*, which allows parties to request a virtual appearance, but can be opposed by another party.<sup>99</sup> In determining the method of procedure, Rule 1.08(6) provides the following criteria:

---

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

<sup>98</sup> Dragana Bukejlovic, “Ontario litigators, dust off your robes (but don’t uninstall Zoom)! The Superior Court of Justice announces guidelines for the presumptive mode of attendance” (23 March 2022), online: *Dentons* <dentons.com> [perma.cc/L537-Y3VY].

<sup>99</sup> R.R.O. 1990, Reg. 19, s. 1.08(1), (4), (7).

- a. the availability of telephone conference or video conference facilities;
- b. the general principle that evidence and argument should be presented orally in open court;
- c. the importance of the evidence to the determination of the issues in the case;
- d. the effect of a telephone conference or video conference on the court's ability to make findings, including determinations about the credibility of witnesses;
- e. the importance in the circumstances of the case of observing the demeanour of a witness;
- f. whether a party, witness or lawyer for a party is unable to attend by a method because of infirmity, illness or any other reason;
- g. the balance of convenience between any party wishing the telephone conference or video conference and any party or parties opposing; and
- h. any other relevant matter.<sup>100</sup>

While the court recognizes “in-person advocacy and participation will remain an essential feature of our justice system”,<sup>101</sup> there are several indications virtual proceedings will remain a key tool in the administration of justice at the ONSC beyond the pandemic. These indications include (1) the Department of Justice’s \$65-million investment in the modernization of the province’s justice system through improving technology in courtrooms and (2) the overall positive experience with virtual proceedings experienced by key stakeholders in Ontario’s justice system throughout the pandemic.<sup>102</sup> Between March 2020 and February 2022 the ONSC heard over 3.2 million virtual or hybrid hearings.<sup>103</sup> The province’s Attorney General

---

<sup>100</sup> *Ibid* at 1.08(6).

<sup>101</sup> Ontario Superior Court of Justice, *supra* note 90.

<sup>102</sup> *Ibid*, Ontario Ministry of the Attorney General, News Release, “Ontario Investing \$65 Million to Expand Access to Video Court Hearings” (10 February 2022); Marg Bruineman, “Justice system to push further into digital age after pandemic, says Downey”, *Orillia Matters* (26 June 2021), online: <orilliamatters.com> [perma.cc/49PV-CLP3]; Suzanne Chiodo, “Ontario Civil Justice Reform in the Wake of COVID-19: Inspired or Institutionalized?” (2021) 57:3 Osgoode Hall L. J. 801 at 809.

<sup>103</sup> Ontario Ministry of the Attorney General, *supra* note 102.

reflected that virtual courts were a “breakthrough that proved we [the justice system] can better meet people’s expectations for how justice can be done, and we are not turning back”.<sup>104</sup> The Ministry of the Attorney General also acknowledged that virtual courts improved access to justice for Indigenous communities and many vulnerable Ontarians by providing faster, less costly access to services, especially for SRLs.<sup>105</sup>

Virtual court allows individuals to access courts with minimal impact on their daily life.<sup>106</sup> The time and cost savings of virtual proceedings are prominently felt in Ontario’s rural communities where there are greater costs associated with transport and a lack of public transit to travel to court. This takes away from parenting, paid work, farm duties, and other family obligations.<sup>107</sup> These outcomes are consistent with the experiences of many lawyers, which, in part, motivated members of the province’s Bar to advocate for the continued use of virtual proceedings for less substantive matters including guilty pleas, bail hearings, and sentencing.<sup>108</sup>

Advocacy for the continued use of virtual proceedings has been most prominent among Ontario’s Family Bar. Members of the Family Bar are advocating

---

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> Trevor Pritchard, “Law in the time of COVID: How the pandemic radically reoriented Ontario’s justice system”, *CBC News* (14 March 2022), online: <cbc.ca/news> [perma.cc/983Q-TPLP].

<sup>107</sup> The Yunusov Question, “AG Doug Downey on the pandemic effect on the justice system, current status and plans for the future” (4 March 2022), online (video) *YouTube* <www.youtube.com> [perma.cc/2NDX-VUS7].

<sup>108</sup> Ontario Ministry of the Attorney General, *supra* note 102; Bukejlovic, *supra* note 98; Jacob Barker, “As pandemic restrictions ease, lawyers hope to see broadcast of court proceedings continue”, *CBC News* (28 February 2022), online: <cbc.ca/news> [perma.cc/3MDW-E6FE].

for family proceedings to be virtual by default, with an option for in-person if parties agree.<sup>109</sup> Proponents note that common complaints about cost and time associated with the judicial system pre-pandemic often translated into access to justice issues for economically disadvantaged people. This is particularly true in an area of law where the public most commonly interacts with the justice system. Such challenges made the cost of legal counsel beyond reach for many Ontarians seeking help in a family matter. By contrast, it is “undisputed that family law proceedings are more efficient virtually, saving clients thousands of dollars – and their lawyers hours of time”.<sup>110</sup> While these benefits do obfuscate the reality of the digital divide which hinders access to justice in the family division,<sup>111</sup> members of Ontario’s Family Bar are advocating for the continued use of virtual proceedings, especially in Northern Ontario to eliminate travel costs and time and because virtual proceedings often lead to cases settling more quickly.<sup>112</sup>

Despite the occasional technological mishaps, many lawyers who have participated in virtual proceedings at the ONSC have reported positive experiences including that virtual court provides for more focused hearings than in-person

---

<sup>109</sup> Annabel Oromoni, “Ontario family lawyers hold virtual press conference urging the courts to continue remote hearings”, *Law Times News* (11 May 2022), online: <lawtimesnews.ca> [perma.cc/YMP5-CJEY].

<sup>110</sup> Mallory Hendry, “Return to in-person hearings means lawyers must find efficiencies elsewhere”, *Canadian Lawyer* (18 April 2022), online: <canadianlawyermag.com> [perma.cc/F2D3-MSBQ]; Sergio Arangio, “Family lawyers call out for virtual court appearances”, *CTV News* (13 May 2022), online: <northernontario.ctvnews.ca> [perma.cc/7XNL-EUW3].

<sup>111</sup> Colin Butler, “Access to justice still a problem as some Ontario family courts return to in-person hearings”, *CBC News* (29 March 2022), online: <cbc.ca/news> [perma.cc/68XR-E2VP].

<sup>112</sup> Jessica Nyznik, “Family lawyers asking for remote hearings to continue”, *Global News* (10 May 2022), online: <globalnews.ca> [perma.cc/82UY-ZYV2]; Oromoni, *supra* note 109.

equivalents. Because of the variability of the appropriateness of virtual court for different matters, some Ontario lawyers are also advocating to allow parties the choice to have their matter heard virtually. Said proponents are also requesting the Court continue allowing hybrid appearances to provide efficiency for all parties involved. To help facilitate the use of virtual proceedings, the ONSC has adopted a detailed guide for *Best Practices for Remote Hearings*, which has been adopted by courts in other jurisdictions—including the NSSC.<sup>113</sup> In furtherance of this objective, ONSC judges have requested counsel be robed for virtual hearings to maintain the decorum and solemnity of the Court.<sup>114</sup> The Court has also indicated that proficiency with virtual proceedings and digital technology is a basic requirement of counsel and courts.<sup>115</sup> While some of the technical issues that caused delays in proceedings (echoing audio, freezing video, background noise) are often beyond the control of the Court, it has been alleviated concerns with assessing witness credibility in a virtual court setting. This has allowed criminal lawyers to observe a witness' breathing, pupils, and blushing allowing for "a much more intense experience of that witness than I do in person".<sup>116</sup> Virtual court has also provided greater efficiency as

---

<sup>113</sup> "Best Practices for Remote Hearings" (13 May 2020), online (pdf): *The Courts of Nova Scotia* <courts.ns.ca> [perma.cc/6KHE-4JBH].

<sup>114</sup> Annabel Oromoni, "Lawyers increasingly concerned about interplay between virtual and in-person operations" (30 March 2022), online: *Law Times News* <lawtimesnews.com> [perma.cc/Z3RH-UH5C].

<sup>115</sup> *Supra* note 113; *Arconti v. Smith*, 2020 O.N.S.C. 2782 at 39-40.

<sup>116</sup> Alyshah Hasham, "Zoom has brought a welcome revolution to Ontario courts. Now, about those teething problems..." (18 March 2021), online: *Toronto Star* <www.thestar.com/news> [perma.cc/JQ8E-XJ6U].

courtrooms can more easily hear multiple matters on the same day—providing a cost savings to clients, counsel, and the Court.<sup>117</sup>

The ONSC’s experience with virtual courts has not been without challenges. As discussed later in this report, virtual proceedings further exposed the “digital divide” in the province. This divide exists between those who can access their court proceedings through reliable technology (laptop, tablet, smartphone, etc.) and internet connection and those who cannot because of poverty, homelessness, and/or their residence in a rural/remote community. The divide creates a “serious access to justice issue for the most vulnerable” according to Ontario’s duty counsel.<sup>118</sup> Some advocates argue that this problem can be partially solved by hearing matters by telephone.<sup>119</sup> However, many lawyers feel strongly that issues arising from the elimination of the human element of court cannot be resolved as easily.<sup>120</sup>

The Ontario Attorney General suggests that the pandemic forced the modernization of the province’s legal system by twenty-five years in twenty-five days; critics in academia do not echo this self-congratulatory tone.<sup>121</sup> Some suggest Ontario’s modernizations merely brought the legal system from the age of the fax machine to the age of the Internet and caution that “simply moving hearings online

---

<sup>117</sup> Katrina Enano, “Ontario Bar Association backs proposed guidelines for remote court hearings” (30 March 2022), online: *Law Times News* <lawtimesnews.com> [perma.cc/2YDU-9K83].

<sup>118</sup> Hasham, *supra* note 116; Butler, *supra* note 111; Pritchard, *supra* note 106.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> Chiodo, *supra* note 102.



is a missed opportunity to take a more sophisticated approach to the civil litigation process, and cure many of its ills along the way”.<sup>122</sup> Critics propose a more fulsome transformation and reimagination of the way justice is performed in Ontario beyond merely layering virtual courts on existing judicial procedure. Such an approach is often costly, inefficient, and complicated for individuals to access. This critique is explored in further detail later in this report.

### *Ontario Court of Appeal*

The Ontario Court of Appeal (ONCA) offers a flexible approach to the method of proceeding that assigns broad discretion with parties/counsel. The Court is hearing appeals and panel motions in-person, unless the Court, Ontario’s *Rules Civil Procedure* (i.e. rule 61) and/or the Court’s practice directives direct otherwise. The court also issues a Zoom link and password for every proceeding to allow parties to appear virtually without request.<sup>123</sup> Providing this agency to parties has allowed the Court to avoid delays caused by weather, COVID-19 infection/exposure, and/or any other challenge that impedes counsel’s ability to attend in-person. This approach also allows individuals to observe the court’s proceedings from anywhere in accordance with the open court principle (without requiring travel to the Court).<sup>124</sup>

---

<sup>122</sup> *Ibid.*

<sup>123</sup> Ontario Court of Appeal, “Consolidated Practice Direction Regarding Proceedings in the Court of Appeal During the COVID-19 Pandemic” (March 15, 2022) at paras. 70-77; Daniel Marentic, personal communication (verbal), May 2022.

<sup>124</sup> *Ibid.*

The Court holds motions heard by a single judge, status court, and purge court virtually by default. It also hears inmate appeals through a hybrid proceeding whereby participants appear in-person with the exception an in-custody inmate—who appears virtually.<sup>125</sup>

The Ontario *Criminal Appeal Rules* also allow for virtual proceedings. However, in the interim the Court's practice directive on virtual court, suspends the criminal and civil *Rules* regarding method of proceeding.<sup>126</sup> For criminal appeals, a party can request to appear virtually by filling a notice of motion, which may be opposed by another party through a notice of objection.<sup>127</sup> The court will determine the manner of hearing using the following criteria:

- a. Whether any of the parties are unrepresented, and, if so, whether they have had access to legal advice;
- b. The availability of videoconference or audioconference facilities to the court and to the parties;
- c. Whether a party or lawyer is unable to attend in person because of disability, illness or any other reason;
- d. The location and personal circumstances of the person who wishes to proceed by videoconference or audioconference;
- e. The balance of convenience between the party who wishes to proceed by videoconference or audioconference and any party or parties opposing;
- f. Whether viva voce evidence is anticipated; and
- g. Any other relevant matter.<sup>128</sup>

---

<sup>125</sup> *Ibid.*

<sup>126</sup> Ontario Court of Appeal, *supra* note 123 at 70.

<sup>127</sup> *Criminal Appeal Rules*, S.I./2021-169, s. 10(2)(3)(4).

<sup>128</sup> *Ibid* at s. 10(5)(6).

It is unclear whether virtual court will be employed long term at the ONCA.<sup>129</sup> In the interim, the ONCA's flexibility regarding virtual appearances and the broadcasting of almost every proceeding through Zoom allows for improved access to justice for parties and counsel, including SRLs. Court users can access proceedings by telephone or video through the Zoom link without additional procedural hurdles as is present in most jurisdictions.<sup>130</sup> This approach allows observers including the media, to access the court's proceedings more easily than before the pandemic without travelling to the court.<sup>131</sup> The ONCA is also advancing the implementation of policies and technologies to allow for the broadcasting of its proceedings to its website (similar to the Supreme Court of Canada) to enhance the application of the open-court principle.<sup>132</sup>

### 2.1.7 Manitoba

#### *Manitoba Court of Queen's Bench*

The Manitoba Court of Queen's Bench (MBQB) has resumed hearing most matters in-person and anticipates that a limited number of proceedings will proceed by video/audio conference as of September 2022. Beginning September 6, 2022, most matters will be heard in-person. These include Enforcement Dockets, Child Protection Dockets, Bankruptcy Dockets, and matters involving the provision of

---

<sup>129</sup> Marentic, *supra* note 123.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> *Ibid.*

viva voce evidence.<sup>133</sup> There will be a continued use of remote technology for chambers and in some jurisdictions outside Winnipeg. .<sup>134</sup> The following matters will continue to be held virtually (teleconference): Masters’ Civil and Family Uncontested List, Contested Motions, Uncontested Passing of Accounts or Hearings for Directions.

The court has also indicated its flexibility to allow for further use of virtual appearances “in appropriate circumstances, on request of the parties, and where resources allow”.<sup>135</sup> The MBQB has also released detailed information about virtual hearings, including videos with instructions for parties and counsel on using Microsoft Teams.<sup>136</sup>

As of September 2022, the Manitoba *Court of Queen’s Bench Rules* will provide the majority of guidance regarding virtual court.<sup>137</sup> These *Rules* allow parties to consent to or make a motion for an order to have a motion heard by telephone or video conference.<sup>138</sup> Furthermore, the *Rules* also allow for counsel and SRLs to attend a pretrial conference virtually and for virtual witness examination on the

---

<sup>133</sup> Manitoba Court of Queen’s Bench, “COVID-19 Update and New Practices for the Fall of 2022” (June 9, 2022).

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*

<sup>136</sup> “Virtual Hearings” (2022), online: *Court of Queen’s Bench of Manitoba* <[www.mantiobacourts.mb.ca/covid-19](http://www.mantiobacourts.mb.ca/covid-19)> [perma.cc/F8G1-E73E].

<sup>137</sup> Amy Jackson, personal communication (verbal), May 2022.

<sup>138</sup> Man. Reg. 553/88, s. 37.09(1).

consent of the parties.<sup>139</sup> However, neither the *Rules* nor practice directives offer criteria for determining the method of proceeding.

Many of the challenges associated with virtual courts, as raised by the Registrar of the MBQB, pertained to SRLs. These include a lack of access to technology and a difficulty in managing the decorum and etiquette of SRLs, which was not an issue with represented parties.<sup>140</sup> To accommodate the interests of SRLs and the efficient workings of the Court, proceedings involving SRLs have taken place in-person throughout the pandemic at the MBQB.<sup>141</sup>

### *Manitoba Court of Appeal*

The Manitoba Court of Appeal (MBCA) has resumed hearing in-person appeals and chambers motions. In June 2022, the Court fully reopened to the public and allows unlimited access without masking requirements.<sup>142</sup>

Although not in reaction to the pandemic, the MBCA amended the Manitoba *Court of Appeal Rules* during the pandemic to allow a judge or panel to issue a direction that the hearing of an appeal, motion, or application be conducted virtually in whole or in part in “exceptional circumstances”.<sup>143</sup> There is no definition of

---

<sup>139</sup> *Ibid* at 34.19, 50.03(1).

<sup>140</sup> Jackson, *supra* note 137

<sup>141</sup> *Ibid.*

<sup>142</sup> Manitoba Court of Appeal, “Resumption of In-person Appeal Hearings and Chambers Motions Starting Monday, March 14, 2022” (March 1, 2022); Manitoba Court of Queen’s Bench and Manitoba Court of Appeal, “Notice Re: Court Transition Plan Arising from Evolving Public Health Orders” (February 25, 2022).

<sup>143</sup> Man. Reg. 555/88 R, s. 37.2(1).

“exceptional circumstances” in the *Rules* nor do the *Rules* or practice directives offer any further criteria for granting a virtual proceeding/appearance. It is anticipated this *Rule* will survive the pandemic and support the facilitation of virtual proceedings moving forward.<sup>144</sup> The MBCA Registrar indicated the court has exercised flexibility in applying this *Rule*, particularly regarding out-of-province counsel who would have been subject to a 14-day isolation requirement upon entry into Manitoba throughout much of the pandemic.<sup>145</sup> It is anticipated the Court will exercise greater restraint in allowing a virtually hearing beyond the pandemic.<sup>146</sup>

Challenges with facilitating virtual proceedings at the MBCA have centred around SRLs and delays/extra work caused by technology (or a lack thereof).<sup>147</sup> For example, challenges arose for SRLs from rural Manitoba who had unstable, or no internet connections.<sup>148</sup> The Court offered SRLs the ability to connect using the Court’s video equipment in the Winnipeg courthouse, but this was not extended to other courthouses or government offices across the province.<sup>149</sup> Other issues included a lack of technological competence among senior members of the Bar, and a lack of technological infrastructure in prisons that, in some cases, necessitated the transportation of incarcerated individuals to Winnipeg to observe their appeal.<sup>150</sup>

---

<sup>144</sup> Doug McCoy, personal communication (verbal), May 2022.

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*

<sup>150</sup> *Ibid.*

Virtual courts also challenged the capacity of the Court’s registry in facilitating the proceedings and troubleshooting connectivity issues. The reviews from counsel appearing at the MBCA were mixed regarding virtual proceedings. Some participants enjoyed the time and cost savings associated with virtual appearances; others felt a loss of interaction with the judges, which challenged their ability focus and guide their advocacy.<sup>151</sup>

### 2.1.8 Saskatchewan

#### *Saskatchewan Court of Queen’s Bench*

At the Saskatchewan Court of Queen’s Bench (SKQB), all matters are currently being held in-person, except for chambers which is presumptively held by telephone.<sup>152</sup> To request a videoconference proceeding/appearance, the requesting party must submit the SKQB’s video conference request form at least ten business days in advance of their hearing. The majority of the SKQB’s child protection matters continue to be heard by telephone.<sup>153</sup>

Chambers matters can be held in-person if the presiding judge grants permission or directs a party to appear in-person.<sup>154</sup> A party wishing to appear in-

---

<sup>151</sup> *Ibid.*

<sup>152</sup> Court of Queen’s Bench for Saskatchewan, “Directive Update” (March 23, 2022); Jennifer Fabian, personal communication (verbal), May 2022.

<sup>153</sup> Fabian, *supra* note 152.

<sup>154</sup> Court of Queen’s Bench for Saskatchewan, “Directive Update” (September 15, 2021).

person or by videoconference for chambers must notify the local Registrar of their request to appear in-person at least two business days prior to the hearing date.<sup>155</sup>

The SKQB's practice directives continue to guide counsel and parties regarding the method of proceeding/appearance. The Saskatchewan *Court of Queen's Bench Rules* only dictate the possibility of virtual appearances for case management conferences, family law applications, pretrial meetings, witness testimony, and appearance day applications.<sup>156</sup> There is no indication the SKQB is planning to amend the *Rules* to allow for the broader use of virtual proceedings beyond the pandemic at the expiry of its virtual court related practice directives.<sup>157</sup>

Interestingly, the SKQB Registrar indicated the possibility of continuing virtual chambers applications and child protection hearings beyond the pandemic to save time and cost for clients and counsel and, in the case of child protection hearings, deescalate the tensions of the proceedings.<sup>158</sup>

The SKQB Registrar reported several challenges associated with virtual courts—primarily regarding decorum and access to justice impediments for SRLs. Many judges at the SKQB reported a decline in decorum, particularly with telephone appearances as the sanctity and gravitas of court was lost through teleconferences.<sup>159</sup>

---

<sup>155</sup> *Ibid*; Court of Queen's Bench for Saskatchewan, "Video Conference Request Form".

<sup>156</sup> *Saskatchewan Queen's Bench Rules*, r. 4-8, 4-21.8, 6-25(1) (civil), r. 15-120(b) (family).

<sup>157</sup> Fabian, *supra* note 152.

<sup>158</sup> *Ibid*.

<sup>159</sup> *Ibid*.



Moreover, SRLs, especially those with limited financial resources, experienced issues accessing their court proceedings due to internet and phone connectivity issues (lack of access to technology/reliable internet). Commentators in Saskatchewan stress the Court must exercise caution and not assume litigants have the capacity to make appearances virtually; the Court must continue to allow SRLs to attend their court proceeding in person.<sup>160</sup>

Despite the loss in decorum and a difficulty with interacting with the bench and other parties (harder to read the room, easy to interrupt others) in telephone proceedings, some members of the Saskatchewan Bar enjoyed the cost and time savings associated with virtual appearances, particularly for chambers appearances.<sup>161</sup>

A report from the University of Saskatchewan School of Law highlighted the challenges of virtual proceedings at the trial level in Saskatchewan, particularly for substantive matters.<sup>162</sup> The report revealed a common sentiment among participants (parties, counsel, judges) that remote chambers operate effectively and efficiently (generally) resulting in cost savings for clients including reduced travel time for rural parties/counsel. The same sentiment was not reported for trials; the high volume of

---

<sup>160</sup> Richardson et al, “Examining Virtual Facilitation of Legal Processes in Saskatchewan: An Exploratory Inquiry” (10 March 2022) at 33, online (pdf): *University of Saskatchewan School of Law – Dean’s Forum on Access to Justice and Dispute Resolution* <law.usask.ca/research> [perma.cc/VLB4-PJ6Y].

<sup>161</sup> *Ibid* at 19-20, 22; Fabian, *supra* note 152.

<sup>162</sup> *Ibid* at 20-21.

“moving pieces” (technical witness testimony, credibility assessments, multiple parties, etc.) inherent to trials increased the challenge of and likelihood of difficulties with virtual proceedings.<sup>163</sup>

Overall, lawyers communicated that the technical nature of the evidence and the importance of credibility in a participial matter along with the technological capacity of the parties should be considered when deciding on the method of proceeding/appearance.<sup>164</sup> Members of the Bar also preferred video over telephone appearances on their ability to advocate for their client, see whether their argument is “landing” with a judge, and for aiding a judge’s ability to evaluate the delivery and ask questions—the “personal impact” of human connection was missing through telephone proceedings.<sup>165</sup> Participants also experienced other challenges associated with virtual proceedings including:

- sound quality issues;
- difficulty cross examining witnesses;
- coordinating among parties when a high volume of documents are involved; disadvantaging ESL litigants, and
- weak internet connection interfering with spontaneous conversation.<sup>166</sup>

The challenges hindered the ability of the Court to resolve disputes effectively and efficiently.

---

<sup>163</sup> *Ibid* at 21.

<sup>164</sup> *Ibid* at 21-22

<sup>165</sup> *Ibid* at 23.

<sup>166</sup> *Ibid* at 21-23; Fabian, *supra* note 152.

### *Saskatchewan Court of Appeal*

The Saskatchewan Court of Appeal (SKCA) has resumed in-person hearings for all appeals and applications.<sup>167</sup> However, the SKCA continues to allow counsel and SRLs to appear virtually or in-person at their discretion.<sup>168</sup> The Court provides this choice for parties to improve access to justice and the open courts principle.<sup>169</sup> The SKCA practice directives continues to guide the procedures. The Saskatchewan *Court of Appeal Rules* only allow for virtual proceedings for chambers applications with the parties' consent or the Registrar's directions for both civil and criminal matters.<sup>170</sup> Despite the foregoing, the Court maintains the discretion to hear matters remotely (even if previously arranged to be in-person).<sup>171</sup> There are no criterion in the *Rules* or practice directives to guide the Court's exercise of this discretion as to the method of proceeding.

In contrast to the findings with regards to the SKQB, the University of Saskatchewan report on virtual courts found a positive reception to virtual court from lawyers who appeared remotely before the SKCA.<sup>172</sup> The report explained that this finding is consistent with the nature of appellate advocacy which lends itself more

---

<sup>167</sup> David Giles, "Saskatchewan's Court of Appeal to resume in-person hearings", *Global News* (23 February 2022), online: <globalnews.ca/news> [perma.cc/EAW7-DDGE].

<sup>168</sup> Court of Appeal for Saskatchewan, "Notice to the Profession, the Public, and the Media" (February 23, 2022).

<sup>169</sup> *Ibid.*

<sup>170</sup> *The Court of Appeal Act*, S.S. 2000, c. C-42.1, s. 22 at r. 48(9); *The Court of Appeal Criminal Appeal Rules (Saskatchewan)*, R.S., c. C-46, s. 33(3).

<sup>171</sup> Court of Appeal for Saskatchewan, *supra* note 168.

<sup>172</sup> Richardson et al, *supra* note 161 at 16.

to virtual participation than that of trial advocacy. Like other appellate courts, the SKCA focuses on oral submissions to the Court and rarely hears evidence from witnesses; as such there is very little weighing of evidence/making credibility assessments.<sup>173</sup> The report also found virtual proceedings enhanced the accessibility of and reduced costs associated with appearing before the SKCA as parties and their counsel no longer had to travel to the court in Regina.<sup>174</sup>

The reports findings were consistent between the SKQB and SKCA regarding the challenges faced by SRLs participating in virtual proceedings. The report found SRLs experienced greater difficulty understanding the appeal process and advocating for themselves in an online forum than in person.<sup>175</sup> Counsel complained about a lack of public transparency, difficulty communicating with clients on breaks, a lack of access to those without reliable internet connection, language barriers, and/or unfamiliar with computers.<sup>176</sup>

### 2.1.9 Alberta

#### *Court of Queen's Bench of Alberta*

Most matters before the Court of Queen's Bench of Alberta (ABQB) are being heard by default in-person.<sup>177</sup> However, several procedural matters continue to be

---

<sup>173</sup> *Ibid* at 16.

<sup>174</sup> *Ibid* at 17, 19.

<sup>175</sup> *Ibid* at 18.

<sup>176</sup> *Ibid* at 17-19.

<sup>177</sup> Court of Queen's Bench of Alberta and Court of Appeal of Alberta, "Notice to the Profession and Public – Update: Restricted Access to Courtrooms" (May 17, 2022).

heard virtually.<sup>178</sup> While most proceedings were held virtually during the pandemic, in-person hearings continued throughout the pandemic for jury selection and trials requiring credibility assessments.<sup>179</sup> The Court does not have the resources to accommodate hybrid proceedings at present.<sup>180</sup>

The ABQB is commencing a pilot project in Summer 2022 for default modes of hearings. The court has issued general principles which inform the process of hearing matters. These principles are in line with the court's current practice regarding the discrepancy in the method of proceeding between substantive and procedural matters.<sup>181</sup> Throughout the pilot project, the Court plans to engage internally and externally with the Bar, media, and pro bono organizations and make changes where necessary.<sup>182</sup> The ABQB's default modes of hearing are enumerated in appendix 2(N)(ii) and flow from the Court's general principles which include:

- a) The default mode for matters that are more adjudicative/substantive in nature is an in-person hearing;
- b) The default mode for matters that are more administrative/procedural in nature is a remote hearing; and
- c) The mode of hearing will be determined at the time a matter is scheduled for hearing and will be subject to the availability of Court resources on the scheduled hearing date.<sup>183</sup>

---

<sup>178</sup> *Ibid.*

<sup>179</sup> "Frequently Asked Questions" (2022), online: *Court of Queen's Bench of Alberta* <[albertacourts.ca/qb](http://albertacourts.ca/qb)> [perma.cc/6ZT6-Q7UL].

<sup>180</sup> Court of Queen's Bench of Alberta, "Mode of Hearing Guidelines" (June 29, 2020).

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

<sup>183</sup> *Ibid.*

Criteria for changing the default method of hearing are also included in the Court's general principles regarding method of procedure. These include:

- inability of a participant to attend in person due to health issues or other personal circumstances;
- distance to the location of the hearing which makes in-person attendance impractical;
- a change in the nature of the proceeding such as to necessitate a departure from the scheduled mode of hearing;
- a change in representation of a party from self-represented to represented, or vice versa; and
- such other reason as approved by the Court.<sup>184</sup>

In absence of the ABQB's practice directives regarding virtual court, Schedule A of the *Alberta Rules of Court* allows for virtual appearances when arrangements are made with the appropriate Judicial Centre.<sup>185</sup> Similarly, the *Rules* allow the court to consider an application, action, or summary trial virtually: by consent, on application, on the Court's own motion, or by Court Order.<sup>186</sup> With the exception of summary motions, these same provisions are applicable to the ABQB *Criminal Procedure Rules* with such modifications as circumstances require.<sup>187</sup> Despite allowing for virtual proceedings, no criteria exists under the province's criminal nor civil *Rules* or practice directives to guide judges in exercising their discretion to order a virtual proceeding.

---

<sup>184</sup> *Ibid.*

<sup>185</sup> Alta. Reg. 124/2010, Schedule A.

<sup>186</sup> *Ibid* at 6.9(1)(b), 6.10, 7.8(1), 8.18, Schedule A (civil).

<sup>187</sup> *Ibid* at 4.2 (criminal).

I was unable to speak with a representative of the ABQB to garner information regarding the challenges associated with virtual proceedings at the ABQB.

### *Court of Appeal of Alberta*

The Court of Appeal of Alberta (ABCA) is hearing all appeal hearings and applications before a three-judge panel in-person. Appeal conferences, judicial dispute resolution matters, and single judge matters are held virtually.<sup>188</sup> The Court does not hear matters through a hybrid format as it lacks this capacity at present.<sup>189</sup>

In absence of the Court's COVID-19 related practice directives, ABCA *Civil Appeal Rules* (Part 14 of the *Alberta Rules of Court*) provide for virtual proceedings for matters before a single judge or panels. These *Rules* allow for this by way of consent, on application, on the Court's own motion, or by Court Order.<sup>190</sup> Equivalent provisions do not exist under the ABCA's *Criminal Appeal Rules* (Part 16 of the *Alberta Rules of Court*).<sup>191</sup> Furthermore, no criteria exist under the ABCA Civil or Criminal *Rules* or practice directives to guide judges in exercising their discretion to order a virtual proceeding.

The ABCA has not made a final decision regarding the use of virtual proceedings in the long term.<sup>192</sup> In the Spring of 2022 the Court conducted a survey

---

<sup>188</sup> Court of Appeal of Alberta, *supra* note 177, Court of Appeal of Alberta, "Notice to the Profession and Public COVID-19 – Update on Court Operations" (April 20, 2022).

<sup>189</sup> Ileen Moore, personal communication (written), June 2022.

<sup>190</sup> *Supra* note 185 at 6.10 (ABQB), 14.73 (ABCA).

<sup>191</sup> *Ibid.*

<sup>192</sup> Moore, *supra* note 185.

of the Alberta Bar seeking feedback on the types of matters best suited for in-person, virtual, and hybrid methods of hearing. In June 2022, the Court was reviewing this feedback.<sup>193</sup>

As experienced in other appellate jurisdictions, virtual proceedings presented several challenges and opportunities for the Court and its users. Most of the challenges experienced by the ABCA regarding virtual courts involved technology equipment and connection issues.<sup>194</sup> These issues became less frequent as more guidelines were developed, with an increase in pre-hearing communication between the Court and the parties and training sessions issued/offered by the Court for participants.<sup>195</sup> The Court also provided a computer station in a courtroom for participants without access to technology/reliable internet connection.<sup>196</sup> However, the Court reported a reduced ability to deliberate between parties and judges, less ease of communication between counsel and clients, perceptions of reduced engagement in court proceedings, and a reduction of court decorum as a result of virtual proceedings.<sup>197</sup> Nevertheless, the ABCA noted that virtual courts allowed greater access to justice for participants due to the elimination of travel time and costs for court appearance.<sup>198</sup>

---

<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*

<sup>198</sup> *Ibid.*



### 2.1.10 British Columbia

#### *Supreme Court of British Columbia*

By default, the Supreme Court of British Columbia (BCSC) is hearing most civil, family, and criminal matters in-person—particularly those of a substantive nature. This includes trials, judicial case conferences, long chambers applications, settlement conferences, judgements, sentencing hearings, jury selections, extradition hearings, summary conviction appeals, and judgements.<sup>199</sup> However, some matters—namely those of a procedural nature—continue to be held virtually or by a hybrid format by default. This includes regular chambers, trial management conference, bail hearings, and regular fix date applications (see Appendix 1 for a detailed list).<sup>200</sup> Parties can submit an application to change the manner of attendance in civil, family, and criminal matters by filing the appropriate form with the Court.<sup>201</sup> This operation is in contrast to pre-pandemic practices where all civil and family chambers and trial management conferences were held in-person along with in-person appearance by counsel in nearly all criminal matters.<sup>202</sup>

---

<sup>199</sup> Supreme Court of British Columbia, “Notice to the Profession, the Public, and the Media Regarding Civil and Family Proceedings: COVID-19: Manner of Attendance for Civil and Family Proceedings” (March 31, 2022); Supreme Court of British Columbia, “Notice to the Profession, the Public, and the Media Regarding Criminal Proceedings: COVID-19: Manner of Attendance for Criminal Proceedings” (March 31, 2022).

<sup>200</sup> *Ibid.*

<sup>201</sup> Supreme Court of British Columbia, “Practice Direction: Applications made by Requisition (Form 17)” (December 15, 2022); Supreme Court of British Columbia, “Practice Direction: Applications made by Requisition (Form F17)” (March 31, 2022); “application to Change the Method of Attendance at Specified Criminal Proceedings” (2022), online: *Supreme Court of British Columbia* <[www.bccourts.ca](http://www.bccourts.ca)> [perma.cc/FGA7-EY2E].

<sup>202</sup> Bruce Cohen, personal communication (written), May 2022.

The Court's practice directives temporarily dispense with the application of some British Columbia *Supreme Court Civil Rules* and *Supreme Court Family Rules* to facilitate virtual proceedings, pursuant to the *COVID Related Measures Act*.<sup>203</sup> In absence of the directives, the *Rules* allow for virtual hearings for urgent cases or where the Court considers it appropriate,<sup>204</sup> and for applications on application of a party or on the court's own initiative.<sup>205</sup>

The Court has not established a strict list of criteria to consider when assessing whether a matter is suitable for a virtual hearing.<sup>206</sup> However, there are factors that individual judges may consider when determining whether a virtual hearing is appropriate, including:

- length and/or complexity of the matter,
- whether there are witness credibility issues or the need for interpretation;
- familiarity and comfort for participants with virtual hearings and electronic technology;
- whether parties are represented by counsel; and
- whether travel for the parties or the presider would be unreasonable in the circumstances.<sup>207</sup>

Moving forward, virtual appearance platforms “have a place in the Court's toolbox”.<sup>208</sup> This includes for most chambers matters (less than two hours) and for some parts of, mainly civil, trials including for expert witnesses (or where witness

---

<sup>203</sup> *Ibid*; *COVID-19 Related Measures Act*, S.B.C. 2022, c. 8, schedule 2, item 11.

<sup>204</sup> B.C. Reg. 168/2009, s. 25-5(3).

<sup>205</sup> *Ibid* at s. 25-5(4).

<sup>206</sup> Cohen, *supra* note 202.

<sup>207</sup> *Ibid*.

<sup>208</sup> *Ibid*.

credibility is not at issue), closing argument, and some criminal *voir dire*s.<sup>209</sup> The BCSC acknowledges that virtual hearings are made more difficult when inexperienced counsel or self-represented litigants are involved. Generally, complex, or high-conflict matters are not well-suited for virtual hearings because it can be more difficult for the judge to exercise control and prevent parties from interrupting each other or the judge.<sup>210</sup>

The BCSC encountered several issues with virtual appearances/proceedings, common to other jurisdictions. Namely, this included reduced formality of court processes, impediments to engaging with participants, increased fatigue of participants from increased screentime, reduced ability to read body language, detracting from the impact/gravitas of submissions/proceedings, and lack of stable internet connection or suitable equipment (microphone, headphones, computer, etc.).<sup>211</sup> To address such issues, the BC CBA has provided support and encouragement for its members to become more proficient with prevailing technology—much to the satisfaction of the BCSC.<sup>212</sup>

From the Court’s perspective, accessibility, convenience, and efficiency are some of the main benefits of using virtual hearings for chambers. The BCSC uses an assize system (periodic judicial proceeding—meaning hearings/trials are

---

<sup>209</sup> *Ibid.*

<sup>210</sup> *Ibid.*

<sup>211</sup> *Ibid.*

<sup>212</sup> *Ibid.*

scheduled to be heard during a 1 or 2 week sitting of the Court) throughout most of the province. Virtual hearings are one way to reduce travel and environmental impact.<sup>213</sup> Virtual hearings allow the Court to conduct proceedings in remote locations of the province where there is no resident judge—without having to fly in judges when there are very short hearing lists.<sup>214</sup> Virtual proceedings have also meant BCSC scheduling staff may reassign matters on relatively short notice when necessary to judges not in the same courthouse as the parties, thereby avoiding adjournments.<sup>215</sup> Additionally, virtual hearings relieve judges, counsel, and parties of the need to travel to a courthouse during inclement weather or when there are natural disasters or other intervening events, such as the BC wildfires and floods of 2021.<sup>216</sup>

Considering the easing of pandemic restrictions and the Court's experiences with virtual proceedings, the BCSC is having ongoing discussions with the Court Services Branch and the Ministry of Attorney General as to what policy or *Rule* changes and operational adjustments might be necessary or advisable to continue to make use of virtual hearings and conferences post-pandemic in certain circumstances.<sup>217</sup>

---

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*

<sup>215</sup> *Ibid.*

<sup>216</sup> *Ibid.*

<sup>217</sup> *Ibid.*

### *British Columbia Civil Resolution Tribunal*

British Columbia's Civil Resolution Tribunal (CRT) provides a unique example of an innovative method to increase access to justice through an entirely virtual process. The Tribunal is an independent administrative agency and Canada's first online tribunal—and the first in the world to be integrated into a justice system.<sup>218</sup> The CRT is the mandatory forum for small claims under \$5,000 and all strata property claims.<sup>219</sup> The tribunal also began hearing some motor vehicle accident and injury claims up to \$50,000 in 2019.<sup>220</sup> The CRT's decisions are subject to judicial review by the BCSC.

The CRT aims to provide “accessible, speedy, economical, informal, and flexible” dispute resolutions through a participatory and collaborative approach.<sup>221</sup> The tribunal processes over 40,000 claims per year through its four stages:

1. **Solution Explorer:** a free online tool which uses ‘guided pathways’ to help a person navigate options to resolve their dispute.
2. **CRT Intake and Negotiation:** The initiating party enters the details of the claim. Notice is served on the other side and parties can negotiate directly.
3. **Facilitation:** An expert facilitator helps parties reach a consensual agreement using mediation, conciliation, or early neutral evaluation. If an agreement is reached, this can be turned into a binding order. If the parties cannot resolve the dispute, the facilitator helps parties prepare for adjudication.
4. **Adjudication:** A tribunal member considers the parties' evidence and arguments (usually in written form) and then issues a binding determination.

---

<sup>218</sup> Peter Cashman & Eliza Ginnivan, “Digital Justice: Online Resolution of Minor Disputes and the Use of Digital Technology in Complex Litigation and Class Actions” (2019) 19 Macquaire L.J. 39 at 43-44.

<sup>219</sup> *Ibid.*

<sup>220</sup> *Ibid.*

<sup>221</sup> “2020/2021 Annual Report” (2021) at 1-2. Online (pdf): *Civil Resolution Tribunal* <[civilresolutionbc.ca](http://civilresolutionbc.ca)> [perma.cc/5VFJ-VJDB].

Hearings usually occur ‘on the papers’, but telephone or video conferencing hearings can be held if credibility or complex issues arise.<sup>222</sup>

The CRT’s data, which is shared publicly in its Annual Report depicts how the process provides access to dispute resolution for thousands of British Columbians each year through an accessible virtual format while receiving overwhelming positive feedback from its users. A significant portion (42 per cent) of the CRT’s claims settle at the negotiation stage.<sup>223</sup> Moreover, the CRT enjoys high levels of satisfaction among participants with over 80 per cent of surveyed users reporting they would recommend the CRT to others, felt the CRT process was fair and easy to use and understand, and felt their matter was handled in a timely fashion.<sup>224</sup> While not a replacement for court processes for criminal and higher-value civil matters, the CRT demonstrates the possibilities of virtual court to enhance access to justice by allowing parties to resolve their disputes in a timely and cost efficient manner—without ever having to enter a courthouse.

### *Court of Appeal for British Columbia*

The Court of Appeal for British Columbia is hearing all appeals and chambers matters in-person, unless the parties request or elect to a remote appearance or proceeding.<sup>225</sup> Parties can apply to appear by videoconference (not telephone) for an

---

<sup>222</sup> *Ibid* at 12.

<sup>223</sup> *Ibid* at 31.

<sup>224</sup> *Ibid* at 32.

<sup>225</sup> Court of Appeal for British Columbia, “Notice Regarding Modified Court of Appeal Procedures and Access to Court Proceedings during the COVID-19 Pandemic” (April 11, 2022).

appeal hearing by filing a “Request to Appear Remotely” form with the Court ten business days before their appeal hearing. Parties can elect to appear virtually for a chambers application by filing the same form two business days before their scheduled hearing.<sup>226</sup> If said form is not submitted, the court assumes the party wishes to appear in person.<sup>227</sup>

When requesting to appear remotely for a chambers application, parties do not require permission of the court if the form is filed on time, unless otherwise ordered—meaning parties do not have to attest to the reason for seeking permission to appear remotely, as is required for appeal hearings.<sup>228</sup> However, when seeking the Court’s permission to appear by videoconference for appeal hearings, parties must address one or more of the following criteria:

- travel cost and convenience to the party;
- the nature of the interests involved and the impact on the community where the appeal originates;
- any sealing orders or publication bans, safety issues, or public health orders in place;
- the circumstances of any litigant or lawyer, or
- any other relevant factor.<sup>229</sup>

The BCCA’s Registrar indicated the utilization of virtual proceedings/appearances is much more frequent for chambers applications than

---

<sup>226</sup> *Ibid*; Court of Appeal for British Columbia, “Request to Appear Remotely” (March 16, 2022).

<sup>227</sup> *Ibid*.

<sup>228</sup> *Ibid*.

<sup>229</sup> *Ibid*.

appeals.<sup>230</sup> The explanation for this is twofold. First, as noted, for chambers applications, parties can simply elect to appear virtually and can do so on much shorter notice. Second, chambers applications are better suited to virtual appearances than appeal hearings.<sup>231</sup> The Registrar alluded to this in stating it's often "obvious" which proceedings are more appropriate for a virtual appearances—namely procedural rather than substantive matters.<sup>232</sup> The Registrar elaborated that while it makes sense for counsel to travel to one of the BCCA courthouses for an appeal hearing of a murder conviction, the same is not true for an application for extension of time, particularly when air travel and overnight accommodation are required for counsel/parties.<sup>233</sup>

Like other jurisdictions, the BCCA has been relying on notices regarding its proceedings during the pandemic; however according to the Court's Registrar, the BCCA is working to modernize the British Columbia *Court of Appeal Rules* regarding virtual appearances throughout Summer 2022.<sup>234</sup> At present, these *Rules* allow a judge or the Registrar to hear an application or conduct a prehearing conference (or Registrar's hearing) by video conference, the BCCA's directives presently fill in the gaps – namely regarding appeal hearings.<sup>235</sup> According to the

---

<sup>230</sup> Tim Outerbridge, personal communication (verbal), May 2022.

<sup>231</sup> *Ibid.*

<sup>232</sup> *Ibid.*

<sup>233</sup> *Ibid.*

<sup>234</sup> *Ibid.*

<sup>235</sup> B.C. Reg. 297/2001, ss. 44(1)–44(2); British Columbia Court of Appeal, *supra* note 225.



Registrar, the Court is seeking to add provisions that resemble the Court's operations regarding virtual proceedings as described above (status quo as of Spring/Summer 2022) to allow the Court more liberty regarding virtual proceedings.<sup>236</sup>

Beyond technological glitches, the BCCA (generally) did not experience many challenges with regards to virtual proceedings and reported a high level of satisfaction from the province's Bar with the use of virtual proceedings.<sup>237</sup> The Court's Registrar indicated participants in the proceedings were able to attend with few breaches regarding reproduction or broadcasting of proceedings.<sup>238</sup> The Court found from its surveys of the Bar a general level of high satisfaction with its response to the pandemic including virtual appeals.<sup>239</sup> This is due to benefits including cost savings and convenience to parties and counsel, the ease of disseminating proceedings through virtual means (observers were not required to travel to court), and eliminating delays when parties were unwell.<sup>240</sup>

#### 2.1.11 Nunavut

##### *The Nunavut Court of Justice*

The Nunavut Court of Justice (NTCJ) has reverted to its pre-pandemic operations which traditionally relies on telephone appearances.<sup>241</sup> Given Nunavut's

---

<sup>236</sup> Outerbridge, *supra* note 230.

<sup>237</sup> *Ibid.*

<sup>238</sup> *Ibid.*

<sup>239</sup> "2021 Annual Report" (2021) at 34, online (pdf): *Court of Appeal for British Columbia* <bccourts.ca/Court\_of\_Appeal> [perma.cc/SK59-HUDH].

<sup>240</sup> *Ibid.*; Outerbridge, *supra* note 230.

<sup>241</sup> Mike Mossey, personal communication (verbal), May 2022.

twenty-five communities are only accessible by air, “the costs associated with travel and weather delays can severely impact the lawyer’s ability to provide cost effective service to clients”.<sup>242</sup> As such, virtual proceedings are a staple of the NTCJ in reducing costs for parties and ensuring access to justice.<sup>243</sup>

The NTCJ is generally accommodating toward a participant’s request to appear virtually as part of “the reality” of dispensing justice in a territory with barriers to access to justice imposed by travel cost and time.<sup>244</sup> To appear by telephone, counsel/witnesses must file a form electronically with the Clerk of the Court three “clear business days” before the scheduled hearing date for civil and criminal chambers.<sup>245</sup> This does not include special chambers or criminal chambers involving *viva voce* evidence where leave from the court is required.<sup>246</sup> Moreover, all or part of case management conferences may also be held virtually pursuant to the territory’s *Civil Rules* (note: the NTCJ uses the *Consolidation of Rules of the Supreme Court of the Northwest Territories*).<sup>247</sup>

### *Nunavut Court of Appeal*

---

<sup>242</sup> Nunavut Court of Justice, “Practice Directive #4: Attendances by Telephone in Criminal and Civil Matters” (July 13, 2012).

<sup>243</sup> *Ibid.*

<sup>244</sup> *Ibid.*

<sup>245</sup> Nunavut Court of Justice, “Form 4A: Civil: Notice of Appearance by Telephone”, “Form 4B: Criminal: Notice of Appearance by Telephone”, and “Form 4D: Criminal: Notice of Witness Appearance by Telephone”; *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg. 010-96, s. 389(1). (Note: NUCJ has adopted the NWTSC’s Rules of Court)

<sup>246</sup> Nunavut Court of Justice, *supra* note 246.

<sup>247</sup> *Rules of the Supreme Court of the Northwest Territories*, *supra* note 245 at s. 289.

The Nunavut Court of Appeal (NUCA) follows the direction and policy of the ABCA including for the method of appearance/proceeding. As indicated above, the ABCA directs that all hearings and applications before three-judge panels will be conducted in-person while single judge matters, appeal conferences, and judicial dispute resolution matters will continue to be held virtually until further notice.<sup>248</sup> Virtual methods of proceeding for these matters is permitted under the Nunavut *Rules of the Court of Appeal Respecting Civil Appeals*, which permit a single appeal judge or panel to hear any appeal or application by electronic means, but do not stipulate the criteria for exercising this authority.<sup>249</sup>

#### 2.1.12 Northwest Territories

##### *Supreme Court of the Northwest Territories*

According to the most recent Northwest Territories Courts Practice Directive, the Supreme Court of the Northwest Territories (NWTSC) resumed all normal operations—including a return to default in-person proceedings.<sup>250</sup> This includes judicial mediation and regular family and civil chambers.<sup>251</sup> However, the NWTSC continues to hold Pre-Trial Conferences by teleconference unless counsel request that it take place in-person, or the conference involves a self-represented accused.<sup>252</sup>

---

<sup>248</sup> Court of Appeal of Alberta, *supra* note 188.

<sup>249</sup> *Rules of the Nunavut Court of Appeal Respecting Civil Appeals*, Nu. Reg. 2000, s. 59.

<sup>250</sup> Northwest Territories Courts, “Practice Directive: COVID-19” (May 24, 2022).

<sup>251</sup> *Ibid.*

<sup>252</sup> *Ibid.*

While it is possible for parties/counsel to request a virtual appearance, it is not frequently requested at the NWSC.<sup>253</sup> Applications for a virtual appearance can be made in-writing “well in advance of the appearance” and must enclose an explanation for the request. An application may also be made by telephone or video conference to a judge in chambers for a criminal or civil matter by consent or with leave of a judge.<sup>254</sup> In civil matters a written request must be made three days in advance of the scheduled hearing date and with notice to all the parties if consent is not found.<sup>255</sup> The judge hearing the application may reject a virtual appearance where they consider the personal attendance of counsel is desirable.<sup>256</sup> The *Rules of the Supreme Court of the Northwest Territories* and practice directives do not provide any further criteria for judges when determining whether to grant leave for a virtual appearance.

The NWTSC will continue to rely on telephone appearances in a similar manner as it did before the pandemic. In speaking with the Courts Administrator for the Northwest Territories Courts, virtual proceedings ran smoothly during the pandemic with participants located in Yellowknife and from “the South” [of Canada].<sup>257</sup> However, a lack of internet connectivity in smaller, remote communities

---

<sup>253</sup> Denise Bertolini, personal communication (verbal), June 2022.

<sup>254</sup> *Rules of the Supreme Court of the Northwest Territories*, *supra* note 245 at s. 389(1); *Criminal Procedure Rules of the Supreme Court of Northwest Territories*, SI98-78 at s. 24(1).

<sup>255</sup> *Rules of the Supreme Court of the Northwest Territories*, *supra* note 245 at 389(3)

<sup>256</sup> *Ibid* at s. 389(2); *Criminal Procedure Rules of the Supreme Court of Northwest Territories*, *supra* note 254 at s. 24(2).

<sup>257</sup> Denise Bertolini, *supra* note 253.

in the territories frustrated the possibility of video proceedings—forcing the use of telephone participation for parties connecting from remote regions.<sup>258</sup> This continues to be a reality as NWSC judges travels only for trials and not chambers hearings.<sup>259</sup>

### *Court of Appeal of the Northwest Territories*

The Court of Appeal of the Northwest Territories (NWTCA) follows the direction and policy of the ABCA including for the method of appearance/proceeding. As indicated above, the ABCA directs that all hearings and applications before three-judge panels will be conducted in-person while single judge matters, appeal conferences, and judicial dispute resolution matters will continue to be held virtually until further notice.<sup>260</sup> Virtual methods of proceeding for these matters is permitted under the Northwest Territories *Rules of the Court of Appeal Respecting Civil Appeals* allow a single appeal judge or panel to hear any appeal or application by electronic means.<sup>261</sup> Most counsel and parties appearing before the NWTCA reside in Yellowknife allowing for the majority of the Court's hearings to be held in-person moving forward.<sup>262</sup> Prior to the pandemic it was custom for accused persons (who are not representing themselves) to appear virtually, which continues.<sup>263</sup> Only one NWTCA hearing during the pandemic was held virtually.

---

<sup>258</sup> *Ibid.*

<sup>259</sup> *Ibid.*

<sup>260</sup> *Ibid.*, Court of Appeal of Alberta, *supra* note 188.

<sup>261</sup> N.W.T. Reg. 091-2018, s. 59(g).

<sup>262</sup> Denise Bertolini, *supra* note 253.

<sup>263</sup> *Ibid.*

The hearing encountered several issues with interpretation but do not stipulate the criteria for exercising this power of the bench.<sup>264</sup>

### 2.1.13 Yukon

#### *Supreme Court of Yukon*

The Supreme Court of Yukon (YKSC) resumed all in-person hearings beginning March 2022 with some procedural matters being held by telephone.<sup>265</sup> This includes all applications, trials, family law case conferences, chambers appearances, and judicial settlement conferences.<sup>266</sup>

In absence of the court's COVID-19 practice directive regarding virtual courts, the Court can on its own initiative or by application of a party allow appearances by video or telephone if "circumstances require". Notice must be provided in advance to the court technologist.<sup>267</sup> In addition, case management conferences and pre-trial conferences are continuing to be held by telephone. In exceptional circumstances on the approval of the presiding judge these may be held in-person or by video; witnesses are permitted to testify and be cross-examined by videoconference under the Yukon *Rules of Court*.<sup>268</sup> Neither the Court's directives

---

<sup>264</sup> *Ibid.*

<sup>265</sup> Supreme Court of Yukon, "Notice to the Profession and Public: COVID-19" (February 28, 2022).

<sup>266</sup> *Ibid.*

<sup>267</sup> *Ibid*; *Supreme Court of Yukon, Rules of Court*, Y.O.I.C. 2008, s. 37(4), 62(4).

<sup>268</sup> *Ibid* at 37(4), 42(1).

nor Yukon's *Rules of Court* stipulate criteria for judges in granting a virtual proceeding/appearance.

Due to low COVID-19 infection rates in the territory throughout much of the pandemic, the YKSC only briefly leveraged virtual proceedings.<sup>269</sup> As such, the Court continued to utilize its criminal court circuits in rural communities over virtual appearances whenever possible throughout the pandemic.<sup>270</sup> Given this, it is not anticipated that the YKSC will rely on virtual proceedings in any meaningful way in the long-term.

### *Yukon Court of Appeal*

The Yukon Court of Appeal (YKCA) follows the directions of the Chief Justice of British Columbia regarding its method of hearing.<sup>271</sup> As of April 2022 appeal hearings and chambers proceedings (including hearings before the Registrar) are heard in-person unless the parties request or elect to appear virtually.<sup>272</sup> In absence of the Court's COVID-19 practice directives regarding virtual court, virtual hearings are permitted for applications, pre-hearing conferences, and Registrar's hearings under the *Yukon Court of Appeal Rules, 2005*.<sup>273</sup> The process for requesting

---

<sup>269</sup> Lisa Robinson, personal communication (verbal), May 2022.

<sup>270</sup> *Ibid.*

<sup>271</sup> Panels at the YKCA include two BCCA judges and one from the territories, sittings only take place for two weeks per year in Whitehorse with the possibility to hear appeals in Vancouver if the time frames do not suit parties' needs.

<sup>272</sup> Court of Appeal for British Columbia, *supra* note 225.

<sup>273</sup> *Supra* note 235 at s. 44.

or electing to appear remotely as well as the criteria used by the court in determining whether to grant permission for a virtual appearance/proceeding is described above in the subsection for the BCCA.<sup>274</sup>

As most hearings take place in-person it is not anticipated the YKCA will utilize remote proceedings/appearances to a significant degree in the long-term.<sup>275</sup> However, there may be circumstances where counsel is in a different jurisdiction and will want to appear virtually to cut costs for a client.<sup>276</sup>

#### 2.1.14 Federal Court

The Federal Court is distinguishing the default method of proceeding for hearings on the merits by their scheduled length, while all motions are presumptively heard by videoconference.<sup>277</sup> Beginning in September 2022, by default the Court will hear matters on their merits scheduled for three hours and longer in-person.<sup>278</sup> For matters on their merits scheduled for less than three hours the Court will solicit the preferences of the parties (preferably via a joint position submitted following consultation).<sup>279</sup> Regardless of the length of the proceeding, parties can request a virtual proceeding/appearance at a pre-trial conference, in the Requisition for hearing, in the Applicant's Record or Respondent's Memorandum of Argument

---

<sup>274</sup> *Supra* note 272.

<sup>275</sup> Lisa Robinson, *supra* note 269.

<sup>276</sup> *Ibid.*

<sup>277</sup> Canada, Federal Court, "Update #8 and Consolidated COVID-19 Practice Direction" (June 24, 2022).

<sup>278</sup> *Ibid.*

<sup>279</sup> *Ibid.*



depending on the type of proceeding (see Appendix 2(T)). Once a hearing is scheduled a party seeking to amend the mode of hearing can request such a change in a letter to the Court by addressing to the following criteria:

- the position of the parties
- all facts relevant to the request; and
- the party’s submissions relevant to the request.<sup>280</sup>

The Court does not stipulate any criterion for granting or denying such a request in the *Federal Courts Rules* nor in the Court’s practice directive(s). In absence of the court’s practice directives, the *Federal Court Rules* allow the Court to provide directions to facilitate the conduct of a virtual hearing (in whole or in part).<sup>281</sup>

The Court’s most recent practice directives reflect feedback from its consultation with members of the Bar, Department of Justice, and judiciary regarding virtual proceedings—namely—for the *option* of virtual proceedings/appearances to continue at the Federal Court beyond the pandemic. Feedback indicates a desire for parties to continue to proceed with an *option* for hearings/appearances and that demand from parties will be sustained for virtual court beyond the pandemic.<sup>282</sup> Participants also indicated a desire to continue hybrid proceedings with the consent of parties for hearings over three hours, as this supports

---

<sup>280</sup> *Ibid.*

<sup>281</sup> S.O.R./98-106, s. 32-33

<sup>282</sup> “Bench and Bar Liaison Committee Meeting: Meeting of the Federal Court with CBA”, Meeting Minutes, (7 May 2021).

the preferences/needs of each counsel and parties.<sup>283</sup> The Court recognizes the that realizing of such cost savings becomes more difficult for virtual hearings on their merits than for procedural matters (i.e. challenges with cross-examination of witnesses and SRLs who experience technological challenges with proceeding virtually).<sup>284</sup> Within such consultation sessions, the Court recognized its role in addressing potential disputes between parties regarding the method of hearing.<sup>285</sup>

#### 2.1.15 Federal Court of Appeal

The Federal Court of Appeal (FCA) is conducting most hearings in-person. While the possibility of fully virtual and hybrid proceedings remains, the FCA is moving toward facilitating all appeal hearings and applications in-person.<sup>286</sup> Neither the *Federal Court Rules* nor the Court's practice directives provide criteria to guide judges' determination of the method of appearance/proceeding. The Court determines the method of appearance on a case-by-case basis and has permitted a virtual participation where a party is recovering from/exposed to COVID-19 or where the parties are in different geographic locations.<sup>287</sup> Once the method of hearing has been decided by the Court, the Judicial Administrator provides advance

---

<sup>283</sup> *Ibid.*

<sup>284</sup> "Bench and Bar Liaison Committee Meeting: Meeting of the Federal Court with CBA", Meeting Minutes, (3 December 2021); Catherine Lawrence, "DOJ's Response to Federal Court's Request for Feedback on Virtual Hearings" E-mail, (25 April 2022).

<sup>285</sup> Bench and Bar Liaison Committee, *supra* note 283.

<sup>286</sup> Federal Court of Appeal (Canada) Court Registry, personal communication (verbal), May 2022.

<sup>287</sup> *Ibid.*

notice of the proposed sittings of the FCA and the method of hearing.<sup>288</sup> In absence of its practice directives and in accordance with section 32 and 33 of the *Federal Court Rules*, the Court may provide directions to facilitate the conduct of a virtual hearing (in whole or in part).<sup>289</sup>

The FCA has experienced several challenges regarding virtual courts. As in other courts, technological challenges created more work for the Registrar and further impediments for SRLs (e.g. lack reliable technology).<sup>290</sup> Virtual proceedings also led to “more hectic”, less organized hearings. This, combined with internet connectivity issues of participants caused the delay of several hearings at the FCA.<sup>291</sup>

#### 2.1.16 Tax Court of Canada

The Tax Court of Canada (TCC) continues to hear matters by way of videoconference and teleconference (hybrid or fully virtual) in major cities (e.g. Toronto, Ottawa, Vancouver), but hears matters in-person in smaller centres (e.g. Halifax, St. John’s).<sup>292</sup> This discrepancy is based on whether the location is equipped with video/teleconference technology.<sup>293</sup> Given the TCC is an itinerant court, the Court has held many proceedings in a hybrid manner where parties and/or the

---

<sup>288</sup> Danielle Lanteigne, “Proposed Sittings, Spring 2022” (Spring 2022), online: *Federal Court of Appeal* <[fca.caf.gc.ca](http://fca.caf.gc.ca)> [perma.cc/EDU6-S9CR].

<sup>289</sup> Federal Court Rules, *supra* note 281.

<sup>290</sup> Federal Court of Appeal, Court Registry, *supra* note 286.

<sup>291</sup> *Ibid.*

<sup>292</sup> Natalie Lagrois, personal communication (verbal), May 2022.

<sup>293</sup> *Ibid.*

presiding judge are connecting virtually from their offices, homes, and/or different courthouses in the same building or in different cities.<sup>294</sup>

The TCC has not issued any formal policies regarding virtual proceedings. The Court's *General Procedure Rules* allow it to direct that any step of the proceeding to be conducted virtually or in a hybrid manner.<sup>295</sup> No such rules exist for the Court's informal procedure matters.<sup>296</sup> As described by the Court's Hearings Coordinator, the principles guiding the process for determining the method of appearance at the TCC include:

- parties can consent to requesting a fully in-person proceeding in writing;
- the presiding judge retains the discretion as to the method of the proceeding; and
- parties always have the option to be present in the TCC courthouse where their matter is scheduled.<sup>297</sup>

Once the judge has decided the method of proceeding, a letter is issued to the parties with the technical guidelines for virtual appearances (if required).<sup>298</sup>

The TCC has experienced some issues regarding virtual proceedings. These include technological mishaps, distraction of parties by children/pets, inability of older parties with OAS/CPP disputes to travel to court and/or use technology.<sup>299</sup> Despite said hinderances, the TCC is likely to continue hearing some matters

---

<sup>294</sup> *Ibid.*

<sup>295</sup> S.O.R./90-688a, c. 51 (4th Supp.), s. 6.

<sup>296</sup> S.O.R./90-688b, c. 51 (4th Supp.).

<sup>297</sup> Natalie Lagrois, *supra* note 292.

<sup>298</sup> *Ibid.*

<sup>299</sup> *Ibid.*

virtually or through hybrid appearances. The Court's investments in new technological infrastructure (cameras, TVs, etc.) in its boardrooms is indicative of its continued use beyond the pandemic.<sup>300</sup>

### 2.1.17 Supreme Court of Canada

The Supreme Court of Canada's (SCC) is hearing matters through hybrid proceedings and continues to encourage remote hearings.<sup>301</sup> Under this approach the presiding justices are present in the courtroom while counsel have the option to appear in-person or by video conference; however, intervenors appear virtually.<sup>302</sup> The Court has observed a strong preference among counsel to appear in-person.<sup>303</sup> Moreover, while judges are often appearing in court, the *Rules of the Supreme Court of Canada* allows justices to participate virtually.<sup>304</sup> Given the flexibility provided to counsel to elect their method of appearance, the SCC has not issued any notice/practice directives that outline the criteria for determining the method of proceeding/appearance.<sup>305</sup>

The SCC continues to encourage remote appearances and provides this option to parties to help provide cost savings and improve access to justice—especially for

---

<sup>300</sup> *Ibid.*

<sup>301</sup> “Chief Justice Wagner Provides Update on Work of Supreme Court” (16 June 2022), online (video): CPAC <[www.cpac.ca/en](http://www.cpac.ca/en)> [pema.cc/2CYC-Q4H8].

<sup>302</sup> Renee Theriault, personal communication (verbal), June 2022.

<sup>303</sup> *Ibid.*

<sup>304</sup> S.O.R./2002-156, c. 34 (3<sup>rd</sup> Supp.), s. 95.1.

<sup>305</sup> Renee Theriault, *supra* note 302.

those located farthest from Ottawa and for public interest interveners.<sup>306</sup> As such, the SCC’s Executive Legal Officer indicated the Court’s experience with virtual proceedings was “remarkably seamless”.<sup>307</sup> These comments are in line with Chief Justice Wagner’s remarks that “technology levels the playing field” as “strong, well reasoned, and persuasive” legal argument can be made from anywhere—whether its on a screen or in the courtroom.<sup>308</sup>

Although it had the infrastructure to hear cases virtually in the 1980s, the SCC did not begin hearing cases remotely to any meaningful extent until the COVID-19 pandemic; however, it is likely that the use of virtual proceedings will continue at the SCC beyond the pandemic. According to Chief Justice Wagner, virtual proceedings have been a positive experience (overall) and will continue to play an important role in improving access to justice in the long term.<sup>309</sup> In reaffirming his belief in the continued use of remote appearances at the SCC, Chief Justice Wagner emphasized that:

We cannot and must not go back to the way things were before the pandemic (...) and the justice system must continue to modernize and innovate knowing access to justice is not just a basic right or service but first and foremost a basic human need and an essential ingredient to democracy.<sup>310</sup>

---

<sup>306</sup> “Chief Justice Wagner Provides Update on Work of Supreme Court” (17 June 2021), online (video): CPAC <[www.cpac.ca/en](http://www.cpac.ca/en)> [perma.cc/B9HR-H9U3].

<sup>307</sup> Renee Theriault, *supra* note 302.

<sup>308</sup> *Ibid*; *supra* note 301.

<sup>309</sup> *Supra* note 301; *supra* note 306.

<sup>310</sup> *Supra* note 301.

Moving forward, Chief Justice Wagner anticipates some parties (including SRLs) and counsel will appreciate the option to reduce costs of travel (and reduce the costs of transporting persons in custody) allowing counsel to work more efficiently to serve clients.<sup>311</sup> Chief Justice Wagner also presented optimism that technology can help realise justice in new ways in the future, including for SRLs whom comprise nearly a quarter of all appeals to the SCC.<sup>312</sup>

However, Chief Justice Wagner qualified the SCC's positive experience in emphasizing that Canada cannot have a completely virtual justice system.<sup>313</sup> He highlighted the challenges that poverty and rural connectivity presents to access virtual proceedings including a lack of reliable internet and phone services, especially in the north.<sup>314</sup> Chief Justice Wagner also expressed concerns that virtual proceedings can lead to a lack of formality and respect for the court. Although judges should retain discretion regarding the method of proceeding, he underscored that most civilian witness testimony should be heard in-person.<sup>315</sup>

#### 2.1.18 Comparative Analysis: Conclusions

In conclusion, most Canadian superior courts continue to hear at least some of their docket virtually – and to a greater extent relative to pre-pandemic practices.

---

<sup>311</sup> *Ibid.*

<sup>312</sup> *Ibid.*

<sup>313</sup> *Supra* note 306.

<sup>314</sup> *Ibid.*

<sup>315</sup> *Ibid*; *supra* note 306.

Many courts recognize the efficiencies made possible by proceeding virtually for procedural matters, especially those proceedings that are short in duration. The above analysis also revealed that while many courts are still in the process of determining where, when, and for whom virtual proceedings are most appropriate, there is strong evidence to suggest many courts will continue to hear a greater proportion of its respective docket virtually than before the pandemic.

Despite the uniformity cited above, there was substantial variation in the level of detail, guidance, and transparency provided by various courts in their virtual proceedings practice directives. At the trial level, the protocols for determining the method of proceeding are most robust at the ONSC and the ABQB. These directives provided a clear outline of the presumptive method of appearance for each type of proceeding (e.g. bail hearings, trials, settlement conferences, etc.) for civil, family, and criminal matters. The ONSC directive also provides specific criteria for the presiding judge to consider when determining the appropriate method of appearance for each type of proceeding.

This transparency and level of organization contrasts with other jurisdictions including the SKQB, NWTSC, TCC, and SCC where the available guidance on determining the method of appearance is distributed amongst numerous iterations of virtual court practice directives, out of date with current practices, and/or unavailable. Moreover, the ONSC and ABQB directives make clear the guidance



provided therein supersedes the rules of court, something that was not made clear by most jurisdictions in their practice directives.

Most courts, both trial and appellate, also did not provide criteria for judges in determining the appropriate method of proceeding. Many courts indicate that such a determination is “at the discretion of the presiding judge”. Only a handful of courts including the SKCA, PQCA, and the ONCA allow parties to elect their method of appearance—an approach which is likely more feasible at an appellate rather than trial court. Some courts including the BCSC, BCCA, ONSC, and the NUCJ have forms for parties to complete to request a virtual appearance/proceeding; and some including the BCCA stipulate criteria parties should reference in their request (e.g. travel cost, nature of the interest involved).

Courts are still in the process of determining how, when, and under what rules it will leverage virtual proceedings beyond the pandemic. Nearly every jurisdiction has yet to revise its rules of court in response to the marked increase in the use of virtual proceedings necessitated by the pandemic. Some courts including the BCCA and PQCA are undergoing this process and are likely to codify many of the current parameters of practice directives regarding virtual courts within its *Rules*. Other courts like the ABCA are undergoing stakeholder consultation on the future of virtual courts. The ABQB is piloting its current guidelines on the method of proceeding with a review of the provisions anticipated later in 2022.

## ***2.2 Challenges and Opportunities Presented by Virtual Courts***

### **Problems Encountered with Virtual Court**

Access to justice extends beyond affording a lawyer or the time required to attend court. It is about ensuring citizens have access to impartial, fair, transparent, effective, and efficient delivery of justice.<sup>316</sup> Virtual proceedings have, in many ways, improved access to the courts—an essential element of the rule of law.<sup>317</sup> A formal quantitative and qualitative analysis of virtual proceedings has not yet been conducted in most jurisdictions. However, at its core promoting access to justice is about ensuring litigants/parties feel as though the process for resolving their matter(s) was taken as seriously as the issues at stake. This ensures litigants have a subjective sense of inclusion in the legal process, which is fundamental to democracy.<sup>318</sup>

Virtual hearings bring new challenges and risks to the accessible administration of justice. When the medium of court proceedings changes, unintended results follow.<sup>319</sup> As such, this section provides a holistic analysis of how virtual courts can both improve and impede access to justice, while suggesting solutions to minimize any deleterious impacts of virtual court on administration of

---

<sup>316</sup> “Imagining the Ideal Video-Conferencing Solution” (May 2020) at 14, online (pdf): *Bennett Jones* <bennetjones.com> [Bennett Jones]; “Access to Justice”, online: *United Nations and the Rule of Law* <un.org/ruleoflaw> [perma.cc/8AFE-WVZG].

<sup>317</sup> *B.C.G.E.U. v. British Columbia (A.G.)*, [1988] 2 S.C.R. 214; *Jonsson v. Lymer*, 2020 A.B.C.A. 167 at para. 38.

<sup>318</sup> Amy Salyzyn, “A New Lens: Reframing the Conversation about the Use of Video Conferencing in Civil Trials in Ontario” (2012) 50:2 Osgood Hall L.J. 429 at 458 [Salyzyn 2012].

<sup>319</sup> Amy Salyzyn, “Trial by Zoom: What Virtual Hearings Might Mean for Open Courts, Participant Privacy and the Integrity of Court Proceedings”, *Slaw* (17 April 2020), online: <slaw.ca> [perma.cc/7TY2-RNYJ].

justice. As discussed in the previous section, nearly every court in Canada is “catching their breath” after being forced to “sample a new menu” in the administration of justice and are in the process of determining where virtual courts work well and for which proceedings and participants.<sup>320</sup> It is anticipated this analysis and summary of the key challenges and opportunities presented by virtual proceedings will assist in this regard. As one NSSC judge articulated, “there are as many opinions as there are people” when it comes to virtual court. This section attempts to highlight the key themes revealed by research participants, mainstream media, and academic and grey literature.

### *2.2.2 The Digital Divide: Exacerbating Disparities in Access to Justice*

The Canadian legal system cannot be fair and accessible when it does not work for everyone—including those who cannot access virtual proceedings.<sup>321</sup> It is well documented that virtual proceedings led to a “digital divide” between those who had access to reliable internet and digital technology and those who did not.<sup>322</sup> This exacerbated the barriers to accessing justice for poor, rural, and/or marginalized Canadians.<sup>323</sup> Access to justice for working class and economically disadvantaged

---

<sup>320</sup> Stairs, *supra* note 27; Ontario Superior Court of Justice, *supra* note 90; Court of Queen’s Bench of Alberta, *supra* note 180.

<sup>321</sup> Richardson, *supra* note 160 at 7; Kate Puddister & Tamara Small, “Trial by Zoom? The Response to COVID-19 by Canada’s Courts” (2020) 19:1-5 Can. J. Polt. Sci. 1 at 2; Meredith Rossner, David Tait, & Martha McCurdy, “Justice reimaged: challenges and opportunities with implementing virtual courts” (2021) 33:1 Current Issues in Crim. Just. 94 at 97.

<sup>322</sup> Cashman, *supra* note 218 at 14-15.

<sup>323</sup> Hendry, *supra* note 110; Puddister *supra* note 321; Access to Justice Committee, “Reaching Equal Justice: An Invitation to Envision and Act” (Ottawa: Canadian Bar Association, 2013) at 9, online: Canadian Bar Association.

Canadians has been referred to as the greatest challenge facing the country's justice system,<sup>324</sup> including by Canada's current and former chief justices.<sup>325</sup> Virtual court adds another layer of complication and cost for marginalized individuals, who, in many cases, already distrust the justice system and feel their rights only exist on paper.<sup>326</sup> The individuals left behind by virtual court, namely poor/rural litigants, are a major source of concern for Nova Scotia's judiciary as it risks entrenching marginalization and widening of the socio-economic gap in the justice system by excluding participants without adequate access to internet/digital technology.<sup>327</sup>

### 2.2.3 Access to Digital Infrastructure

Access to a trial should not depend on one's address or income level. How can virtual proceedings be considered fair and accessible when one or more of the participants lacks reliable access to internet or digital technology? Many judges and stakeholders articulated that virtual court is "not a panacea".<sup>328</sup> While virtual appearances may offer benefits for some participants (see section 2.2.15), there are real disadvantages for others who are poor, do not have a private space to participate

---

<sup>324</sup> Richardson, *supra* note 160 at 4.

<sup>325</sup> Wagner, *supra* note 301; The Canadian Press, "Canada's top judge calls for fair access to justice for all", *CTV News* (20 October 2017), online: <ctvnews.ca> [perma.cc/C5NU-FVRB]; Beverley McLachlin, *Truth Be Told*, (Toronto: Simon & Schuster Canada, 2019) at 317.

<sup>326</sup> Richardson, *supra* note 162 at 18; "Examining the Disproportionate Impact of the COVID-19 Pandemic on Access to Justice for Marginalized Individuals" (30 July 2022), online *Action Committee on Court Operations in Response to COVID-19* <fja.gc.ca/COVID-19> [perma.cc/P6RF-BPBU].

<sup>327</sup> Richardson, *supra* note 162 at 7; Richard Susskind, *Online Courts and the Future of Justice*, (Oxford: Oxford University Press, 2019) at 187–188; Cashman, *supra* note 218 at 15.

<sup>328</sup> Richard Susskind, "Video hearings have transformed courts but are not a panacea" (1 April 2021), online "ADR Institute of Canada" <adric.ca> [perma.cc/Q9XC-NBLQ]; Yves Fagay & Karen Eltis, "Digitizing our Courts" (25 June 2020), online (podcast): *Canadian Bar Association National Magazine* <cba.org>. [perma.cc/4F8E-5BKN].

virtually, lack highspeed internet, have limited minutes on their phone, and/or do not own reliable digital technology.<sup>329</sup> As many research participants and articles highlighted, Nova Scotia—like all other jurisdictions in Canada—lacks ubiquitous, reliable highspeed internet, particularly in rural areas.<sup>330</sup> In fact, fewer than half of Canada’s rural communities have access to unlimited, highspeed broadband—hindering judges, counsel, and parties’ ability to access proceedings.<sup>331</sup> Moreover, disparities in access to reliable technological devices further aggravates this issue for many of the same individuals.<sup>332</sup> It should be noted that many judges mentioned the issue of access to reliable technology has been rarely encountered. As a Judge from the Ontario Court of Justice articulated: “really poor accused persons have a lawyer (unless they are willfully underrepresented” and “[i]f people didn't have phones or computers they were often one step away from people who did. Lots of people would say ‘oh, that's my mothers name on the display’”. Nevertheless, in other instances, challenges are presented by inequalities in participants’ technical capabilities and skills—especially among marginalized litigants, SRLs, senior

---

<sup>329</sup> Rossner, *supra* note 321 at 108.

<sup>330</sup> Salyzyn, *supra* note 319; Julius Melnitzer, “Virtual proceedings: here to stay but the devil is in the details”, *The Lawyer’s Daily* (31 March 2022), online: <thelawyersdaily.ca> [perma.cc/53J6-JZ8X]; Bennett Jones, *supra* note 316 at 16; Rossner, *supra* note 321 at 97.

<sup>331</sup> Melnitzer, *supra* note 330.

<sup>332</sup> Salyzyn, *supra* note 319; Bennett Jones, *supra* note 316 at 15.

members of the Bar, sole practitioners, and even older judges.<sup>333</sup> These challenges often present insurmountable barriers to accessing and administering justice.<sup>334</sup>

Challenges connecting to virtual proceedings have led to severe consequences with deleterious impacts on already marginalized court users. Unhoused persons and individuals with mental health disorders and/or addictions face serious barriers to accessing virtual courts for the reasons cited above. In some jurisdictions this has led to a marked increase in failure to appear charges for individuals who lack access to the technology required to appear virtually.<sup>335</sup> The Kitchener-Waterloo region saw a 60% increase in such charges in 2021 compared to pre-pandemic figures.<sup>336</sup> Some advocates argue this is “akin to criminalizing poverty” or “a war on the marginalized” as it pushes marginalized people further underground.<sup>337</sup> In other instances, parties disconnecting because they exceeded the minutes on their cell phone plan have experienced deleterious impacts on the process and outcome of their trial.<sup>338</sup>

Accessing virtual court is often difficult for SRLs—particularly those on the wrong side of the digital divide.<sup>339</sup> As one NSSC Family Division judge articulated,

---

<sup>333</sup> Salyzyn, *supra* note 319; Rossner, *supra* note 321 at 97.

<sup>334</sup> Puddister *supra* note 321.

<sup>335</sup> Desmond Brown, “Virtual court hearings are criminalizing poverty as fail-to-appear charges spike in Waterloo area: lawyer”, *CBC News* (18 December 2021), online <[cbc.ca/news](https://www.cbc.ca/news)> [perma.cc/AA5W-FQ97].

<sup>336</sup> *Ibid.*

<sup>337</sup> *Ibid.*

<sup>338</sup> Pritchard, *supra* note 106.

<sup>339</sup> Jacquelyn Burkell et al, “Expert insights: The perils of Zoom courts”, *Western News* (9 April 2021), online: <[news.westernu.ca](https://news.westernu.ca)> [perma.cc/9NQE-7B5S].

appearing before the court as an SRL is an intimidating process as their own lives and resources are at issue; appearing before the court virtually often becomes even more anxiety provoking. Appearing virtually adds another layer of complication to a process that is already difficult to navigate for those who are unfamiliar and overwhelmed by the law/court and/or lack the knowledge and skills to participate effectively in their *own* litigation.<sup>340</sup> Confusion with virtual court for SRLs can be as simple as not knowing when to call in, being stuck in a virtual waiting room, or not knowing how/when to ask questions.<sup>341</sup> A federal Department of Justice report estimated that 50 to 80 per cent of family and civil litigants are SRLs.<sup>342</sup>

Courts must recognize the populations they serve and find solutions/accommodations that prioritize the needs of litigants with *real* barriers to access to justice (i.e. SRLs). Given SRLs, by definition, do not hire a lawyer for all or part of their legal matter due to financial constraints, it is unsurprising that a high proportion of SRLs lack access to reliable technology/internet, have limited technological literacy, and/or lack access to a private, quiet space to appear virtually.<sup>343</sup> This can exacerbate power imbalances between represented and unrepresented parties, negatively affect credibility assessments (section 2.2.8), and/or lead to expensive

---

<sup>340</sup> Canadian Judicial Council, “Statement of Principles on Self-represented Litigants and Accused Persons” (2006), online: <cjc-ccm.gc.ca>.

<sup>341</sup> Hasham, *supra* note 116.

<sup>342</sup> “Self-Represented Litigants in Family Law”, *Department of Justice* (June 2016), online: <justice.gc.ca> [perma.cc/YG2H-ZXNS].

<sup>343</sup> Action Committee on Court Operations in Response to COVID-19, *supra* note 326.

cell phone/internet bills.<sup>344</sup> Moreover, as several NSSC and NSCA judges articulated, human relationships are especially important in providing SRLs with support to fair and accessible justice, reducing a subjective sense of injustice, and preserving the trust and integrity of the system.<sup>345</sup> This reality led some provinces to require or allow SRLs to appear in-person, even before the respective court returned to predominantly in-person appearances or hearings.<sup>346</sup>

The medium is the message. When proceedings are held exclusively online or in one location in a province (e.g. the NSCA in Halifax), it sends a message of who justice serves. There are simple solutions to access to justice issues for SRLs/marginalized litigants that can be reduced to one concern: having consideration for the socio-economic, transportation, digital connectivity, and other *real* access barriers faced by these litigants. Several solutions have been purported by access to justice advocates, the bench, and the Bar. These solutions are beginning to be employed, including in Nova Scotia. One example is providing iPad stations/video suites at community locations or local courthouses with sufficient privacy and internet connectivity. It is important that these litigants are supported with sufficient IT support to troubleshoot issues.<sup>347</sup> This solution circumvents technology/internet access barriers and limits transportation costs for participants.

---

<sup>344</sup> *Ibid.*

<sup>345</sup> Wagner, *supra* note 301; Salyzyn 2012, *supra* note 318 at 449-450.

<sup>346</sup> Clair, *supra* note 1; Court of Queen's Bench of Manitoba, *supra* note 133,

<sup>347</sup> Pritchard, *supra* note 106; Action Committee on Court Operations in Response to COVID-19, *supra* note 326.



The NSSC (Family Division) and PESC have employed this solution by providing iPads to litigants and setting up rooms in courthouses for SRLs to appear virtually during the pandemic respectively.<sup>348</sup> Furthermore, many judges have also utilized telephone proceedings to better facilitate virtual appearances, circumvent access to technology/internet issues, and better serve the public’s needs.<sup>349</sup> Such measures have been undertaken by the NBQB, the NLCA, the NUCJ, and the NSSC.<sup>350</sup> The simplicity of a telephone appearance has offered real benefit to people and the court by allowing for more efficient and timely resolution of matters, while limiting transportation costs—especially when in-person proceedings were not feasible on account of the pandemic (see sections 2.2.1 and 2.2.12).

The best use of virtual technology is the use that works best for the court’s most vulnerable users, SRLs. Ensuring justice is accessible to everyone, including the most vulnerable, not simply those with cellphones, laptops, and reliable internet access requires prioritizing the interests of those with *real* access to justice issues.<sup>351</sup> As a NSSC judge said, this requires leveraging virtual proceedings “appropriately”, in a “smart way” articulated another. To do so, courts must be focused on its users

---

<sup>348</sup> Action Committee on Court Operations in Response to COVID-19, *supra* note 326.

<sup>349</sup> Terry Hancock, “Atlantic Roundtable for COVID-19 and Beyond” (Guest Panelist delivered CBA Atlantic, Fredericton Online, May 31, 2022).

<sup>350</sup> DeWare, *supra* note 59; Nunavut Court of Justice, *supra* note 242; Superior Court of the Northwest Territories, *supra* note 250; Action Committee on Court Operations in Response to COVID-19, *supra* note 326.

<sup>351</sup> Amanda Jerome, “Ontario’s chief justices address backlog, stress need for accessibility as courts modernize”, *The Lawyer’s Daily* (15 September 2021), online: <thelawyersdaily.ca> [perma.cc/FXS7-MA2F], Pritchard, *supra* note 106.

and the question of how to make court proceedings work for “people who have *real* access to justice problems” before considering the interests of the bench and Bar who have more resources.<sup>352</sup>

#### *2.2.4 The Impact of Virtual Court on Indigenous Peoples*

Geographic isolation, high transportation costs, and a lack of rural internet connectivity exacerbates the digital divide between Indigenous and non-Indigenous Canadians—creating a further barrier to access to justice for Indigenous peoples. The remote location of many Indigenous communities has made the telephone a staple of court proceedings for participants in remote communities in the Northwest Territories and Nunavut—particularly for procedural matters.<sup>353</sup> This reality flows from (1) a lack of reliable internet connectivity in many Northern, Indigenous communities pre, during, and post-pandemic and (2) the expense of travel to larger centres for court proceedings.<sup>354</sup> Similar challenges also extend to Indigenous peoples in Nova Scotia. As one NSSC judge articulated: telephone appearances are necessary for some parties in the province because rural poverty, particularly on reserve, means many Indigenous peoples lack a driver’s license and often do not access to/cannot afford public transportation or taxis.

---

<sup>352</sup> Fagay, *supra* note 328.

<sup>353</sup> Nunavut Court of Justice, *supra* note 242; Bertolini, *supra* note 253.

<sup>354</sup> *Ibid*; Action Committee on Court Operations in Response to COVID-19, *Restoring Court Operations in Northern, Remote and Indigenous Communities*, (Ottawa: Office of the Commissioner for Federal Judicial Affairs Canada, 2020).

While technology can enable and sometimes be a necessity for access to justice for Indigenous Canadians, it can also exacerbate existing disparities. The Federal Action Committee on Court Operations in Response to COVID-19 has issued a report on the safe restoration of court operations in Indigenous communities to advance reconciliation based on recognition of rights, respect, co-operation, and partnership.<sup>355</sup> The report highlights: (1) the unequal distribution of technological resources (i.e. internet, cellular service, laptops, tablets, etc.) between socio-economic demographic circumstances, which occur disproportionately in Indigenous communities, as a major contributor to the exacerbation of unequal access to justice with the advent of virtual courts and (2) methods of justice delivery for Indigenous communities may adapt differently to virtual facilitation (e.g. restorative justice).<sup>356</sup> In response to these factors, the report urges the justice system to (1) understand justice as a service to preserve the wellbeing and rights of the system's participants and (2) ensure justice is a *shared* responsibility that includes understanding and adapting court processes to meet the unique needs of northern, remote, and Indigenous communities by including "fruitful collaboration" with Indigenous governments.<sup>357</sup>

---

<sup>355</sup> Department of Justice Canada, News Release, "Update from the Action Committee on Court Operations in Response to COVID-19" (6 November 2020).

<sup>356</sup> Action Committee on Court Operations in Response to COVID-19, *supra* note 354.

<sup>357</sup> *Ibid.*

### 2.2.5 *The Solemnity of Court and Court Decorum*

Many members of the bar and bench alike fear online proceedings undermine the solemnity (state of seriousness or distinguishment) of court.<sup>358</sup> As one NSSC judge articulated: given the seriousness of the matters at stake, courts should not become “a spectacle” whereby participants are walking around their homes, participating from their cars, bathtub, or toilet, or not wearing a shirt/professional attire.<sup>359</sup> In one instance during a hearing Justice Lynch of the NSSC Family Division heard a party order a “double-double” coffee.<sup>360</sup> In another matter a lawyer requested the court to leave the court teleconference running for him to conduct other business once their proceeding concluded. Another NSSC judge stated that “judges have commiserated about the loss of respect because someone is at home in their PJs and a dog is barking in the background”. As a judge from the Ontario Court of Justice articulated regarding guilty pleas

[t]here’s something about having to go to court, stand up in front of a courtroom of people, and admit to your drunk driving offence, which is different than checking that box off from your computer at home. Overall interview participants revealed a concern for a loss of respect for the institution in a virtual environment—and with it the integrity of the justice system.

---

<sup>358</sup> Burkell, *supra* note 339. Meredith Rossner, “Remote rituals in virtual courts” (2021) 48:3 J. of L. & Soc. 334 at 360.

<sup>359</sup> Pritchard, *supra* note 106.

<sup>360</sup> Wagner, *supra* note 306.

Academics have also commented on this topic arguing the visual cues created by a physical court convey the gravitas of a legal proceeding. Other academics have reasoned physical courtrooms perpetuate the marginalization of vulnerable populations. This further exemplifies why courts should take a flexible approach when determining the ‘appropriate’ method of proceeding for a particular matter. A report prepared for the Irish Parliament indicated that virtual proceedings “fall short of the full experience of a real courtroom” and warn virtual appearances may “undermine perceptions of justice” as “the way a courtroom is laid out, the way certain areas are elevated” help communicate the importance of the proceeding.<sup>361</sup> Amy Salyzyn, a leading Canadian academic on this topic purports that cues including the design of courtrooms and courthouses “reinforce that going to court is not an ordinary or everyday experience”. Salyzyn goes on to explain that removing witnesses from this experience “disrupts the geography of adjudication and threatens the solemnity associated with, and the respect given to, the civil justice system”.<sup>362</sup> Justice Duncan of the Ontario Court of Justice articulated that allowing a witness to ‘mail it in’ by appearing virtually detracts from the “solemn and majestic atmosphere of court” and degrades the truth seeking function thereof.<sup>363</sup> Following this logic,

---

<sup>361</sup> Melnitzer, *supra* note 330.

<sup>362</sup> Salyzyn 2012, *supra* note 318 at 455.

<sup>363</sup> *R. v. Allen*, [2007] O.J. No. 1353 at 27.

one can conclude trials may lose their vitality and significance when participants are not physically in a courtroom.<sup>364</sup>

Yet, the virtual courts can provide a more neutral and safer environment for marginalized participants. This includes Indigenous peoples, many of whom feel estranged from the Canadian justice system. Physical courtrooms often operate “to reinforce unequal power relations and marginalize vulnerable individuals and groups”.<sup>365</sup> This creates a space where some participants/actors feel/are privileged, while others are disempowered.<sup>366</sup> This further supports courts adopting a flexible approach to virtual proceedings.

A loss of the solemnity of court in a virtual environment can lead to a loss of decorum—particularly among SRLs. Several judges discussed incidents of offensive language, motions, or signals, dysregulation of parties over the phone (where muting a participant is not possible), losing parties disconnecting without properly leaving court, and parties threatening judges. This behaviour is less common when a sheriff is present for in-person proceedings. One NSSC judge explained the importance of courtroom decorum while stating these actions are “more than a poor choice of words, it’s a decorum issue” and in “highly contested matters if we’ve lost decorum, we’ve lost everything, and it might reduce itself to a Jerry Springer event”. An

---

<sup>364</sup> Salyzyn 2012, *supra* note 318 at 459.

<sup>365</sup> *Ibid.*

<sup>366</sup> *Ibid.*

ONSC justice commented that “this isn’t drop-in-from-whenever-you-happen-to-be court (...) the lack of decorum is a concern” after postponing a sentencing when a man appeared from his car.<sup>367</sup> Some decorum issues can be as simple not being able to mediate against interruptions because of a lack of visual cues in a video/telephone conference. As another NSSC judge articulated it can be very concerning when parties “stop speaking to the court and start speaking to each other” and it requires judges be very clear about the requirements of virtual court and remind counsel and parties “we aren’t all on one big telephone soiree”, Ultimately, the ability to manage the decorum of a courtroom and maintain the solemnity of court proceedings was a major factor underlying the bench’s general preference for in-person proceedings.

### *2.2.6 Unreliable Technology*

A common refrain from the literature and participants in this research was the impediment of unreliable technology to the efficiency operation of virtual proceedings. Ultimately, these technological issues have halted some judges from using virtual proceedings almost entirely.<sup>368</sup> These challenges relate to the functionality of technology, including when virtual court participants are connecting through reliable devices and internet connectivity.<sup>369</sup> For example, technology can

---

<sup>367</sup> Marg Bruineman, “Lack of decorum is a concern: Judge admonished accused for connecting to court from vehicle”, *Barrie Today* (8 February 2022), online: <barrietoday.com> [perma.cc/Q8TY-T8QU].

<sup>368</sup> Stairs, *supra* note 27.

<sup>369</sup> Michelle Bertrand, “Dispensing Digital Justice: COVID-19, Courts, and the Potential Diminishing Role of Jury Trials” (2021) 10 *The Annual Rev of Interdisciplinary Justice Research* 1 at 42-43.

be difficult to use, offer poor functionality, and be prone to malfunction, which impedes the efficiency of courts and the conduct of a fair trial.<sup>370</sup> Such malfunctions include technology glitches, echoes, background noises, trouble with cameras, microphone issues, interruptions, and participants dropping off calls.<sup>371</sup> In addition, garbled audio and unmuted microphones creates sometimes insurmountable issues for transcribers.<sup>372</sup>

Numerous judges expressed a high level of frustration with the additional time and delays imposed by unreliable technology on court proceedings, which often counteracts any efficiencies brought on by virtual proceedings, restricting access to justice.<sup>373</sup> This was a common issue expressed by jurisdictions across Canada.<sup>374</sup> Recent data from the United States suggests virtual proceedings take 30-40 percent longer than in-person hearings – mostly due to technological glitches/mishaps.<sup>375</sup> While there is no publicly available empirical data from Canada, anecdotal evidence from Nova Scotia’s judiciary, particularly at the trial level, suggests a similar reality in Canada. One NSSC judge stated that the Court must always book extra time for virtual trials because the Court cannot predict the reliability of technology and seeks to avoid adjourning a matter if it runs overtime. Another NSSC judge voiced the

---

<sup>370</sup> Bennett Jones, *supra* note 316 at 14; Stairs, *supra* note 27.

<sup>371</sup> *Ibid*; Hasham, *supra* note 116; Melnitzer *supra* note 330.

<sup>372</sup> Burkell, *supra* note 339.

<sup>373</sup> Amy Salyzyn and A.C.J. Duncan, “Atlantic Roundtable for COVID-19 and Beyond” (Guest Panelist delivered CBA Atlantic, Fredericton Online, May 31, 2022).

<sup>374</sup> Higgins, *supra* note 51; Nguyen, *supra* note 85; McCoy, *supra* note 144.

<sup>375</sup> Salyzyn, *supra* note 319.



frustration of many trial judges stating: “the most excruciating time as a judge has been when technology failed us”. The same judge proceeded to illustrate the limited court technological support resources that often delays proceedings, which is “extremely frustrating when you have witnesses, a jury, and/or clients paying a high hourly rate waiting”. Such delays are more commonly experienced with participants lacking technological support including sole practitioners and SRLs<sup>376</sup> – leading one jurisdiction to only hear matters involving SRLs in-person.<sup>377</sup>

The unreliable technology re virtual proceedings is not as prevalent of an issue expressed by the NSCA, nor other appellate courts across Canada.<sup>378</sup> This is due to the nature of appellate hearings which are more suited to a virtual environment as they rarely feature witnesses, have fewer variables, and are shorter in length than trials.<sup>379</sup>

Many judges and jurisdictions cited the issues with technology becoming less frequent as the courts and their users became more comfortable with virtual connectivity. In fact, many members of the bench, including the Chief Justice of the Queen’s Bench of New Brunswick and several trial judges at the NSSC have stated that even the justices most hesitant/resistant to use virtual technology now (1) see its

---

<sup>376</sup> Stairs, *supra* note 27.

<sup>377</sup> Court of Queen’s Bench of Manitoba, *supra* note 133.

<sup>378</sup> McInnes, *supra* note 36; Theriault, *supra* note 302.

<sup>379</sup> *Ibid.*

value and (2) have become more comfortable with virtual proceeding—allowing for improved efficiency.

### *2.2.7 Procedural Fairness*

Despite the numerous challenges regarding the efficacy of virtual proceedings, fairness—procedural or otherwise—is not a challenge courts have recognized jurisprudentially nor anecdotally.<sup>380</sup> Provided all parties have reliable virtual connection, courts have been unsympathetic to arguments that virtual proceedings are inherently unfair.<sup>381</sup> Both courts with inherent jurisdiction<sup>382</sup> and those established by statute,<sup>383</sup> can control their own processes in a way that secures conventions, expeditiousness, and efficiency in the administration of justice.<sup>384</sup> This is particularly necessary for the accomplishment of the objective intended by the enacting statutory regime.<sup>385</sup>

Despite objections from some parties, the ABQB and the ONSC both began virtual proceedings early in the pandemic. In doing so, both courts cited their existing civil procedure rules, which provide for videoconferencing and other modes

---

<sup>380</sup> Chiodo, *supra* note 102 at 809.

<sup>381</sup> Rossner, *supra* note 321 at 97.

<sup>382</sup> *Endean v. British Columbia*, 2016 S.C.C. 42 at paras. 21-23 [*Endean*].

<sup>383</sup> S.O.R./98-106, ss. 3-4; *R. v. Cunningham*, 2010 S.C.C. 10 at para. 19; *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 S.C.C. 4, at para. 51 [*ATCO*]. (doctrine of jurisdiction by necessary implication)

<sup>384</sup> *Endean*, *supra* note 382.

<sup>385</sup> *ATCO*, *supra* note 383.

of virtual hearings.<sup>386</sup> Parties have raised numerous arguments claiming that virtual proceedings are inherently unfair including:

- the difficulty of assessing credibility, the barriers to conferring with clients and co-counsel;<sup>387</sup>
- the impracticality of translation;<sup>388</sup>
- the lack of solemnity;<sup>389</sup>
- challenges imposed by complex legal issues and/or voluminous documentary records;<sup>390</sup>
- the complication of virtual proceedings when significant rights are at issue;<sup>391</sup> and
- the deprivation of in-person questioning.

Justice Myers of the Ontario Superior Court has been routinely quoted in response to these arguments, stating “in 2020, use of readily available technology is part of the basic skillset required of civil litigators and courts”.<sup>392</sup> Justice Myers elaborated that “all parties have the same opportunity to participate, be heard, and put all the relevant evidence before the court and to challenge the evidence adduced by the other side.”<sup>393</sup> This applies equally to large, highly complex matters<sup>394</sup> and potentially final matters.<sup>395</sup>

---

<sup>386</sup> *Sandhu v. Siri Guru Nanak Sikh Gurdwara of Alberta*, 2020 A.B.Q.B. 359 at para. 30 [*Sandhu*]; *Arconti*, *supra* note 115 at 21.

<sup>387</sup> *Hudema v. Moore*, 2020 B.C.S.C. 1502, at para. 20 [*Hudema*].

<sup>388</sup> *Sandu*, *supra* note 386 at 4.

<sup>389</sup> *Arconti*, *supra* note 115 at 18.

<sup>390</sup> *Miller v. FSD Pharma Inc.*, 2020 O.N.S.C. 3291 at para. 2 [*FSD Pharma*].

<sup>391</sup> *Natco Pharma (Canada) Inc. v. Canada (Health)*, 2020 F.C. 618 at para. 22 [*Natco Pharma*].

<sup>392</sup> *Arconti*, *supra* note 115 at 33; *Sandhu*, *supra* note 386 at 33; *Hudema*, *supra* note 387 at 24.

<sup>393</sup> *Arconti*, *supra* note 115 at 32.

<sup>394</sup> *Arconti*, *supra* note 115 at 33; *FSD Pharma*, *supra* note 390 at 10-11.

<sup>395</sup> *FSD Pharma*, *supra* note 390 at 10-11; *Natco Pharma*, *supra* note 391 at 22.

Much of the case law in this area was formulated under the auspices of the necessity of proceeding virtually during the pandemic.<sup>396</sup> Despite these origins, Justice Myers has been routinely quoted in judgements across Canada regarding the continuation of virtual proceedings when stating:

It's 2020. We no longer record evidence using quill and ink. In fact, we apparently do not even teach children to use cursive writing in all schools anymore. We now have the technological ability to communicate remotely effectively. (...) We should not be going back.<sup>397</sup>

Other common law jurisdictions including Australia and the United Kingdom have taken a similar approach to courts in Canada in consistently concluding that virtual proceedings are an appropriate alternative to in-person proceedings and meet the requirements of procedural fairness.<sup>398</sup>

Courts' validation of the procedural fairness of virtual court is further supported by the proportionality principle articulated by the SCC in *Hryniak*.<sup>399</sup> This “culture shift” addresses the cost and delay in civil litigation by ensuring the procedure applied to a matter is proportionate, timely, and appropriate given the extent and nature of the issues at stake.<sup>400</sup> Following the rationale that costs and time are elements of justice, the use of technology to make proceedings speedier and more

---

<sup>396</sup> *Arconti*, *supra* note 115 at 34.

<sup>397</sup> *Ibid* at 19, *Sandhu*, *supra* note 386 at 33.

<sup>398</sup> Rossner, *supra* note 325 at 97; Michael Legg, “The COVID-19 Pandemic, the Courts and Online Hearings: Maintaining Open Justice, Procedural Fairness and Impartiality” (2021) 49:2 Federal L.R. 161 at 172.

<sup>399</sup> Chiodo, *supra* note 102 at 811; *Hryniak v. Mauldin*, 2014 S.C.C. 7 at para. 28 [*Hryniak*]; AAS Zuckerman, “A Reform of Civil Procedure – Rationing Procedure Rather Than Access to Justice” (1995) 22 JL & Soc’y 155 at 162; Rebecca Assy, “Briggs’ Online Court and the Need for a Paradigm Shift” (2017) 36 C.J.Q. 70 at 70, 80, 82, 84.

<sup>400</sup> *Ibid*.

affordable promotes justice by enabling court resources to be dispensed to a wider range of citizens. As such, “the principle of proportionality, then (...) militates most in favour of the shift to virtual hearings”.<sup>401</sup> Despite the jurisprudence in this regard, the challenges of virtual court, which include the digital divide, the perception of accused persons, and the ascertaining of witness credibility, cannot be ignored.<sup>402</sup>

### *2.2.8 Witness Credibility and Perceptions of Accused Persons*

The broad use of virtual proceedings throughout the pandemic highlighted the importance of in-person appearances, which allow judges to better assess witness credibility. It also allowed legal scholars to assess the impacts and outcomes of virtual appearance on such assessments. This echoes much of my discussion with members of the Bench and court administration across Canada that there is “something about the presence of a live individual that cannot be replicated, even with modern technology”.<sup>403</sup> This is a major factor that courts across Canada use in determining whether a proceeding will be held virtually or in-person.<sup>404</sup> Many judges and legal commentators stressed the importance of in-person witness testimony when credibility is at stake (i.e. non-expert witnesses). International research indicates cross-examination is “significantly less effective” in a virtual environment

---

<sup>401</sup> *Ibid.*

<sup>402</sup> Rossner, *supra* note 321 at 95.

<sup>403</sup> Salyzyn 2012, *supra* note 318 at 448.

<sup>404</sup> See appendix 1 (criteria for method of Proceeding): NLSC, ONSC, ONCA, BCSC

as it is harder for judges to evaluate a witness' reaction to testimony.<sup>405</sup> A NSSC judge indicated their support for observing witness credibility/demeanour in-person, stating: "like to see faces, it means something to me (...), I usually look at people, I take notes, I want to size them up". Legal research supports the difficulty of assessing non-verbal communication in virtual proceedings.<sup>406</sup> This communication is conveyed through the way witnesses walk to the stand, look at the judge or lawyers, their tone of voice, the loudness of their voice, and the pace in which they speak.<sup>407</sup>

While some purport the ability to perceive witness credibility/demeanour better on video than in a typical courtroom,<sup>408</sup> this is largely dependent on high quality audio and video and not a consensus among courts and adjudicators. There is a stronger consensus that departing from in-person trials would likely harm the integrity of the justice system by degrading the efficacy of cross-examination and witness credibility assessments though a lessened ability to perceive non-verbal communication.<sup>409</sup> Non-verbal communication can assist judges compare the facts

---

<sup>405</sup> Melnitzer, *supra* note 330.

<sup>406</sup> Millan, *supra* note 79.

<sup>407</sup> *Ibid.*

<sup>408</sup> Hasham, *supra* note 116; Salyzyn 2012, *supra* note 318 at 432-34.

<sup>409</sup> Vincent Denault & Miles Patterson, "Justice and Nonverbal Communication in a Post-pandemic World: An Evidence-Based Commentary and Cautionary State for Lawyers and Judges" (2020) 45:1 J of Nonverbal Behaviour 1 at 5.

presented by various witnesses and is part of a trial court’s assessment of demeanour for which appellate courts provide deference.<sup>410</sup>

On the other hand, as one judge argued, judges have been assessing credibility via remote testimony way before the pandemic. The *Criminal Code* has allowed certain complainants to testify outside a courtroom for decades. Also, instead of observing a witness beside them in a courtroom, in a virtual courtroom a judge can observe a witness directly in front of them on a screen. This judge also reasoned that demeanour plays a much less significant role in the assessment of credibility in the modern context. As the judge articulated: “it’s about what people say, not whether they lower an eyebrow or raise a lip. These sorts of things don’t play much of a role in modern credibility assessments according to our Appellate Courts”.

Not only does a virtual setting challenge a judge’s ability to evaluate a witness’ credibility/demeanour, but it also impedes their ability to connect emotionally with witnesses.<sup>411</sup> As one NSSC judge articulated, technology can be a mechanism for “unsavory” witnesses to “hide behind”, making it harder for a judge to relate to a witness in the same way they can in person—leading some NSSC judges to regret allowing a witness to testify virtually.

---

<sup>410</sup> Millan, *supra* note 79; Denault, *supra* note 409 at 7; (*P. (D.) v. S. (C.)*), [1993] 3 S.C.R. 141 at p. 192, 18 CRR (2d) 1.

<sup>411</sup> Salyzyn 2012, *supra* note 318 at 432, 443.

In addition to the reduced ability to evaluate witness credibility, there are numerous variables in a virtual proceeding that influence how an accused person is perceived—sometimes leading to a higher likelihood of conviction. While this is an emerging area of research, initial findings suggest that camera angles, volume, lighting, and other variables effecting the quality of virtual connectivity can influence how a witness and/or accused person is perceived by the trier of fact.<sup>412</sup> It is difficult to precisely predict or reliably control these perceptions.<sup>413</sup> Such research provides further evidence supporting the notion of the dehumanization of defendants during a virtual proceeding. This is especially true for those appearing from jail, framed from a low angle, wearing prison attire, and or seated far from the camera.<sup>414</sup> However, it is argued the opposite holds true for defendants appearing from a high-tech video suite at a law firm with lavish surroundings.<sup>415</sup>

Given this, it is important courts be alert to the unintended effects and pay attention to how defendants and witnesses appear to mitigate any negative perceptions grounded in the method of appearance.<sup>416</sup> Despite the higher likelihood of negative perceptions for accused individuals via video appearances there are mixed results on how this influences the outcome of a proceedings. One study from

---

<sup>412</sup> Fagay, *supra* note 328; Salyzyn 2012, *supra* note 318 at 453; Salyzyn, *supra* note 319. Bennett Jones, *supra* note 316 at 15.

<sup>413</sup> Salyzyn 2012, *supra* note 318 at 445.

<sup>414</sup> *Ibid* at 445; Bennett Jones, *supra* note 316 at 15.

<sup>415</sup> *Ibid*.

<sup>416</sup> Salyzyn, *supra* note 319.



Australia found, “defendants appearing via video were no more likely to be found guilty than if they were sitting beside their lawyers in court.”<sup>417</sup> This study did not account for variations in the quality of video and audio connectivity and only evaluated jurors’, not judges’, perceptions.<sup>418</sup> By contrast, other studies have revealed worse outcomes for accused persons in remote hearings;<sup>419</sup> low audio quality has led to less favourable perceptions of witnesses and a reduced memory of presented evidence leading judges to put less weight on such evidence in their decisions.<sup>420</sup>

### 2.2.9 Managing Appearances for Accused Persons

Despite the challenges in assessing credibility, virtual proceedings play a role in delivering timely access to justice to accused persons. This section applies to criminal proceedings where some interpretations of the *Criminal Code* does not require an accused person to appear “in-person” to hear evidence (see section 2.3.1). As previously discussed, many jurisdictions across Canada are continuing to allow virtual appearances for accused individuals for routine matters including *voir dires* and hearings for sentencing and bail.

---

<sup>417</sup> *Ibid*; Rossner, *supra* note 321 at 97.

<sup>418</sup> *Ibid* at 101, 103.

<sup>419</sup> Bertrand, *supra* note 369 at 39.

<sup>420</sup> Elena Blid et al, “Sound and Credibility in Virtual Court: Low Audio Quality Leads to Less Favourable Evaluations of Witnesses and Lower Weighting of Evidence” (2021) 45:5 L & Human Behaviour 481 at 492.

As several NSSC judges noted, the benefits of virtual appearances for accused individuals in-custody are three-fold and centre around the prevention of delays and the preservation of court resources. First, it limits the costs and associated challenges of transporting accused individuals to court. Such challenges include: the dangers surrounding inclement weather and the risks associated with violence and the return of contraband to the institution.<sup>421</sup> Second, it mitigates concerns regarding delays associated with COVID-19 infection as some institutions refuse to transport inmates during outbreaks. Third, correctional institutions (usually) provide a controlled atmosphere for virtual participation. As such, provided the court can circumvent the issue of communication with counsel, the NSSC generally allows accused persons in-custody to participate virtually, which helps avoid delays.

Despite the benefits, the importance of having an accused individual in-person when their liberty is at stake cannot be understated. As one NSSC judge conveyed: “I wasn’t comfortable with having folks just appear by video.... It felt a little star chambery...”. First, the broad use of virtual proceedings in Ontario created barriers for in-custody accused individuals given the high demand for video suites in institutions. This led to the interruption and impromptu adjournment of numerous proceedings for days and sometimes weeks when matters exceeded their scheduled

---

<sup>421</sup> Higgins, *supra* note 51.

time. This resulted in some accused individuals remaining in custody longer.<sup>422</sup> Second, several NSSC judges highlighted the challenge accused individuals endure in providing instructions to counsel throughout the course of a virtual proceeding. Third, issues with decorum are presented when accused individuals are not in custody, which means they are likely appearing from a less controlled environment than if they were in court or a correctional facility's video suite. This uncontrolled environment allows for greater interjection and presenting an issue with recording/rebroadcasting proceedings than when an accused person appears virtually from a correctional institution. Lastly, as one NSCA judge pointed out, virtual appearances deny an accused person the opportunity to interact with family/friends as they would in a limited capacity in court which is "another quite significant piece that's lost in the virtual world".

Despite these challenges, several solutions can help address the challenges of virtual appearances for accused persons. These include:

- virtual breakout rooms to allow for timely and secure communication between counsel and clients;
- a uniform video background to mitigate presentational barriers, neutralize the courtroom experience, and alleviate bias;
- providing basic technology/video suites for accused persons at a public venue (e.g. a courthouse closest to the accused's residence) to allow for a controlled environment for participation.<sup>423</sup>

---

<sup>422</sup> Hasham, *supra* note 116.

<sup>423</sup> Bennett Jones, *supra* note 370 at 18.

Evidently the requirements of the *Criminal Code* for in-person attendance of accused individuals, the challenges of an accused individual appearing virtually, and the benefits of in-person proceedings for the accused present several barriers to virtual appearances. There was consensus among NSSC judges that virtual appearances by accused persons should be used sparingly—when the benefits of avoiding delay because of an inability to appear virtually (e.g. weather, COVID, safety concerns) *significantly outweighs* the drawbacks of virtual appearance.

### 2.2.10 Open Court Principle

Many courts have been concerned with ensuring the continued functioning of Canadian courts throughout the pandemic while preserving the integrity of the justice system and safeguarding the open court principles.<sup>424</sup> As the Chief Justice of Nova Scotia remarked at the onset of the pandemic “[t]he fact is, the Courts cannot close. As the third branch of government, an independent judiciary is vital for our Canadian democracy to function. It is never more important than in times of crisis”.

<sup>425</sup> Allowing the public and media access to court proceedings via teleconference has presented several challenges from both a technical and privacy perspective.

There exists an inherent tension between the open court principle and the security and privacy of proceedings in a virtual environment. The open court

---

<sup>424</sup> Stairs, *supra* note 27.

<sup>425</sup> Puddister *supra* note 321 at 1.

principle, which requires court proceedings be “presumptively open and accessible to the public and to the media”,<sup>426</sup> is a “hallmark of a democratic society”<sup>427</sup> and helps guard “against the risk of a court abusing its decision-making powers”.<sup>428</sup> Thus, it is not surprising this issue “continues to concern” judges and administrators at Nova Scotia’s trial and appellate courts;<sup>429</sup> removing the judicial process from a publicly viewable forum makes it more opaque and challenges the public’s ability to scrutinize judicial decision making.<sup>430</sup> Interestingly, the issue of the open court principle regarding virtual proceedings is more of an issue in theory, rather than practice within the Family Division. As one NSSC Family Division judge remarked, it is rare that family cases generate interest beyond the parties and their lawyers.

Although webcasting virtual court proceedings may be an appealing solution to the above challenges, the difficulties inflicted by this solution are multifaceted, especially at the trial level. First, despite requiring observers to sign undertakings, the ease of recording, reproducing, and/or broadcasting virtual proceedings makes it challenging to prevent.<sup>431</sup> Second, exclusion orders are difficult to monitor and enforce virtually to prevent the tainting of witnesses evidence.<sup>432</sup> Third, requiring

---

<sup>426</sup> Salyzyn, *supra* note 426; *A.B. v. Bragg Communications Inc.* 2012 S.C.C. 46 at para. 11; Susskind, *supra* note 328.

<sup>427</sup> Salyzyn, *supra* note 426; *Vancouver Sun (Re)*, 2004 S.C.C. 43 at para. 23.

<sup>428</sup> Cashman *supra* note 218 at 16.

<sup>429</sup> Stairs, *supra* note 27.

<sup>430</sup> Cashman *supra* note 218 at 15.

<sup>431</sup> Bennett Jones, *supra* note 316 at 16; Stairs, *supra* note 27.

<sup>432</sup> Stairs, *supra* note 27.

parties to seek approval to observe a proceeding virtually puts the onus on the public to request the ability to attend and creates barriers to the practical implementation of the open court principle.<sup>433</sup> Some courts have attempted to subvert this challenge through webcasting proceedings or posting a public Zoom link.<sup>434</sup> While these solutions can promote public engagement in the justice system, the latter option has caused Zoom calls to reach capacity—including in a high profile “Freedom Convoy” bail hearing where capacity constraints bared the presiding judge from joining the Zoom call.<sup>435</sup>

Public confidence in the judicial system must be consistently earned.<sup>436</sup> This is particularly the case at a time when public trust in institutions is steadily waning. Earning public trust requires selecting an appropriate platform not only for parties involved, but also the public and media.<sup>437</sup> Some legal scholars, practitioners, and adjudicators reason that digital technologies are a means to advance this end.<sup>438</sup> Social media (e.g. Instagram), webcasting proceedings, and posting summaries of cases on court websites are specific approaches taken by the SCC to help support create a more engaging and transparent relationship between the court and the

---

<sup>433</sup> *Ibid.*

<sup>434</sup> Pritchard, *supra* note 106.

<sup>435</sup> *Ibid.*

<sup>436</sup> Aidan Macnab, “Back to court: in-person v. virtual litigation”, *Canadian Lawyer* (31 May 2022), online: <canadianlawyermag.com> [perma.cc/XX68-CHQG].

<sup>437</sup> *Ibid.*

<sup>438</sup> Shauna Hall-Coates, “following Digital Media into the Courtroom: Publicity and the Open Court Principle in the Information Age” (2019) 24:101-40 *Dalhousie J. of Leg. Studies*.

public.<sup>439</sup> The NSCA has worked to broadcast high profile proceedings and the ONCA is exploring policies in this regard.<sup>440</sup>

Allowing the public and media to attend proceedings (even those conducted in-person), by telephone or video conference eliminates many of the non-legal barriers to observing court.<sup>441</sup> In many ways this approach enhances the implementation of the open court principle compared to pre-pandemic court operations. This approach makes proceedings *more* observable and transparent by abating the issue of courtroom capacity restrictions and allowing the public to observe proceedings even if they cannot access the court in-person.<sup>442</sup> Moreover, posting recorded proceedings to a court's website further enhances the accessibility to those who are unavailable to observe the hearing live (i.e. the majority of the public who works or attends school during a court's operating hours).<sup>443</sup> Observing court virtually also removes the psychological barriers of attending the highly formalized and securitized environment of a court proceeding.<sup>444</sup>

Virtual observation has enhanced media coverage of court proceedings and the practical realization of the open court principle. In Nova Scotia, members of the

---

<sup>439</sup> Wagner, *supra* note 306; Travis Olsen & Christine O'Clock, "The Role of Social-Networking Tools in Judicial Systems" (2010) *Future Trends in State Courts* 164–69.

<sup>440</sup> Marentic, *supra* note 123; Stairs, *supra* note 27.

<sup>441</sup> Supreme Court of Newfoundland and Labrador, *supra* note 2; Court of Appeal of Newfoundland and Labrador, *supra* note 12; Nova Scotia Courts, *supra* note 20; Court of Appeal of New Brunswick, *supra* note 66; Court of Appeal for Saskatchewan, *supra* note 168; Supreme Court of British Columbia, *supra* note 199; Court of Appeal of British Columbia, *supra* note 225; Supreme Court of Yukon, *supra* 265; Federal Court, *supra* note 277.

<sup>442</sup> Cashman, *supra* note 218 at 13; Salyzyn, *supra* note 426.

<sup>443</sup> Salyzyn, *supra* note 426.

<sup>444</sup> *Ibid.*

media appreciate the option to observe virtually and hope this option will continue.<sup>445</sup> Through virtual court, reporters are able to observe multiple court proceedings in a day without necessitating travel.<sup>446</sup> This is especially critical given mainstream media outlets lack the resources they once enjoyed—particularly across Atlantic Canada. Despite these advantages, one NSSC judge expressed some hesitation toward virtual court observation because having “the media floating in the background [...] feels very odd” and articulated the need for a clear policy regarding such participation.

As most courts return to predominantly in-person proceedings it is crucial that the judicial system continues to make courts more accessible for the public and media to observe in the long-term. This includes allowing virtual observation by telephone, webcast, or video conferencing platform.<sup>447</sup> Courts cannot assume in-person court is accessible given the physical and psychological burdens of attending. A column published by the Centre for Free Expression at Ryerson University offered three protocols for supporting the open court principle through the transformation to virtual proceedings. One such principle included ensuring “the public has access to a means to view virtual hearings in “real-time” or, if this is not possible, access to a

---

<sup>445</sup> Stairs, *supra* note 27.

<sup>446</sup> *Ibid.*

<sup>447</sup> Salyzyn, *supra* note 426.



recording upon request”.<sup>448</sup> The ability to attend a NSCA proceeding in Halifax for an individual living and working in Yarmouth or Inverness (i.e. 3 hours from the location of the proceeding) may not be providing meaningful “access” to court proceedings for all Nova Scotians. Measures used during the pandemic to provide open access to the courts should not be discarded with the return to in-person proceedings because continuing such practices will help enhance access by providing more avenues for the public to engage with the judicial system.<sup>449</sup>

### *2.2.11 Privacy Concerns*

Enhancing the accessibility of court proceedings must be carefully balanced against the privacy of parties. This includes cybersecurity issues such as the vulnerability of virtual proceedings to hacking, commonly known as “Zoom bombing”; the illegal sharing of images and/or recordings; and the unauthorized communication of observers in a video conferencing chat feature.<sup>450</sup> Cybersecurity concerns also extend to ensuring unsanctioned individuals are not observing *in camera* proceedings. For example, as one NSSC judge explained, concerns exist surrounding the tainting of witness testimony.<sup>451</sup> Ensuring the quality and security of information should not be lost in the courts’ efforts to ensure public confidence

---

<sup>448</sup> Justin Sagayeni, “Even in the Age of Covid-19, Justice Requires Open Courts”, *Centre for Free Expression* (13 March 2020), online: <cfe.ryerson.ca> [perma.cc/2VEK-GPXY].

<sup>449</sup> Rossner, *supra* note 358.

<sup>450</sup> Hasham, *supra* note 116; Melnitzer, *supra* note 330; Burkell *supra* note 339; Amy Salyzyn, *supra* note 373.

<sup>451</sup> Salyzyn, *supra* note 426.

in the justice system through the open courts principle.<sup>452</sup> It should be noted, as articulated by a trial judge, that the cybersecurity of virtual connectivity platforms has dramatically improved and “Zoom bombing” is largely an issue of the past.

Courts must also be cognizant of the repercussions of dispensing with the “practical obscurity” of court proceedings that flows from enhancing the openness and accessibility of the courts. Broadcasting and/or posting recordings of court proceedings online rather than limiting the observation of proceedings to physical attendance shifts proceedings that were once difficult to observe to highly accessible—which creates challenges for managing the personal information of participants.<sup>453</sup> Some suggest this moves courts away from their traditional role as custodians of information to a publisher thereof.<sup>454</sup> Legal researchers further argue this makes parties’ personal information vulnerable to use that is de-contextualized, for voyeuristic rather than educational purposes and/or for legal or illegal financial gain.<sup>455</sup> In some cases individuals’ legal matters have become viral entertainment.<sup>456</sup> Moreover, some worry these risks combined with the permanency of online data can void parties’ privacy or “right to be forgotten”, especially following an acquittal.<sup>457</sup>

---

<sup>452</sup> Michael Spratt, “The case against cameras in the courtroom”, *CBC News* (20 September 2016), online: <cbc.ca/news> [perma.cc/MZT6-R7E3].

<sup>453</sup> Salyzyn, *supra* note 426; Patrick C. File, “A History of Practical Obscurity: Clarifying and Contemplating the Twentieth Century Roots of a Digital Age Concept of Privacy” (2017) 6 U. Balt. J. Media L. & Ethics 4.

<sup>454</sup> Fagay, *supra* note 328.

<sup>455</sup> *Ibid*; Salyzyn, *supra* note 426; Burkell, *supra* note 339; Jane Bailey & Jacquelyn Burkell, “Revisiting the Open Court Principle in an Era of Online Publications: Questioning Presumptive Public Access to Parties’ and Witnesses’ Personal Information” (2017) *FIMS Publications*, 143 at 159; Fagay, *supra* note 328.

<sup>456</sup> Burkell, *supra* note 339.

<sup>457</sup> Stairs, *supra* note 27; Bertrand, *supra* note 369.

This can subject a litigant/accused to revictimization and may dissuade individuals from advancing a meritorious case.<sup>458</sup> For example, in immigration matters, revealing refugee status (i.e. sexual orientation) may subject the individual to retribution in their home country if their application is denied.<sup>459</sup>

### *2.2.12 The Impact of Virtual Proceeding on Family Division Courts*

It is important that virtual court be used appropriately for family law matters given their personal and time sensitive nature (e.g. child protection). As previously noted, a network of family law lawyers in Ontario have called on the province's family courts to change their decision to transition back to in-person proceedings.<sup>460</sup> Those advocating for this reason that virtual family proceedings are more efficient and cost effective for counsel, clients, and the court system, particularly in rural and remote areas.<sup>461</sup> However, such advantages must be carefully weighted against the unique circumstances of family law matters.

There are several factors which make virtual court inaccessible or unsuitable in certain family law matters. These factors include family law matters being:

1. highly emotionally and stressful for parties (often involving ongoing relationships between litigants, not just money);
2. frequently involving vulnerable individuals including children and SRL (nearly half of family division litigants in Nova Scotia); and

---

<sup>458</sup> Salyzyn, *supra* note 426.

<sup>459</sup> *Ibid.*

<sup>460</sup> Ontario Superior Court of Justice, *supra* note 90; Arangio, *supra* note 110; Hendry, *supra* note 110; Oromoni, *supra* note 109.

<sup>461</sup> *Ibid.*

3. frequently involve incidence of violence, physical safety, and power imbalances between parties.<sup>462</sup>

Moreover, the digital divide impedes the ability of litigants to participate in these highly sensitive legal matters. In Ontario, family lawyers have reported parties missing child protection matters because they lack the technology to log into court proceedings—a prevalent issue for litigants residing rurally/on reserve and for older, less technologically competent Ontarians.<sup>463</sup> Furthermore, it is more difficult for courts to screen for intimidation and/or domestic violence in a virtual court setting.<sup>464</sup>

Based on the above factors, one NSSC family division judge suggested that virtual proceedings must be used *appropriately* in family law matters. In general, matters that are less complicated and more procedural in nature are more conducive for virtual proceedings (e.g. date assignment conferences, pre-trial motions, routine matters by consent). By contrast, as discussed above, the subject and/or circumstances of some family law issues may negate the value of virtual proceedings.

The same judge articulated that high-stakes matters including child protection cases are best suited in-person. In those cases, virtual appearances should be used as

---

<sup>462</sup> “Meaningful Change for Family Justice: Beyond Wise Words: Final Report of the Family Justice Working Group” (April 2013) at 15-17, online (pdf): *Action Committee on Access to Justice in Civil and Family Matters* <cfc-fcjc.org> [perma.cc/W9YU-XSWR].

<sup>463</sup> Butler, *supra* note 111.

<sup>464</sup> *Ibid.*

a last resort. This allows parties, regardless of the outcome, to best feel the process was treated “as seriously as the matter at stake”. Using virtual proceedings appropriately in family law matters also includes using the right medium for matters. For example, the NSSC Family Division leveraged the reliability of telephone proceedings throughout the pandemic to avoid technological delays, the impracticality of compensating for delays in child custody matters as is possible in civil claims, and to meet the strict deadlines of child protection proceedings.

### *2.2.13 Intrinsic Benefits of In-Person Proceedings*

Although it is difficult to quantify, in-person hearings provide inherent benefits to the court and its users that regarding participants’ ability to engage with one another. Courts commonly expressed refrain with counsel’s impediments to engaging with the presiding judge(s) during virtual court—including at the NSCA.<sup>465</sup> Through its consultation with the Bar, the NSCA has heard complaints regarding the ability of counsel to see the expressions of panel members while presenting and a lack of an immediate sense of how their argument was being received as is possible in a physical setting.<sup>466</sup> This was partially overcome by technical improvements including zooming in on the judges.<sup>467</sup> The virtual environment also presented challenges for judges. A NSSC judge indicated virtual proceedings hindered their

---

<sup>465</sup> McInnes, *supra* note 36; McCoy, *supra* note 144; Cohen, *supra* note 202; Fabian, *supra* note 152.

<sup>466</sup> McInnes, *supra* note 36.

<sup>467</sup> *Ibid.*

ability to connect with witnesses, which in some instances prohibited the resolution of matters. One NSCA judge spoke of a consensus among the bench that virtual court makes it harder to get counsel's attention, break in to ask questions, and facilitate the flow of court. This was partially a result of a lack of non-verbal cues. An NSSC family division judge commented that missing non-verbal cues in telephone proceedings makes it harder for judges to interject as they are fearful of cutting off participants and making them feel the judge is being disrespectful or not listening to them. These factors likely partially explain counsel's general preference for in-person proceedings.<sup>468</sup>

Many judges at the NSSC and NSCA also conveyed the importance of in-person proceedings which allow counsel to interact with other lawyers and their clients. In many instances this has propelled resolution. While discussing this topic, one NSCA judge expressed caution toward virtual proceedings stating, "just because some aspects of virtual court make things cheaper and avoid people having to be transported, we have to keep the human centred piece of it very much in the foreground". Not only are in-person proceedings beneficial for morale, collegiality, and building relationships, it encourages conversation among opposing counsel—sometimes leading to off the record settlement. Even if not leading to settlement, several judges indicated the ability of opposing counsel to caucus in-person before

---

<sup>468</sup> *Ibid.*

proceedings often lends itself to more efficient proceedings. This allows parties to communicate details/disclosure/motions for directions before appearing in court. Although it is possible to do this virtual, several judges noted that this often did not take place prior to virtual proceedings. Moreover, many judges highlighted the importance of the learning opportunity for new lawyers and law students to observe/support files in a physical court, which was missed throughout most of the pandemic.

#### *2.2.14 The Impact of Virtual Proceedings on Jury Trials*

As one research participant put it: “it’s obvious” jury trials are not well suited for virtual proceedings; what is perhaps less obvious are the potential ramifications of failing to conduct virtual jury trials. It is unsurprising that no jurisdiction in Canada attempted to conduct virtual jury trials during the pandemic; NSSC judges interviewed for this research expressed hesitancy to virtual jury trials because of the intense time commitments and logical complexities.<sup>469</sup> Legal researchers at the University of Manitoba reason that Canada’s reluctance to attempt virtual jury trials while conducting all other procedures virtually, “leaves the jury trial vulnerable to obsolescence in a digital world”.<sup>470</sup> The same researchers suggest this reluctance is attributable to “a general propensity to devalue and discourage jury trials”, which

---

<sup>469</sup> Bertrand, *supra* note 369 at 40.

<sup>470</sup> *Ibid* at 38-39.

they argue is founded in the “significant pressure” on accused to elect a trial by judge.<sup>471</sup> Their research offers only anecdotal evidence and no empirical data to support their claim, which the researchers acknowledge is seldom discussed in legal scholarship—nor did it arise in any grey or academic literature reviewed in compiling this report.<sup>472</sup>

At the time of publication of this report, all Canadian superior courts have resumed in-person jury trials—largely negating the critiques. Unfortunately, during the pandemic accused individuals and civil litigants were forced to wait until jury trials could safely resume.<sup>473</sup> However, provinces including Manitoba, Nova Scotia, and Ontario resumed jury trials in the Summer 2020. Furthermore, jurisdictions including Nova Scotia also designed and opened new court facilities equipped for physically distanced jury selection and trials moving forward.

#### *2.2.15 Benefits Encountered with Virtual Court*

For some litigants, virtual court allows greater access to courts with minimal impact on their daily life.<sup>474</sup> As one NSSC family division judge explained: the expanded use of virtual proceedings because of the pandemic has endowed courts

---

<sup>471</sup> *Ibid* at 50.

<sup>472</sup> *Ibid*.

<sup>473</sup> *Ibid* at 51.

<sup>474</sup> Pritchard, *supra* note 106.



with an additional ‘tool’ to enhance the efficient and accessible administration of justice. The main benefit of virtual proceedings is its abatement of geographic and transportation barriers for parties, counsel, witnesses, and judges. This offers cost and time efficiencies for participants including reduced travel time, waiting time, and eliminating unanticipated delays.<sup>475</sup> Virtual appearances have allowed for greater accessibility to proceedings for rural and Indigenous litigants, particularly those who lack access to a vehicle, driver’s license, taxi service, and or public transit.<sup>476</sup> This leads to logistical and cost efficiencies, which can allow lawyers to take on more cases, saves clients time and money on travel, and limits the opportunity/personal cost of accessing justice (e.g. time away from work, child/elder care responsibilities).<sup>477</sup> This is particularly advantageous in limiting the transportation costs and time for routine appearances, which are common in the family law disputes. Such savings also extend to the justice system in limiting the need for travel for district judges and the transportation of incarcerated persons for court proceedings. These cost savings are particularly important for parties struggling to afford counsel.<sup>478</sup>

---

<sup>475</sup> Michael Spratt, “Our justice system should not go back to normal pre-COVID delays”, *Canadian Lawyer Magazine* (22 April 2022), online: <canadianlawyermag.com> [perma.cc/WE2H-Q6XW].

<sup>476</sup> Justice Christa Brothers, Supreme Court of Nova Scotia, *supra* note 28; Federal Court, *supra* note 282; Wagner, *supra* note 301; Richardson, *supra* note 160 at 8; Cohen, *supra* note 202.

<sup>477</sup> *Ibid*; Richardson, *supra* note 161 at 38-39; Salyzyn 2012, *supra* note 318 at 440; DeWare, *supra* note 59.

<sup>478</sup> DeWare, *supra* note 59.

Virtual proceedings *can* lead to the more efficient and timely administration of justice. Such efficiencies are not just limited to travel savings for rural litigants but extend to urban parties and counsel. Such benefits exist in large urban/suburban regions of Canada where traffic delays can be cumbersome and unpredictable. One Ontario criminal defense lawyer has described the time saved driving between courthouses in the GTA as “a godsend” as it has allowed her to spend less time stuck in traffic and more time serving her clients.<sup>479</sup> Virtual proceedings also help prevent delays associated with COVID, inclement weather,<sup>480</sup> and by allowing judges and court administrators to fill in for their colleagues in other districts on short notice. Some judges also reported that virtual proceedings allowed for the more flexible and efficient transition between witnesses. Representatives from courts across the country, particularly less populated ones, indicated that virtual proceedings have also allowed courts and counsel to be more accessible to citizens in remote areas including enhanced ability to leverage out out-of-province/region counsel, who are true counsel of choice, and/or expert witnesses in a more cost-effective manner.

As many courts are now equipped with the technology to allow for virtual proceedings, courts can now offer more *options* for parties regarding their method of appearance.<sup>481</sup> For some court participants, virtual appearances have reduced the

---

<sup>479</sup> Hasham, *supra* note 116.

<sup>480</sup> Cohen, *supra* note 202; DeWare, *supra* note 59.

<sup>481</sup> Clair, *supra* note 1; Bruineman, *supra* note 102; Wagner, *supra* note 301.

financial obstacles of accessing justice. For others, it has reduced the emotional toll of participating in an adversarial method of dispute resolution by allowing accused persons, vulnerable witnesses, and other court users to participate from a setting, other than a courtroom, in which they are more comfortable.<sup>482</sup>

Some judges also noted improved sightlines of witnesses in virtual proceedings compared to in *some* courtrooms; participants may also be better focused in a virtual environment.<sup>483</sup> Virtual proceedings also limits the overcrowding of courthouses, while at the same time video/audio participation by the public and media eliminates/mitigates non-legal barriers to open courts.<sup>484</sup>

Despite the opportunities for efficiencies presented by virtual courts, virtual proceedings are not a panacea. As one NSCA judge indicated, it is important to not lose sight of the fact that virtual proceedings are not appropriate for all matters or participants in the justice system. A study of the English and Welsh civil justice system indicated that remote hearings are not necessarily cheaper than in-person proceedings; any cost savings are often limited to the elimination of travel and accommodation expenses.<sup>485</sup> It is evident from a sample of Nova Scotia judges

---

<sup>482</sup> Cashman, *supra* note 218.

<sup>483</sup> Chiodo, *supra* note 102 at 80; Hasham, *supra* note 116.

<sup>484</sup> Bennett Jones, *supra* note 316 at 16.

<sup>485</sup> Chiodo, *supra* note 102 at 826; UK Civil Justice Council, *The Impact of COVID-19 on the Civil Justice System* (CJC, 2020) at paras 5.1, 5.89-5.92.

consulted in this study, the courts surveyed, and academic literature that virtual proceedings are not an all-encompassing solution to access to justice issues.<sup>486</sup>

### ***2.3 Virtual Trials in the Context of the Criminal Code***

The future of virtual proceedings in the criminal law context depends on whether courts take a textual or purposive/contextual interpretation of the relevant provisions regarding the method of proceeding in the *Criminal Code* (the “Code”). As a starting point, the principal rule requires individuals participating in a proceeding (i.e. the accused, counsel, the presiding judge) to do so personally.<sup>487</sup> An accused retains the right and duty to be present throughout the duration of their trial under subs. 650(1) of the *Code*; the importance thereof is undisputed by courts and legal scholars.<sup>488</sup> What remains unsettled is whether a virtual appearance complies with subs. 650(1) which requires the accused be “present in court” during their trial and whether an accused can appear virtually when one or both of the parties objects and insists upon the accused’s physical presence in the courtroom.<sup>489</sup> The virtual presence of the judge and other participants (i.e. counsel) is a less contentious matter as ss. 715.26 and 715.25 respectively set out the considerations for the trial judge in

---

<sup>486</sup> Salyzyn, *supra* note 373.

<sup>487</sup> Steve Coughlan, *Criminal Procedure*, 4th ed. (Toronto: Irwin Law Inc, 2020) at 511-12.

<sup>488</sup> Wayne Gorman, “The Virtual Court and the Presence of the Accused” (2022) 70 C.L.Q. 397 at 9 [Gorman 2022]; Wayne Gorman, “The Virtual Court” (Paper delivered at the Provincial Court of Nova Scotia, Spring Education Conference, Halifax, 11 June 2021) [Gorman 2021]; Christopher Bentley, *Criminal Practice Manual: A Practical Guide to Handling Criminal Cases* (Toronto: Thomson Reuters, 2000) (loose -leaf updated 2022, release 7) ch. 3 at 82.

<sup>489</sup> Gorman, *supra* note 488 at 4.

deciding whether to allow it (see Appendix 3).<sup>490</sup> As an aside, the presumption of attendance for accused persons during a trial is reversed in the case of summary conviction. This allows an accused to appear personally or by counsel but permits a judge to require the accused's personal attendance.<sup>491</sup>

### 2.3.1 Can “present in court” in s.650(1) Include Virtual Presence?

A textual interpretation of s. 650(1) and its related subs. have led some jurists and legal scholars to interpret the *Code* to require the physical presence of the accused for the duration of their trial.<sup>492</sup> As a judge from the NSSC articulated, Nova Scotia's trial courts have adopted the position that an accused, by default, appears in-person when evidence is being called. This presumption that the accused “must be present in person – that is, cannot attend remotely – for any portion of the trial where evidence is being taken” flows from the exceptions to subs. 650(1) in ss. 650.(1.1) and 650(2).<sup>493</sup> The challenge in interpreting subs. 650(1) to include virtual appearance is that s. 650(1.1) explicitly refers to the accused appearing by videoconference by way of court order and the parties' consent, *except* while

---

<sup>490</sup> Roger Salhany, *Criminal Trial Handbook* (Toronto: Thomson Reuters, 1992) (loose-leaf updated 2022, release 3), ch. 1 at 26; Coughlan, *supra* note 487 at 512; Gorman 2022, *supra* note 488 at 2; Gorman 2021, *supra* note 488 at 3.

<sup>491</sup> *Criminal Code*, R.S.C. 1985, c. C-46, s. 800(2); Coughlan, *supra* note 487 at 511.

<sup>492</sup> Salhany, *supra* note 490 at § 7:1; Halsbury's Laws of Canada (online), *Criminal Procedure*, “Trial Procedure: Jury Trials: General” (VIII.5(1) at HC2-344 “Accused to be present” (Cum. Supp. Release 55) [HC2-344].; *R. v. C. (A.W.)*, 2005 A.B.C.A. 96 at para. 10.

<sup>493</sup> *R. v. Gibbs*, 2018 N.L.C.A. 26 at para. 26 [*Gibbs*]; Coughlan, *supra* note 487 at 51.

evidence is being taken.<sup>494</sup> The *Code* reiterates the requirement the accused be physically present in the courtroom for the portion of the trial in which evidence is being taken in s. 650(1.2).<sup>495</sup> Justice McKay affirms this interpretive approach in *R. v. Jefferies* while stating:

Parliament has chosen to differentiate those portions of a trial where evidence is not heard, and to permit the court to order an accused to appear by audio or video conference for those portions of the trial. However, Parliament has chosen to maintain the requirement that an accused be present in person in the courtroom for those portions of the trial where the evidence of a witness is taken.<sup>496</sup>

Simply put, ss. 650(1.1) and 650(1.2) would have no meaning in allowing for virtual appearances for the portion of the trial where evidence is not being taken if the accused by court order *and* the parties' consent if s. 650(1) did not require the accused to be physically present in the courtroom for the duration of their trial.<sup>497</sup>

There is a notable exception to the requirement imposed by s. 650(1) that the accused be “present in court during the whole of his or her trial” that does not require the accused be physically present in court while evidence is being taken or the consent of the Crown.<sup>498</sup> This exception allows the court to “permit the accused to be out of court during the whole or any part of his trial on such conditions as the

---

<sup>494</sup> *Criminal Code*, *supra* note 491 at s. 650(1.1); David Rose, *Quigley's Criminal Procedure in Canada*, 2nd ed. (Toronto: Thomson Reuters, 2005) (loose-leaf updated 2022, release 2), ch. 10 at 5; Gorman 2022 *supra* note 488 at 9; HC2-344, *supra* note 492.

<sup>495</sup> HC2-344, *supra* note 492; Rose, *supra* note 494 at § 10:5.

<sup>496</sup> *R. v. Jefferies*, 2021 O.N.C.J. 98 at para. 35.

<sup>497</sup> *R. v. Twoyoungmen*, 2021 A.B.P.C. 88 at para. 45 [*Twoyoungmen*]; Gorman 2022, *supra* note 488 at 9; Gibbs, *supra* note 493 at para. 25.

<sup>498</sup> *Criminal Code*, *supra* note 491 at s. 650(2)(b).

court considers proper”<sup>499</sup> This exception may appear to establish “open-ended discretion” for the court to proceed with the virtual presence of an accused; however, “the section has historically been applied with restraint” and to only be applicable if there is a request by the accused to be absent.<sup>500</sup> The ONSC has interpreted “permit” in s. 650(2)(b) to suggest the accused has to request permission to be out of the physical courtroom—requiring the accused’s consent, but not that of the Crown, for a judge to issue an order allowing the accused to appear virtually.<sup>501</sup> The ABQB has adopted a similarly restrictive approach in that “s. 650(2)(b) should be used sparingly, and with caution” and is “the exception rather than the norm”.<sup>502</sup> The court reasoned the exception should only be leveraged in situations of “a valid and legitimate reason that does not offend public policy, and that is beneficial to the accused without prejudicing fair trial rights of the accused and other trial participants”.<sup>503</sup>

The discussion above suggests for a presiding judge to proceed with a virtual hearing requires, at minimum, the consent of the accused.<sup>504</sup> This conclusion flows from the following rationale:

---

<sup>499</sup> *Ibid*; HC2-344, *supra* note 492; Rose, *supra* note 494 at § 10:5.

<sup>500</sup> *R. v. Colegrove*, 2021 N.S.S.C. 9 at para. 12 [*Colegrove*]; *R. v. Howell*, [1955] O.J. No. 328, at para. 4, 22 C.R. 263 (Ont. C.A.) [*Howell*].

<sup>501</sup> *Re: Court File No. 19/578*, 2020 O.N.S.C. 3870 at para. 25 [*Re: No. 19-578*].

<sup>502</sup> *R. v. Pazder*, 2015 A.B.Q.B. 493 at para. 249-50 [*Pazder*].

<sup>503</sup> *Ibid* at para. 249.

<sup>504</sup> *Gibbs*, *supra* note 493 at 61, 98.

1. Accused persons have a right and duty to appear in person (i.e. physically in the courtroom) for the entire duration of their criminal trial.<sup>505</sup>
2. There is little impediment to the use of virtual court for a criminal trial if (1) the parties' consent, (2) a judge so orders, and (3) it is for a portion of the trial where evidence is not being taken.<sup>506</sup>
  - a. In these situations, a judge may preside, and counsel may ALSO appear virtually.<sup>507</sup>
3. Judges can "permit" an accused appear virtually, but should do so restrictively, with case law to suggest this requires the consent of an accused, but not that of the Crown.<sup>508</sup>

There is also a potential for purposive, contextual, and textual interpretations of the accused's presence requirement in s. 650(1), which leads to the broader, permissive use of virtual proceedings for criminal trials.<sup>509</sup> Through employing a purposive interpretation, courts in other jurisdictions have held that "presence" in s. 650(1) is not limited to physical and can include virtual presence<sup>510</sup>—something an NSSC judge articulated the Nova Scotia Courts are not prepared to do yet. As is broadly purported, subs. 650(1) exists to ensure the accused hears the evidence and can fully participate in their trial.<sup>511</sup> As Justice Green at the NLCA reasoned in *R v. Gibbs*:

---

<sup>505</sup> *Ibid* at para. 25; *Criminal Code*, *supra* note 491 at s. 650(1); Coughlan, *supra* note 487 at 511-12.

<sup>506</sup> *Criminal Code*, *supra* note 491 at s. 650(1.1); Gorman 2022, *supra* note 488 at 9; Gorman, *supra* note 488 at 3.

<sup>507</sup> *Criminal Code*, *supra* note 491 at s. 715.2.

<sup>508</sup> *Ibid* at s. 650(2)(b), Pazder, *supra* note 502 at para. 249-50; *Re: No. 19-578* at para. 25; *Colegrove*, *supra* note 500 at para. 12; *Howell*, *supra* note 500 at para. 4; HC2-344, *supra* note 492; Rose, *supra* note 494 at § 10:5.

<sup>509</sup> Gorman 2022, *supra* note 488 at 9.

<sup>510</sup> In *R. v. Singh*, [2020] N.J. No. 177, at para. 46, 165 W.C.B. (2d) 320 (P.C.) [*Singh*] the accused efforts adjournment of his trial arguing he could not travel to Newfoundland and Labrador from British Columbia due to cost and pandemic restrictions was dismissed. The accused objected to a virtual appearance, arguing he retained the right to appear physically in the courtroom. In dismissing the objection, the presiding judge reasoned, "when an accused person appears by video conference she or he is 'present in court'".

<sup>511</sup> *R v. Tran*, [1994] S.C.R. 951, at para. 50, 117 D.L.R. (4th) 7; *R. v. Cote*, [1986] 1 S.C.R. 2, at para. 13, 5 D.L.R. (4th) 82; CED 4th (online) *Criminal Law*, "Introduction: Defences: Procedure: Right to be Present at Trial" (1.2.(h).(i)) at § 32; Gorman 2022, *supra* note 488 at 5.



the purpose of ‘presence’ is to ensure that the accused has the opportunity to have first-hand knowledge of proceedings which affect his or her vital interests, such as facing his or her accuser, hearing the case against him or her, consulting with counsel, cross-examining witnesses, participating in the trial through motions and objections, having proper observations made of the demeanour of witnesses and, in the words of subsection (3) of section 650, ‘to make full answer and defence’ after the close of the case for the prosecution.<sup>512</sup>

Justice Green noted that none of the objectives are compromised through a virtual appearance of one of the trial’s participants provided the aforementioned objectives are met and the judge can “hear, manage, and decide the case in a fair and effective manner”.<sup>513</sup> Furthermore, because s. 650(1) does not expressly stipulate “physical presence” the provision should be interpreted in accordance with its purpose and within the context of modern technology and global and local circumstances (i.e. a pandemic).<sup>514</sup> This contextual interpretation recognizes that physical presence can be replicated in ways not possible when Canadian legal traditions were established where failure to arrange contemporaneous physical presence would have prejudiced the accused’s right to a fair trial.<sup>515</sup> There is jurisprudence which adopts this interpretive approach that includes virtual attendance within the definition of “presence”.<sup>516</sup>

---

<sup>512</sup> *Gibbs*, *supra* note 493

<sup>513</sup> *Gibbs*, *supra* note 493 at para. 59; *Twoyoungmen*, *supra* note 497 at para.s. 23-24.

<sup>514</sup> *R. v. Polmateer*, 2022 O.N.C.J. 221 at para. 31; Gorman 2022, *supra* note 488 at 9.

<sup>515</sup> *Gibbs*, *supra* note 493 at para.s. 26, 51.

<sup>516</sup> *Woods (Re)*, 2021 O.N.C.A. 190 at para. 44 [*Woods (Re)*]; *Singh*, *supra* note 510 at para. 46; *Twoyoungmen*, *supra* note 497 at para.s. 44.

Moreover, it can further be argued from a textual interpretation that “present” in its ordinary meaning includes “virtual presence”. For instance, while presence via videoconference may be qualified as remote or virtual, the participants’ attendance is undeniable.<sup>517</sup> Justice Green in *Gibbs* advances this position in articulating the definition of court as “a place wherein justice is judicially administered” is institutional, rather than locational and questions whether a court must be defined as a singular location whereby participants are physically present.<sup>518</sup> Finally, some judges have taken the position that rather than shepherding the interpretation of s. 650(1) to preclude virtual trials, ss. 650(1.1) and (1.2) regulate the process of virtual proceedings to safeguard the fundamentals of a trial.<sup>519</sup>

### 2.3.2 Can Virtual Trials Proceed without the Consent of the Accused?

While section 650 is strongly suggestive of requiring the consent of the accused or both parties to proceed virtually, section 715.23 of the *Code* raises questions surrounding a judge’s ability to proceed virtually over the objection of the accused.<sup>520</sup> Part XXII.01 (Remote Attendance by Certain Persons) was added to the *Code* somewhat psychically in 2019, on the cusp of the pandemic to permit video or audioconference participation by various participants in certain circumstances.<sup>521</sup>

---

<sup>517</sup> Stephen E. Smith, *The Online Criminal Trial as a Public Trial*, (2021) 51 Sw. L. Rev. 116, at p. 116.

<sup>518</sup> *Gibbs*, *supra* note 493 at para. 51.

<sup>519</sup> *Ibid* at para. 62.

<sup>520</sup> Gorman 2022, *supra* note 488 at 6; <sup>520</sup> Gorman 2021, *supra* note 488 at 4.

<sup>521</sup> Coughlan, *supra* note 487 at 512; Salhany, *supra* note 490 at § 1:26.

These sections are however subject to other provisions in the code - including s.650(1).<sup>522</sup> Section 715.23(1) stipulates that the court may order a participant participate by audio or video conference if appropriate in regard to the circumstances.<sup>523</sup> This indicates broad powers for the presiding judge to require the accused appear virtually. What remains unclear is whether this provision provides the court with the authority to require an accused appear virtually without their consent, which would seemingly be in contrast to prior interpretations of sections 650(1.1) and 650(2)(b).<sup>524</sup> Justice Monahan decided this in the affirmative in *Woods* stating this section 715.23(1): makes it clear that the court may make such an order whether or not the accused has consented”<sup>525</sup> The MBCA made a similar determination in *R. v. Kinnavanthong*, when it found the circumstances of the pandemic and history of the proceedings led the trial judge to properly exercise his authority to require the accused to appear virtually during a sentencing hearing.<sup>526</sup>

### 2.3.3 Conflicting Interpretations Regarding Changes Potential for Virtual Trials

In summary, the interpretation of the relevant provisions surrounding virtual trials is conflicting. Sections 650 and 715.23 appear to restrict and limit the authority of judges to require the accused appear virtually respectively. The jurisprudence is

---

<sup>522</sup> Rose, *supra* note 494 at § 10:5; *Criminal Code*, *supra* note 491 at ss. 715.23(1), 715.25(2), 715.26(1).

<sup>523</sup> Appendix 3.

<sup>524</sup> *Criminal Code*, *supra* note 491 at ss. 715.24.

<sup>525</sup> *Woods v. Ontario*, 2020 O.N.S.C. 6899 at para. 44 [*Woods*], affirmed *Woods (Re)*, *supra* note 516.

<sup>526</sup> *R. v. Kinnavanthong*, 2022 MBCA 49 at paras. 26, 31.

also unsettled regarding the definition of “present in court” under s. 650(1). Case law seemingly suggests that s. 715.23 allows a presiding judge to require an accused to appear virtually and that s. 650(1) can be interpreted such that an accused’s presence can be satisfied virtually.<sup>527</sup> While at the same time jurisprudence has interpreted s. 650(1) in light of ss. 650(1.1) and (1.2) not only require the physical presence of the accused in the courtroom, but in conjunction with s. 650(2)(b) requires at minimum the consent of the accused to proceed virtually. However, much of this case law stems from before the pandemic and the addition of Part XXII.01 (i.e. s. 715.23) to the *Code*.

In absence of guidance from the SCC surrounding the interpretation of ss. 650(1) and 715.23(1) regarding the ability of an accused to appear virtually for the calling of evidence and the authority of a presiding judge to order the virtual appearance of the accused, I would suggest a purposive and contextual interpretation is most persuasive. This approach recognizes the reality of modern technology and its potential to fulfill the purpose of s. 650(1) (i.e. ensuring the accused has knowledge of the proceedings and ability to participate fully therein) that was once not possible—a matter in which judges have taken judicial notice thereof.<sup>528</sup> It also allows for the potential for an expanded scope of virtual court within criminal trials,

---

<sup>527</sup> *Singh*, *supra* note 510 at 46; *Gibbs*, *supra* note 493 at 56; *Woods(Re)*, *supra* note 516 at 44.

<sup>528</sup> *Woods*, *supra* note 525 at para. 44, affirmed *Woods (Re)*, *supra* note 516; *R. v. E. (F.E.)*, 2011 O.N.C.A. 783 at para. 21 [*E. (F.E.)*].

thereby maximizing the potential for access to justice and minimizing delays/backlogs of court proceedings where the presiding judge is satisfied it is appropriate in the circumstances under subs.715.23(1).

There are other forms of criminal proceedings where s. 650 does not apply and therefore allows for the expanded use of virtual court within the criminal context. Section 650(1) only refers to the accused's presence at a trial (including jury selection and the pre-charge conference).<sup>529</sup> It does not however apply to bail or arraignment whereby ss. 502.1 and 515(2.2) permit the accused to appear by video,<sup>530</sup> nor does it apply to administrative steps taken in preparation for trial, which are often not consider part of "the trial" under s. 650(1).<sup>531</sup> Moreover, an accused is not entitled to the physical presence of all witnesses.<sup>532</sup> For example, vulnerable witnesses may testify outside the courtroom or behind a screen in accordance with s. 486.2.

Changes to the *Code* would be required to address the contradictory jurisprudence and accommodate the broader use of virtual trials, while safeguarding the purpose of s.650(1). These changes would include clarifying the interaction ss.

---

<sup>529</sup> *E. (F.E.)*, *supra* note 528 at paras. 44, 56, 50 [*E. (F.E.)*]; *R. v. Sinclair*, 2013 O.N.C.A. 64 at para. 20; Salhany, *supra* note 490 at § 7:1; Rose, *supra* note 494 at § 10:5; Bentley, *supra* note 488 at § IF:1.

<sup>530</sup> Rose, *supra* note 494 at § 10:5.

<sup>531</sup> *R. v. Branco* (1988), 62 C.R. (3d) 371, at para. 14, 25 O.A.C. 73 (Ont. C.A.); *R. v. Barrow* (1987), 61 C.R. (3d) 305, at para. 23, 45 D.L.R. (4th) 487 (S.C.C.); *R. v. James*, 2009 O.N.C.A. 366 at para. 15; *R. v. Cote*, *supra* note 511; Bentley, *supra* note 488 at § IF:1.

<sup>532</sup> Rose, *supra* note 494 at § 10:5.

650(1) and s.715.23(1) such that “present in court” can include virtual presence and consent of the accused is not required to appear virtually.

#### ***2.4 Types of Cases Best Suited for Virtual Court***

Virtual proceedings have had a profound impact on the administration of justice and courts must now determine what types of cases are most suitable for virtual courts.<sup>533</sup> As was the consensus among interviewees and academic literature, while virtual courts can offer efficiencies (see section 2.2.14) and work well for certain types of proceedings, virtual proceedings are not suitable for all matters nor all parties.<sup>534</sup> As one NSSC family division judge articulated, “just because you *can* do something virtually, doesn’t mean you should (...) you really have to consider what’s at stake and whether the subject matter is appropriate”. Drawing upon the discussion of the benefits and challenges of virtual proceedings, the expertise of interviewees, and the experiences of courts across Canada, this section provides a summary of the instances where virtual proceedings are appropriate. As a matter of scope, this discussion extends to matters that do not require an accused to hear evidence “present in court” under the *Criminal Code* (see section 2.3.1).

In-person proceedings are important for substantive and/or practically dispositive matters, particularly where credibility is in question. As the ONSC

---

<sup>533</sup> Stairs, *supra* note 27; Melnitzer, *supra* note 330.

<sup>534</sup> Faguy, *supra* note 328; Salyzyn, *supra* note 319; Melnitzer, *supra* note 330.

stated: in person proceedings are valuable for more substantive matters and “will remain an *essential* feature of our justice system”.<sup>535</sup> Such matters include, but are not limited to:

- mandatory mediations;
- trials (judge and jury); and
- long motions, and examinations for discovery.

Furthermore, the Advocates’ Society recommends that an in-person proceeding is appropriate the matter in question represents “a significant step in the proceedings” (i.e. legally or practically dispositive of the case), where evidence is being put before the court, and/or at least one party is seeking an in-person appearance.<sup>536</sup> By a similar token, judges, including the Chief Justice of British Columbia, have expressed a preference for in-person proceedings for complex, detailed, high-stakes cases, and matters involving sensitive information.<sup>537</sup>

The importance of parties’ subjective sense of due process and inclusion in the justice system cannot be understated. This is essential in high-stakes family, criminal, and civil matters (e.g. jury trials, child custody matters, high value civil claims, etc.) to allow parties to “have their day in court”,<sup>538</sup> feel a subjective sense

---

<sup>535</sup> Ontario Superior Court of Justice, *supra* note 90.

<sup>536</sup> “The Right to be Heard: The Future of Advocacy in Canada” (June 2021) at 9, 91, 95, online (pdf): *The Advocates’ Society* <advocates.ca> [perma.cc/EVM7-TRVX] [Advocates’ Society]; Bernice Carolino, “New Report explores how to preserve oral advocacy in a digital world”, *Canadian Lawyer* (25 June 2021), online: <canadianlawyermag.com> [perma.cc/5C7L-S3N7].

<sup>537</sup> *Ibid.*, Outerbridge, *supra* note 230.

<sup>538</sup> *Ibid.*

of inclusion in the legal process,<sup>539</sup> and feel their proceeding was taken as seriously as the issues at stake. Along these lines, one NSSC judge expressed concerns that a move toward efficiency *visa vie* virtual proceedings may inadvertently delegitimize the institutions; parties may not feel as though they are participating in a “real” or “meaningful” way.

Judges also expressed a marked preference for in-person proceedings for trials because of the ease of facilitating the presentation of evidence, exhibits, and witnesses in- leading to smoother and more efficient trials (see section 2.26). This is particularly important for witness testimony where credibility is at issue (see section 2.28). While virtual proceedings are possible to achieve this outcome, many judges argued there is no substitute for in-person proceedings when it comes to assessing a witness’ demeanour, character, and credibility.<sup>540</sup>

By contrast, less complicated matters with reduced necessity for personal contact between participants and the trial judge are more well suited for virtual appearances to allow for the speedy, just, and inexpensive resolution of matters.<sup>541</sup>

As many judges and legal scholars agreed, this includes:

- uncontested matters;
- routine appearances;
- minor criminal offences;
- many commercial disputes;

---

<sup>539</sup> Salyzyn, *supra* note 318 at 449.

<sup>540</sup> Higgins, *supra* note 51; Rossner, *supra* note 321 at 95; Salyzyn 2012, *supra* note 318 at 448.

<sup>541</sup> Nova Scotia Civil Procedure Rules, r. 1.01.



- motions and applications;
- set date courts;
- low-value civil disputes;
- settlement conferences; and
- preliminary and procedural hearings.<sup>542</sup>

Courts are also continuing to hear some bail applications and sentencing hearings virtually—subject to the significance and gravitas of the matter.<sup>543</sup> Many judges expressed the importance of proceeding virtually for the aforementioned proceedings in rural/Northern regions where the time and cost associated with attending court in-person outweighs any benefit associated with an in-person appearance.

As previously discussed, proceeding virtually for such matters can offer numerous benefits to court users (see section 2.2.14). As the BCCA’s Registrar stated: paying for airfare and accommodation for an application for extension of time “doesn’t make sense”.<sup>544</sup> Allowing low-value civil disputes to proceed virtually can minimize financial and geographical constraints that prevent litigants from resolving their matter under the traditional, in-person process—particularly for marginalized individuals.<sup>545</sup>

---

<sup>542</sup> Rossner, *supra* note 321 at 95; McInnes *supra* note 36; Carolino, *supra* note 536; Advocates’ Society, *supra* note 536 at 8-9; Macnab, *supra* note 436.

<sup>543</sup> See Appendix 1 (e.g. NBQB, SKQB).

<sup>544</sup> Outerbridge, *supra* note 230.

<sup>545</sup> Cashman, *supra* note 218 at 43-44.

In the family law context, virtual proceedings are also utilized (including at the NSSC) to provide a more comfortable and secure court appearance for survivors of family violence. Overall, the more straightforward, process-oriented the matter the more consensus for it proceed virtually. Some judges, however, still expressed a preference for in-person civil and criminal (Crownside) chambers emphasizing the importance of collaboration between opposing counsel and the opportunity for younger counsel to develop their skills (see section 2.2.13).

Many courts continue to rely on hybrid proceedings to enhance the accessibility of court proceedings and limit expenses to parties and the public associated with witness travel and testimony. There was an expressed consensus among judges and other interviewees that it is appropriate and sensible to have witnesses appear virtually where credibility is not in issue, especially when the witness is located far from the court of jurisdiction.<sup>546</sup> This approach can offer substantial cost savings for the justice system and/or the party financing the appearance.

As appellate judges and courts across Canada have observed, appellate proceedings, are better suited to virtual proceedings. This is, of course, unless a participant lacks access to the required technology or if evidence is being taken—

---

<sup>546</sup> Cohen, *supra* note 202.

both uncommon occurrences at appellate courts.<sup>547</sup> This reality flows from the nature of appeal hearings, which generally consist of purely legal arguments. Thus, they do not feature issues associated with witness credibility and the efficient conduct of a trial that are experienced by trial courts. Despite the appropriateness of virtual court for appellate proceedings many appellate counsel and judges prefer in-person hearings—partially because of an enhanced ability to engage with and respond to a presiding judge/panel.

## ***2.5 The Future of Virtual Court***

There is a consensus among courts, stakeholders, and academic literature that virtual proceedings will continue to be used “in a smart way”<sup>548</sup> beyond the pandemic.<sup>549</sup> As one interviewee stated: the “horse is out of the barn” when it comes to virtual proceedings as many participants in the justice system are familiar with the advantages and limitations of virtual proceedings. As such, this will remain a “tool” in courts’ “toolkit” beyond the pandemic.<sup>550</sup> Some have even purported that it would be “a mistake to simply return to the old way of doing things” (i.e. almost exclusively in-person).<sup>551</sup>

---

<sup>547</sup> McInnes, *supra* note 36; Richardson, *supra* note 160 at 16; Theriault, *supra* note 302.

<sup>548</sup> Duncan, *supra* note 373.

<sup>549</sup> Richardson, *supra* note 160 at 32.

<sup>550</sup> McInnes, *supra* note 36

<sup>551</sup> Richardson, *supra* note 160 at 32.

Despite the slow adoption of technology by the justice system before the pandemic, which some describe as “active resistance”,<sup>552</sup> many stakeholders—including judges—have described the adoption of technology as a “silver lining” of the pandemic.<sup>553</sup> In many jurisdictions, the pandemic served as a “springboard” of court digitization efforts that were already underway/being planned.<sup>554</sup> In this regard, COVID-19 became an accelerator of digital change in a system founded on *starie decises*, steeped in tradition, and that is constantly searching for certainty and predictability.<sup>555</sup> Moving forward, the question is not whether virtual proceedings will continue, but how technology can be used “appropriately” to promote access to justice. This is crucial to ensuring technology does not become the “tail waving the dog” in the administration of justice.<sup>556</sup>

There is strong evidence that virtual courts will be much more prominent than prior to March, 2020, “keep[ing] the best of virtual proceedings”, despite the fact that virtual proceedings may not be utilized to the same extent as they were during the height of the pandemic. The most significant indication of this is the fact that almost every superior court has continued, albeit to various extents, to hear some or

---

<sup>552</sup> Richardson, *supra* note 160 at 32; Puddister, *supra* note 321 at 2; Cashman, *supra* note 218 at 40; Wagner, *supra* note 306.

<sup>553</sup> Richardson, *supra* note 160 at 7; Puddister, *supra* note 321 at 2.

<sup>554</sup> *Scaffidi-Argentina v. Tega Homes Developments Inc.*, 2020 O.N.S.C. 3232 at para., 1; *Arconti*, *supra* note 115 at para. 19; Salyzyn, *supra* note 319; Rossner, *supra* note 358.

<sup>555</sup> Hancock, *supra* note 349.

<sup>556</sup> *Ibid.*

parts of matters virtually.<sup>557</sup> While this primarily extends to procedural matters it is evident that (1) current operations (as of Spring 2022) reflect a marked increase in the use of virtual proceedings compared to pre-pandemic practices and (2) judges, for the most part, are exhibiting greater flexibility in accommodating parties' requests for a virtual appearance or proceeding.<sup>558</sup> Jurisprudence since the onset of the pandemic is also indicative of the continued use of virtual courts beyond the pandemic. As Justice Myers of the ONSC stated in *Arconti*,

[w]e now have the technological ability to communicate remotely effectively. Using it is more efficient and far less costly than personal attendance. We should not be going back.<sup>559</sup>

Justice Myers' position echoes the consensus among judges consulted: the judiciary has now experienced the benefits (and drawbacks) of virtual proceedings. The most significant indication of this is the fact that almost every superior court has continued, albeit to various extents, to hear some or parts of matters virtually leading even those judges most disinterested in technology before the pandemic "totally engaged".<sup>560</sup> The Chief Justice of the NBQB has stated there is complete buy-in and acceptance of the importance of virtual proceedings among the province's Bench.<sup>561</sup> This is partially flows from improvements and investments in technology which better facilitates virtual witness testimony, the digital display of exhibits, and the

---

<sup>557</sup> Appendix 1.

<sup>558</sup> McCoy, *supra* note 144; Clair, *supra* note 1.

<sup>559</sup> *Arconti*, *supra* note 115 at 19.

<sup>560</sup> Duncan, *supra* note 373.

<sup>561</sup> DeWare, *supra* note 59.

electronic transmission of documents during a proceedings. These investments in technology are another indicator of the permanency of virtual proceedings.<sup>562</sup>

Despite many courts and judges “getting over the hump” to understand how virtual courts can better facilitate access to justice, there remains an implicit assumption that in-person proceedings are superior to their virtual counterpart.<sup>563</sup> Virtual courts are not a panacea and are better suited for certain types of proceedings. The rapid pace at which virtual proceedings were introduced inevitably led to challenges which likely contributed to the affirmation of many stakeholders’ assumption of the superiority of in-person proceedings.<sup>564</sup> In *Arconti*, Justice Myers attributed this hesitancy and concern to “our own unfamiliarity with the technology” and proceeded to reason that technology “is just a tool. It does not produce perfection. But neither is its use as horrible as it is uncomfortable”.<sup>565</sup> Virtual proceedings cannot offer a perfect medium for court proceedings.

By ensuring the development and maintenance of virtual courts is sufficiently resourced and staffed, judges and stakeholders will have easier see virtual courts as a complete part of the administration of justice, rather than a necessity to get through the pandemic. It is crucial to ensure the administration of digital justice is resourced

---

<sup>562</sup> Duncan, *supra* note 373, Chiodo, *supra* note 102 at 808-09; Clair, *supra* note 1; Lagrois, *supra* note 292; Gallant, *supra* note 46; The Yunusov Question, *supra* note 107.

<sup>563</sup> Stairs, *supra* note 27.

<sup>564</sup> Faguy, *supra* note 328.

<sup>565</sup> Arconti, *supra* note 115 at 43.

appropriately to ensuring the long-term viability of virtual courts and realizing the benefits thereof. The unpredictability of technology combined with the lack of resources to address technological issues presents a barrier to the continued use of virtual proceedings in the immediate and long-term. In the short-term, this unreliability/unpredictability has led some judges to be more inclined to hear matters in-person. In the long-term, the lack of resources/backup plan to troubleshoot technological glitches as they arise threatens the sustainability of virtual proceedings. As a representative of Digital Services Nova Scotia indicated, there is an expectation among judges that court proceedings will run smoothly and the technology that enables virtual proceedings is working, sustained, and highly available. However, technology, by its nature, is not always reliable. As a result, the necessary resources to support the physical and virtual technological infrastructure with back-up systems are essential to avoid jeopardizing the sustainability of virtual proceedings.

### **3.0 Recommendations and Conclusion**

#### ***Recommendations***

Although virtual proceedings are not a panacea, courts are now recognizing that in-person hearings are not a one-sized-fits-all approach to the administration of justice. Virtual proceedings are unlikely to disappear entirely beyond the pandemic; it is important courts continue to innovate and evolve the digitization of justice to

realize the full potential of virtual proceedings. There are several best practices courts can employ to maximize the efficiency and effectiveness of virtual proceedings and promote access to justice. While not an exhaustive list, courts should:

1. establish a streamline and transparent process for determining the method of proceeding;
2. ensure this process is flexible and seek to achieve proportionality between the expeditious and inexpensive resolution of matters and the nature the case;
3. measure key outcomes of the digitization of justice and continually consult with court users regarding their experiences;
4. establish clear guidelines for virtual proceedings to preserve solemnity of court and uphold decorum to the greatest extent possible in a virtual environment; and
5. incorporate virtual proceedings as part of a holistic digitization of the courts to deliver justice in a modern and efficient manner.

### 3.1 Best-Case-Ontario and the Not-so-Wild West: Streamlining Processes

Courts must ensure a streamlined process for accessing virtual proceedings whenever possible. When provided with the terms of reference for this report I was advised that I would be able to locate the information regarding the policies and current practices of virtual proceedings in other jurisdictions through the respective court websites. However, this was not always possible. Some courts offered no information; others provided only out-of-date information on the method of proceeding.<sup>566</sup> In many jurisdictions multiple iterations of practice directives,

---

<sup>566</sup> Supreme Court of Canada, “Notice about COVID-19” (April 26, 2022); Wagner, *supra* note 301; See Appendix 1 (e.g. TCC, PQSC).



website posts, and FAQ pages made it challenging to understand current practices.<sup>567</sup> For many courts, it was not clear how the court’s practice directives regarding virtual proceedings interact with the civil procedure rules. In other instances, the criteria used by the court to determine the method of proceeding (which was made available to me upon request) was not publicly disseminated.<sup>568</sup> Courts should undertake a streamlined and transparent approach to determining the method of proceeding for litigants to help avoid any confusions or frustrations. The following best practices can be considered.

- a) **Ensuring transparency and predictability in determining the method of proceeding or appearance.** The approaches used by the ONSC and the ABQB provide examples of clarity and transparency regarding the determination of the method of proceeding.<sup>569</sup> Both Courts issued a detailed practice directive with the default method of proceeding (e.g. writing, virtual, hybrid, or in-person) for all types of civil, family, child protection, and criminal matters (e.g. case conferences, jury trials, contested motions, first appearances, etc.) These jurisdictions also provided several guiding principles including judicial independence, the needs of SRLs, access to justice, the

---

<sup>567</sup> Nova Scotia Courts, *supra* note 22; “Best Practices Checklist” (29 April 2021) , online (pdf): *Court of Appeal of Nova Scotia* <courts.ns.ca> [perma.cc/9HL5-H3YE]; Court of Nova Scotia, *supra* note 32.

<sup>568</sup> Cohen, *supra* note 202.

<sup>569</sup> Ontario Superior Court of Justice, *supra* note 90; Court of Queen’s Bench of Alberta, *supra* note 180.

importance of in-person proceedings, the nature of the proceedings, and the availability of court resources, which underly these presumptive methods of appearance. In addition, the ONSC provides criteria tailored to each type of proceeding to be used by the Court if a participant is able and wishes to appear/proceed in a manner other than the default prescribed by the directive. The directives provided by the ONSC and ABQB demonstrate best practices in transparency in determining the method of proceeding and how a participant can request a change to the presumptive method. This fulfills many of the wishes of NSSC judges consulted because it provides criteria for the presiding judge while affording flexibility to determine the appropriate method of proceeding. It also provides participants with clarity and consistency on how the court will make these determinations.

- b) **Help court users tailor their request to appear virtually.** To request a virtual appeal hearing at the BCCA parties must complete a standardized form (Appendix 2(P)(ii)). This form provides specific instructions to address the criteria considered by the court in determining the method of proceedings (e.g. travel cost, nature of interests involved, circumstances of the party, etc.). Transparency in this regard helps ensure participants seeking to have their matter heard virtually are aware of the criteria that will be used by the court

in making such determinations and address said criteria to help facilitate the granting of their request.

- c) **Communicate and outline information regarding the method of proceeding/appearance in a manner that is sequential and easy to understand.** The BCCA has issued guidance via a flow chart outlining the process for appellants that has been updated with considerations for virtual court (Appendix 2(P)(iii)). Many jurisdictions including the ABQB have published FAQ pages to their website regarding virtual proceedings. Manitoba's Courts have compiled videos outlining the expectations of attending virtual court.<sup>570</sup> All such measures represent means to help inform participants of the process of attending court virtually and should be continually revised to ensure they reflect current practices.
- d) **Avoid delays, Zoom today.** With the arrival of the seventh wave of COVID-19 in Canada and the ever-present risk infection, the importance of avoiding delays associated with the virus remains important. The ONCA has adopted an approach whereby a Zoom link is issued for each proceeding. Parties and/or counsel are free to use the link to access court when desired/needed.<sup>571</sup> This practice has helped the Court avoid delays when a participant becomes ill and

---

<sup>570</sup> Manitoba Courts, "How to Attend Court in Manitoba Using Microsoft Teams" (5 February 2021), online (video): *YouTube* <[www.youtube.com](http://www.youtube.com)> [perma.cc/3TNB-CXMF].

<sup>571</sup> Ontario Court of Appeal, *supra* note 123.

provides enhanced accessibility to court proceedings for participants and observers (i.e. media and the public) (see section 2.2.10).

### 3.2 Employing a Flexible Approach

The most efficacious use of virtual proceedings beyond the pandemic is one that makes justice more accessible for individuals facing significant barriers thereto. Access to justice is too important an ends to delay the permanent digitization of court services, including virtual courts where appropriate, for the benefit of litigants and the broader public.<sup>572</sup> As several judges articulated, in developing an approach to the sustained use of virtual proceedings the court must remain focused on the people it serves.<sup>573</sup> While the Bar and Bench have the resources to appear in court by whatever medium necessary, not all parties have this luxury. As one NSSC judge articulated: courts must prioritize the interests of those with “real access to justice problems” including those who “don’t have a lot of money and face transportation barriers”. For these individuals courts must consider which matters it will require their in-person attendance and how to get these individuals to court.

Courts should employ a flexible approach to the criteria for determining the method of proceeding to prioritize the interests of marginalized Nova Scotians, realize the efficiency and effectiveness of virtual proceedings and make meaningful

---

<sup>572</sup> *Hudema, supra* note 387 at para. 24.

<sup>573</sup> *DeWare, supra* note 59.

improvements to access to justice. Many judges articulated the importance of allowing presiding judges the flexibility to determine the appropriate method of proceeding while ensuring there is policy to guide judges, providing transparency to parties and counsel on how this determination will be made. Options to facilitate this include:

1. Amending Nova Scotia *Civil Procedure Rule* 25.02(3) to allow judges to hear a matter by video *or* tele conference when one, not all, of the enumerated criteria are met;<sup>574</sup>
2. Encoding the NSCA's criteria for deciding the format of an appeal outlined in the Court's COVID-19 Practice Directive (nature and complexity of the case, whether liberty interests are at stake, whether the appeal is a matter of public interest, etc.) within Rules 90 and 91(where possible);
3. Consult criteria used in other jurisdictions' rules and practice directives (see Appendix 1) including the expected length of the hearing,<sup>575</sup> the status of parties (e.g. self represented),<sup>576</sup> access to technology,<sup>577</sup> the evidentiary record,<sup>578</sup> and practical constraints of a participant (e.g. travel constraints, disability, illness, etc.) and consider which may be appropriate in Nova Scotia.<sup>579</sup>
4. Continue to consult with users of the court, the Nova Scotia judiciary, and courts in other jurisdictions to glean best practices and make amendments where necessary.

### 3.3 Measuring and Consulting

Given virtual proceedings are still in their infancy, it is important courts continually solicit feedback from participants and measure the key outcomes of

---

<sup>574</sup> Nova Scotia Civil Procedure Rules, r. 25.02(3).

<sup>575</sup> See Appendix 1: FC, ONSC, BCSC.

<sup>576</sup> See Appendix 1: ONSC, ONCA, ABQB, BCSC

<sup>577</sup> See Appendix 1: ONSC, BCSC

<sup>578</sup> See Appendix 1: ONSC, ONCA, NLSC

<sup>579</sup> See Appendix 1: ONCA, ABQB, BCSC, BCCA, NLSC

virtual court—and make this information public to the greatest extent possible. This coalition of information will help courts employ the use of virtual court *appropriately* to maximize its benefits for court users. Among other jurisdictions, the ABCA is in the process of doing this and the NSCA has consulted the provincial bar throughout the pandemic on the administration of virtual justice.<sup>580</sup> Such information is not presently available to the public. Moreover, much of the information collected for this report and by committees of the Nova Scotia Courts has been anecdotal. As representatives from Nova Scotia’s Department of Justice and Digital Services highlighted, a proper evaluation of the metrics and achievements of virtual court has yet to be conducted. Robert Susskind, a leading scholar on digital justice, states that virtual courts; as necessitated by the pandemic, were “a massive and unscheduled pilot scheme that produced some rather haphazard innovations. So, a systemic analysis of the experience is needed”.<sup>581</sup> Meaningful progress and modernization require courts remain aware to the most efficient and accessible delivery of justice.<sup>582</sup> A thorough evaluation of the effectiveness of virtual proceedings and the outcomes it achieved for the delivery of justice should be conducted to ensure Nova Scotia’s courts can pivot where necessary.

---

<sup>580</sup> Court of Appeal of Alberta, *supra* note 188, McInnes, *supra* note 36.

<sup>581</sup> Susskind, *supra* note 328.

<sup>582</sup> *Ibid.*

The public dissemination of this information will help ensure public trust and confidence in the integrity of the courts as an institution. British Columbia's CRT (see section 2.1.10) provides a good example of this by disclosing the data it collects from its users to collate and publish. The public dissemination of this information is particularly important for creating inertia in favour of technological innovation and efficiencies in the delivery of justice.

### 3.4 Establishing Guidelines

Courts must continue their efforts to sustain the training and support for judges, staff, and court users to overcome the challenges of the reliability of virtual proceedings and judges' associated frustration thereof. Throughout the pandemic, nearly every court in Canada issued guidelines for virtual proceedings and many conducted test proceedings in advance of a hearing—of which many noted helped alleviate delays and prevented issues from surfacing.<sup>583</sup> Some, including staff at the Nova Scotia Courts and Department of Justice, have suggested tracking reoccurring issues to understand how they can be addressed internally or through the bar and enabling more human resources to support virtual proceedings. In all, effective and efficient virtual proceedings require:

1. comprehensive planning and communication among stakeholders;
2. fast, reliable, and secure internet access;
3. high-quality technological infrastructure; and

---

<sup>583</sup> Stairs, *supra* note 27.

#### 4. ample training for staff.<sup>584</sup>

However, as representatives from Nova Scotia’s Department of Justice and Digital Services indicated, implementing virtual proceedings in a manageable form requires an evaluation and understanding of how virtual courts impact the delivery of justice beyond simply as a platform to use when in-person proceedings are not possible.

Courts can also take measures to maintain the decorum and solemnity of virtual proceedings to the greatest degree possible—one of the most prominent challenges with virtual proceedings raised by the judges and court administrators in this research. While nearly every court has developed a series of guidelines for court participants re virtual court,<sup>585</sup> many courts laced said guidelines between multiple documents and webpages<sup>586</sup> or have failed to give these guidelines the clout required to help reinforce the gravitas and formality of virtual proceedings. As an Ontario Court of Justice Judge articulated: “[t]here’s no question that this [reduced formality and solemnity] is an issue (...) because we have Zoom court, but we don’t have set standards for Zoom appearances”. This judge further articulated that to establish such standardization of virtual proceedings and avoid issues of reduced solemnity and formality, courts can:

- require judges and counsel gown;
- oblige participants mute their microphone unless called upon;

---

<sup>584</sup> Bertrand, *supra* note 369.

<sup>585</sup> *Supra* note 113.

<sup>586</sup> *Supra* note 567.



- stipulate protocols for entering and leaving virtual court;
- require participation from a private and distraction-free space; and
- mandate participants using their cameras to display a uniform background.

Despite the inability to replicate the gravitas of the physical court space (see section 2.2.5) “these standards can help make it feel like a regular day in court” by giving virtual proceedings the closest appearance of a court as possible. Equally important are guidelines that are accessible and easy to understand by non-legally trained individuals.<sup>587</sup>

Courts can provide some clout to these guidelines by encoding them in their rules of court to ensure the expectations of virtual proceedings are clear and enforceable and uphold the solemnity and gravitas of a court proceeding. There is precedent for encoding such provisions within the rules of court in other jurisdictions. The PQCA *Rules for Criminal Matters* require counsel gown while appearing by video conference<sup>588</sup>. The Newfoundland and Labrador *Court of Appeal Rules* mandate that parties appearing virtually ensure their place of appearance is free from distraction and noise.<sup>589</sup> Admittedly, as many interviewee participants conveyed, the enforceability of rules surrounding the recording and or reproduction of proceedings (particularly when the protection of anonymity is important, e.g., undercover police officers) and the prevention of tainting of witness evidence is a

---

<sup>587</sup> Chiodo, *supra* note 102 at 828; Susskind *supra* note 327 at 63.

<sup>588</sup> *Rules of the Court of Appeal of Quebec in Criminal Matters*, *supra* note 83 at r. 34.

<sup>589</sup> Nfld. Reg. 38/16, s. 21(5).

greater question that leaves trials with viva voce evidence less suitable to virtual proceedings. Nevertheless, solutions exist including having witnesses testify and await testimony in a secure location (i.e. a courthouse or courtroom) to ensure they are not influenced by others/prior witness testimony. Employing these measures can help preserve the solemnity of court and the gravitas of proceedings, while allowing participants to leverage the efficiencies and cost savings made possible through virtual proceedings.

An ethical predicament arises surrounding of enforcement of certain rules—namely requiring participants to appear from a secure, private, and distraction-free area— if the court is unwilling/unable to provide virtual connectivity support for marginalized litigants. As a judge from the Ontario Court of Justice articulated: many litigants appear before a virtual court from a fast-food restaurant because it offers free internet connectivity (Wi-Fi). Several courts, including the PECA, NSSC, TCC, and the MBCA, provided space (often in courthouses) and infrastructure for participants to participate virtually during the height of the pandemic. Courts should continue to explore solutions in this regard to allow parties to participate in virtual proceedings free from distraction or interruption. These solutions should also include avenues to allow parties to participate from a courthouse closest to them when lengthy travel times would be required to reach the court of jurisdiction.

### 3.5 Transformative Justice Requires a Holistic Approach, Digital Platforms

It is imperative that stakeholders in the justice system appreciate that virtual proceedings are but one small piece in the transformation and digitization of the administration of justice. As such, it is untenable to layer virtual proceedings on top of the existing court processes and expect the more efficient and effective administration of justice.<sup>590</sup> Legal sector analyst Jordan Furlong provides the metaphor that “you can’t apply a Band-aid when you need a DNA replacement” in this regard.<sup>591</sup> As a judge from the Ontario Court of Justice indicated, the transition to virtual proceedings must include digital platforms for documents, applications, and evidence to realize efficiencies. This is because:

Zoom is just the beginning of the solution; you need a digital platform and doesn’t work well for a virtual trial unless you have all the other technological infrastructure [i.e. a way to share information digitally].

As a Senior Director with Nova Scotia’s Department of Justice recognized, the digitization of court services in the provinces “wasn’t a duplication of the way we did things in the physical world (...) it’s a new way, a transformed way of doing business in the virtual world”. A director with the province’s Digital Services Branch echoed these remarks in emphasizing that creating efficiencies requires a “systems

---

<sup>590</sup> Chiodo, *supra* note 102 at 828.

<sup>591</sup> *Ibid* at 832.

view” and virtual proceedings are one pillar on a stool with dozens of legs required for the effective digitization of justice.

In order to reform a system that many characterize as too slow, costly, and inaccessible for many there must be a simplified body of rules and an automation, digitization, and streamlining of court services – all of which must be accessible to non-lawyers.<sup>592</sup> Otherwise, adding a digital layer (e.g. virtual proceedings) onto an existing judicial system (plagued by volumes procedural steps) would limit the efficiency of virtual court.<sup>593</sup> It is evident senior leaders in Nova Scotia’s Department of Justice and Digital Services understand this reality. It is incumbent on other stakeholders to support this transformation of court services to promote the accessible and efficient administration of justice.

## ***Conclusion***

Superior courts across Canada are continuing to leverage virtual appearances and proceedings, but to a lesser extent than at the height of the pandemic. At present, many jurisdictions are navigating the appropriate use of and protocols for virtual proceedings in the long term. Many courts are concluding that virtual appearances makes the most sense for matters that are procedural in nature and/or do not involve witness testimony where credibility is at issue. Utilizing virtual proceedings in these

---

<sup>592</sup> *Ibid* at 828; Susskind *supra* note 327 at 63.

<sup>593</sup> Chiodo, *supra* note 102 at 826.

instances offers innumerable time and cost savings for court users, which enhances access to justice for many—particularly rural litigants. Courts must use caution to ensure virtual proceedings do not jeopardize the sanctity of court and effective delivery of justice nor perpetuate or exacerbate the ‘digital divide’. Courts can look to other jurisdictions for best practices regarding upholding court decorum and abating this divide. Courts must also be conscious of requirements for an accused individual to be “present in court” pursuant to the *Code* and future interpretations thereof in the context of the potential broader use of virtual criminal trials. Ultimately, it is important courts are accessible to the people they serve. This requires courts’ protocols and practices to be appropriately situated within the context of modern virtual service delivery—which continues to become more prominent in many aspects of Canadian society—while ensuring the sanctity, decorum, and efficacy of the delivery of justice.

## **Bibliography**

### ***Legislation***

Alta. Reg. 124/2010.

B.C. Reg. 297/2001, ss. 44(1)–44(2).

C.N.R. 2018 c. C.-12.3 s. 131.

*COVID-19 Related Measures Act*, S.B.C. 2022, c. 8, schedule 2, item 11.

C.Q.L.R. c. C-25.01, r. 0.2.3.

C.Q.L.R. c. C-25.01, r. 5.

C.Q.L.T. c. C-25.01, r. 10.

*Criminal Code*, R.S.C. 1985, c. C-46.

Man. Reg. 553/88.

Man. Reg. 555/88 R.

N.B. Reg. 82-73.

Nfld. Reg. 38/16, s. 21(1).

*Nova Scotia Civil Procedure Rules*, r. 5.18(1)(c), 23.08(1)(c), 51.08, 53.05, 56.

N.W.T. Reg. 010-96.

N.W.T. Reg. 091-2018.

O.C. 1186-2019, 27 November 2019.

R.R.O. 1990, Reg. 19, s. 1.08.

*Rules of the Nunavut Court of Appeal Respecting Civil Appeals*, Nu. Reg. 2000, s. 59.

*Rules of Practice of the Superior Court of the Province of Quebec, Criminal Division*, S.C. 2002, c. 13, s. 17.

*Rules of the Court of Appeal of Quebec in Criminal Matters*, S.I./2018-96, s. 43.

*Saskatchewan Queen's Bench Rules*, r. 4-8, 4-21.8, 6-25(1) (civil), r. 15-120(b) (family).

S.O.R./98-106, s. 32-33.

*Supreme Court of Yukon, Rules of Court*, Y.O.I.C. 2008.

S.O.R./90-688a, c. 51 (4th Supp.).

S.O.R./90-688b, c. 51 (4th Supp.).

S.O.R./2002-156, c. 34 (3<sup>rd</sup> Supp.).

*The Court of Appeal Act*, S.S. 2000, c. C-42.1, s. 22.

*The Court of Appeal Criminal Appeal Rules (Saskatchewan)*, R.S., c. C-46, s. 33(3).

### ***Jurisprudence***

*A.B. v. Bragg Communications Inc.* 2012 S.C.C. 46.

*Arconti v. Smith*, 2020 O.N.S.C. 2782.

*ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 S.C.C. 4.

*B.C.G.E.U. v. British Columbia (A.G.)*, [1988] 2 S.C.R. 214.

*Endean v. British Columbia*, 2016 S.C.C. 42.

*Hudema v. Moore*, 2020 B.C.S.C. 1502.

*Hryniak v. Mauldin*, 2014 S.C.C. 7.

*Jonsson v. Lymer*, 2020 A.B.C.A. 167.

*Miller v. FSD Pharma Inc.*, 2020 O.N.S.C. 3291.

*Natco Pharma (Canada) Inc. v. Canada (Health)*, 2020 F.C. 618.

*(P. (D.) v. S. (C.))*, [1993] 3 S.C.R. 141, 18 CRR (2d) 1.

*R. v. Allen*, [2007] O.J. No. 1353.

*R. v. Barrow* (1987), 61 C.R. (3d) 305, 45 D.L.R. (4th) 487 (S.C.C.).

*R. v. Branco* (1988), 62 C.R. (3d) 371, 25 O.A.C. 73 (Ont. C.A.).

*R. v. C. (A.W.)*, 2005 A.B.C.A. 96.

*R. v. Colegrove*, 2021 N.S.S.C. 9.

*R. v. Cote*, [1986] 1 S.C.R. 2, 5 D.L.R. (4th) 82.

*R. v. Cunningham*, 2010 S.C.C. 10.

*R. v. E. (F.E.)*, 2011 O.N.C.A. 783.

*R. v. Gibbs*, 2018 N.L.C.A. 26.

*R. v. Howell*, [1955] O.J. No. 328, 22 C.R. 263 (Ont. C.A.).

*R. v. James*, 2009 O.N.C.A. 366.

*R. v. Jefferies*, 2021 O.N.C.J. 98.

*R. v. Kinnavanthong*, 2022 MBCA 49.



*R. v. N.S.*, 2012 SCC 72.

*R. v. Pazder*, 2015 A.B.Q.B. 493.

*R. v. Polmateer*, 2022 O.N.C.J. 221.

*R. v. Singh*, [2020] N.J. No. 177, 165 W.C.B. (2d) 320 (P.C.).

*R v. Tran*, [1994] S.C.R. 951, 117 D.L.R (4th) 7.

*R. v. Twoyoungmen*, 2021 A.B.P.C. 88.

*Re: Court File No. 19/578*, 2020 O.N.S.C. 3870.

*Sandhu v. Siri Guru Nanak Sikh Gurdwara of Alberta*, 2020 A.B.Q.B. 359.

*Scaffidi-Argentina v. Tega Homes Developments Inc.*, 2020 O.N.S.C. 3232.

*Vancouver Sun (Re)*, 2004 S.C.C. 43.

*Woods (Re)*, 2021 O.N.C.A. 190.

*Woods v. Ontario*, 2020 O.N.S.C. 6899.

### ***Secondary Material***

AAS Zuckerman, “A Reform of Civil Procedure – Rationing Procedure Rather Than Access to Justice” (1995) 22 JL & Soc’y 155.

“Access to Justice”, online: *United Nations and the Rule of Law* <[un.org/ruleoflaw](http://un.org/ruleoflaw)> [perma.cc/8AFE-WVZG].

Access to Justice Committee, “Reaching Equal Justice: An Invitation to Envision and Act” (Ottawa: Canadian Bar Association, 2013) online: Canadian Bar Association.

Action Committee on Court Operations in Response to COVID-19, *Restoring Court Operations in Northern, Remote and Indigenous Communities*, (Ottawa: Office of the Commissioner for Federal Judicial Affairs Canada, 2020).

Aidan Macnab, “Back to court: in-person v. virtual litigation”, *Canadian Lawyer* (31 May 2022), online: <canadianlawyermag.com> [perma.cc/XX68-CHQG].

Alyshhah Hasham, “Zoom has brought a welcome revolution to Ontario courts. Now, about those teething problems...” (18 March 2021), online: *Toronto Star* <www.thestar.com/news> [perma.cc/JQ8E-XJ6U].

Amanda Jerome, “Ontario’s chief justices address backlog, stress need for accessibility as courts modernize”, *The Lawyer’s Daily* (15 September 2021), online: <thelawyersdaily.ca> [perma.cc/FXS7-MA2F],

Amy Salyzyn, “A New Lens: Reframing the Conversation about the Use of Video Conferencing in Civil Trials in Ontario” (2012) 50:2 Osgood Hall L.J. 429.

Amy Salyzyn, “Trial by Zoom: What Virtual Hearings Might Mean for Open Courts, Participant Privacy and the Integrity of Court Proceedings”, *Slaw* (17 April 2020), online: <slaw.ca> [perma.cc/7TY2-RNYJ].

Annabel Oromoni, “Lawyers increasingly concerned about interplay between virtual and in-person operations” (30 March 2022), online: *Law Times News* <lawtimesnews.com> [perma.cc/Z3RH-UH5C].

Annabel Oromoni, “Ontario family lawyers hold virtual press conference urging the courts to continue remote hearings”, *Law Times News* (11 May 2022), online: <lawtimesnews.ca> [perma.cc/YMP5-CJEY].

“Atlantic Roundtable for COVID-19 and Beyond” (Guest Panelist delivered CBA Atlantic, Fredericton Online, May 31, 2022).

“Bench and Bar Liaison Committee Meeting: Meeting of the Federal Court with CBA”, Meeting Minutes, (7 May 2021).

“Bench and Bar Liaison Committee Meeting: Meeting of the Federal Court with CBA”, Meeting Minutes, (3 December 2021).

Bernice Carolino, “New Report explores how to preserve oral advocacy in a digital world”, *Canadian Lawyer* (25 June 2021), online: <canadianlawyermag.com> [perma.cc/5C7L-S3N7].

“Best Practices Checklist” (29 April 2021) , online (pdf): *Court of Appeal of Nova Scotia* <courts.ns.ca> [perma.cc/9HL5-H3YE].

“Best Practices for Remote Hearings” (13 May 2020), online (pdf): *The Courts of Nova Scotia* <courts.ns.ca> [perma.cc/6KHE-4JBH].

Beverley McLachlin, *Truth Be Told*, (Toronto: Simon & Schuster Canada, 2019).

Canadian Judicial Council, “Statement of Principles on Self-represented Litigants and Accused Persons” (2006), online: <cjc-ccm.gc.ca>.

Catherine Lawrence, “DOJ’s Response to Federal Court’s Request for Feedback on Virtual Hearings” E-mail, (25 April 2022).

CED 4th (online) *Criminal Law*, “Introduction: Defences: Procedure: Right to be Present at Trial” (I.2.(h).(i)).

“Chief Justice Wagner Provides Update on Work of Supreme Court” (17 June 2021), online (video): *CPAC* <www.cpac.ca/en> [perma.cc/B9HR-H9U3].

“Chief Justice Wagner Provides Update on Work of Supreme Court” (16 June 2022), online (video): *CPAC* <www.cpac.ca/en> [pema.cc/2CYC-Q4H8].

Justice Christa Brothers, Supreme Court of Nova Scotia, “Removing Barriers to Virtual Court”, *Nova Voce* 39:2 (Summer 2021) 6.

Christopher Bentley, *Criminal Practice Manual: A Practical Guide to Handling Criminal Cases* (Toronto: Thomson Reuters, 2000) (loose -leaf updated 2022, release 7).

Colin Butler, “Access to justice still a problem as some Ontario family courts return to in-person hearings”, *CBC News* (29 March 2022), online: <cbc.ca/news> [perma.cc/68XR-E2VP].

Danielle Lanteigne, “Proposed Sittings, Spring 2022” (Spring 2022), online: *Federal Court of Appeal* <fca.caf.gc.ca> [perma.cc/EDU6-S9CR].

David Giles, “Saskatchewan’s Court of Appeal to resume in-person hearings”, *Global News* (23 February 2022), online: <globalnews.ca/news> [perma.cc/EAW7-DDGE].

David Rose, *Quigley’s Criminal Procedure in Canada*, 2nd ed. (Toronto: Thomson Reuters, 2005) (loose-leaf updated 2022, release 2).

Department of Justice Canada, News Release, “Update from the Action Committee on Court Operations in Response to COVID-19” (6 November 2020).

Desmond Brown, “Virtual court hearings are criminalizing poverty as fail-to-appear charges spike in Waterloo area: lawyer”, *CBC News* (18 December 2021), online <cbc.ca/news> [perma.cc/AA5W-FQ97].

Dragana Bukejlovic, “Ontario litigators, dust off your robes (but don’t uninstall Zoom)! The Superior Court of Justice announces guidelines for the presumptive mode of attendance” (23 March 2022), online: *Dentons* <dentons.com> [perma.cc/L537-Y3VY].

Elena Blid et al, “Sound and Credibility in Virtual Court: Low Audio Quality Leads to Less Favourable Evaluations of Witnesses and Lower Weighting of Evidence” (2021) 45:5 L & Human Behaviour 481.

“Examining the Disproportionate Impact of the COVID-19 Pandemic on Access to Justice for Marginalized Individuals” (30 July 2022), online *Action Committee on Court Operations in Response to COVID-19* <fja.gc.ca/COVID-19> [perma.cc/P6RF-BPBU].

“Frequently Asked Questions” (2022), online: *Court of Queen’s Bench of Alberta* <albertacourts.ca/qb> [perma.cc/6ZT6-Q7UL].

Hadeel Ibrahim, “Top trial judge says COVID-19 reveals value of remote justice”, *CBC News* (16 April 2020), online: <www.cbc.ca/news> [perma.cc/E6RK-U8DY].

Halsbury’s Laws of Canada (online), *Criminal Procedure*, “Trial Procedure: Jury Trials: General” (VIII.5(1) at HC2-344 “Accused to be present” (Cum. Supp. Release 55).

“Imagining the Ideal Video-Conferencing Solution” (May 2020), online (pdf): *Bennet Jones* <bennetjones.com>.

Jacquelyn Burkell et al, “Expert insights: The perils of Zoom courts”, *Western News* (9 April 2021), online: <news.westernu.ca> [perma.cc/9NQE-7B5S].

Jane Bailey & Jacquelyn Burkell, “Revisiting the Open Court Principle in an Era of Online Publications: Questioning Presumptive Public Access to Parties’ and Witnesses’ Personal Information” (2017) *FIMS Publications*, 143.

Jacob Barker, “As pandemic restrictions ease, lawyers hope to see broadcast of court proceedings continue”, *CBC News* (28 February 2022), online: <cbc.ca/news> [perma.cc/3MDW-E6FE].

Jessica Nyznik, “Family lawyers asking for remote hearings to continue”, *Global News* (10 May 2022), online: <globalnews.ca> [perma.cc/82UY-ZYV2].

Julius Melnitzer, “Virtual proceedings: here to stay but the devil is in the details”, *The Lawyer’s Daily* (31 March 2022), online: <thelawyersdaily.ca> [perma.cc/53J6-JZ8X].

Justin Sagayeni, “Even in the Age of Covid-19, Justice Requires Open Courts”, *Centre for Free Expression* (13 March 2020), online: <cfe.ryerson.ca> [perma.cc/2VEK-GPXY].

Kate Puddister & Tamara Small, “Trial by Zoom? The Response to COVID-19 by Canada’s Courts” (2020) 19:1-5 *Can. J. Polt. Sci.* 1.

Katrina Enano, “Ontario Bar Association backs proposed guidelines for remote court hearings” (30 March 2022), online: *Law Times News* <lawtimesnews.com> [perma.cc/2YDU-9K83].

Luis Millan, “Quebec accelerating legal modernization drive”, *Law in Quebec* (13 July 2020), online: <lawinquebec.com> [perma.cc/WW2U-43D2].

Luis Millan, “Unintended consequences of virtual hearings”, *Law in Quebec* (28 September 2020), online: <lawinquebec.com> [perma.cc/HHV6-H26K].

Mallory Hendry, “Return to in-person hearings means lawyers must find efficiencies elsewhere”, *Canadian Lawyer* (18 April 2022), online: <canadianlawyermag.com> [perma.cc/F2D3-MSBQ].

Manitoba Courts, “How to Attend Court in Manitoba Using Microsoft Teams” (5 February 2021), online (video): *YouTube* <www.youtube.com> [perma.cc/3TNB-CXMF].

Marg Bruineman, “Justice system to push further into digital age after pandemic, says Downey”, *Orillia Matters* (26 June 2021), online: <orilliamatters.com> [perma.cc/49PV-CLP3].

Marg Bruineman, “Lack of decorum is a concern: Judge admonished accused for connecting to court from vehicle”, *Barrie Today* (8 February 2022), online: <barrietoday.com> [perma.cc/Q8TY-T8QU].

“Meaningful Change for Family Justice: Beyond Wise Words: Final Report of the Family Justice Working Group” (April 2013), online (pdf): *Action Committee on Access to Justice in Civil and Family Matters* <cfc-fcjc.org> [perma.cc/W9YU-XSWR].

Meredith Rossner, “Remote rituals in virtual courts” (2021) 48:3 J. of L. & Soc. 334.

Meredith Rossner, David Tait, & Martha McCurdy, “Justice reimaged: challenges and opportunities with implementing virtual courts” (2021) 33:1 Current Issues in Crim. Just. 94.

Michael Legg, “The COVID-19 Pandemic, the Courts and Online Hearings: Maintaining Open Justice, Procedural Fairness and Impartiality” (2021) 49:2 Federal L.R. 161.

Michael Spratt, “Our justice system should not go back to normal pre-COVID delays”, *Canadian Lawyer Magazine* (22 April 2022), online: <canadianlawyermag.com> [perma.cc/WE2H-Q6XW].

Michael Spratt, “The case against cameras in the courtroom”, *CBC News* (20 September 2016), online: <cbc.ca/news> [perma.cc/MZT6-R7E3].

Michelle Bertrand, “Dispensing Digital Justice: COVID-19, Courts, and the Potential Diminishing Role of Jury Trials” (2021) 10 *The Annual Rev of Interdisciplinary Justice Research* 1

Ontario Ministry of the Attorney General, News Release, “Ontario Investing \$65 Million to Expand Access to Video Court Hearings” (10 February 2022).

Patrick C. File, “A History of Practical Obscurity: Clarifying and Contemplating the Twentieth Century Roots of a Digital Age Concept of Privacy” (2017) 6 *U. Balt. J. Media L. & Ethics* 4.

“P.E.I. courts to maintain COVID-19 Restrictions”, *The Guardian* (7 April 2022), online: <[saltwire.com/prince-edward-island](https://saltwire.com/prince-edward-island)> [perma.cc/UT7S-FC96].

Peter Cashman & Eliza Ginnivan, “Digital Justice: Online Resolution of Minor Disputes and the Use of Digital Technology in Complex Litigation and Class Actions” (2019) 19 *Macquaire L.J.* 39.

Rabeea Assy, “Briggs’ Online Court and the Need for a Paradigm Shift” (2017) 36 *CJQ* 70.

Richardson et al, “Examining Virtual Facilitation of Legal Processes in Saskatchewan: An Exploratory Inquiry” (10 March 2022), online (pdf): *University of Saskatchewan School of Law – Dean’s Forum on Access to Justice and Dispute Resolution* <[law.usask.ca/research](https://law.usask.ca/research)> [perma.cc/VLB4-PJ6Y]

Richard Susskind, *Online Courts and the Future of Justice*, (Oxford: Oxford University Press, 2019).

Richard Susskind, “Video hearings have transformed courts but are not a panacea” (1 April 2021), online” *ADR Institute of Canada* <[adric.ca](https://adric.ca)> [perma.cc/Q9XC-NBLQ].

Roger Salhany, *Criminal Trial Handbook* (Toronto: Thomson Reuters, 1992) (loose-leaf updated 2022, release 3).

“Self-Represented Litigants in Family Law”, *Department of Justice* (June 2016), online: <justice.gc.ca> [perma.cc/YG2H-ZXNS].

Sergio Arangio, “Family lawyers call out for virtual court appearances”, *CTV News* (13 May 2022), online: <northernontario.ctvnews.ca> [perma.cc/7XNL-EUW3].

Shauna Hall-Coates, “following Digital Media into the Courtroom: Publicity and the Open Court Principle in the Information Age” (2019) 24:101-40 *Dalhousie J. of Leg. Studies*.

Steve Coughlan, *Criminal Procedure*, 4th ed. (Toronto: Irwin Law Inc, 2020).

Stephen E. Smith, *The Online Criminal Trial as a Public Trial*, (2021) 51 Sw. L. Rev. 116.

Suzanne Chiodo, “Ontario Civil Justice Reform in the Wake of COVID-19: Inspired or Institutionalized?” (2021) 57:3 *Osgoode Hall L. J.* 801.

The Canadian Press, “Canada’s top judge calls for fair access to justice for all”, *CTV News* (20 October 2017), online: <ctvnews.ca> [perma.cc/C5NU-FVRB].

“The Right to be Heard: The Future of Advocacy in Canada” (June 2021), online (pdf): The Advocates’ Society <advocates.ca> [perma.cc/EVM7-TRVX] [Advocates’ Society].

The Yunusov Question, “AG Doug Downey on the pandemic effect on the justice system, current status and plans for the future” (4 March 2022), online (video) *YouTube* <www.youtube.com> [perma.cc/2NDX-VUS7].

Travis Olsen & Christine O’Clock, “The Role of Social-Networking Tools in Judicial Systems” (2010) 164:69 *Future Trends in State Courts*.

Trevor Pritchard, “Law in the time of COVID: How the pandemic radically reoriented Ontario’s justice system”, *CBC News* (14 March 2022), online: <cbc.ca/news> [perma.cc/983Q-TPLP].

UK Civil Justice Council, *The Impact of COVID-19 on the Civil Justice System* (CJC, 2020).



Vincent Denault & Miles Patterson, “Justice and Nonverbal Communication in a Post-pandemic World: An Evidence-Based Commentary and Cautionary State for Lawyers and Judges” (2020) 45:1 J of Nonverbal Behaviour 1.

“Virtual Hearings” (2022), online: *Court of Queen’s Bench of Manitoba* <[www.mantiobacourts.mb.ca/covid-19](http://www.mantiobacourts.mb.ca/covid-19)> [perma.cc/F8G1-E73E].

“Virtual Court: Criteria for Virtual Court Hearings” (2022), online: *The Courts of Nova Scotia* <[courts.ns.ca](http://courts.ns.ca)> [perma.cc/76QP-B3ZV].

Wayne Gorman, “The Virtual Court and the Presence of the Accused” (2022) 70 C.L.Q. 397 [Gorman 2022].

Wayne Gorman, “The Virtual Court” (Paper delivered at the Provincial Court of Nova Scotia, Spring Education Conference, Halifax, 11 June 2021) [Gorman 2021].

Yves Faguy & Karen Eltis, “Digitizing our Courts” (25 June 2020), online (podcast): *Canadian Bar Association National Magazine* <[cba.org](http://cba.org)>. [perma.cc/4F8E-5BKN].

Zena Olijnyk, “Law Society of New Brunswick’s aim to drive modernization of province’s rules of court”, *Canadian Lawyer* (22 April 2022), online <[canadianlawyermag.com](http://canadianlawyermag.com)> [pema.cc/TB2M-C587].

“2020/2021 Annual Report” (2021), Online (pdf): *Civil Resolution Tribunal* <[civilresoltionbc.ca](http://civilresoltionbc.ca)> [perma.cc/5VFJ-VJDB].

“2021 Annual Report” (2021), online (pdf): *Court of Appeal for British Columbia* <[bccourts.ca/Court\\_of\\_Appeal](http://bccourts.ca/Court_of_Appeal)> [perma.cc/SK59-HUDH].

### ***Protocols & Practice Directives***

Supreme Court of Newfoundland and Labrador, “Notice to the Profession and General Public: Supreme Court Operations for General Division and Family Division Judicial Centres May – June 2022 (Revised)” (May 13, 2022).

Court of Appeal of Newfoundland and Labrador, “Notice to the Profession and General Public: Court of Appeal Operations” (May 16, 2022).

Supreme Court of Nova Scotia and Nova Scotia Court of Appeal, “COVID-19 Restrictions in the Nova Scotia Courts will Remain in Effect During Phase 3 of Reopening Plan” (March 18, 2022).

Supreme Court of Nova Scotia, “COVID-19: Supreme Court (General and Family Divisions) Returning to Safe Services Model” (Updated: February 18, 2022).

Nova Scotia Court of Appeal, “Practice Directive: Appeal Proceedings during the COVID-19 Pandemic” (Updated: March 7, 2022).

Prince Edward Island Court of Appeal, Supreme Court, and Provincial Court, “Notice to the Profession, the Public and the Media regarding COVID-19 Update” (April 6, 2022).

Court of Queen’s Bench of New Brunswick, “Notice to Profession and Public – Updated COVID-19 Directive” (March 14, 2022).

Court of Appeal of New Brunswick, “Updated Directive – Court of Appeal of New Brunswick” (March 14, 2022).

Superior Court of Quebec, “Lift of the rule according to which the parties must proceed exclusively by virtual hearings” (June 2, 2022).

Court of Appeal of Quebec, “COVID-19 Pandemic – New arrangements for hearings” (March 4, 2022).

Ontario Superior Court of Justice, “Notice to the Profession Parties, Public and the media (March 14, 2022).

Ontario Court of Appeal, “Consolidated Practice Direction Regarding Proceedings in the Court of Appeal During the COVID-19 Pandemic” (March 15, 2022) at paras. 70-77.

Manitoba Court of Queen’s Bench and Manitoba Court of Appeal, “Notice Re: Court Transition Plan Arising from Evolving Public Health Orders” (February 25, 2022).

Manitoba Court of Queen’s Bench, “COVID-19 Update and New Practices for the Fall of 2022” (June 9, 2022).

Manitoba Court of Appeal, “Resumption of In-person Appeal Hearings and Chambers Motions Starting Monday, March 14, 2022” (March 1, 2022).

Court of Queen’s Bench for Saskatchewan, “Directive Update” (March 23, 2022).

Court of Queen’s Bench for Saskatchewan, “Video Conference Request Form”.

Court of Appeal for Saskatchewan, “Notice to the Profession, the Public, and the Media” (February 23, 2022).

Court of Queen’s Bench of Alberta and Court of Appeal of Alberta, “Notice to the Profession and Public – Update: Restricted Access to Courtrooms” (May 17, 2022).

Court of Queen’s Bench of Alberta, “Mode of Hearing Guidelines” (June 29, 2022).

Court of Appeal of Alberta, “Notice to the Profession and Public COVID-19 – Update on Court Operations” (April 20, 2022).

Supreme Court of British Columbia, “Notice to the Profession, the Public, and the Media Regarding Civil and Family Proceedings: COVID-19: Manner of Attendance for Civil and Family Proceedings” (March 31, 2022).

Supreme Court of British Columbia, “Practice Direction: Applications made by Requisition (Form 17)” (December 15, 2022).

Supreme Court of British Columbia, “Notice to the Profession, the Public, and the Media Regarding Criminal Proceedings: COVID-19: Manner of Attendance for Criminal Proceedings” (March 31, 2022).

Supreme Court of British Columbia, “Practice Direction: Applications made by Requisition (Form F17)” (March 31, 2022).

Court of Appeal for British Columbia, “Notice Regarding Modified Court of Appeal Procedures and Access to Court Proceedings during the COVID-19 Pandemic” (April 11, 2022).

Court of Appeal for British Columbia, “Request to Appear Remotely” (March 16, 2022).

Court of Appeal for British Columbia, “COVID-19 Overview of the Process for Appellants” (August 2021).

Nunavut Court of Justice, “Practice Directive #4: Attendances by Telephone in Criminal and Civil Matters” (July 13, 2012).

Northwest Territories Courts, “COVID-19” (May 24, 2022).

Supreme Court of Yukon, “Notice to the Profession and Public: COVID-19” (February 28, 2022).

Canada, Federal Court, “Update #8 and Consolidated COVID-19 Practice Direction” (June 24, 2022).

Federal Court of Canada, “Notice to the Parties and the Profession: Resumption of in person hearings and the effect of the *Time Limits and Other Periods Act (COVID-19)*” (September 1, 2020).

Supreme Court of Canada, “Notice about COVID-19” (April 26, 2022).

### ***Parties Consulted***

**Justice** [REDACTED]  
Nova Scotia Court of Appeal

**Justice** [REDACTED]  
Nova Scotia Supreme Court (General Division – Halifax)

**[REDACTED]**  
Nova Scotia Supreme Court (General Division – Halifax)

**Justice [REDACTED]**  
Nova Scotia Supreme Court (General Division – Bridgewater)

**Justice [REDACTED]**  
Nova Scotia Supreme Court (Family Division – Halifax)

**Caroline McInnes**  
Registrar, Nova Scotia Court of Appeal

**Jennifer Stairs**  
Director of Communications, The Courts of Nova Scotia

**Peter James**  
Department of Justice, Nova Scotia

**Gary Robitaille**  
Digital Services, Nova Scotia

**Yeta Withrow,**  
Director of Digital Justice Strategy and Products, Nova Scotia

**Andre Clair**  
Legal Officer, Newfoundland and Labrador Supreme Court  
[andreclair@supreme.court.nl.ca](mailto:andreclair@supreme.court.nl.ca)

**Shelley Nicholson**  
Deputy Registrar, Supreme Court of Prince Edward Island  
[sanicholson@gov.pe.ca](mailto:sanicholson@gov.pe.ca)

**Shelia Gallant**  
Deputy Registrar, Prince Edward Island Court of Appeal  
[sfgallant@gov.pe.ca](mailto:sfgallant@gov.pe.ca)

**Donald Higgins**

Senior Strategist, Digital Engagement, New Brunswick Court of Queen's Bench  
[donald.higgins@gnb.ca](mailto:donald.higgins@gnb.ca)

**Caroline Lafontaine**

Registrar Services, New Brunswick Court of Appeal  
[caroline.lafontaine@gnb.ca](mailto:caroline.lafontaine@gnb.ca)

**Annick Nguyen**

Coordinator of the Registrar, Quebec Court of Appeal (Montreal)  
[courdappelmtl@judex.qc.ca](mailto:courdappelmtl@judex.qc.ca)

**Justice [REDACTED]**

Ontario Court of Justice (Central East Region)

**Daniel Marentic**

Manager of Court Operations, Ontario Court of Appeal  
[coa.registrar@ontario.ca](mailto:coa.registrar@ontario.ca)

**Amy Jackson**

Registrar, Manitoba Court of Queen's Bench  
(204) 945-0091

**Doug McCoy**

Registrar, Manitoba Court of Appeal  
(204) 945-8412

**Jennifer Fabian, QC**

Registrar & Executive Legal Officer, Court of Queen's Bench for Saskatchewan  
(306) 787-0472

**Amy Groothuis**

Registrar, Saskatchewan Court of Appeal  
[agroothuis@sasklawcourts.ca](mailto:agroothuis@sasklawcourts.ca)

**Ileen Moore**

Deputy Registrar, Alberta Court of Appeal  
[ileen.moore@albertacourts.ca](mailto:ileen.moore@albertacourts.ca)

**Bruce Cohen**

Communications Officer, British Columbia Supreme Court  
[scjcommunicationsofficer@bccourts.ca](mailto:scjcommunicationsofficer@bccourts.ca)

**Tim Outerbridge**

Registrar, Court of Appeal for British Columbia  
(604) 660-2729

**Mark Mossey**

Executive Legal Officer to the Chief of the Nunavut Court of Justice, Nunavut Courts  
[mmossey@gov.nu.ca](mailto:mmossey@gov.nu.ca)

**Denise Bertolini**

Courts Administrator, Northwest Territories Courts  
[denise\\_bertolini@gov.nt.ca](mailto:denise_bertolini@gov.nt.ca)

**Lisa Robinson**

Registrar (Acting), Yukon Courts  
[lisa.Robinson@yukon.ca](mailto:lisa.Robinson@yukon.ca)

**Andrew Baumberg**

Legal Counsel, Federal Court  
[andrew.Baumberg@cas-satj.gc.ca](mailto:andrew.Baumberg@cas-satj.gc.ca)

**Natalie Lagrois**

Director of Hearings Coordinators, Tax Court of Canada  
[nathalie.lagrois@cas-satj.gc.ca](mailto:nathalie.lagrois@cas-satj.gc.ca)

**Renee Theriault**

Executive Legal Officer, Supreme Court of Canada  
[renee.theriault@scc-csc.ca](mailto:renee.theriault@scc-csc.ca)

## Appendices

### *Appendix 1: Table Summarizing Existing Practices, Policies, and Rules re Virtual Court across Canada's Superior Courts (Current as of 30 June 2022)*

See below.

### *Appendix 2: Protocols (current as of 30 June 2022)*

See below.

### *Appendix 3: Criteria for Granting Audioconference or Videoconference Appearances Under the Criminal Code*

Participant	Section	Criteria
<b>Witness</b>	714.1	<p>A court may order that a witness in Canada give evidence by audioconference or videoconference, if the court is of the opinion that it would be appropriate having regard to all the circumstances, including</p> <ul style="list-style-type: none"> <li>(a) the location and personal circumstances of the witness;</li> <li>(b) the costs that would be incurred if the witness were to appear personally;</li> <li>(c) the nature of the witness' anticipated evidence;</li> <li>(d) the suitability of the location from where the witness will give evidence;</li> <li>(e) the accused's right to a fair and public hearing;</li> <li>(f) the nature and seriousness of the offence; and</li> <li>(g) any potential prejudice to the parties caused by the fact that the witness would not be seen by them, if the court were to order the evidence to be given by audioconference.</li> </ul>
<b>Accused</b>	715.23(1)	<p>Except as otherwise provided in this Act, the court may order an accused to appear by audioconference or videoconference, if the court is of the opinion that it would be appropriate having regard to all the circumstances, including</p> <ul style="list-style-type: none"> <li>(a) the location and personal circumstances of the accused;</li> <li>(b) the costs that would be incurred if the accused were to appear personally;</li> <li>(c) the suitability of the location from where the accused will appear;</li> <li>(d) the accused's right to a fair and public hearing; and</li> <li>(e) the nature and seriousness of the offence.</li> </ul>
<b>Participant (i.e. counsel)</b>	715.25(1)	<p>Except as otherwise provided in this Act, the court may order a participant to participate in a proceeding by audioconference or videoconference, if the court is of the opinion that it would be appropriate having regard to all the circumstances, including</p> <ul style="list-style-type: none"> <li>(a) the location and personal circumstances of the participant;</li> <li>(b) the costs that would be incurred if the participant were to participate personally;</li> <li>(c) the nature of the participation;</li> <li>(d) the suitability of the location from where the participant will participate;</li> <li>(e) the accused's right to a fair and public hearing; and</li> <li>(f) the nature and seriousness of the offence.</li> </ul>



<b>Judge or justice</b>	715.26(1)	<p>Except as otherwise provided in this Act, the judge or justice may preside at the proceeding by audioconference or videoconference, if the judge or justice considers it necessary having regard to all the circumstances, including</p> <p>(a) the accused's right to a fair and public hearing;</p> <p>(b) the nature of the witness' anticipated evidence;</p> <p>(c) the nature and seriousness of the offence; and</p> <p>(d) the suitability of the location from where the judge or justice will preside.</p>
-------------------------	-----------	---

#### ***Appendix 4: Standardized Interview Questions***

1. To what extent does your respective court continue to utilize virtual proceedings? Is this practice different than pre-pandemic norms? If yes, how so?
2. Looking ahead, what types of cases and court users (if any) are best suited for virtual court at your respective court?
3. What if any rule changes will be necessary to facilitate the use of virtual courts beyond the pandemic? Are any revisions currently underway?
4. What problems have been encountered by your respective court re virtual proceedings and how are they being overcome?
5. What are the benefits realized by virtual courts in your jurisdiction (for the court and its users)?
6. From your perspective, what does the future hold for virtual courts?

*Appendix 1: Table summarizing comparative analysis of Canadian superior courts' protocols for virtual court*

Court	Default method of proceeding	Criteria for method of proceeding	Rules
<b>Supreme Court of Newfoundland and Labrador (NLSC)</b>	<p><b>In-person:</b> most civil trials and all criminal proceedings (save for minor matters) with some virtual appearance by witnesses.</p> <p><b>Virtual:</b> all conferences and chambers appearances</p> <p><i>Method of appearance at the discretion of the court.</i></p> <p><i>Parties can request their preferred method of appearance.</i></p>	<p>The court may consider the following criteria when deciding on whether to permit remote appearance(s):</p> <p>a) the general principle that evidence and argument are best presented orally and in-person in open court;</p> <p>b) the nature of the evidence to be offered during the appearance and its importance to determining the issues in the case;</p> <p>c) the importance, in the circumstances of the case, of observing demeanor and whether the observation might be hampered by a remote appearance;</p> <p>d) the impact such an appearance might have on the court's ability to make findings, including credibility assessments;</p> <p>e) whether a party, lawyer for a party, or witness is unable to attend because of infirmity or illness;</p> <p>f) the cost and inconvenience of requiring the participant to attend the Court proceeding in-person;</p> <p>g) whether the other parties consent to such an appearance; and</p> <p>h) any other relevant consideration.</p>	<p><b>Rule 47A.05 (Civil):</b> criteria for determining method of appearance (general division) (see left)</p> <p><b>Rule F41(Family):</b> criteria for determining method of appearance (family division) – mirrors general division (see left)</p> <p><b>Rule 47A.02 (Civil):</b> Parties/lawyers can appear remotely without prior permission of the court in limited situations involving procedural matters (uncontested applications, case management meetings, pre-trial conferences, status updates, applications for directions).</p>
<b>Newfoundland and Labrador Court of Appeal (NLCA)</b>	<p><b>In-person:</b> all appeals and applications (unless the parties are notified otherwise)</p>	N/A	<p><b>Rule 21(1) (Civil):</b> parties wishing to appear virtually or electing for a fully virtual proceeding must notify the NLCA in writing (by email) indicating the reason for their interest in appearing virtually (often requests are related to travel).</p> <p><b>Rule 21(2)(c) (Civil):</b> teleconference proceedings are only held when videoconferencing is not practically available.</p> <p><b>Rule 21(5) (Civil):</b> party appearing virtually must ensure place of appearance is free from distraction/noise.</p>
<b>Supreme Court of Nova Scotia (NSSC)</b>	<p><b>In-person:</b> any matter can proceed in-person.</p> <ul style="list-style-type: none"> <li>- counsel, parties and judge will discuss method of appearance at pre-trial conference. Presiding judge will consider</li> </ul>	<p><b>General Division (from practice directives):</b> Virtual court is available for civil and criminal matters in all locations, subject to the following criteria, or as a judge may otherwise order:</p>	<p><b>Rule 5.18(4)(h) (Civil):</b> hearing judge may inquire as to needs of parties re examination by video conference at the prehearing conference</p>

	<p>the situation and the wishes of the participants and determine the appropriate method of proceeding on a case-by-case basis.</p> <ul style="list-style-type: none"> <li>- counsel and parties no longer must establish their matter is urgent or essential to proceed in-person. (see Criteria to the right for general and family division)</li> </ul> <p><b>Virtually:</b> “where appropriate”</p> <ul style="list-style-type: none"> <li>- <b>Family Division:</b> The Court offers virtual options as deemed appropriate on a case-by-case basis.</li> </ul>	<ul style="list-style-type: none"> <li>- All parties are represented by counsel;</li> <li>- The matter can be dealt with in three days or less; and</li> <li>- All parties consent.</li> </ul> <p><b>Family Division (from practice directives):</b> The Court offers virtual options as deemed appropriate on a case-by-case basis.</p> <p><b>Rule 25.02(3) (Civil):</b> A judge may permit a party, counsel, or a corporation’s agent to attend the hearing by video conference, if the judge is satisfied on all of the following:</p> <ol style="list-style-type: none"> <li>it is impractical or unfair to require personal attendance;</li> <li>attendance by video conference will save significant expense;</li> <li>the courtroom has been equipped with an audiovisual system of sufficient quality that the person is as good as physically present in the courtroom.</li> </ol>	<p><b>Rule 23.08(1)(c) (Civil):</b> Providing evidence by video conference in a chambers motion</p> <p><b>Rule 51.08 (Civil):</b> Testimony by video conference</p> <p><b>Rule 53.05 (Civil):</b> Cross examination by video conference</p> <p><b>Rule 56:</b> commission evidence and testimony by video conference</p>
<p><b>Nova Scotia Court of Appeal (NSCA)</b></p>	<p><b>In-person:</b> most appeal hearings and some chambers (see criterion to the right)</p> <p><b>Videoconference/hybrid:</b> some appeal hearings and some chambers hearings</p> <p><i>The NSCA will continue to deal with matters virtually, where appropriate.</i></p> <p><i>The method of procedure is at the discretion of the panel (see criterion to the right)</i></p>	<p><b>Appeal hearings:</b> the panel of judges assigned to each appeal will review the materials filed with the court and decide the format in which the appeal will be heard. Among other things, the panel will consider:</p> <ul style="list-style-type: none"> <li>- The nature of the case;</li> <li>- The complexity of the case;</li> <li>- Whether there are liberty interests at stake; and</li> <li>- Whether the appeal relates to a matter of public interest.</li> </ul> <p><b>Chambers:</b> Requests for in-person chambers appearances will be accommodated where possible with priority to:</p> <ul style="list-style-type: none"> <li>- motions for bail pending appeal</li> <li>- motions for stays</li> <li>- motions re publication bans</li> <li>- motions for state-funded counsel</li> <li>- any other matter the chambers justice in their discretion considers should proceed by in-person appearance</li> </ul>	<p>N/A</p>

<b>Supreme Court of Prince Edward Island (PESC)</b>	<p><b>In-person:</b> most matters</p> <p><b>Virtual:</b> available with permission of the court upon request (court generally flexible in accommodating)</p>	N/A	N/A
<b>Prince Edward Island Court of Appeal (PECA)</b>	<p><b>In-person:</b> most matters</p> <p><b>Virtual:</b> available with permission of the court upon request (court generally flexible in accommodating)</p> <ul style="list-style-type: none"> <li>- Virtual proceedings/appearances often granted to out-of-province counsel, parties presenting decorum issues, and/or parties exposed to/recovering from COVID-19</li> <li>- PECA accommodates parties to participate virtually at other courthouses across PEI.</li> </ul> <p><i>Court retains discretion regarding determining the method of proceeding – granted on a case-by-case basis</i></p>	N/A	N/A
<b>Court of Queen's Bench of New Brunswick (NBQB)</b>	<p><b>In-person:</b> all proceedings, with</p> <p><b>Virtual (subject to approval of a party's motion for virtual proceeding/appearance):</b> most common among bail hearings, settlement conferences, and administrative proceedings</p>	N/A	<b>Rule 4.1.02 (Civil):</b> by motion or decision-maker's own initiative and where just and convenient, an order may be made directing all or part of a proceeding be heard virtually
<b>Court of Appeal of New Brunswick (NBCA)</b>	<p><b>Videoconference or in-person (at court's discretion):</b> appeal hearings (most virtual)</p> <p><b>Telephone (unless motion judge of Chief Justice determines otherwise):</b> scheduled motions and status hearings</p>	N/A	<b>Rule 62.02.1 (Civil):</b> the Chief Justice may direct that any matter in the Court of Appeal may be heard by way of video conference
<b>Quebec Superior Court of Justice (QCCS)</b>	<p><b>In-person:</b> permitted if there is no testimonial evidence in civil, family, and commercial matters.</p>	N/A	<p><b>Rule 25 (Civil):</b> an application not requiring the hearing of a witness may be heard virtually with 24 hours notice</p> <p><b>Rule 26 (Civil):</b> the court may authorize the virtual presentation of an application with 48 hours notice</p> <p><b>Rule 27 (Civil):</b> the court may authorize witness to be heard by virtually at a hearing with 5 days notice</p> <p><b>Rule 17 (Criminal) / Rule 14 (Penal Matters):</b> any motion, application, appeal</p>

			on its merits or prehearing conference may be held virtually, (must present written application to Judge Administrator of the Criminal Division) (telephone if urgent is acceptable)
<b>Court of Appeal of Quebec (QCCA)</b>	<p><b>In-person:</b> at the discretion of the parties</p> <p><b>Virtual:</b> at the discretion of the parties</p> <p><i>Parties/counsel may elect to come to Court or appear by videoconference for their appeal hearing (hybrid proceedings are permitted)</i></p> <p><i>In some circumstances the court may deem an appeal or application not appropriate for a virtual appearance and will notify those concerned.</i></p>	N/A	<p><b>Rule 39 (Civil):</b> A party wishing to appear virtually can make a request to the Clerk by letter. The presiding judge shall decide whether to grant the request.</p> <ul style="list-style-type: none"> <li>- Costs assumed by party requesting</li> </ul> <p><b>Rule 34 (Criminal) / Rule 32 (Penal Matters):</b> A party wishing to appear virtually can make a request to the Clerk by letter. The presiding judge shall decide whether to grant the request.</p> <ul style="list-style-type: none"> <li>- Costs assumed by party requesting</li> <li>- Requires written consent of the accused</li> </ul> <p><b>Rule 55 (Criminal) / Rule 53 (Penal Matters):</b> where circumstances permit, and parties consent a motion may be heard virtually.</p> <p>*New rules expected in Fall, 2022</p>
<b>Ontario Superior Court of Justice (ONSC)</b>	<p><i>Default method of hearing (however, some Regions, in particular the Northwest, Northeast, and those with circuiting judges, will require greater flexibility in hearing more cases virtually)</i></p> <p><u>Civil</u></p> <p><b>Virtual (videoconference only):</b> Assessment hearings</p> <p><b>Virtual (unless Court specifies differently):</b> case conferences, pre-trial conferences involving trial management issues only, settlement and trial management conferences, and trial and motion scheduling court</p> <p><b>Virtual (unless a party requests in-person and Court agrees, or Court directs):</b> contested motions and applications</p>	<p><b><u>General criteria (for civil, family, and criminal) prescribed by practice directive:</u></b> The final determination of how an event will proceed will remain subject to the discretion of the Court. This will consider:</p> <ul style="list-style-type: none"> <li>• the issues in the proceeding,</li> <li>• the expected length of the hearing,</li> <li>• the evidentiary record, the status of parties (e.g. self-represented litigants) and</li> <li>• access to technology (including virtual capacity at institutions and courthouses).</li> </ul> <p><u>Civil</u></p> <p><b>Criteria prescribed by rule 1.08(6):</b> The court shall make an order directing the method of attendance at the hearing or step and, in doing so, the court shall consider, as applicable, a. the availability of telephone conference or video conference facilities;</p>	<p><b>Rule 1.08(1) (Civil):</b> party seeking a hearing or step in proceeding that requires in-person attendance may specify in advance which methods the party proposes that the parties attend (in-person, teleconference, or videoconference)</p> <p><b>Rule 1.08(2) (Civil):</b> doesn't apply to case conferences, which are heard by teleconference</p> <p><b>Rule 1.08(4) (Civil):</b> another party can oppose by filing a notice of objection form</p> <p><b>Rule 1.08(6) (Civil):</b> criteria for determining method of proceeding (see left)</p> <p><b>Rule 1.08(7) (Civil):</b> if no notice of objection is filed the parties are deemed to</p>

	<p><b>In writing (unless Court specifies differently):</b> consent motions, without notice motions, unopposed motions, costs, and motions for leave to appeal to the Divisional Court</p> <p><b>In-person (unless parties consent or Court directs virtual):</b> examinations for discovery, and mandatory mediations</p> <p><b>In-person (unless parties consent and Court approves, court may consider hybrid proceeding and/or virtual witness appearance(s)):</b> judge alone trials and appeals to the Divisional Court</p> <p><b>In-person (court may consider hybrid proceeding and/or virtual witness appearance(s)):</b> jury trials</p> <p><b><u>Family</u></b></p> <p><b>Virtually (unless court specifies differently):</b> first appearances, early or urgent case conferences and triage court</p> <p><b>Virtual (videoconference unless in-person required):</b> complex procedural motions</p> <p><b>Virtual (videoconference):</b> substantive motions &lt; 1 hour</p> <p><b>In-writing:</b> consent, unopposed motions, simple procedural motions</p> <p><b>In-person (unless court approves different method):</b> case conferences, settlement conferences, trial management conferences, long motions</p> <p><b>In-person (unless parties consent and court approves to virtual, court may consider hybrid proceeding and/or virtual witness appearance(s)):</b> trials</p> <p><b>In-person:</b> motions for contempt, hearing</p>	<p>b. the general principle that evidence and argument should be presented orally in open court;</p> <p>c. the importance of the evidence to the determination of the issues in the case;</p> <p>d. the effect of a telephone conference or video conference on the court's ability to make findings, including determinations about the credibility of witnesses;</p> <p>e. the importance in the circumstances of the case of observing the demeanour of a witness;</p> <p>f. whether a party, witness or lawyer for a party is unable to attend by a method because of infirmity, illness or any other reason;</p> <p>g. the balance of convenience between any party wishing the telephone conference or video conference and any party or parties opposing; and</p> <p>h. any other relevant matter.</p> <p><b><i>Contested motions and applications</i></b></p> <ul style="list-style-type: none"> <li>• the positions of the parties;</li> <li>• the complexity of the legal or factual issue;</li> <li>• whether the outcome of the motion or application is legally or practically dispositive of a material issue in the case (e.g. summary judgement);</li> <li>• whether viva voce evidence will be heard;</li> <li>• and any other factor bearing on the administration of justice.</li> </ul> <p><b><u>Family</u></b></p> <p><b><i>First appearances</i></b></p> <ul style="list-style-type: none"> <li>- the Court will consider the availability of duty counsel and on-site mediation services</li> </ul> <p><b><u>Criminal</u></b></p> <p><b><i>Assignment conferences</i></b></p> <ul style="list-style-type: none"> <li>• whether the accused is self-represented (either in custody or out of custody) and</li> <li>• any other factor bearing on the administration of justice, including any access to justice issues.</li> </ul> <p><b><i>Bail hearings, bail reviews, and detention</i></b></p>	
--	---	--	--

	<p>alleging wrongful removal or retention of a child</p> <p><b>Family (child protection): see Appendix 2(I)</b></p> <p><b><u>Criminal</u></b></p> <p><b>Virtual (unless court specifies differently):</b> assignment court, bail hearings, bail reviews, detention reviews, and judicial pre-trials</p> <p><b>In-person (unless crown and accused consent and court approves virtual, court may consider hybrid proceeding and/or virtual witness appearance(s)):</b> judge-alone trials and pre-trial motions</p> <p><b>In-person (unless crown and accused consent and court approves virtual):</b> guilty pleas and sentencing hearings</p> <p><b>In-person ((court may consider hybrid proceeding and/or virtual witness appearance(s)):</b> jury trials</p>	<p><b>reviews criteria</b></p> <ul style="list-style-type: none"> <li>the availability of a virtual suite from the custodial institution;</li> <li>whether the accused is self represented;</li> <li>the position(s) of the parties; and</li> <li>any other factor bearing on the administration of justice</li> </ul> <p><b>Judicial Pre-trials criteria</b></p> <p>In-person judicial pre-trial is required in light of</p> <ul style="list-style-type: none"> <li>the accused being self-represented;</li> <li>there being multiple accused in a case;</li> <li>the complexity of trial issues;</li> <li>the length of the trial; or</li> <li>any other factor the court decides warrants an in-person judicial pre-trial.</li> </ul>	
<b>Ontario Court of Appeal (ONCA)</b>	<p><b>In-person:</b> appeals and Panel motions (unless otherwise directed by rules, practice directives or judge)</p> <ul style="list-style-type: none"> <li>all matters are provided a default Zoom link so parties/counsel can make virtual appearance – no request required</li> <li>Parties to an in-person appeal or panel motion may <b>choose to appear remotely</b> – parties should indicate their method of appearing on the Counsel Slip and Hearing Information Form</li> </ul> <p><b>Hybrid:</b> Inmate appeals</p> <ul style="list-style-type: none"> <li>In-person (with inmate in custody appearing virtually or in-mate out of custody electing in-person or virtual appearance)</li> </ul> <p><b>Virtual (video or audio conference):</b> single judge motions, Status Court, and Purge Court</p>	<p><b>Rule 10(6) (Criminal):</b> In deciding on the manner of hearing, the judge shall consider, if applicable:</p> <ol style="list-style-type: none"> <li>Whether any of the parties are unrepresented, and, if so, whether they have had access to legal advice;</li> <li>The availability of videoconference or audioconference facilities to the court and to the parties;</li> <li>Whether a party or lawyer is unable to attend in-person because of disability, illness or any other reason;</li> <li>The location and personal circumstances of the person who wishes to proceed by videoconference or audioconference;</li> <li>The balance of convenience between the party who wishes to proceed by videoconference or audioconference and any party or parties opposing;</li> <li>Whether viva voce evidence is anticipated; and</li> <li>Any other relevant matter.</li> </ol>	<p>Practice Direction supersedes criminal and civil rules as of June 2022 – end of practice directive TBD</p> <p><b>Rule 1.08(2) (Civil):</b> proceedings in the Court of Appeal, may be heard as directed by the court</p> <p><b>Rule 10(2) (Criminal):</b> Unless otherwise directed or ordered by the rules, a practice direction, the court, or a judge, appeals and motions may be heard in-person, by videoconference, by audioconference or in writing.</p> <p><b>Rule 10(3) (Criminal):</b> the moving party specifies the proposed manner of hearing in their notice of motion</p> <p><b>Rule 10(4) (Criminal):</b> Party opposing proposed manner of hearing shall serve and file notice of objection within 4 days of being served with notice of motion</p>

			<p><b>Rule 10(5) (Criminal):</b> notice of motion and objection placed before judge in advance of hearing and judge makes order directing manner of hearing</p> <p><b>Rule 10(6) (Criminal):</b> criteria for judge (see left)</p> <p><b>Rule 10(7) (Criminal):</b> if no objection is filed within the time limits, parties are deemed to agree to proceed with manner of hearing proposed in notice of motion unless judge/court directs otherwise</p>
<b>Manitoba Court of Queen's Bench (MBQB)</b>	<p><b>In-person:</b> most matters</p> <ul style="list-style-type: none"> <li>- by Fall 2022 only limited matters will be heard remotely including chambers and some other matters outside Winnipeg</li> <li>- matters where both parties are SRLs conducted in-person</li> </ul> <p><b>Other Stipulations</b></p> <p><b>In-person:</b> maintenance enforcement dockets, child protection dockets, bankruptcy dockets, matters involving the provision of viva voce evidence</p> <p><b>Virtual:</b> masters civil and family uncontested list, contested motions, uncontested passing of accounts or hearings for directions</p>	<p>MBQB will offer continued flexibility to allow for virtual appearances in: “appropriate circumstances, on request of the parties, and where resources allow”.</p>	<p><b>Rule 3709(1) (Civil):</b> parties can consent to or make a motion for an order to have their motion heard virtually</p> <p><b>Rule 50.03(1) (Civil):</b> counsel and SRLs can attend a pre-trial conference virtually</p> <p><b>Rule 34.19 (Civil):</b> witness examination can be virtual on consent of the parties</p>
<b>Manitoba Court of Appeal (MBCA)</b>	<p><b>In-person:</b> all appeals and chambers motions</p>	<p><b>Rule 17.2(1) (Civil):</b> court may allow virtual proceeding in whole or in part in <i>exceptional circumstances</i>.</p>	<p><b>Rule 17.2(1) (Civil):</b> a judge or panel may issue a direction that a hearing of an appeal, motion, or application be conducted virtually in whole or in part in <i>exceptional circumstances</i>.</p>
<b>Saskatchewan Court of Queen's Bench (SKQB)</b>	<p><b>In-person:</b> most matters (except for those enumerated below)</p> <p><b>Telephone:</b> chambers applications, which are presumptively by telephone and most Child Protection matters</p> <p><i>Parties can request in-person or video conference Chambers appearances.</i></p> <p><i>SRLs have option to appear in-person.</i></p>	<p>N/A</p>	<p><b>Rule 4-8 (Civil):</b> option for court to permit a virtual case management conference</p> <p><b>Rule 15-120(b) (Family):</b> option for court to permit virtual family law proceedings</p> <p><b>Rule 9-20(1) (Civil):</b> possibility of virtual witness testimony with court approval</p> <p><b>Rule 6-25(1) (Civil):</b> option for judge to direct virtual attendance at a pre-trial meeting</p>



<b>Saskatchewan Court of Appeal (SKCA)</b>	<p><b>In-person:</b> all appeals and applications</p> <p><i>Court maintains discretion subject to practice directives to hear a matter remotely</i></p> <p><i>Court allows counsel or SRL the option to appear virtually or in-person (no need for court approval)</i></p>	N/A	<p><b>Rule 48(9) (Civil):</b> by consent of parties or Registrar's directions an application in chambers may be conducted by telephone conference</p> <p><b>Rule 33(3) (Criminal):</b> by consent of parties or Registrar's directions, an application in chambers may be heard by telephone or video conference</p>
<b>Alberta Court of Queen's Bench (ABQB)</b>	<p><b>In-person:</b> bar admissions, civil chambers, civil justice specials, early intervention case conferences, family court appeals, family law chambers, family law specials, family pre-trial conferences, judicial dispute resolution, judicial reviews (involving SRLs), masters chambers (Calgary and Edmonton), summary disposition/sentencing, summary trial, trials (judge alone), trials (judge and jury)</p> <p><b>Hybrid:</b> adult guardianship and trustee applications, case management, masters chambers (outside Calgary and Edmonton), urgent matters chambers</p> <p><b>Virtual:</b> bail, bankruptcy, child support list, commercial list, criminal appearance court, civil pre-trial conferences, criminal bail, criminal pre-trial conferences, estate case conferences, family docket court, interjurisdictional support orders, judicial reviews (with no SRLs)</p>	<p><b>General Principles</b> (informing the method of proceedings):</p> <ol style="list-style-type: none"> <li>1. The default mode for matters that are more adjudicative/substantive in nature is an in-person hearing;</li> <li>2. The default mode for matters that are more administrative/procedural in nature is a remote hearing;</li> <li>3. The mode of hearing will be determined at the time a matter is scheduled for hearing and will be subject to the availability of Court resources on the scheduled hearing date;</li> <li>4. The Court does not presently have sufficient resources to accommodate hybrid processes in all matters.</li> </ol> <p>Changes to the mode of hearing after a matter is scheduled will be determined considering the circumstances and the following criteria:</p> <ul style="list-style-type: none"> <li>• inability of a participant to attend in-person due to health issues or other personal circumstances;</li> <li>• distance to the location of the hearing which makes in-person attendance impractical;</li> <li>• a change in the nature of the proceeding such as to necessitate a departure from the scheduled mode of hearing;</li> <li>• a change in representation of a party from self-represented to represented, or vice versa; and</li> <li>• such other reason as approved by the Court.</li> </ul>	<p><b>Schedule A (Civil):</b> possible to appear before court by telephone or videoconference</p> <p><b>Rule 6.9(1)(b) (Civil):</b> Court can consider electronic a filed application virtually</p> <p><b>Rule 6.10 (Civil):</b> an electronic hearing may be held by way of consent, on application or on the Court's own motion, or by Court Order</p> <p><b>Rule 7.8(1) (Civil):</b> summary trial may be conducted in accordance with rule 6.10</p> <p><b>Rule 8.18 (Civil):</b> Trials may be conducted in accordance with rule 6.10</p> <p><b>Rule 4.8 (Criminal):</b> Rules 6.9(1)(b), 6.10, and 8.18 also apply (with modifications as circumstances require).</p>
<b>Alberta Court of Appeal (ABCA)</b>	<p><b>In-person:</b> all appeal hearings and applications before a three-judge panel</p> <p><b>Virtual:</b> Appeal conference, judicial dispute resolution matters and single judge matters (until</p>	N/A	<p><b>Rule 14.73 (Civil):</b> allowed for a single judge or panel to hear any appeal or application electronically by way of consent, on application or on the Court's own motion, or by Court Order</p>

	further notice)  <b>Hybrid:</b> unavailable due to a lack of technological capacity.		
<b>Supreme Court of British Columbia (BCSC)</b>	<p><b><u>Civil and Family:</u></b></p> <p><b>In-person:</b> trials, judicial case conferences, long chambers applications, settlement conferences, case planning conferences, registrar’s hearings, judicial management conferences, judgements</p> <p><b>Videoconference:</b> regular chambers</p> <p><b>Audio/Teleconference:</b> trial management conferences</p> <p><b><u>Criminal:</u></b></p> <p><b>In-person:</b> trials, sentencing hearings, <i>voir dire</i>s and pre-trial applications, jury selections, extradition hearings, judgements, summary conviction/traffic ticket appeals, applications under s. 490 of the <i>Criminal Code</i></p> <p><b>Counsel in-person and accused by video:</b> judicial interim release (bail) and bail review hearings, detention review hearings under s. 525 of the <i>Criminal Code</i>, Scheduled hearings for s/ 525 detention review</p> <p><b>Counsel by Teams audio, accused who is required or wishes to attend (In custody: Video, Out of Custody: Teams audio):</b> regular fix-date appearances, pre-trial conferences, and case management conferences</p>	<p>The Court has not established a strict list of criteria to consider when assessing whether a matter is suitable for a virtual hearing. However, there are circumstances in which individual presiders may be called upon to decide if a virtual hearing is appropriate.</p> <p>Factors considered <i>may</i> include:</p> <ul style="list-style-type: none"> <li>• length;</li> <li>• complexity;</li> <li>• whether there are witness credibility issues or the need for interpretation;</li> <li>• familiarity and comfort for participants with virtual hearings and electronic technology;</li> <li>• whether parties are represented by counsel; and</li> <li>• whether travel for the parties or the presider would be unreasonable in the circumstances.</li> </ul>	<p>COVID notices temporarily dispensing with the application of some BCSC Civil and Family Rules to facilitate virtual proceedings, under the authority provided in the <i>COVID Related Measures Act</i>.</p> <p><b>Practice Directive #49 (Schedule A) (Civil):</b> Applications to change the manner of attendance from the default are submitted to the court via an application by requisition (Appendix 2(O)(ii)).</p> <p><b>Practice Directive #18 (Schedule A) (Family):</b> Applications to change the manner of attendance from the default are submitted to the court via an application by requisition (Appendix 2(O)(iii)).</p> <p><b>Practice Directive #51 (criminal):</b> Applications to change the manner of attendance from the default by</p> <ol style="list-style-type: none"> <li>1. Applying to the court during an earlier appearance (if one is scheduled); or</li> <li>2. If no earlier appearance, complete and submit the online application form of the BCSC website<sup>1</sup></li> </ol> <p><b>Rule 23-5(3) (Civil and Family):</b> In urgent cases or if court or registrar considers appropriate the court may conduct a hearing and make an order or decision virtually</p> <p><b>Rule 23-5(4) (Civil and Family):</b> on application or by the court’s own initiative the court may direct an application be heard virtually</p> <ul style="list-style-type: none"> <li>- ((4.1) – same rule applies to registrar)</li> </ul>

<sup>1</sup> “Application to Change the Method of Attendance at Specified Criminal Proceedings” (2022), online: *Supreme Court of British Columbia* <bccourts.ca/supreme\_court> [perma.cc/2DRE-HNH9].

			<b>Rule 23-5(5) (Civil and Family):</b> application must be made by requisition (see above)
<b>British Columbia Court of Appeal (BCCA)</b>	<b>In-person:</b> all appeal hearings and chambers proceeding  <b>Virtually:</b> none, unless parties request or elect a remote appearance/proceeding - Telephone not permitted for appeal hearings	For appeals, parties must seek permission to appear by Zoom addressing the following criteria (not applicable to chambers applications)  a. Travel cost and convenience to the party b. The nature of the interests involved and the impact on the community where the appeal originates, c. Any sealing orders or publication bans, safety issues, or public health orders in place, d. The circumstances of any litigant or lawyer, e. Any other relevant factor  (See Appendix 2(P)(ii))	<b>Request to appear virtually:</b> - <b>Appeal hearings:</b> Parties can apply to appear by video conference 10 business days before the appeal hearings using the request form (Appendix 2(P)(ii)), if not submitted the court assumes party wishes to appear in-person - <b>Chambers applications:</b> parties must file a request form (Appendix 2(P)(ii)) 2 business days before the chambers proceeding, but do not require permission of the court, unless ordered otherwise - if not submitted the court assumes party wishes to appear in-person  <b>Rule 44(1-2) (Civil):</b> A justice (or registrar) may hear an application or hold a prehearing conference (or registrar's hearing), by telephone or videoconference if they consider it appropriate.  *New rules being developed to codify current practices under the practice directives
<b>Nunavut Court of Justice (NUCJ)</b>	<b>In-person:</b> default for most proceedings  <b>Telephone:</b> <i>court flexible to accommodate the broad use of telephone appearances based on cost/time associated with travel in Nunavut. This is in accordance with pre-pandemic practices.</i>	N/A	<b>Practice directive:</b> Participants can appear virtually by filing a form electronically with the Clerk of the Court three business days before the scheduled hearing dates save for special chambers or criminal chambers involving viva voce evidence.  Telephone appearances are a key measure for access to justice in Nunavut.
<b>Court of Appeal of Nunavut (NUCA)</b>	<b>In-person:</b> all hearings and applications before three-judge panels (Following the policy directions of the ABCA)  <b>Virtual:</b> Single judge matters, appeal conferences, and judicial dispute resolution matters (until further notice)	N/A	<b>Rule 59(g) (Civil):</b> allows a single appeal judge or panel to hear any appeal or application by electronic means

<b>Supreme Court of the Northwest Territories (NWTSC)</b>	<p><b>In-person:</b> default for most proceedings (including judicial mediation and chambers)</p> <p><b>Telephone:</b> Pre-Trial Conferences (unless counsel requests in-person or involves self-represented accused)</p>	<p><b>Rule 389(3) (Civil) and Rule 24(2) (Criminal):</b> Judge hearing the application may reject a request to appear virtually in civil or criminal chambers matters if they consider the personal attendance of the solicitor's <i>desirable</i>.</p>	<p><b>Practice Directive:</b> applications for virtual appearance can be made well in advance of appearance and must enclose explanation for the request.</p> <p><b>Rule 389 (Civil):</b> parties can make an application to appear virtually for chambers 3 days in advance of the hearing if no consent is found</p> <p><b>Rule 12 (Criminal):</b> parties can appear virtually by consent or leave of the court</p>
<b>Court of Appeal for the Northwest Territories (NWTCA)</b>	<p><b>In-person:</b> all hearings and applications before three-judge panels (Following the policy directions of the ABCA)</p> <p><b>Virtual:</b> Single judge matters, appeal conferences, and judicial dispute resolution matters (until further notice)</p>	N/A	<p><b>Rule 59(g) (Civil):</b> allows a single appeal judge or panel to hear any appeal or application by electronic means</p>
<b>Supreme Court of the Yukon Territory (YKSC)</b>	<p><b>In-person:</b> most hearings (applications, trials, family law case conferences, chambers appearances, and judicial settlement conferences)</p> <p><b>Telephone:</b> Case management conferences and pre-trial conferences (in exceptional cases with permission of the judge held by video or in-person)</p> <p>The Court can on its own initiative or by application of a party, allow appearances by video or telephone if circumstances require and notice is provided in advance to the court technologist</p>	N/A	<p><b>Rule 37(4) (Civil):</b> judicial settlement conferences may include attendance by video or telephone where necessary and appropriate.</p> <p><b>Rule 42(1) (Civil):</b> witness may testify by videoconference</p> <p><b>Rule 42(48) (Civil):</b> witness may be cross-examined by videoconference</p> <p><b>Rule 62(4) (Civil):</b> On application or by court's own initiative the court may direct an application be heard by videoconference</p>
<b>Yukon Court of Appeal (YKCA)</b>	<p><b>In-person:</b> appeal hearings and chamber proceedings (including hearings before the Registrar), unless parties request or elect to appear remotely.</p> <p><b>Virtual (videoconference):</b> by permission (see right)</p>	<p>For appeals, you must seek permission to appear by Zoom addressing the following criteria (not applicable to chambers applications):</p> <ol style="list-style-type: none"> <li>Travel cost and convenience to the party</li> <li>The nature of the interests involved and the impact on the community where the appeal originates,</li> <li>Any sealing orders or publication bans, safety issues, or public health orders in place,</li> <li>The circumstances of any litigant or lawyer,</li> <li>Any other relevant factor</li> </ol>	<p><b>Rule 44 (Civil):</b> a justice may hear an application or hold a pre-hearing conference by telephone or video conference if they consider it appropriate</p>

		(See Appendix 2(P)(ii))	
<b>Federal Court</b>	<p><b>In-person:</b> presumptive mode of hearing for all matters 3 hours or longer in duration (commencing for matters scheduled to be heard September 2022 or latter)</p> <ul style="list-style-type: none"> <li>- Parties will have the option to request a remote hearing (see right)</li> </ul> <p><b>Subject to the request of parties:</b> matters under 3 hours in duration parties asked to advise the court re their preferred hearing mode (ideally by joint submission following consultation between parties)</p> <ul style="list-style-type: none"> <li>- See timelines for parties communicating their preferred mode of hearing to the court in Appendix 2((T))</li> </ul> <p><b>Changing the mode of hearing once scheduled:</b> submit a letter to the Judicial Administrator via the Registry as soon as possible. The request should set out:</p> <ol style="list-style-type: none"> <li>a. The position of other parties;</li> <li>b. all facts relevant to the request; and</li> <li>c. the party's submissions relevant to the request.</li> </ol>	N/A	<b>Rule 32</b> ( <i>Federal Court Rules</i> ): The Court may provide directions to facilitate the conduct of a hearing or any part of a hearing virtually.
<b>Federal Court of Appeal (FCA)</b>	<p>In-person: FCA is moving toward hearing all appeal hearings and applications in-person.</p> <ul style="list-style-type: none"> <li>- Possibility of hybrid/virtual proceedings remains.</li> <li>- Virtual proceedings granted on a case-by-case basis and often done so when participants are COVID positive/exposed, or parties are in different cities.</li> </ul>	N/A	<b>Rule 32</b> ( <i>Federal Court Rules</i> ): The Court may provide directions to facilitate the conduct of a hearing or any part of a hearing virtually.
<b>Tax Court of Canada (TCC)</b>	<p><b>Hybrid:</b> most matters often with parties communicating virtually from different courtrooms (depending on availability of technology of the courtroom where the proceeding is taking place).</p> <ul style="list-style-type: none"> <li>- Presiding judge retains discretion of method of proceeding</li> <li>- Parties always entitled to appear from the courthouse where their matter is scheduled.</li> </ul>	N/A	<p><b>Section 6</b> (<i>Tax Court of Canada Rules (General Procedure)</i>): the court may direct any step of the proceeding to be conducted virtually or in a hybrid manner.</p> <p><b>**No formal, publicly available policies, practice directives, notices, etc. issued by the TCC.</b></p>

<p><b>Supreme Court of Canada (SCC)</b></p>	<p><b>Hybrid:</b> all matters</p> <ul style="list-style-type: none"> <li>- Judges appear in the courtroom,</li> <li>- Counsel have discretion as to method of appearance (video appearance or in-person)</li> <li>- Intervenors appear by videoconference</li> </ul> <p>CJ Wagner indicated virtual proceedings will remain an option for parties beyond pandemic and encourages remote appearances to improve access to justice (reduce costs for clients and interveners).</p> <p>Appellant court well suited to virtual/hybrid proceedings given nature of appellant advocacy (witness testimony is rare).</p> <p>All matters are livestreamed and achieved on the SCC website (subject to some exceptions) as is consistent with pre-pandemic practices.</p>	<p>N/A</p>	<p><b>Section 95.1</b> (<i>Rules of the Supreme Court of Canada</i>): allows justices to participate virtually.</p>
---	--	------------	---



**SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
NOTICE TO THE PROFESSION AND GENERAL PUBLIC**

**SUPREME COURT OPERATIONS FOR GENERAL DIVISION AND  
FAMILY DIVISION JUDICIAL CENTRES  
MAY - JUNE, 2022 (REVISED)**

For the information of all stakeholders, this Notice outlines the planned operations for the **General Division and Family Division in all judicial centres** from **May 2-June 30, 2022**. This Notice replaces the one issued on April 27, 2022.

The Supreme Court continues to recommend that all persons entering the courthouse wear a 3-layer mask at all times in the courthouse but this will no longer be required, unless a judge directs otherwise. Please consult the revised Supreme Court's [COVID-19 Guidelines](#) for additional details.

**OPERATIONS FROM MAY 2 – JUNE 30, 2022**

For the period running from May 2-June 30, 2022, **all Supreme Court General Division and Family Division judicial centres** will continue in a hybrid in-person/virtual services model. Under this model, the Court will continue hearing some matters in-person, while continuing to conduct a significant amount of its business virtually.

Note that any matter that proceeds in-person will be held in accordance with the [COVID-19 Guidelines](#) issued by the Court.

**Trials**

Criminal, civil and family trials scheduled to begin between May 2-June 30, 2022, may proceed in-person. Counsel and parties are encouraged, however, to identify trials that could be conducted virtually or to identify trial participants that could appear remotely. Where that is the case, and with the approval of the presiding judge, Court staff members will contact the parties to make arrangements for the conduct of the trial.

**Hearings**

All hearings that are set to be heard virtually will proceed. Hearings that are set to be heard in-person may proceed, but each of these will be assessed by Court staff members, in consultation with the judiciary, to determine if they may be appropriately heard virtually or if one or more participants could appear remotely. Where that is the case, and with the

approval of the presiding judge, Court staff members will contact the parties to make arrangements for the conduct of the hearing.

No new in-person hearings will be scheduled for this period, unless they are urgent. Urgent matters would include the following:

- **Criminal Proceedings** – bail hearings, bail review applications where the accused is in custody, and detention reviews.
- **Family Proceedings** – requests for urgent relief relating to the safety of a child or parent; applications relating to medical decisions or wrongful removal of a child; applications to preserve property or assets; warrants under the *Children, Youth and Families Act*; and new applications under the *Adult Protection Act*.

Other matters that a judge determines to be urgent may also proceed in-person.

### **Conferences**

Conferences will continue virtually.

### **Filing and Processing Documents**

Supreme Court courthouses will remain open for the weeks of May 2-June 30, 2022. All persons are encouraged to use the drop boxes at the front of the courthouses for contactless drop-off and pick-up of documents. The drop boxes and mail hubs are accessible during the Court's normal business hours. Documents that are delivered in the drop boxes less than one hour before the Court's normal closing time will be time stamped as received on the following business day.

Where necessary, individuals may attend at the Registry counter for in-person service. In the St. John's General Division and Family Division courthouses, individuals must make an appointment using the [online scheduling system](#) (note that *urgent* in-person service may be provided in the absence of an appointment).

Please also note the following:

- **Email filings will not be accepted** (with the exception of email filings permitted in accordance with Practice Note P.N. 2020-03).
- For documents left in a drop box, filing fees must be paid in one of the following ways: (1) the filing party may include a cheque enclosed with the document being filed; or (2) the filing party may provide a contact name and number with the document so that the Court can process a credit card payment by phone.
- Forms may be downloaded from the [Court's website](#).
- Processing times may be delayed owing to reduced staffing levels.



## CONTACTING THE COURT

If you are seeking an urgent hearing or you have questions about your upcoming appearance, or need other assistance on an urgent basis, please contact the applicable Registry using the contact information below:

**Corner Brook General Division and Family Division**

[inquiryCB@supreme.court.nl.ca](mailto:inquiryCB@supreme.court.nl.ca)

709-637-2633

**Gander General Division**

[inquiryGander@supreme.court.nl.ca](mailto:inquiryGander@supreme.court.nl.ca)

709-256-1115

**Grand Bank General Division**

[inquiryGB@supreme.court.nl.ca](mailto:inquiryGB@supreme.court.nl.ca)

709-832-1720

**Grand Falls-Windsor General Division**

[inquiryGFW@supreme.court.nl.ca](mailto:inquiryGFW@supreme.court.nl.ca)

709-292-4260

**Happy Valley-Goose Bay General Division**

[inquiryHVGB@supreme.court.nl.ca](mailto:inquiryHVGB@supreme.court.nl.ca)

709-896-7892

**St. John's Family Division**

[familyinquiries@supreme.court.nl.ca](mailto:familyinquiries@supreme.court.nl.ca)

709-729-2258

**St. John's General Division**

[inquiries@supreme.court.nl.ca](mailto:inquiries@supreme.court.nl.ca)

709-729-1137

## PUBLIC AND MEDIA ACCESS TO VIRTUAL TRIALS AND HEARINGS

The Court will continue facilitating virtual attendance by members of the media and the public at virtual trials and hearings. To find out what matters are proceeding and when, please consult the Court's docket posted on the [Court's website](#).

If you wish to attend one of the matters listed on the docket, you should contact the Court's inquiries email address (listed above for each judicial centre) **at least 48 hours prior** to the hearing of the matter in question. Requests should indicate the file number, case name, and date of the hearing you wish to attend. If the matter is one that the public would ordinarily be able to attend, you will be given a teleconference number so that you may call in to listen to the proceedings.

## **UPDATES**

The Supreme Court will continue to monitor the COVID-19 situation across the province to determine whether any further changes to operations are required. Please continue to consult the [Court's website](#) and Twitter account ([@NLSupremeCourt](#)) for the most up-to-date information.

RAYMOND P. WHALEN  
**Chief Justice**



**COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR**

**NOTICE TO THE PROFESSION AND GENERAL PUBLIC**

**COURT OF APPEAL OPERATIONS**

Issued: May 16, 2022

The Court of Appeal continues normal operations. Appeals and applications will be heard in person, unless the parties are notified otherwise.

If space does not permit members of the media or the public to be accommodated in the Courtroom, they may request to observe court hearings by teleconference. Interested parties may contact the Registry for assistance by email at [coaregistry@appeal.court.nl.ca](mailto:coaregistry@appeal.court.nl.ca) or by telephone at 709-729-0066. If the matter is one that the public would ordinarily be able to attend, a teleconference number will be provided.

Masks are no longer mandatory at the Court of Appeal.

The procedures described in this notice are subject to change depending on health guidelines.

Updates will be provided on the Court's website at [www.court.nl.ca/appeal](http://www.court.nl.ca/appeal) or on Twitter @nlcaupdates.

DEBORAH E. FRY  
**Chief Justice of Newfoundland and Labrador**



## **COVID-19 RESTRICTIONS IN THE NOVA SCOTIA COURTS WILL REMAIN IN EFFECT DURING PHASE 3 OF REOPENING PLAN**

**Friday, March 18, 2022**

The Province of Nova Scotia will enter [Phase 3](#) of its reopening plan on Monday, March 21, 2022, a move that will see most COVID-19 restrictions lifted entirely in many public places.

Given the unique position of the Courts, where individuals who attend are often compelled to do so, and where vulnerable segments of the population are often involved, it is important to continue to provide a safe place for matters to proceed. Although the provincial government is eliminating gathering limits, physical distancing and mask requirements in most settings, Public Health is still encouraging people to voluntarily continue these practices to help reduce the spread of COVID-19.

With that in mind, the All Courts COVID-19 Recovery Committee is recommending that the Courts' current COVID-19 restrictions remain in place for the foreseeable future, with some expanded capacity for in-person attendance.

As per the [May 27, 2021, Notice](#), masking will continue to be required in all public areas of courthouses. Masking inside courtrooms is strongly encouraged but will be at the discretion of the presiding judge.

Public access to courthouses will continue to be limited to those people who:

- work in the building;
- are directly involved with a court proceeding;
- have an appointment; or
- have approval from a judge to view a court proceeding in person.

Effective March 21, 2022, physical distancing requirements in courthouses and courtrooms will be reduced to one metre. However, due to space and other considerations, some judges may choose to continue enforcing two-metre physical distancing in their courtrooms.

Although reduced physical distancing will enable more people to attend court in person, individuals who are not essential to the proceedings must still apply to the Court in advance for approval to attend. This is to ensure physical distancing requirements can be met and courtroom capacity limits are not exceeded. That process is outlined [here](#).

To help maintain the open courts principle, members of the media are permitted to attend court in person, provided there is space available in the courtroom. If members of the media are interested in covering a hearing in person, they should contact the Judiciary's Communications Director to determine if there is space available. Alternatively, the Court will arrange for media to participate remotely by telephone or video.

Hand sanitizing stations and sanitizing wipes in courtrooms will continue to be available. Enhanced cleaning measures will also continue until further notice for all high-touch surfaces in courthouses.

Virtual court has been an important part of the Courts' COVID-19 Recovery Plan. Remote appearances by telephone or videoconferencing have allowed the Courts to hear more matters during the pandemic and continue to be helpful options. As such, the Courts will continue to deal with matters by telephone or Microsoft Teams, where appropriate.

These restrictions are temporary measures to help reduce the spread of COVID19. The All Courts COVID-19 Recovery Committee will regularly assess the situation to determine when these restrictions can be further eased or lifted entirely.

For more information about COVID-10 directives for each level of Court, please visit [https://www.courts.ns.ca/News\\_of\\_Courts/COVID19\\_Preventative\\_Measures.htm](https://www.courts.ns.ca/News_of_Courts/COVID19_Preventative_Measures.htm).

-30-

**Media Contact:**

Jennifer Stairs  
Communications Director  
Nova Scotia Judiciary  
902-221-5257  
[stairsjl@courts.ns.ca](mailto:stairsjl@courts.ns.ca)



## **COVID-19: SUPREME COURT (GENERAL AND FAMILY DIVISIONS) RETURNING TO SAFE SERVICES MODEL**

**Wednesday, Feb. 9, 2022  
Updated: Feb. 18, 2022**

Effective Monday, Feb. 14, 2022, the Supreme Court (General and Family Divisions) will return to a safe services model in all areas of the province.

This means that counsel and parties will no longer have to establish that a matter is urgent or essential to proceed in-person. Jury trials and non-urgent in-person hearings will be permitted, provided they can be conducted safely and in accordance with established public health protocols to protect against the spread of the COVID-19 virus.

### **Masking**

Mandatory masking and physical distancing measures in courthouses remain in effect and will be strictly enforced.

Sheriffs will provide a disposable medical mask to all witnesses, parties and defendants involved in an in-person court proceeding. Counsel are expected to bring their own disposable medical mask. However, for those who may not have one, a supply will be available at the front doors of the courthouses.

### **Access to Courthouses**

While the Supreme Court recognizes the need to expand the services offered to the public during the pandemic, it also recognizes that the fewer people inside courthouses right now, the better, from a safety perspective. For this reason, courthouses will continue to limit who is permitted inside the building. Only those individuals who work in the building, who are participating in a court proceeding, who have an appointment, or have approval from a judge to view a court proceeding in person will be permitted in courthouses.

To help maintain the open courts principle, members of the media will be permitted to cover court proceedings in person; however, whenever possible media will be encouraged to participate remotely by telephone or videoconferencing.

Anyone attending a courthouse is reminded to practice good hand hygiene, including the use of hand sanitizer, while in the building.

### **Public File Access**

Public and media access to files continues to be by appointment only, provided there is space available at the courthouse to view the files, while respecting physical distancing.

Individuals must contact Court Administration to make an appointment to view files, prior to coming to the courthouse. This is required so that staff can control the number of people in the viewing rooms. These spaces will be disinfected between appointments. Anyone coming to view files will be subject to health screening at the front door and will be required to wear a mask at all times.

For information on the various Supreme Court directives related to COVID-19, please visit [https://www.courts.ns.ca/News\\_of\\_Courts/COVID19\\_Preventative\\_Measures.htm](https://www.courts.ns.ca/News_of_Courts/COVID19_Preventative_Measures.htm).

-30-

### **Media Contact:**

Jennifer Stairs  
Communications Director  
Nova Scotia Judiciary  
902-221-5257  
[stairsjl@courts.ns.ca](mailto:stairsjl@courts.ns.ca)



## **NOVA SCOTIA COURT OF APPEAL PRACTICE DIRECTIVE: APPEAL PROCEEDINGS DURING THE COVID-19 PANDEMIC**

Implemented: June 22, 2020

Updated: March 7, 2022

### **CONTENTS**

<b>INTRODUCTION .....</b>	<b>2</b>
<b>PRACTICE DIRECTIVE .....</b>	<b>2</b>
<b>1. Format of Appeals .....</b>	<b>2</b>
I. Fully In-Person Appeals .....	4
II. Appeals with Remote Appearances .....	5
III. Fully Virtual Appeals .....	6
IV. In-writing Appeals .....	6
<b>2. Chambers .....</b>	<b>7</b>
<b>3. E-filing .....</b>	<b>8</b>
<b>4. Filing Deadlines .....</b>	<b>10</b>
<b>5. Etiquette .....</b>	<b>11</b>
<b>6. Civility .....</b>	<b>12</b>
<b>7. Technological Difficulties .....</b>	<b>13</b>
<b>8. Media and the Public .....</b>	<b>13</b>
<b>9. Prohibition on Recording Electronic Hearings .....</b>	<b>15</b>
<b>10. Self-Represented Parties .....</b>	<b>15</b>
<b>11. Miscellaneous .....</b>	<b>16</b>



## **INTRODUCTION**

Nova Scotia remains under a provincial state of emergency due to the ongoing COVID-19 pandemic. This practice directive is designed to enable the Nova Scotia Court of Appeal to continue operations in a manner that protects the health and safety of justice system participants in line with guidance from public health officials. We appreciate the patience and cooperation of members of the public and the Bar as the Court of Appeal continues to adapt to a new mode of operations.

Subject to any order of the Court, all matters currently being heard will be conducted pursuant to this practice directive.

Details of this practice directive are subject to change as public health guidelines are updated in the province. For current information and updates, please see the Nova Scotia Courts website:  
[https://courts.ns.ca/Virtual\\_Court.htm](https://courts.ns.ca/Virtual_Court.htm).

## **PRACTICE DIRECTIVE**

### **1. Format of Appeals**

The panel of justices assigned to each appeal will review the materials filed with the court and decide the format in which the appeal will be heard. There are four formats by which appeals may proceed:

#### **i. Fully In-Person Appeals**

- Fully in-person appeals will be heard by in-person attendance of the parties and the panel.

#### **ii. Appeals with Remote Appearances**

- Appeals with Remote Appearances may involve a combination of in-person and remote appearance, in which some parties participate remotely (by Microsoft Teams or by telephone) and some participate in-person (in the courtroom) **or** appeals in which all parties participate remotely, but the panel hears the

appeal by physically attending the courtroom. An Appeal with Remote Appearances may also be referred to as an appeal “via Microsoft Teams with the panel in the courtroom.” For greater clarity, in any appeal designated an “Appeal with Remote Appearances,” the panel will be in the courtroom.

**iii. Fully Virtual Appeals**

- Fully Virtual Appeals will be conducted using a virtual platform. As of April 29, 2021, that platform will be Microsoft Teams, unless otherwise ordered by the Panel. Microsoft Teams also allows for a telephone connection. For the Fully Virtual Appeal format, the panel will also participate remotely.

**iv. In-writing Appeals**

- In-writing appeals will be considered on the basis of written materials only.

When selecting the format in which the appeal will be heard, the panel will consider, among other things:

- The nature of the case;
- The complexity of the case;
- Whether there are liberty interests at stake;
- Whether the appeal relates to a matter of public interest; and
- Other relevant considerations, including public health considerations.

Certain matters may typically require some form of oral hearing. Examples include (but are not limited to) appeals in which an individual’s liberty is in jeopardy (such as when an individual in prison appeals his or her conviction or sentence) and appeals involving child protection proceedings.

Where the panel determines a virtual hearing is appropriate, parties will not be allowed to adjourn (postpone) appeals on the sole basis that they would prefer to have the appeal heard fully in-person.

## **I. Fully In-Person Appeals**

In-person hearings are conducted much in the same way hearings were conducted before the COVID-19 pandemic. Parties should expect to sit in the same configuration as normal, with particular care to maintain physical distancing while entering the courtroom and while inside. The Court has equipped its appeal courtroom with Lexan barriers, so that parties can appear in-person in a manner that complies with public health guidelines.

Disposable medical masks are mandatory in the Law Courts, consistent with provincial public health directives. Parties may remove masks once seated in the courtroom or making oral argument, subject to other instructions by the panel.

As water jugs will not be provided during this time, parties may bring their own water bottles into the courtroom.

At this time, Sheriffs Services are screening all individuals who wish to enter the Law Courts. No one should enter a courthouse if they feel unwell and are exhibiting any of the symptoms of COVID-19 as identified by public health officials.

All persons in the Law Courts should follow physical distancing guidelines at all times and wear a mask whenever moving through the building. Hand sanitizer is provided throughout the building, including at the entrance of the appeal courtroom.

Anyone who attends in-person hearings will be required to comply with directives from the Court concerning health and safety. Parties must familiarize themselves with the applicable directives and ensure they are aware of requirements in place at the time of their hearing date.

## **II. Appeals with Remote Appearances**

If a panel determines that an appeal will be heard by remote/virtual appearance (or one or more parties requests to appear remotely), court staff will arrange for the participation of parties by extending a Microsoft Teams meeting invitation to a virtual hearing.

The Court is using Microsoft Teams for all virtual appeals. Parties must familiarize themselves with this platform prior to their hearing date(s). Participants who are unable to use Microsoft Teams videoconferencing for the appeal hearing may be provided with a number to call in to the session by telephone.

All parties participating in an appeal by Microsoft Teams must take part in a technology check (“tech check”) organized the Court Clerk prior to their hearing date(s). The Court Clerk will contact the parties in advance to set up a date and time for the tech check, and to provide instructions. All parties must use the same computer and/or other equipment for the tech check they plan to use for the appeal hearing. In addition, parties must ensure they are in the same location for the appeal as they were for the tech check. Questions about this process may be directed to Alanah Wallace ([alanah.wallace@courts.ns.ca](mailto:alanah.wallace@courts.ns.ca)).

If Microsoft Teams fails for a participant appearing remotely, the Court will recess until the Court Clerk can reconnect that participant to the Teams session. If Microsoft Teams fails for many or all involved, the Court Clerk will connect the parties and the panel by teleconference and the appeal will resume as expeditiously as possible or be rescheduled. The Court Clerk will request a telephone number from each participant for that purpose in advance of the hearing. Participants must ensure they can be reached during the hearing at the telephone number they have provided.

“Appeals with Remote Appearances” may also be referred to as appeals “via Microsoft Teams with the panel in the courtroom.”

### **III. Fully Virtual Appeals**

The same requirements apply to Fully Virtual Appeals as those to Appeals with Remote Appearances, set out above. The key difference between the two formats is that for Fully Virtual Appeals, the members of the panel will not physically attend the courtroom to hear the appeal, whereas for Appeals with Remote Appearances, the panel will be physically present in the courtroom during the hearing of the appeal, even if all parties are appearing remotely.

#### **IV. In-writing Appeals**

Proceeding with an appeal “in writing” means that the panel will decide the appeal based on the written arguments and related materials parties provide to the court without an oral hearing.

The Court may be prepared to decide appeals in writing where doing so is appropriate. If all parties are in agreement with proceeding with an in-writing appeal, a request may be made by email to the Registrar ([Caroline.McInnes@courts.ns.ca](mailto:Caroline.McInnes@courts.ns.ca)). Alternatively, the Registrar may notify the parties that the panel believes the appeal may be addressed in writing.

Where parties have agreed or do not object to the panel’s assessment that the matter should proceed in writing, they will have the opportunity to file additional written submissions on dates and within page limits determined by the panel (the details of which will be communicated by the Registrar).

Additional submissions may be filed in hard copy or by email attachment, in accordance with this practice directive. All text must be formatted in compliance with the Civil Procedure Rules of Nova Scotia (e.g., font must be in size 12 and text must be double-spaced).

**Appeals will only proceed in writing where all parties and the panel agree that the format is appropriate for the particular appeal.**

If an appeal proceeds on the basis of written materials only and the panel determines that it needs to hear further from the parties, the panel may:

- Request further written submissions;
- Request answers to specific questions; or
- Schedule an in-person or virtual hearing.

During this time, only select appeals will proceed in-writing.

#### **2. Chambers**

At this time, chambers matters are being heard by telephone and in-person. The Court can also offer the option of a virtual (Microsoft Teams) hearing.

Requests for in-person chambers appearances will be accommodated where possible, but the following types of matters will be prioritized:

- Motions for bail pending appeal;
- Motions for stays;
- Motions related to publication bans;
- Motions for state-funded counsel; and
- Any other matter that the chambers justice in their discretion considers should proceed by in-person appearance.

Parties to any chambers motion requiring a witness to give evidence (e.g., a contested motion for bail) should notify the Chambers Clerk, Cherri Brown ([Cherri.Brown@courts.ns.ca](mailto:Cherri.Brown@courts.ns.ca)) at the earliest opportunity.

### 3. E-filing

Parties may continue to file documents for any matter in paper format, in a manner consistent with the requirements of the Civil Procedure Rules of Nova Scotia and all existing practice directives and Guidelines requiring the filing of hardcopy documents with the Nova Scotia Court of Appeal. In particular, all e-filings must be in compliance with the [Instructions for Electronically Filing Documents with the Nova Scotia Court of Appeal](#) (E-Filing).

However, for the period of time during which this practice directive is in effect, **unless otherwise stated herein or ordered by the Court**, parties are permitted and encouraged to file documents in electronic format in lieu of paper. Parties are not required to obtain special permission from the Registrar to do so. However, counsel and parties are advised that should a panel wish to have a hard copy or copies of any filings, they will be expected to provide such copies as directed.

For greater clarity, the Court of Appeal will continue to accept paper filings. **Electronically filed documents must meet the following requirements:**

- Electronic documents must be filed in word-processing format and/or in text searchable PDF format. For scanned PDF documents, an Optical Character Recognition (OCR) format must be used to make the documents text searchable. If filing materials in text searchable PDF format, all attachments must be searchable as well.

- Electronically filed documents must be formatted in a manner that complies with the Nova Scotia Civil Procedure Rules (See Rules 90.30 – 90.33 for civil matters and Rules 91.15 – 91.19 for criminal matters).
- All electronic documents must be filed either by email or through delivery of a USB flash drive. The email or USB drive must be labelled with the court file number. USB flash drives can be delivered by mail, courier, or by in-person drop-off at the Law Courts (using the drop bin located at the front doors).
- Electronic filings of appeal books (including transcripts), facta, and books of authorities (where applicable) should be emailed to [appealcourt@courts.ns.ca](mailto:appealcourt@courts.ns.ca). All other filings should be sent directly to the Registrar, Caroline McInnes, at [Caroline.McInnes@courts.ns.ca](mailto:Caroline.McInnes@courts.ns.ca). The Registrar will acknowledge receipt of all electronic filings by email. For greater clarity, the Registrar will not provide a court- stamped copy for electronic filings of appeal books, transcripts, facta or books of authorities, but will acknowledge receipt by email. However, the Registrar will provide a court-stamped copy for parties' records for other e-filed materials. If there are problems with any electronic filing, the Registrar will contact the affected party.
- In addition to the court file number on the email or USB, all documents filed electronically must be individually named in a manner that identifies their contents. For example: "Factum of the Appellant"; "Factum of the Respondent"; "Appeal Book Part I"; "Trial Transcript [DATE]".
- Any documents being filed for a matter with a publication ban in effect must carry an appropriate caution as part of the file name.
- Appeal Books should be filed as single electronic Word or PDF documents, rather than as a series of separate attachments. Trial transcripts and other similar documents should be merged into one document (rather than separate files for different trial dates, etc.). If the size of a document is too large to send as an email attachment, documents may be divided into smaller parts and labelled accordingly (e.g., Appeal Book Vol. I, Appeal Book Vol. II, etc.).

- If parties have particular concerns regarding the filing of sealed documents, they should seek direction from the Court by contacting the Registrar, Caroline McInnes ([Caroline.McInnes@courts.ns.ca](mailto:Caroline.McInnes@courts.ns.ca)).
- Parties who elect to e-file must file one physical copy of each appeal book and factum filed for their appeal with the registrar's office, as well as original copies of any sworn affidavits (if applicable) by the filing deadline, unless otherwise given permission to file a hard copy at a later date by the Registrar or the presiding justice in chambers. Parties are asked to include a covering note stating that the materials are being filed as hard-copy duplicates of the documents that were previously filed electronically. Such hard copies must be identical in content to the documents filed electronically.
- Electronic service under this practice directive shall constitute proper service unless the affected party shows otherwise.

Rather than filing books of authorities, the preference is for parties to hyperlink their factums to the judgment databases found on the websites of Canadian courts or [www.canlii.org/en/index.html](http://www.canlii.org/en/index.html), and where not available on either, to LexisNexis Quicklaw or WestlawNext Canada. However, if this is not possible or feasible, then books of authorities are to be filed electronically in accordance with the e-filing protocols described herein. If books of authorities are filed electronically, then electronic highlighting of the relevant passages is requested.

The panel hearing an appeal retains discretion and authority to require that the appellant file additional hard copies of its Appeal Book, facta and Books of Authority, where the panel considers it necessary. In such situations, the Registrar, Caroline McInnes, will contact the appellant(s) in advance of the hearing date to request one or more additional hard copies of these filings.

#### **4. Filing Deadlines**

The time periods for commencing civil appeals under Rules 90.13(3) and 90.14, and criminal appeals under Rules 91.09(1) and 91.10 of the Civil Procedure Rules are currently in effect.



Deadlines may be extended by consent in certain circumstances. Such requests should be sent to the Registrar, Caroline McInnes, at [Caroline.McInnes@courts.ns.ca](mailto:Caroline.McInnes@courts.ns.ca). In the event that parties are unable to meet filing deadlines or to fulfil other obligations due to the COVID-19 pandemic, they must be prepared to explain how the pandemic has impacted their ability to do so.

## **5. Etiquette**

Courtroom etiquette should be maintained during all remote hearings. Participants should make best efforts to avoid detracting from the dignity of proceedings, including the following considerations:

- Counsel are not required to gown for remote appearances unless requested to do so by the panel but must dress in business attire. Counsel may gown if they prefer to do so.
- Counsel are expected to gown for in-person appeals.
- Self-represented parties should wear clothing that is appropriate for a court appearance.
- Counsel and self-represented litigants must be able to participate from a quiet space with a neutral background. Counsel and self-represented litigants must make reasonable efforts to avoid or reduce the risk of interruptions during the hearing. If it is not possible to find a quiet space, it may be necessary for the appeal to proceed in-person to preserve the quality of the transcript.
- Participants should mute or turn off notifications on any digital devices.
- Participants will be asked by the Court to mute their microphone or telephone when not speaking during a video or telephone hearing. It is ideal for all participants to use a headset and microphone to reduce background noise and to ensure that all parties can be heard and recorded clearly.
- Parties should not eat during the hearing, unless the Court or presiding justice allows otherwise.

- Participants should not move away from the screen or turn off their camera during a video hearing without the permission of the Court. Panels will direct participants at the beginning of each hearing as to breaks.
- Unless directed otherwise by the court, it is not necessary in virtual hearings to stand when the panel joins the hearing or when addressing the Court. Parties should take reasonable steps to ensure they remain within view of the camera during the entire hearing. In lieu of bowing to the Court, counsel may nod or bow their heads when the panel or presiding justice enters the video. Participants should remain seated throughout their submissions to the Court.
- Unless addressing the Court, or otherwise requested to speak, all participants should have their microphones muted during video or telephone hearings. Parties should refrain from typing when their microphones are on if it creates a disruption to the proceedings.
- Parties must take special care not to interrupt one another during remote hearings, in order to avoid gaps in the audio recording of the proceedings. All participants should speak slowly and clearly, especially when there is any lag or delay in the audio or video.
- The panel chair may provide direction as to when or how questions will be asked. Parties are asked to keep a close eye on their screens and to allow for pauses in their submissions so that panel members may ask questions without compromising the quality of the transcript.

## **6. Civility**

As with all hearings, remote hearings require civility, professionalism, cooperation, communication, and collaboration between parties, both before and during the hearing.

Parties must be flexible when it comes to technical difficulties or other challenges that other participants may experience. The Court recognizes that due to the COVID-19 pandemic, many participants will be working from home and/or on modified schedules, and that many will be dealing with particular challenges related to technology, child, and elder care.

Parties should cooperate in good faith and be open to adapting their plans to ensure that all matters may be determined in the most just, speedy and inexpensive manner possible. Parties should communicate with one another in advance of remote hearings to resolve as many hearing details as possible.

## **7. Technological Difficulties**

It is the responsibility of each participant to ensure their equipment is functioning correctly and that their Internet service can accommodate the bandwidth video conferencing requires.

Wherever possible, parties are asked to use a hard-wired Internet connection, rather than wireless Internet (WiFi).

In the event of technological issues during a video hearing, parties should wait to see if the issue resolves itself and, if it does not, should inform the court clerk that a problem is occurring. The Court is not able to provide technical support. Do not contact court staff for assistance using videoconferencing software.

If at any time due to delay, distortion, or disconnection a party misses something that was said during a hearing, that party should notify the panel immediately so the statement can be repeated. Parties should also be prepared to repeat statements if asked.

Parties should not take unfair advantage of the fact that the hearing is being held virtually. In particular, they should not take advantage of, or act upon, slips, irregularities, technical issues or mistakes, or inadvertence. If technical issues arise during a virtual hearing or the dynamics of the hearing are challenging or distracting, the parties may ask the panel for permission to deliver post-hearing submissions in writing. Permission to file post-hearing submissions is at the discretion of the panel.

## **8. Media and the Public**

The Nova Scotia Court of Appeal recognizes the importance of the “open courts principle,” which ensures all court hearings are accessible to the public. The Court further recognizes the key role media plays in informing the public about legal proceedings throughout Nova Scotia.

In order to better facilitate public access to the courts, the Court of Appeal allows webcasts of certain proceedings. The Court of Appeal will webcast suitable appeals at their discretion. Live webcasts are available to view directly on the [Nova Scotia Courts' website](#).

The docket (schedule of hearings) is publicly available on the Court of Appeal website: [https://courts.ns.ca/Appeal\\_Court/NSCA\\_dockets.htm](https://courts.ns.ca/Appeal_Court/NSCA_dockets.htm). Members of the media and public who wish to attend or access information about appeals are advised of the following:

- Individuals who wish to attend an **in-person appeal** are asked to notify the Communications Director, Jennifer Stairs (for members of the media) or the Registrar, Caroline McInnes (for all other members of the public) in advance. They will consult with the Court of Appeal to determine whether public access is possible on a case-by-case basis (due to room occupancy limitations.)
- Those who wish to listen to or observe **appeals with remote appearances or fully virtual appeals** should contact Jennifer Stairs (for inquiries from members of the media) or Caroline McInnes (for inquiries from all other members of the public) in advance for instructions.
- Individuals who wish to access materials filed in relation to an appeal heard **in writing** (without an oral hearing) may do so by contacting Jennifer Stairs (for inquiries from members of the media) or the Registrar, Caroline McInnes (for inquiries by all other members of the public).

Jennifer Stairs  
Communications Director  
Nova Scotia Judiciary  
902-221-5257  
[stairsjl@courts.ns.ca](mailto:stairsjl@courts.ns.ca)

Caroline McInnes  
Registrar  
Court of Appeal  
902-424-8962  
[Caroline.McInnes@courts.ns.ca](mailto:Caroline.McInnes@courts.ns.ca)

For more information on media access to the Court of Appeal during the COVID-19 pandemic, please review the most recent [Notice to the Media](#).

## **9. Prohibition on Recording Electronic Hearings**

No one can take photos (including screen captures) or recordings of a hearing without prior approval of the panel or presiding justice.

Accredited members of the media may use audio recording devices for the purpose of ensuring the accuracy of their reporting but must not use recordings for broadcast or publication. Members of the media are advised that [existing policies](#) regarding the use of electronic recording devices continue to apply to remote hearings.

## **10. Self-Represented Parties**

This practice directive applies to both counsel and self-represented parties involved in appeals before the Nova Scotia Court of Appeal. The Court recognizes that self-represented parties may experience particular challenges in advancing or responding to appeals during the current pandemic. The Court is committed to addressing those challenges and facilitating access to justice for all parties.

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 must cooperate with the Court to ensure that a self-represented litigant receives a fair hearing, including, where appropriate, collaborating with self-represented litigants and recommending possible alternatives and/or accommodations to the Court (e.g. consenting to having an appeal proceed in writing where a self-represented party is unable to easily access the Internet).

If any party is unable to access Internet, microphone, or webcam equipment required for video appearances, he or she should contact the Registrar, Caroline McInnes, at [Caroline.McInnes@courts.ns.ca](mailto:Caroline.McInnes@courts.ns.ca) to make alternate arrangements as soon as possible in advance of the hearing. The [Nova Scotia Courts' Free Legal Clinic](#) remains available for self-represented parties appearing before the Court of Appeal to access free basic legal advice. At this time, the Free Legal Clinic is operating by telephone only. To make an appointment, contact the Executive Office of the Nova Scotia Judiciary at 902-424-3690.



**Notice to the Profession, the Public and the Media regarding**

**COVID-19 Update**

**Prince Edward Island Court of Appeal, Supreme Court and Provincial Court**

**April 6, 2022**

The Province will move to enter Phase 3 of its reopening plan beginning Thursday, April 7, 2022. This Plan provides that certain COVID-19 restrictions will be removed including gathering and capacity limits, and physical distancing requirements. Masking mandates will continue in place until at least April 28, 2022.

However, the Courts will continue to keep the restrictions in place for the time being, and until a further announcement is made. Gathering and capacity limits will continue to be adhered to as well as physical distancing and masking requirements.

All Courts have resumed hearing most matters in-person. However, a request for a virtual hearing can be made. It will be in the discretion of each Court whether to hold a virtual hearing. Inquiries may be directed to:

Court of Appeal: 902.368.6024  
Supreme Court: 902.368.6023  
Provincial Court: 902.368.6040

Access to the Registry will continue to be restricted. The Drop Box will continue to be available for document delivery and e-filing will be maintained.

In keeping with the open courts principle members of the media are permitted to attend court matters provided space is available. If not, each court will arrange for media to attend virtually.

The Courts continue to appreciate the patience and cooperation of all.

Hon. Michele M. Murphy  
(Acting) Chief Justice of Prince Edward Island

Hon. Tracey L. Clements  
Supreme Court of Prince Edward Island

Hon. Jeffrey E. Lantz  
Chief Judge Provincial Court

## **Notice to Profession and Public – Updated COVID–19 Directive**

This Updated Directive effective March 14, 2022, replaces any previous directive on the operations of the Court of Queen's Bench of New Brunswick during the COVID-19 pandemic.

On February 24, 2022, the Government of New Brunswick announced effective March 14, 2022, it would lift the majority of pandemic restrictions.

Throughout the COVID-19 pandemic, all courtrooms of the Court of Queen's Bench of New Brunswick have been operating under restrictions designed to ensure the safety of all participants. Given the unique position of the Courts, where persons who attend are often compelled to do so, and where vulnerable segments of the population attend, there is an ongoing need to continue with the restrictions contained in this directive until further notice.

### **ENTRY IN COURTROOMS, USE OF MASKS AND PHYSICAL DISTANCING:**

The wearing of an adequate mask is mandatory for entry to any courtroom of the Court of Queen's Bench of New Brunswick. However, upon considering the number of persons in attendance and any other relevant factor, the presiding judge may, in his or her discretion, permit all or some persons in attendance to remove their masks.

The presiding judge may also direct that court participants and members of the public be required to maintain physical distancing between themselves and others with whom they do not reside.

The presiding judge may limit the number of people who may be present in courtrooms at any given time.

### **AFFIDAVITS**

During the COVID-19 pandemic, some accommodation is made for the commissioning of affidavits in circumstances where it is not possible, or it is medically unsafe, for the deponent to physically attend before a lawyer or commissioner. Subject to the discretion of the Court or of a judge thereof to require the best evidence, affidavits to be used in the Court of Queen's Bench may still be sworn or affirmed, as the case may be, by video technology in the following manner:

1. Any affidavit to be sworn using video technology must contain a paragraph at the end of the body of the affidavit describing that the deponent was not physically present before the commissioner, but was linked with the commissioner utilizing video technology and that the process for remote commissioning of affidavits was utilized;
2. While connected via video technology, the deponent must show the commissioner the front and back of the deponent's current government-issued photo identification and the commissioner must compare the video image of the deponent and information in the deponent's government-issued photo identity document to be reasonably satisfied that it is

the same person and that the document is valid and current. The commissioner must also take a screenshot of the front and back of the deponent's government-issued photo identity document and retain it;

3. The commissioner and the deponent are both required to have a copy of the affidavit, including all exhibits, before each of them while connected via video technology;

4. The commissioner and the deponent must review each page of the affidavit and exhibits to verify that the pages are identical and if so, must initial each page in the lower right corner;

5. At the conclusion of the review, the commissioner will administer the oath, the deponent will state what needs to be said to swear or affirm the truth of the facts, and the commissioner must watch the deponent sign his or her name to the affidavit;

6. The deponent will then send the signed affidavit with exhibits electronically to the commissioner;

7. Before completing the affidavit, the commissioner must compare each page of the copy received from the deponent against the initialled copy that was before him or her in the video conference and may affix his or her name to the jurat only upon being satisfied that the two copies are identical;

8. The two copies will then be attached together with a certificate signed by the commissioner stating that the commissioner was satisfied that the process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and the commissioner to be physically present together; and

9. The completed package would then be permitted to be filed.

## **ARRANGEMENTS FOR THE HEARING OF COMMERCIAL INSOLVENCY MATTERS**

1. Until further notice, commercial insolvency matters of the type described in Schedule "A" must be commenced in the Judicial District of Saint John.

2. Matters that are urgent or time sensitive, or those in which there are immediate and significant financial repercussions that may result if there is no judicial hearing, may be scheduled on an urgent basis. The Court will use its discretion to determine whether a matter should be heard urgently.



3. Counsel are directed to contact the Clerk of the Judicial District of Saint John at 506-658-2587, NB-Insolv@gnb.ca with details regarding any such matter they wish to have heard urgently, identifying why the matter is urgent, time sensitive or will result in significant financial consequence. Counsel should also advise of a time estimate for the hearing. This information, together with a draft of the relevant application/motion, must be provided in writing.

4. Any steps taken by the Court or counsel outside the usual procedure due to COVID-19, including proceeding by way of teleconference, should be expressly noted and recorded in the endorsement or order, if necessary.

### **Conduct of Teleconference Hearings**

1. If the Court accepts that a matter is to be heard urgently, the Court may direct counsel to communicate directly with the Judge who will hear the matter. That Judge will provide direction with respect to service and timing.

2. The matter may proceed by way of teleconference. The Court anticipates having teleconference lines available, some with recording capabilities. In the meantime, the Court may ask counsel to provide conference facilities.

3. The Court expects counsel to follow the three Cs: cooperating, communicating and using common sense, particularly in terms of scheduling.

### **Materials for Hearing Urgent Matters**

Parties shall email the Court all relevant materials necessary for the teleconference hearing unless otherwise directed by the presiding Judge. The system cannot accommodate large Records. Parties should exercise discretion in determining what materials are necessary. Parties should also consider sending large documents by way of secure file share rather than attachments. **Materials for Hearing Urgent Matters** Parties shall email the Court all relevant materials necessary for the teleconference hearing unless otherwise directed by the presiding Judge. The system cannot accommodate large Records. Parties should exercise discretion in determining what materials are necessary. Parties should also consider sending large documents by way of secure file share rather than attachments. Caselaw and other source materials referenced in any facta should be hyperlinked. Where hyperlinks are provided, it will not be necessary to file a Book of Authorities. The Judge will ask for further materials if necessary, and hard copies of Records may be filed with the Court at a later time or as otherwise directed by the Judge.

### **Affidavits Regarding Urgent Matters**

1. Parties should have regard to the Guidelines regarding the commissioning of affidavits detailed above.

2. The Court will accept unsworn affidavits prior to the hearing, provided that a sworn affidavit is provided prior to or at the hearing, or the affiant is available at the teleconference to swear the truth of its contents in accordance with the Guidelines.

### **Orders for Urgent Matters**

1. Finalized draft orders should be emailed directly to the Judge. The Judge will sign the order and send a scanned signed copy to counsel.
2. Orders may be entered at the courthouse. If this changes, the Court will provide further direction.

### **Reservation**

This directive is being issued on an interim basis in response to the challenge posed to our economy and the efficient administration of justice by COVID-19. The Court reserves the right to direct that any matter submitted to it in accordance with this directive be commenced in an alternate judicial district for processing and disposition in the usual course.

### **Schedule “A” Matters**

The following are commercial insolvency matters that may be considered essential or urgent:

- a. an application for an initial order or stay extension order under the **Companies Creditors Arrangement Act (“CCAA”)**;
- b. the appointment of a liquidator, receiver, interim receiver or receiver-manager under **the Canada Business Corporations Act (“CBCA”), Business Corporations Act (“BCA”), Bankruptcy and Insolvency Act (“BIA”) or Rules of Court**;
- c. applications for an interim and/or final order of arrangement, or shareholder disputes requiring immediate relief, under the CBCA or BCA;
- d. applications for bankruptcy orders under the BIA falling within the jurisdiction of the Court; or
- e. an application for relief specific to a restructuring proceeding under the BIA or CCAA.

**This directive, issued by the Honourable Tracey K. DeWare, Chief Justice of the Court of Queen’s Bench of New Brunswick, on March 14, 2022, is effective immediately and until further notice.**



## **UPDATED DIRECTIVE – COURT OF APPEAL OF NEW BRUNSWICK**

---

**Date:** March 14, 2022

**To:** **Public, Lawyers, Media**

**From:** The Honourable J.C. Marc Richard, Chief Justice of New Brunswick

**Subject:** **NBCA COVID-19 – UPDATED DIRECTIVE**

---

This Updated Directive replaces previous directives on the operations of the New Brunswick Court of Appeal during the COVID-19 pandemic. It applies to both civil and criminal appeals.

### **INTRODUCTION**

Since the beginning of the pandemic, New Brunswick courts have adapted their operations to this context and adopted their own measures to reduce the spread of the coronavirus and its variants and to protect the health of participants in the justice system, court employees, and other members of the public, while maintaining the rule of law.

Effective today, the Province of New Brunswick has lifted all its remaining COVID-19 mandatory measures. Courthouses are reopening to the general public, including the Justice Building, in Fredericton, where the Court of Appeal sits. However, the Court has identified a continuing need to protect the health and safety of court participants in its own courtrooms. In the exercise of its inherent jurisdiction to control its own process, the Court directs that the measures described in this Updated Directive apply until further notice from the Court.

This Updated Directive applies to the Court of Appeal. The individual home pages of the [Court of Queen's Bench](#) and the [Provincial Court](#) of New Brunswick should be consulted, as needed, for information on directions given by these courts.

## **ACCESS TO COURTROOMS, USE OF MASKS AND PHYSICAL DISTANCING**

Participants in proceedings in the Court of Appeal and members of the public or the accredited news media may not attend a hearing in person shortly after being diagnosed with COVID-19, or while experiencing COVID-19 symptoms. In these circumstances, participants whose presence at the hearing is required must immediately contact the office of the Registrar by phone at (506) 453-2452, or by email at [nbca-canb@gnb.ca](mailto:nbca-canb@gnb.ca), to arrange to attend the hearing by video or telephone conference.

The Court continues to limit the number of people who may be present in its courtrooms at any time. The maximum number of people may not be exceeded at any point during the proceeding. Priority will be given to parties and their counsel.

Everyone must wear an adequate face mask when entering a courtroom and circulating inside. However, upon considering the number of persons in attendance and any other relevant factor, the presiding judge may, in his or her discretion, permit all or some persons in attendance to remove their masks.

The presiding judge may impose any other health measures in the courtroom.

## **FILING AND SERVICE OF DOCUMENTS**

Although counter services are available again at the office of the Registrar of the Court of Appeal, anyone who needs to file a document (including a Notice of Appeal or a Notice of Motion) with the Court is strongly encouraged to file the document with the Registrar, Ms. Caroline Lafontaine, by emailing it to [nbca-canb@gnb.ca](mailto:nbca-canb@gnb.ca), or by faxing it to (506) 453-7921. The original of the document and any prescribed fee are to be sent by mail or courier as soon as possible following filing by email or fax.

Should filing by email or fax be impossible, a document may be filed:

- (a) by sending the document and any prescribed fee by courier, in which case it will be deemed to have been received on the day it was sent, or by mail, in which case the document will be filed on the day it is received; or
- (b) by leaving the document and any prescribed fee in a secure box located outside the Registrar's office at the Justice Building, in Fredericton.

The prescribed fee referred to above is to be paid by a lawyer's cheque, a certified cheque or a money order.

The Registrar enforces the hours during which her office is open for business, as set by Rule 3.03 of the *Rules of Court*, in determining the date on which a document was filed by email or fax.

Unless the *Rules of Court* provide otherwise, registry staff will not send a party's document to the other parties. Any party to a proceeding who files a document by email or fax must serve an exact copy of the document on every other party to the proceeding within the time prescribed by the *Rules of Court* for service. Service on a solicitor may be effected by email as provided by Rule 18.07.1 of the *Rules of Court*.

For any inquiries regarding the filing and service of documents, please contact the Registrar by phone at (506) 453-2452, or by email at [caroline.lafontaine@gnb.ca](mailto:caroline.lafontaine@gnb.ca).

## **AFFIDAVITS**

Some accommodation continues to be made for the commissioning of affidavits in circumstances where it is not possible, or it is medically unsafe, for the deponent to physically attend before a lawyer or commissioner. Subject to the discretion of the Court of Appeal or of a judge thereof to require the best evidence, affidavits to be used in the Court may still be sworn or affirmed, as the case may be, by video technology in the following manner:

1. Any affidavit to be sworn using video technology must contain a paragraph at the end of the body of the affidavit describing that the deponent was not physically present before the commissioner, but was linked with the commissioner utilizing video technology and that the process for remote commissioning of affidavits was utilized;
2. While connected via video technology, the deponent must show the commissioner the front and back of the deponent's current government-issued photo identification and the commissioner must compare the video image of the deponent and information in the deponent's government-issued photo identity document to be reasonably satisfied that it is the same person and that the document is valid and current. The commissioner must also take a screenshot of the front and back of the deponent's government-issued photo identity document and retain it;
3. The commissioner and the deponent are both required to have a copy of the affidavit, including all exhibits, before each of them while connected via video technology;
4. The commissioner and the deponent must review each page of the affidavit and exhibits to verify that the pages are identical and, if so, must initial each page in the lower right corner;

5. At the conclusion of the review, the commissioner will administer the oath, the deponent will state what needs to be said to swear or affirm the truth of the facts, and the commissioner must watch the deponent sign his or her name to the affidavit;
6. The deponent will then send the signed affidavit with exhibits electronically to the commissioner;
7. Before completing the affidavit, the commissioner must compare each page of the copy received from the deponent against the initialled copy that was before him or her in the videoconference and may affix his or her name to the jurat only upon being satisfied that the two copies are identical;
8. The two copies will then be attached together with a certificate signed by the commissioner stating that the commissioner was satisfied that the process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and the commissioner to be physically present together; and
9. The completed package would then be permitted to be filed.

## **HEARING OF MOTIONS**

Scheduled motions and status hearings continue to be heard by telephone conference unless the motion judge or the Chief Justice determines otherwise. The office of the Registrar will make the necessary arrangements and provide the parties or their counsel with instructions. Arrangements may also be made for represented parties to join the telephone conference provided that, once they have identified themselves, they place their phone on mute and do not interrupt the proceedings.

All lawyers and self-represented litigants who have a matter before the Court of Appeal must ensure the Registrar is provided with their current phone number and email address.

Except as provided for the accredited news media, recording of the hearing by anyone, except by the Court, is strictly prohibited and may constitute contempt of court.

Any request for adjourning the hearing of a motion or a status hearing may be addressed to the Registrar by phone at (506) 453-2452, or by email at [caroline.lafontaine@gnb.ca](mailto:caroline.lafontaine@gnb.ca), and she will arrange for a case management telephone conference.

## HEARING OF APPEALS

On the third day of each month or, should the office of the Registrar be closed for business that day, on the next business day, the [list of appeal cases](#) will be updated on the Court of Appeal's website to indicate whether an appeal will be heard in person or by video or telephone conference. However, parties or their counsel may request to appear by video or telephone conference. If the request is granted, the office of the Registrar will make the necessary arrangements and inform the parties or their counsel. Arrangements may also be made for represented parties to join a video or telephone conference provided that, once they have identified themselves, they place their microphone or phone on mute and do not interrupt the proceedings.

When joining a video or telephone conference, self-represented parties and counsel must put their microphone or phone on mute after identifying themselves and must not interrupt the proceedings except to make appropriate representations.

When appearing by videoconference, self-represented parties and counsel must wear appropriate business clothing. Counsel need not gown.

All lawyers and self-represented litigants who have a matter before the Court of Appeal must ensure the Registrar is provided with their current phone number and email address.

Except as provided for members of the accredited news media, recording of the hearing, in whole or in part, by anyone, except by the Court, without prior permission of the Chief Justice is strictly prohibited and may constitute contempt of court.

The taking of photos or screen captures during a hearing held by videoconference without prior permission of the Chief Justice is strictly prohibited and may constitute contempt of court.

## ACCESS BY THE PUBLIC AND THE ACCREDITED NEWS MEDIA

The Court of Appeal recognizes the critical importance of the “open court” principle in all but exceptional circumstances. The Court therefore continues to permit remote access to its hearings. Members of the public or the accredited news media may request remote access to a hearing in the following manner and subject to the following restrictions:

1. Unless a statutory provision or an order of the Court requires that a hearing be held *in camera* (closed to the public), members of the public or the accredited news media may observe, or listen to, the hearing remotely;
2. Simultaneous translation into the other official language is not available during hearings;

3. Members of the public or the accredited news media may determine which motions or appeals are scheduled to be heard by following these links to the Court's [list of motions](#) or [list of appeal cases](#). These lists are frequently updated to reflect those cases being made accessible remotely;
4. Members of the public or the accredited news media who wish to monitor the hearing of a motion by telephone conference may write to the Registrar by email at [nbca-canb@gnb.ca](mailto:nbca-canb@gnb.ca) to request instructions on how to join the remote hearing. Their email must contain the following information: their name, the name of their news outlet (if applicable), the case name, the case number, and the hearing date. Instructions on how to join the hearing remotely will be sent by email. Exceptionally, a member of the public who does not have access to email may contact the Registrar by phone at (506) 453-2452 and provide the requested information to receive instructions;
5. Members of the public or the accredited news media who wish to monitor an appeal hearing by telephone conference or to observe it by videoconference may consult the [list of appeal cases](#) for the month in which that hearing is scheduled to be held. The local telephone number and the video link for joining the hearing remotely will be added to that list by the third day of that month;
6. Members of the public or the accredited news media who ask to join a hearing remotely must ensure they have, at the relevant time, the technical means to do so. The Microsoft Teams platform is used to hold hearings by videoconference;
7. Access to court proceedings taking place by video or telephone may be subject to limits on the number of video or telephone conference participants who can be connected through a single conference number;
8. Other than identifying themselves if asked to do so, members of the public or the accredited news media joining a court hearing remotely must put their communications device on mute or remain silent throughout the proceeding;
9. A motion judge or the chair of an appeal panel may exclude from a remote hearing anyone who disrupts the proceedings;



10. Members of the accredited news media only may make an audio recording of a proceeding for the sole purpose of verifying their notes. Recording of a proceeding, in whole or in part, by anyone else, except by the Court, without prior permission of the Chief Justice is strictly prohibited and may constitute contempt of court; and
11. The broadcast or distribution, in whole or in part, of a recording of a proceeding and the taking of photos or screen captures during a proceeding without prior permission of the Chief Justice is strictly prohibited and may constitute contempt of court.



**SUPERIOR COURT OF QUÉBEC  
DISTRICT OF MONTREAL**

June 2, 2022

**NOTICE TO THE MEMBERS OF THE BAR  
MODIFICATION TO THE COMMUNIQUÉ REVISED  
ON FEBRUARY 26, 2021**

**Lift of the rule according to which the parties must proceed  
exclusively by virtual hearings**

**As of June 6, 2022**, the Superior Court lifts the rule according to which the parties must proceed exclusively by virtual hearings when there is no testimonial evidence for all applications, in the course of a proceeding, or on the merits, in civil, family and commercial matters.

The Honourable Chantal Tremblay  
Coordinating Judge for the District  
of Montreal



[Home](#) ▶ [News](#) ▶ [Covid-19 Pandemic - New arrangements for hearings](#)

## Covid-19 Pandemic - New arrangements for hearings

March 04, 2022

As of March 7, 2022, the Court will offer pleaders (counsel or party) the choice of coming to Court for the hearing of their appeal or participating in the hearing via videoconference. The Court office will contact the pleaders concerned in order to inform them of the applicable arrangements for such purposes.

In principle, applications before a judge alone or before a panel will continue to be heard by videoconference. When an application is placed on the roll, the Court office will send the parties or their counsel, as the case may be, a notice of hearing containing all the necessary information for the videoconference. Upon receipt of the notice of hearing, a pleader (counsel or party) may notify the Court office that they wish to appear in person in Court for the hearing of the application.

Please note that a virtual hearing may not be appropriate for certain appeals or applications, in which case the Court office will also contact those concerned.

For more information on virtual hearings and the safety measures you must follow in the Courthouse, please refer to the sections entitled [COVID-19 Pandemic – Update](#) and [Virtual Courtrooms](#).

▶ [Back](#)

## Ontario Superior Court of Justice (Excerpt)

### Notice to the Profession, Parties, Public and the Media

Effective April 19, 2022

This **Notice to the Profession, Parties, Public and the Media** (“Notice”) applies to all proceedings in the Superior Court of Justice (“SCJ”). It consolidates and supersedes all previous Province-wide Provincial Notices but does not introduce new substantive provisions unless indicated below. All prior Provincial Notices have been archived in the section “Notices no longer in effect”.

This Provincial Notice is supplemented by Regional Notices. Counsel, parties, the public and the media should consult the [Regional Notices](#) for specific scheduling and Region-specific practices and protocols including the Region’s direction on how the Court’s Guidelines determining the mode of proceeding in Civil, Family & Criminal will be scheduled.

#### 5. Guidelines to Determine Mode of Proceeding in Civil

Please see [Regional Notices](#) for scheduling protocols related to the application of the following presumptive guidelines including scheduling processes related to requests for changes in the presumption.

##### A. Over-arching principles in the application of the presumptive guidelines

These guidelines set out presumptive methods of attendance for events in Superior Court of Justice proceedings. In applying these guidelines, the Court will take into account the following general principles:

###### 1. Discretion of the Court:

While presumptions for each event set out the default position of the Court, the final determination of how an event will proceed will remain subject to the discretion of the Court. This will take into account the issues in the proceeding, the expected length of the hearing, the evidentiary record, the status of parties (e.g. self-represented litigants) and access to technology (including virtual capacity at institutions and courthouses).

###### 2. Rule 1.08:

Rule 1.08 of the *Rules of Civil Procedure* sets out the procedure for the moving party to specify the proposed method of attendance at a hearing or other step in a proceeding. The moving party and responding party/parties are to refer to these guidelines which set out the general expectations of the Court regarding the method of attendance.

###### 3. Access to justice:

While virtual platforms to conduct proceedings remotely have enhanced access to justice for many, the Court also recognizes that there are significant variations in the abilities of litigants to access and use the technology that is required for virtual hearings. Until such time as there is a means to provide access to technology to those who do not have it so that they can fully participate in a

remote hearing, the Court will take this access issue into account when determining the appropriate mode of proceeding. In that respect, if remote proceedings are utilized, the needs of all participants must be met so they can fully and equally participate.

#### **4. Self-represented litigants:**

While the Court's determination of the appropriate mode of proceeding will necessarily take into account the ability of litigants to access and effectively use technology for virtual hearings, the Court will also consider other circumstances uniquely related to self-represented litigants. Issues such as the inability to obtain timely assistance from duty counsel and court staff, needing support to use technology or the inability to adequately address issues in writing may mean that in proceedings involving a self-represented litigant, Courts may favour an in-person mode of proceeding.

#### **5. In-person hearings important:**

While the continued use of virtual proceedings increases efficiency at many stages in the litigation process, the Court also recognizes the importance of in-person interaction and hearings for more substantive attendances. For these matters, in-person advocacy and participation will remain an essential feature of our justice system.

#### **6. Hybrid options:**

In determining the mode of proceeding and the application of the guidelines, the Court will also take into account whether some parts of a proceeding should be conducted virtually and other parts conducted in person. In other words, hybrid options will be considered where appropriate or necessary.

#### **7. Impediments to a virtual hearing:**

There may be statutory, security or other impediments to having a remote hearing in certain matters, particularly criminal cases, civil contempt hearings and other matters that deal with sensitive information (e.g. child protection cases). Moreover, a party's or participant's personal circumstances (e.g. disabilities or caregiver responsibilities) may make remote hearings less suitable.

### **B. Terms used in the guidelines**

"Virtual" = proceedings using a platform like Zoom video or audioconference or by teleconference.

"Hybrid" = proceedings in which some justice participants are appearing physically in the courtroom and others are participating virtually.

"In-person" = all parties, counsel and the judge are physically in the courtroom.

"Videoconference or audioconference" = connecting into a proceeding using a platform like Zoom through video and audio or audio only.

"Teleconference" = connecting into a proceeding via a telephone number to a landline.

## **C. Presumptive guidelines to determine mode of proceeding in civil matters**

The following guidelines set out the Court's expectations for the default method of appearance for all civil events that will be applied across the province. However, the Court also recognizes that some Regions, in particular the Northwest, Northeast and those with circuiting judges, will require greater flexibility in hearing more cases virtually.

### **1. Case conferences:**

All case conferences will be held virtually (by videoconference or audioconference or by teleconference) unless the Court specifies a different method of attendance.

### **2. Pre-trial conferences involving trial management and scheduling issues only:**

All pre-trial conferences involving trial scheduling issues only will be held virtually (by videoconference or audioconference or by teleconference) unless the Court specifies a different method of attendance.

### **3. Pre-trial conferences: settlement and trial management conferences:**

All pre-trial conferences directed at settlement or both settlement and trial management will be held virtually (by videoconference or audioconference or by teleconference) unless the Court directs that an in-person pre-trial conference is required.

### **4. Trial and motion scheduling court:**

All trial and long motion scheduling court appearances will be held virtually (by video conference or audioconference or by teleconference) unless the Court specifies a different method of attendance.

### **5. Consent motions, without notice motions and unopposed motions:**

All motions on consent of both parties, all motions without notice and all motions that are unopposed will be held in writing unless the Court specifies a different mode of proceeding.

### **6. Contested motions and applications:**

All contested motions (short or long) and all contested applications will be held virtually unless a party requests that it be held in person and the Court agrees or the Court directs that it will be held in person. In directing that the contested motion or contested application be held in person, the Court will take into account the positions of the parties; the complexity of the legal or factual issue; whether the outcome of the motion or application is legally or practically dispositive of a material issue in the case (e.g. summary judgement); whether viva voce evidence will be heard; and any other factor bearing on the administration of justice.

### **7. Examinations for discovery:**

All examinations for discovery will be held in person, unless the parties consent to it being conducted virtually or unless the Court specifies a different mode of proceeding.

### **8. Mandatory mediations:**

All mediations will be held in person, unless the parties consent to it being conducted virtually or unless the Court specifies a different mode of proceeding.

#### **9. Judge-alone trials:**

All judge-alone trials will be held in person unless all parties consent to a virtual trial and the Court approves. The Court may consider the option of a hybrid proceeding and whether a witness, at the request of either party, may be permitted to testify virtually by videoconference.

#### **10. Jury trials:**

All civil jury trials will be held in person. The Court may consider the option of a hybrid proceeding and whether a witness, at the request of either party, may be permitted to testify virtually by videoconference.

#### **11. Assessment hearings:**

All assessments for solicitor fees or judge-referred orders for assessment of costs will be held virtually (by videoconference).

#### **12. Costs:**

All motions for costs will be held in writing or as the Court directs.

#### **13. Motions for leave to appeal to the Divisional Court:**

All motions for leave to appeal to the Divisional Court will be held in writing unless the Court specifies a different mode of proceeding.

#### **14. Appeals to the Divisional Court and applications for judicial review:**

All appeals and applications for judicial review in Divisional Court will be held in person, unless all parties consent to it being heard virtually and the Court agrees or the Court decides that the appeal or application should be conducted virtually.

### **15. Guidelines to Determine Mode of Proceeding in Family**

Please see [Regional Notices](#) for scheduling protocols related to the application of the following presumptive guidelines including scheduling processes related to requests for changes in the presumption.

#### **A. Over-arching principles in the application of the presumptive guidelines**

These guidelines set out presumptive methods of attendance for events in Superior Court of Justice proceedings. In applying these guidelines, the Court will take into account the following general principles:

##### **1. Discretion of the Court:**

While presumptions for each event set out the default position of the Court, the final determination of how an event will proceed will remain subject to the discretion of the Court. This will take into account the issues in the proceeding, the expected length of the hearing, the evidentiary record, the status of parties (e.g. self-represented litigants) and access to technology (including virtual capacity at institutions and courthouses).

## **2. Access to justice:**

While virtual platforms to conduct proceedings remotely have enhanced access to justice for many, the Court also recognizes that there are significant variations in the abilities of litigants to access and use the technology that is required for virtual hearings. Until such time as there is a means to provide access to technology to those who do not have it so that they can fully participate in a remote hearing, the Court will take this access issue into account when determining the appropriate mode of proceeding. In that respect, if remote proceedings are utilized, the needs of all participants must be met so they can fully and equally participate.

## **3. Self-represented litigants:**

While the Court's determination of the appropriate mode of proceeding will necessarily take into account the ability of litigants to access and effectively use technology for virtual hearings, the Court will also consider other circumstances uniquely related to self-represented litigants. Issues such as the inability to obtain timely assistance from duty counsel and court staff, needing support to use technology or the inability to adequately address issues in writing may mean that in proceedings involving a self-represented litigant, Courts may favour an in-person mode of proceeding.

## **4. In-person hearings important:**

While the continued use of virtual proceedings increases efficiency at many stages in the litigation process, the Court also recognizes the importance of in-person interaction and hearings for more substantive attendances. For these matters, in-person advocacy and participation will remain an essential feature of our justice system.

## **5. Hybrid options:**

In determining the mode of proceeding and the application of the guidelines, the Court will also take into account whether some parts of a proceeding should be conducted virtually and other parts conducted in person. In other words, hybrid options will be considered where appropriate or necessary.

## **6. Impediments to a virtual hearing:**

There may be statutory, security or other impediments to having a remote hearing in certain matters, particularly criminal cases, civil contempt hearings and other matters that deal with sensitive information (e.g. child protection cases). Moreover, a party's or participant's personal circumstances (e.g. disabilities or caregiver responsibilities) may make remote hearings less suitable.



## **B. Terms used in the guidelines**

“Virtual” = proceedings using a platform like Zoom video or audioconference or by teleconference.

“Hybrid” = proceedings in which some justice participants are appearing physically in the courtroom and others are participating virtually.

“In-person” = all parties, counsel and the judge are physically in the courtroom.

“Videoconference or audioconference” = connecting into a proceeding using a platform like Zoom through video and audio or audio only.

“Teleconference” = connecting into a proceeding via a telephone number to a landline.

## **C. Presumptive guidelines to determine mode of proceeding in family matters**

The following guidelines set out the Court's expectations for the default method of appearance for all family events that will be applied across the province. However, the Court also recognizes that some Regions, in particular the Northwest, Northeast and those with circuiting judges, will require greater flexibility in hearing more cases virtually.

### **I. Family**

#### **1. First appearances:**

Where required, first appearance courts will be heard virtually unless the Court specifies a different method of attendance. In deciding whether these attendances will be conducted other than virtually, the Court will take into account the availability of duty counsel and on-site mediation services.

#### **2. Early or urgent case conferences and triage courts (where available):**

All early or urgent case conferences and early intervention courts will be held by videoconference unless the Court specifies a different method of attendance.

#### **3. Urgent motions:**

All urgent motions will be heard by videoconference unless the Court specifies a different method of attendance when the event is scheduled. A party who takes the position that the urgent motion should be heard in person should include in their motion materials the reasons why the motion should not be heard by videoconference.

#### **4. Case conferences, settlement conferences and trial management conferences:**

All (i) case conferences, (ii) settlement conferences, and (iii) trial management conferences with a settlement focus, will be held in person unless a different method of attendance is approved by the Court in advance.

#### **5. Trial scheduling conferences, other trial management conferences and assignment court attendances (where required):**

All trial scheduling conferences, trial management conferences where the focus is on preparation for trial and assignment court attendances (where required) will be heard by videoconference unless, at a prior conference, the Court has specified a different method of attendance.

#### **6. Motions for procedural relief and motions on consent:**

All motions on consent, unopposed motions and simple procedural motions will be conducted in writing. More complex procedural motions will be conducted by videoconference, unless the Court specifies that an in-person attendance is required.

#### **7. Substantive regular/short motions:**

Outside of Toronto and Windsor, where regular motions in family cases are heard on mixed civil and family lists, substantive motions of less than an hour will be held by videoconference.

In Unified Family Court locations, Toronto and Windsor, regional Notices will direct the mode of appearance for these events.

All motions for contempt will be held in person.

#### **8. Long motions:**

All long motions will be held in person unless the Court has agreed to a virtual attendance in advance, which will be decided at the case conference.

If contempt is sought or there is a hearing alleging the wrongful removal or retention of a child, the motion will be held in person.

#### **9. Trials:**

All trials will be held in person unless all parties consent to a virtual trial and the Court approves. The Court may consider the option of a hybrid proceeding and whether a witness may be permitted to testify virtually by videoconference. Requests for virtual or hybrid trials will be addressed with the completion of the Trial Scheduling Endorsement Form prior to the scheduling of the trial.

## **II. Child Protection**

#### **1. First hearing where child has been brought to a place of safety (5-day hearings):**

5-day hearings will be heard virtually unless the Court decides that an in-person hearing is required, taking into account any concerns regarding: (i) parental participation in virtual hearings or (ii) Legal Aid support for these events.

#### **2. Child protection lists or TBST appearances:**

Child protection lists or To Be Spoken To appearances will be held by videoconference unless the Court decides that an in-person hearing is required, taking into account any concerns regarding: (i) parental participation in virtual hearings or (ii) Legal Aid support for these events.

### **3. Settlement conferences and trial management conferences:**

All (i) settlement conferences and (ii) trial management conferences with a settlement focus will be held in person unless a different method of attendance is approved by the Court in advance.

### **4. Trial scheduling conferences, other trial management conferences and assignment court attendances (where required):**

All trial scheduling conferences, trial management conferences where the focus is on preparation for trial and assignment court attendances (where required) will be heard by videoconference unless, at a prior conference, the Court has specified a different method of attendance.

### **5. Motions on consent and motions for procedural relief only (including 14B motions):**

All motions on consent, unopposed motions or simple procedural motions will be conducted in writing. More complex procedural motions will be conducted by videoconference, unless the Court specifies that an in-person attendance is required.

### **6. Substantive/regular short motions:**

Regional Notices will direct the mode of appearance for these attendances.

### **7. Long motions including summary judgment motions and temporary care and custody hearings:**

All long motions, including summary judgment motions, and temporary care and custody hearings will be held in person unless the Court has agreed to a virtual attendance in advance, which requests should be raised at a prior court attendance.

### **8. Trials:**

All trials will be held in person unless all parties consent to a virtual trial and the Court approves. The Court may consider the option of a hybrid proceeding and whether a witness may be permitted to testify virtually by videoconference. Requests for virtual or hybrid trials will be addressed with the completion of the Trial Scheduling Endorsement Form prior to the scheduling of the trial.

## **III. FRO Lists and Refraining Motions**

All Family Responsibility Office matters will be heard in person unless the Court directs a different method of attendance.

Refraining motions that are not held on regular FRO sittings at Unified Family Court locations, including those held in generalist locations, will be held by videoconference unless the Court directs a different method of attendance.

## **IV. Dispute Resolution Conferences**

All Dispute Resolution Conferences will continue to be held by videoconference.

### **3. Guidelines to Determine Mode of Proceeding in Criminal**

These guidelines will take effect April 19th, 2022.

Please see [Regional Notices](#) for scheduling protocols related to the application of the following presumptive guidelines including scheduling processes related to requests for changes in the presumption.

#### **A. Over-arching principles in the application of the presumptive guidelines**

These guidelines set out presumptive methods of attendance for events in Superior Court of Justice proceedings. In applying these guidelines, the Court will take into account the following general principles:

##### **1. Discretion of the Court:**

While presumptions for each event set out the default position of the Court, the final determination of how an event will proceed will remain subject to the discretion of the Court. This will take into account the issues in the proceeding, the expected length of the hearing, the evidentiary record, the status of parties (e.g. self-represented litigants) and access to technology (including virtual capacity at institutions and courthouses).

##### **2. Access to justice:**

While virtual platforms to conduct proceedings remotely have enhanced access to justice for many, the Court also recognizes that there are significant variations in the abilities of litigants to access and use the technology that is required for virtual hearings. Until such time as there is a means to provide access to technology to those who do not have it so that they can fully participate in a remote hearing, the Court will take this access issue into account when determining the appropriate mode of proceeding. In that respect, if remote proceedings are utilized, the needs of all participants must be met so they can fully and equally participate.

##### **3. Self-represented litigants:**

While the Court's determination of the appropriate mode of proceeding will necessarily take into account the ability of litigants to access and effectively use technology for virtual hearings, the Court will also consider other circumstances uniquely related to self-represented litigants. Issues such as the inability to obtain timely assistance from duty counsel and court staff, needing support to use technology or the inability to adequately address issues in writing may mean that in proceedings involving a self-represented litigant, Courts may favour an in-person mode of proceeding.

##### **4. In-person hearings important:**

While the continued use of virtual proceedings increases efficiency at many stages in the litigation process, the Court also recognizes the importance of in-person interaction and hearings for more substantive attendances. For these matters, in-person advocacy and participation will remain an essential feature of our justice system.

##### **5. Hybrid options:**

In determining the mode of proceeding and the application of the guidelines, the Court will also take into account whether some parts of a proceeding should be conducted virtually and other parts conducted in person. In other words, hybrid options will be considered where appropriate or necessary.

#### **6. Impediments to a virtual hearing:**

There may be statutory, security or other impediments to having a remote hearing in certain matters, particularly criminal cases, civil contempt hearings and other matters that deal with sensitive information (e.g. child protection cases). Moreover, a party's or participant's personal circumstances (e.g. disabilities or caregiver responsibilities) may make remote hearings less suitable.

### **B. Terms used in the guidelines:**

"Virtual" = proceedings using a platform like Zoom video or audioconference or by teleconference.

"Hybrid" = proceedings in which some justice participants are appearing physically in the courtroom and others are participating virtually.

"In-person" = all parties, counsel and the judge are physically in the courtroom.

"Videoconference or audioconference" = connecting into a proceeding using a platform like Zoom through video and audio or audio only.

"Teleconference" = connecting into a proceeding via a telephone number to a landline.

### **C. Presumptive guidelines to determine mode of proceeding in criminal matters**

#### **1. Assignment court:**

Assignment court appearances will be held virtually (either by video or audioconference or in some jurisdictions by teleconference) unless the Court specifies a different method of attendance. In deciding whether any assignment court appearance will be conducted other than virtually, the Court will take into account whether the accused is self-represented (either in custody or out of custody) and any other factor bearing on the administration of justice, including any access to justice issues.

#### **2. Bail hearings, bail reviews and detention reviews:**

##### **(i) Bail hearings:**

All bail hearings will be held virtually subject to the discretion of the Court, which will take into account: the availability of a virtual suite from the custodial institution, whether the accused is self-represented, the position(s) of the parties and any other factor bearing on the administration of justice. The mode of appearance can be decided at the pre-bail hearing conference or a party may request one for this purpose.

## **(ii) Bail reviews and detention reviews:**

All bail reviews and 90-day detention reviews will be held virtually subject to the discretion of the Court, which will take into account: the availability of a virtual suite from the custodial institution, whether the accused is self-represented, the position(s) of the parties and any other factor bearing on the administration of justice. The mode of appearance can be decided at the pre-bail hearing conference or a party may request one for this purpose.

### **3. Judicial pre-trials:**

All judicial pre-trials will be held virtually (either by video or audioconference or in some jurisdictions by teleconference) unless the Court directs that an in-person judicial pre-trial is required in light of the accused being self-represented, there being multiple accused in a case, the complexity of trial issues, the length of the trial, or any other factor the Court decides warrants an in-person judicial pre-trial.

### **4. Pre-trial motions:**

All pre-trial motions will be held in person unless both the accused and the Crown consent to it being heard virtually and the Court approves. The Court may consider the option of a hybrid proceeding and whether a witness, at the request of either party, may be permitted to testify virtually by videoconference. This direction does not otherwise limit either the accused's or Crown's ability to seek to call a particular witness' evidence remotely as authorized by the Criminal Code or the common law.

### **5. Judge-alone trials:**

All judge-alone trials will be held in person unless both the accused and Crown consent to a virtual trial and the Court approves. The Court may consider the option of a hybrid proceeding and whether a witness, at the request of either party, may be permitted to testify virtually by videoconference. This direction does not otherwise limit either the accused's or Crown's ability to seek to call a particular witness' evidence remotely as authorized by the Criminal Code or the common law.

### **6. Jury trials:**

All jury trials will be held in person. The Court may consider the option of a hybrid proceeding and whether a witness, at the request of either party, may be permitted to testify virtually by videoconference. This direction does not otherwise limit either the accused's or Crown's ability to seek to call a particular witness' evidence remotely as authorized by the Criminal Code or the common law.

### **7. Guilty pleas:**

All guilty pleas will be held in person unless both the accused and the Crown consent to it being heard virtually and the Court approves.

### **8. Sentencing hearings:**

All sentencing hearings will be held in person unless both the accused and the Crown consent to it being heard virtually and the Court approves.

**9. Summary conviction appeals and special motions:**

**(i) Assignment court (in jurisdictions where these are held):**

All assignment court appearances related to summary conviction appeals and special motions will be held virtually (either by video or audioconference or in some jurisdictions by teleconference), with the exception of self-represented litigants, unless the Court specifies a different method of attendance.

**(ii) Hearing of the motion:**

All summary conviction appeals will be held virtually subject to the discretion of the Court, which will take into account: whether the accused is self-represented, the position(s) of the parties, and any other factor bearing on the administration of justice. Where one of the parties requests another mode of appearance, they can do so at a case management conference or they can request a case management conference for this purpose.

Geoffrey B. Morawetz, Chief Justice.

April 14, 2022.

## **Appendix 2(J): Ontario Court of Appeal**

### **Ontario Court of Appeal (Excerpt)**

#### **Consolidated Practice Direction Regarding Proceedings in the Court of Appeal During the COVID-19 Pandemic**

Effective: March 29, 2021

Released: March 15, 2021

Revisions Released: March 31, 2021; July 6, 2021; September 27, 2021; October 26, 2021; November 1, 2021; November 10, 2021; December 17, 2021; January 10, 2022; March 22, 2022; April 26, 2022

### **B. Manner of Hearing**

#### **(a) Rule 10 (“Manner of Hearing”) of the *Criminal Appeal Rules* Inapplicable Unless Otherwise Ordered**

70. As noted in paragraph 2 of this Practice Direction, rule 10 (“Manner of Hearing”) of the *Criminal Appeal Rules* and its associated Form 6 (“Notice of Objection to Proposed Manner of Hearing”) do not apply unless otherwise ordered by the court or a judge of the court. Instead, this Practice Direction governs the manner of hearing for all matters at the Court of Appeal.

#### **(b) Appeals and Panel Motions**

71. Effective April 4, 2022, unless otherwise directed or specified below, the Court of Appeal will conduct appeals and panel motions in person.

72. A party to an in-person appeal or panel motion may still choose to appear remotely. Each party should indicate whether they will be appearing in person or remotely on the Counsel Slip and Hearing Information Form.

73. Paragraph 71 does not apply to panel motions which are normally heard in writing, including summary conviction leave applications and motions for leave to appeal under r. 61.03.1 of the *Rules of Civil Procedure*. These motions will continue to be heard in writing unless otherwise directed.

74. Inmate appeals will be returning to an in-person format, but until further notice, inmates who are in custody at the time of their appeal hearing will continue to appear remotely by video conference. Inmates who are out of custody at the time of their appeal hearing may choose to appear in person or by video conference. For motions in inmate matters, inmates – whether in custody or out of custody at the time of the motion hearing – must appear remotely by video or audio conference.

75. Appeals from orders made under Part XX.1 – Mental Disorder of the *Criminal Code* (generally known as Ontario Review Board appeals or ORB appeals) will



also be returning to an in-person format, but until further notice, accused persons who are in custody at the time of their appeal hearing and who are not represented by a lawyer will continue to appear remotely by video conference. Accused persons who are out of custody at the time of their appeal hearing and who are not represented by a lawyer may choose to appear in person or by video conference. For motions in these matters, accused persons who are not represented by a lawyer – whether in custody or out of custody at the time of the motion hearing – must appear remotely by video or audio conference.

**(c) Single Judge Motions**

76. Unless otherwise directed, the Court of Appeal will continue to conduct all single judge oral motions remotely by video or audio conference using the Zoom platform. Single judge motions proceeding in writing will continue to be heard in writing.

**(d) Status Court and Purge Court**

77. Unless otherwise directed, the Court of Appeal will hold status court and purge court remotely by video or audio conference using the Zoom platform.

**MANITOBA COURT OF APPEAL**  
**MANITOBA COURT OF QUEEN'S BENCH**  
**MANITOBA PROVINCIAL COURT**

**NOTICE**

FEBRUARY 25<sup>th</sup>, 2022

**RE: COURT TRANSITION PLAN ARISING FROM EVOLVING PUBLIC  
HEALTH ORDERS**

The three Manitoba Courts are currently reviewing the recently announced easing of Public Health Order restrictions. This examination is being done with a view to properly customizing an approach to what will be a transitional period during which the Courts will resume delivery of in-person court services. With the goal of a June 27<sup>th</sup> full reopening, in the coming weeks each of the Courts will be announcing a transition to an increased level of service for its respective Court.

Keeping in mind that the Courts provide an essential service, we will continue to balance the health and safety of all court users with the need to maintain open and accessible services. Informed by the recommendations of the Chief Public Health Officer and the need to ensure a robust and functioning justice system, the transition plan will proceed by way of a gradual relaxation of restrictions. This will be applied in all Manitoba court facilities as follows:

- |                        |  |
|------------------------|--|
| <b>Support Persons</b> | <b>April 18<sup>th</sup>, 2022:</b> As of April 18 <sup>th</sup> , there will be an increase from two to five support persons allowed per accused, victim, or child witness.   |
| <b>Masks</b>           | <b>May 16<sup>th</sup>, 2022:</b> Until May 16 <sup>th</sup> , masks will continue to be required by all attendees to any court facility in the Province. Masks are available at the entry to all court facilities. Without proof of exemption, any attendees without a mask will be refused entry or asked to leave. Although no longer required after May 16 <sup>th</sup> , mask use will continue to be supported as a means of minimizing the risk of COVID-19 transmission, unless requested otherwise by a presiding judge in the context of a hearing. |
| <b>Public Access</b>   | <b>June 27<sup>th</sup>, 2022:</b> Unlimited access to the courts by members of the public will resume on June 27 <sup>th</sup> . As of this date, there will no longer be any COVID-19 related restrictions in place.   |

To protect all court users, other measures—including enhanced cleaning of high touch areas and the use of plexiglass barriers—will remain in place indefinitely. All court users are asked to continue to self-monitor for symptoms of illness and not to attend court facilities when sick. We urge all court attendees to conduct themselves with courtesy and respect for others.

The Manitoba Courts will continue to actively monitor the public health situation and may issue further Notices adjusting timelines or reintroducing restrictions in response to changing circumstances.

Richard Chartier  
Chief Justice of Manitoba

Glenn D. Joyal  
Chief Justice  
Court of Queen's Bench

Margaret Wiebe  
Chief Judge  
Provincial Court

**NOTICE TO THE PROFESSION**  
**MANITOBA COURT OF QUEEN'S BENCH – MASTERS**  
**JUNE 9, 2022**  
**RE: COVID-19 UPDATE AND NEW PRACTICES FOR THE FALL**  
**OF 2022**

There have been Notices issued by the Manitoba Court of Queen's Bench Masters on March 17, 2020, April 7, 2020, April 24, 2020, May 11, 2020, September 1, 2021, January 15, 2022 and March 1, 2022. While these notices continue to govern practice before the masters through this summer, they will be replaced by this notice in the fall.

**THE NEW PRACTICES NOTED BELOW WILL BE EFFECTIVE IN FULL AS OF SEPTEMBER 6, 2022, AND WILL CONTINUE IN PLACE UNTIL FURTHER NOTICE OF THE COURT.**

These changes reflect a balance between the continuing health and safety risks for court participants related to COVID-19, available court resources, proportionality, access to justice and the nature of the work of the masters. These changes reflect, as close as is possible, the changes announced by the Chief Justice of Manitoba, the Chief Justice of Court of Queen's Bench and the Chief Judge of the Provincial Court on February 25, 2022 and May 13, 2022.

As noted, this notice will be in full force and effect as of **September 6, 2022**, and will impact service requirements for all matters noted as moving back to full in person hearings. Until that time, the previous directions, in particular the notice of March 1, 2022, will continue to guide proceedings before the masters. These changes reflect the move back to in person hearings for all matters that are not set to appear in masters' chambers, with some

exceptions in jurisdictions outside of Winnipeg as set out below. Concerning all other matters, as more specifically addressed below, there will be a continued use of available remote technology, with opportunity to implement flexibility in appropriate circumstances, on the request of the parties, and where resources allow. This notice will apply to practices in the masters' courts in every jurisdiction, except as expressly addressed below:

### **Maintenance Enforcement Dockets**

These dockets recommenced on or about March 14, 2022, and will continue to run in all centres with no changes. Debtors who are summoned to appear on a Maintenance Enforcement docket in Manitoba are required to attend court in person. If debtors have legal counsel, counsel will also be required to appear in person. All COVID-19 Safety Procedures in force must be followed.

### **Child Protection Dockets**

These dockets will return to in person dockets as of September 6, 2022, subject only to consideration of legal assistance continuing to be provided to impacted children without the necessity of a court appearance where circumstances permit, or as determined through further consultation with the bar. Persons or organizations required to be served in accordance with the relevant legislation must be served accordingly. Should circumstances arise which may justify proceeding with audio or video conferencing (where capacity allows) the parties must direct their request to the child protection coordinator, or scheduling coordinator as the case may be, for the consideration of the presiding master. Similarly, any matters that are appropriate to be brought to the attention of the presiding master prior to the docket for review, should continue to be so brought in the same fashion and

counsel should continue to file all relevant documents in advance of the docket wherever possible. This applies in all judicial centres in Manitoba serviced by the masters.

### **Masters' Civil and Family Uncontested List**

The Masters' Uncontested Lists in all jurisdictions will continue to operate via teleconference, in the manner described in the Notice issued by the masters on May 11, 2020. The call-in number and ID for those matters on the daily uncontested list remain as follows for the Winnipeg Centre:

Toll-free dial-in number: 1-855-342-6455

Conference ID number: 5589296

In the event there are any questions with respect to scheduling of matters for outside of Winnipeg, counsel should contact the applicable Trial Coordinator:

**Brandon:** [BrandonQBTrialCoordinator@gov.mb.ca](mailto:BrandonQBTrialCoordinator@gov.mb.ca) (Michelle Brown's telephone number is 204-726-7430).

**Dauphin:** [Shauna.Kachur@gov.mb.ca](mailto:Shauna.Kachur@gov.mb.ca) (telephone number is 204-622-2100).

**Portage la Prairie:** [Sherry.Moffit@gov.mb.ca](mailto:Sherry.Moffit@gov.mb.ca) (telephone number is 204-239-3383).

**Morden:** [Sheila.Jeffers@gov.mb.ca](mailto:Sheila.Jeffers@gov.mb.ca) (telephone number is 204-822-2880).

### **Bankruptcy Dockets**

The Bankruptcy dockets will return to full in person service as of September 6, 2022. All parties that are required to be served for the dockets on, or after that date, should be served appropriately for attendance at the relevant court facility. Should circumstances arise which may justify proceeding with a

matter by audio or video conferencing (where capacity allows), requests can be made to the appropriate scheduling coordinator for the consideration of the presiding registrar. This applies in all judicial centres in Manitoba serviced by the masters/registrars.

### **Contested Motions**

Contested motions, family and civil, will continue to be heard via teleconference in all judicial centres serviced by the masters unless alternate arrangements are made at least 10 days in advance, and at the discretion of the presiding master.

### **Uncontested Passing of Accounts and Hearings for Directions**

All uncontested Passing of Accounts or Hearings for Directions in respect of references, accountings or any other matters, will continue to be heard via teleconference in all judicial centres serviced by the masters unless alternate arrangements are made at least 10 days in advance, and at the discretion of the presiding master.

### **Matters involving the provision of viva voce evidence**

All matters in which the master will be hearing viva voce evidence will be set to proceed in person. Should circumstances arise which may justify proceeding by video conference (where capacity permits) or teleconference, counsel may direct such a request to the presiding master through the appropriate scheduling coordinator in the relevant jurisdiction.

### **ISSUED BY:**

**“Original signed by Senior Master Karen L. Clearwater**

**Senior Master K. L. Clearwater  
June 9, 2022**

**NOTICE**  
**MANITOBA COURT OF APPEAL**

**RE: RESUMPTION OF IN-PERSON APPEAL HEARINGS AND  
CHAMBERS MOTIONS STARTING MONDAY, MARCH 14, 2022**

This Notice replaces the previously issued Notice dated December 20, 2021.

The Manitoba Court of Appeal continues to balance its institutional obligations with broader public health priorities. Since January 4, 2022, all appeals have been heard remotely by videoconference and all motions or applications have been heard remotely by teleconference. Given the recently announced easing of Public Health Order restrictions that began on February 15, 2022, and, assuming the public health situation remains stable, the Manitoba Court of Appeal will resume its in-person appeal hearings in Courtroom 330 and in-person chambers motions in Courtroom 130 starting on Monday, March 14, 2022.

With respect to public safety measures, I and the Chiefs of the other two level of Courts announced on February 25, 2022 a customized transitional period that will see these measures phased out in three stages, starting on April 15 and ending on June 27, 2022. The Manitoba Courts will continue to actively monitor the public health situation and may issue further Notices adjusting timelines or reintroducing restrictions in response to changing circumstances.

For the latest information on public safety measures and other court matters, please monitor the Manitoba Courts website at: <http://www.manitobacourts.mb.ca>

**ISSUED BY:**

*“Original Signed by Chief Justice Chartier”*

---

**The Honourable Richard J. Chartier**  
**Chief Justice of Manitoba**  
**DATE: March 1, 2022**





## **COURT OF QUEEN'S BENCH FOR SASKATCHEWAN DIRECTIVE UPDATE**

As of March 23, 2022

The Court of Queen's Bench for Saskatchewan is committed to taking the steps necessary to safeguard the health of everyone in our courtrooms and court facilities while ensuring access to justice, upholding the rule of law, and continuing court operations as effectively and efficiently as possible.

The Court continues to be mindful of its obligation to continue to hear and process matters that come before the Court, while simultaneously respecting the need to adhere to recommendations and protocols designed to keep everyone safe.

The Court of Queen's Bench has issued this Directive respecting its operations, which applies to all Court of Queen's Bench judicial centres throughout the Province.

The Court will continue to monitor the situation related to COVID-19 and its variants, and will update the Court's Directives from time to time.

### **Effective Date**

This Directive takes effect immediately.

### **Jury Trials**

On January 31, 2022, all jury trials scheduled to commence between January 31 and April 1, 2022 were postponed.

As of April 4, 2022, all jury trials are expected to proceed as scheduled.

The September 7, 2021 Directive stated that all jury trials would proceed in locations other than court houses “until further notice.” This Directive constitutes notice that effective April 4, 2022 jury selection and/or the jury trial itself may, or may not, depending on the circumstances, be held at an off-site location. It is the responsibility of the judicial participants (i.e., Crown, defence, accused, prospective jurors, etc.) to report to the correct venue.

For information on venue and related matters, please contact the local registrar for the relevant judicial centre. The contact information for each local registrar for each judicial centre is attached.

**This Directive updates—but does not replace—the Directives dated September 7, 2021, September 15, 2021, and January 31, 2022**

The changes outlined in this Directive update—but do not replace—the provisions of the September 7, 2021 Directive (as modified by the September 15, 2021 and January 31, 2022 Directives), which remain in full force and effect.

CHIEF JUSTICE M.D. POPESCU

## Judicial Centre Contact Information\*

Battleford  
Box 340  
291 23rd Street West  
Battleford, SK S0M 0E0  
Phone: (306) 446-7675  
Fax: (306) 446-7737  
Email: [qblr.battleford@gov.sk.ca](mailto:qblr.battleford@gov.sk.ca)

Estevan  
1016 4th Street  
Estevan, SK S4A 0W5  
Phone: (306) 637-4527  
Fax: (306) 637-4536  
Email: [qblr.estevan@gov.sk.ca](mailto:qblr.estevan@gov.sk.ca)

Melfort  
Box 2530  
409 Main Street  
Melfort, SK S0E 1A0  
Phone: (306) 752-6265  
Fax: (306) 752-6264  
Email: [qblr.melfort@gov.sk.ca](mailto:qblr.melfort@gov.sk.ca)

Moose Jaw  
64 Ominica Street West  
Moose Jaw, SK S6H 1W9  
Phone: (306) 694-3602  
Fax: (306) 694-3056  
Email: [qblr.moosejaw@gov.sk.ca](mailto:qblr.moosejaw@gov.sk.ca)

Prince Albert  
1800 Central Avenue  
Prince Albert, SK S6V 4W7  
Phone: (306) 953-3200  
Fax: (306) 953-3210  
Email: [qblrprincealbert@gov.sk.ca](mailto:qblrprincealbert@gov.sk.ca)

Regina  
2425 Victoria Avenue  
Regina, SK S4P 4W6  
Phone: (306) 787-5377  
Fax: (306) 787-7217  
Email: [qblrregina@gov.sk.ca](mailto:qblrregina@gov.sk.ca)

Saskatoon  
520 Spadina Crescent East  
Saskatoon, SK S7K 3G7  
Phone: (306) 933-5135  
Fax: (306) 975-4818  
Email: [qblrsaskatoon@gov.sk.ca](mailto:qblrsaskatoon@gov.sk.ca)

Swift Current  
121 Lorne Street West  
Swift Current, SK S9H 0J4  
Phone: (306) 778-8400  
Fax: (306) 778-8581  
Email: [qblr.swiftcurrent@gov.sk.ca](mailto:qblr.swiftcurrent@gov.sk.ca)

Yorkton  
29 Darlington Street East  
Yorkton, SK S3N 0C2  
Phone: (306) 786-1515  
Fax: (306) 786-1521  
Email: [qblryorkton@gov.sk.ca](mailto:qblryorkton@gov.sk.ca)



**February 23, 2022**

**COURT OF APPEAL FOR SASKATCHEWAN**

**NOTICE TO THE PROFESSION, THE PUBLIC  
AND THE MEDIA**

**Appeals and Applications to the Court**

Since March 23, 2020, the Court of Appeal for Saskatchewan has heard nearly all appeals and applications electronically, either by teleconference or by videoconference. The Court wishes to advise counsel, litigants, and members of the public of the following upcoming changes.

Effective Monday, February 28, 2022, the Court will resume in-person hearings for all appeals and applications. As of that date, all hearings will occur with judges and court clerks sitting in the court room. However, in the interests of improving access to justice and promoting the open courts principle, counsel and self-represented litigants may, on an ongoing basis, choose at their individual option whether to attend their hearing in person or by WebEx video. This means that some proceedings will feature all of the lawyers and/or self represented litigants being physically present in the courtroom, some might feature only the judges and the clerk in the courtroom with all other participants appearing by Webex, and some might involve some counsel or self represented litigants being physically present and some appearing by WebEx. The Court also retains the right to decide to hear a matter remotely even if it has previously been arranged to be heard in-person.

Counsel and self-represented litigants who elect to appear remotely will not be able to file documents with the Court during the hearing. As such, in that instance, any documents that have not already been provided to the Court and that counsel or self-represented litigants wish to file must be provided to the other party(s) and the Court's registry office at least one clear day before the hearing date.

**Media and Public**

The Court recognizes both the important role that members of the media play in informing the public about its work and the right of individual members of the public to attend its proceedings. As a result of the audio-visual technological upgrades to the courtrooms, both members of the public as well as accredited members of the media may listen to or observe

hearings as they occur by contacting the Court's [registry office](#) in advance for instructions on accessing hearings by WebEx.

### **Prohibition on Recording or Saving a Recording of an Electronic Hearing**

The usual [courtroom guidelines](#) continue to apply to the audio and video recording of an electronic hearing. Participants may not record or save still images or audio or video of the hearing unless they are accredited members of the media. Accredited members of the media may use recording devices or save audio recordings for the purpose of ensuring the accuracy of their reporting but not for broadcast or publication.

### **The Registry Office**

Until such time as the Registry Office reopens to the public, registry staff continue to offer assistance to lawyers and self-represented litigants by telephone at (306) 787-5382.

Documents can be delivered to the Registry office via eCourt or by regular mail, email or fax at (306) 787-5815. For documents delivered by eCourt, automatic notification is sent to the filing party when the document is approved for filing or rejected. For documents delivered by regular mail, email or fax, Registry staff will notify litigants by telephone or email if the documents are not approved for filing. For litigants who are unable to use regular mail, email or fax and who need to file documents in person at the Registry office, there is a drop box available. Registry office staff continue to check the drop box several times each day. They will notify litigants by telephone or email if the documents received in the drop box are not approved for filing.

### **Ongoing Protocols**

Notwithstanding the lifting of public health measures by the Province, the Court or presiding judge may still require that masks be worn and that physical distance be maintained in a courtroom during any proceeding.

The Court of Appeal for Saskatchewan thanks everyone for their patience and support, which has allowed the Court to maintain its regular hearing schedule throughout the last two years.

*The Honourable Robert G. Richards*  
*Chief Justice of Saskatchewan*

# NOTICE TO PROFESSION AND PUBLIC - UPDATE: RESTRICTED ACCESS TO COURTROOMS

May 17, 2022

Effective May 24, 2022, social distancing requirements and related capacity limits due to COVID-19 will be rescinded in some courtrooms in Alberta as noted below. While social distancing in those courtrooms will no longer be required, it is, nevertheless, still encouraged. We stress that social distancing and capacity limits remain in effect in all Provincial Court courtrooms until further notice.

All restrictions in relation to masking, vaccination policies and the current use of Plexiglass remain in effect until further notice.

## Court of Appeal of Alberta

Social distancing requirements and related capacity limits in courtrooms in which the Court of Appeal hears matters are rescinded.

Proceedings before the Court of Appeal will be conducted in accordance with the [Notice to the Profession and Public](#) dated April 20, 2022. Effective May 2, 2022 and following, all appeal hearings and applications before three-judge panels will be conducted in person. Appeal conferences, judicial dispute resolution matters and single judge matters will continue to be heard virtually until further notice. Bar admission ceremonies will be conducted in person or virtually.

## Court of Queen's Bench of Alberta

Social distancing requirements and related capacity limits in courtrooms in which the Court of Queen's Bench hears matters are rescinded.

All matters currently scheduled to proceed remotely will continue to be heard virtually. There is no change to the Court of Queen's Bench policies and processes governing virtual and in-person hearings going forward until further notice. For additional clarity, the following matters which could result in an increased volume of people at courthouses will continue to be heard virtually as will Bar admission ceremonies:

- Bail Estreatments
- Bail Reviews
- Bankruptcy Lists
- Child Support Lists

- Commercial Lists
- Criminal Appearance Court
- EVV Triage Lists
- Family Docket Court
- Inter-Jurisdictional Support Order Lists

There is no change to the current COVID-19-related policies and processes governing the filing of materials at the Court of Queen's Bench.

# MODE OF HEARING GUIDELINES

Over the fall of 2021 and the spring of 2022, the Ad-Hoc Remote Hearings Committee of the Court of Queen's Bench (the Committee) studied the mode of conducting hearings which had been adopted during the course of the pandemic. The Committee undertook both internal and external engagement. The Committee submitted a Report to the Executive Board of the Court which provided recommendations as to the processes for hearing matters before the Court on a go-forward Pilot Project basis. These processes are set out in these Hearing Guidelines.

## GENERAL PRINCIPLES

The following are the general principles which have informed the processes for hearing matters:

1. The default mode for matters that are more adjudicative/substantive in nature is an in-person hearing;
2. The default mode for matters that are more administrative/procedural in nature is a remote hearing;
3. The mode of hearing will be determined at the time a matter is scheduled for hearing and will be subject to the availability of Court resources on the scheduled hearing date;
4. The Court does not presently have sufficient resources to accommodate hybrid processes in all matters. As such, any change to the mode of hearing after a matter is scheduled must be approved by the Manager, Court Coordination at [hearingmodes.qb@albertacourts.ca](mailto:hearingmodes.qb@albertacourts.ca). Changes to the mode of hearing after a matter is scheduled will be determined considering the circumstances and the following criteria:
  - inability of a participant to attend in person due to health issues or other personal circumstances;
  - distance to the location of the hearing which makes in-person attendance impractical;
  - a change in the nature of the proceeding such as to necessitate a departure from the scheduled mode of hearing;
  - a change in representation of a party from self-represented to represented, or vice versa; and



- such other reason as approved by the Court.

## PILOT PROJECT

The hearing of matters in accordance with these Hearing Guidelines is on a Pilot Project basis. The mode of hearing matters as set out in these Hearing Guidelines will commence on September 6, 2022 and will be subject to review in early 2023.

All new matters scheduled after July 4, 2022 to be heard on or after September 6<sup>th</sup>, 2022 will be scheduled in accordance with these Hearing Guidelines.

Internal Court engagement and external engagement with the Bar, pro bono organizations and the media will be undertaken during the course of the Pilot Project and amendments will be made as necessary.

## DEFAULT MODES BY HEARING TYPE

Hearing Type	Default Mode
Adult Guardianship and Trustee Applications List	<b>Hybrid</b> (In person – opposed applications; <b>Remote</b> – unopposed/consent applications)
Bail Estreatments	<b>Remote</b>
Bankruptcy	<b>Remote</b>
Bar Admissions	<b>In person</b>
Case Management	<b>Hybrid</b> (To be determined by the CM Justice at the time of scheduling)
Child Support List	<b>Remote</b>
Civil Chambers	<b>In person</b>
Civil Justice Specials	<b>In person</b>
Civil Pre-Trial Conferences	<b>Remote</b>

Civil Rule 4.10 Case Conferences	<b>Remote</b>
Commercial List	<b>Remote</b>
Criminal Appearance Court (QBAC/CAC)	<b>Remote</b>
Criminal Bail (Regular Bail, Detention Reviews & Longer Bail Applications)	<b>Remote</b>
Criminal Pre-Trial Conferences	<b>Remote</b>
Early Intervention Case Conferences	<b>In person</b>
Emergency Protection Order (EPO) Reviews	<b>Remote</b>
EPO Reviews with Viva Voce Evidence	<b>In person</b>
EPO Reviews with Viva Voce Triage	<b>Remote</b>
Estate Case Conferences	<b>Remote</b>
Family Court Appeals	<b>In person</b>
Family Docket Court	<b>Remote</b>
Family Law Chambers	<b>In person</b>
Family Law Specials	<b>In person</b>
Family Pre-trial Conferences	<b>In person</b>
Family Rule 4.10 Case Conferences	<b>In person</b>
Interjurisdictional Support Orders	<b>Remote</b>

Judicial Dispute Resolution	<b>In Person</b> (Remote upon approval by the JDR Justice)
Judicial Reviews	<b>Hybrid</b>  ( <b>Remote</b> – where all parties represented by Counsel, unless consent to proceed in person; <b>In person</b> – where a party is self-represented)
Justice Seized	<b>Hybrid</b> (To be determined by the seized Justice at the time of scheduling)
Masters Appeals	<b>Hybrid</b>  ( <b>Remote</b> – where all parties represented by Counsel, unless consent to proceed in person; <b>In person</b> – where a party is self-represented)
Masters Chambers	<b>In person – Calgary/Edmonton</b> <b>Hybrid – Other regional Court locations</b> (To be determined by the Court at the time of scheduling)
Masters Specials	<b>In person – Calgary/Edmonton</b> <b>Hybrid – Other regional Court locations</b> (To be determined by the Court at the time of scheduling)
Provincial Court Appeals	<b>Hybrid</b>  ( <b>Remote</b> – where all parties represented by Counsel, unless consent to proceed in person; <b>In person</b> – where a party is self-represented)
Summary Conviction Appeals	<b>Hybrid</b>  ( <b>Remote</b> – where all parties represented by Counsel, unless consent to proceed in person;

	<b>In person</b> – where a party is self-represented)
Summary Disposition/Sentencing	<b>In person</b>
Summary Trial	<b>In person</b>
Trials – Judge Alone	<b>In person</b>
Trials– Judge & Jury	<b>In person</b>
Urgent Matters Chambers	<b>Hybrid</b> (Justice will be in person and counsel/parties may attend remotely or in person)



## COURT OF APPEAL OF ALBERTA

# Notice to the Profession and Public COVID-19 – Update on Court Operations

April 20, 2022

Further to the [March 16, 2022 – Notice to the Profession and Public](#), the Court of Appeal will resume in-person hearings on May 2, 2022 as set out below. As always during the pandemic, the Court is guided by several considerations including the continuing need to ensure the health and safety of all Court participants.

The purpose of this Notice is to:

1. confirm which matters will proceed in person and which matters will continue to proceed electronically (also referred to as “virtually”); and
2. describe where to find information about procedural requirements and COVID-19 safety protocols for in-person hearings.

### **How Matters Will Proceed**

#### ***Appeals and Applications Before Three-Judge Panels***

Effective May 2, 2022, all appeal sittings and applications before three-judge panels will be conducted in person.

#### ***Single Appeal Judge Matters***

Appeal Conferences, Judicial Dispute Resolution matters and single judge matters will continue to be heard virtually until further notice.

Parties wishing to book a JDR may do so by contacting the relevant [Case Management Officer](#).

#### ***Bar Admission Ceremonies***

Effective May 2, 2022, Bar Admission ceremonies will be conducted either in person subject to courtroom capacity limits or virtually.

For questions about booking a Bar Admission ceremony, please contact the relevant Registry as follows:

- Calgary matters: Fax: 403-297-5294 or [Calgary.Registry@albertacourts.ca](mailto:Calgary.Registry@albertacourts.ca)
- Edmonton matters: Fax: 780-422-4127 or [Edmonton.Registry@albertacourts.ca](mailto:Edmonton.Registry@albertacourts.ca)

## **Procedural Requirements and Best Practices for In-Person and Electronic Hearings and Other Matters**

The Court of Appeal Procedure Guide for In-Person and Electronic Hearings and Other Matters can be found on the website [HERE](#). The purpose of the Guide is to:

1. provide information about procedural requirements and best practices for in-person hearings;
2. provide information about procedural requirements and best practices for electronic hearings;
3. confirm procedures for bail check-ins, electronic filing, online payment of filing fees, condensed books and the remote commissioning of affidavits; and
4. confirm the COVID-19 health and safety protocols in place including those for in-person hearings.

### **This Notice Replaces the Following Notices:**

- [March 16, 2020 – Notice – COVID-19 – Emergency Court Protocol Information Regarding COVID-19](#)
- [March 23, 2020 – Notice to the Profession and Public - Covid-19 - Update on Affected Court Operations](#)
- [March 23, 2020 – Notice to the Profession - Covid-19 - Alberta Courts' Pandemic Responses](#)
- [April 8, 2020 – Notice - COVID-19 - Electronic Hearing Procedural Information](#)
- [July 6, 2020 – Notice to the Profession and Public - COVID-19 - Update on Appellate Judicial Dispute Resolution and Bar Admissions](#)
- [July 6, 2020 – Notice to the Profession and Public - COVID-19 - Electronic Hearings Update - Attendance and Resource Reminders](#)
- [July 6, 2020 – Notice to the Profession and Public - COVID-19 - New Procedure for Electronic Hearings – Confidentiality or Privacy Concerns](#)
- [August 27, 2020 – Notice to the Profession and Public - COVID-19 - Electronic Hearings Update](#)
- [October 27, 2020 – Notice to the Profession and Public - COVID-19 - Electronic Hearings Update](#)
- [July 21, 2021 – Notice to the Profession and Public – Covid-19 – Return to In-Person Hearings](#)
- [October 19, 2021 – Notice to the Profession and Public – Covid-19 – Electronic Hearings Extended to January 1, 2022](#)
- [December 17, 2021 – Notice to the Profession and Public – Covid-19 – Electronic Hearings Extended to February 25, 2022](#)
- [February 10, 2022 – Notice to the Profession and Public – Covid-19 – Electronic Hearings Extended to March 25, 2022](#)



Catherine A. Fraser  
Chief Justice of Alberta



THE LAW COURTS  
800 SMITHE STREET  
VANCOUVER, B.C.  
V6Z 2E1

## Notice to the Profession, the Public and the Media Regarding Civil and Family Proceedings

### COVID-19: MANNER OF ATTENDANCE FOR CIVIL AND FAMILY PROCEEDINGS

*COVID-19 Notice No. 50*

**Date: March 31, 2022**

This notice replaces the following notice:

- COVID-19 Notice No. 46 – Civil and Family Proceedings by Microsoft Teams Video and Audio

The following chart sets out the default manner of attendance at civil and family law proceedings, including those previously scheduled, as of April 11, 2022 and until further notice, unless the Court otherwise orders or directs.

“Teams video” indicates that the appearance is by video using the Microsoft Teams platform. “Teams Audio” indicates that the appearance is by audio only, also using the Microsoft Teams platform. Participants may join a Teams audio hearing using a telephone or other device, by dialing the conference call numbers provided.

Hearing Type	Current	April 11
Trials	In person	In person
Judicial Case Conferences	Teams Video	In person
Regular Chambers	Teams Video	Teams Video
Long Chambers Applications	Teams Video	In person
Settlement Conferences	Teams video	In person
Trial Management Conferences	Telephone/Teams Audio	Telephone/Teams Audio
Case Planning Conferences	Telephone/Teams Audio	In person
Registrar’s Hearings	Telephone/Teams Audio	In person
Judicial Management Conferences	Telephone/Teams Audio	In person
Judgments	Telephone/Teams Audio	In person

For regular chambers matters (chambers matters not scheduled on the trial list), more information is available in [COVID Notice No. 42](#).

## **Applications to change the manner of attendance**

A party seeking to change the manner of attendance from the default noted above may apply by requisition.

For civil matters, see [Practice Direction 49](#).

For family matters, see [Family Practice Direction 18](#).

**THE FOREGOING IS SUBJECT TO CHANGE. ANY UPDATED DIRECTIONS WILL BE POSTED ON THE COURT'S WEBSITE.**

Dated March 31, 2022, Vancouver, British Columbia

**By Direction of Chief Justice Christopher E. Hinkson**  
Supreme Court of British Columbia





**SUPREME COURT OF BRITISH COLUMBIA**

**Effective Date:** 2015/12/15

**Number:** PD - 49

**Title:**

**Practice Direction**  
**Applications Made by Requisition**  
**Rules 5-1(3), 5-2(3)(a), 5-2(3)(b), 12-2(4) and 23-5(4)**

**Summary:**

A Requisition in Form 17 varied as set out in Schedule A to this Practice Direction may be filed by the applicant in the referenced Supreme Court Civil Rules in place of a separate letter setting out the reasons why the order is sought. The party filing the Requisition must indicate the position of the other party(ies) on the application.

**Direction:**

1. This Practice Direction replaces PD-3 (*July 1, 2010*) which is rescinded.
2. The following applications may be made by filing a Requisition in Form 17 in the form attached as Schedule A , in place of a separate letter setting out the reasons why the order is sought:
  - a. an application pursuant to Supreme Court Civil Rule 5-1(3) to shorten the service period applicable to a notice of case planning conference
  - b. an application pursuant to Supreme Court Civil Rule 5-2(3)(a) exempting a person from attending a case planning conference
  - c. an application pursuant to Supreme Court Civil Rule 5-2(3)(b) respecting the method of attendance at a case planning conference
  - d. an application pursuant to Supreme Court Civil Rule 12-2(4) for an order respecting the manner in which a person is to attend a trial management conference or exempting a person from attending a trial management conference

- e. an application pursuant to Supreme Court Civil Rule 23-5(4) for directions that an application be heard by way of telephone, video conference or other communication medium and the manner in which the application is to be conducted
3. The party filing the Requisition must note on the Requisition the position of the other party(ies) on the application.

**Chief Justice C. E. Hinkson**

**Schedule A**

Form 17

No. ....

..... Registry

*In the Supreme Court of British Columbia*

Between

Plaintiff(s)

and

Defendant(s)

**REQUISITION – GENERAL**

Filed by: .....[party(ies)].....

Required:

1. ☐ Application pursuant to Supreme Court Civil Rule 5-1(3) to shorten the service period applicable to a notice of case planning conference.
2. ☐ Application pursuant to Supreme Court Civil Rule 5-2(3)(a) exempting a person from attending a case planning conference.
3. ☐ Application pursuant to Supreme Court Rule 5-2(3)(b) respecting the method of attendance at a case planning conference.
4. ☐ Application pursuant to Supreme Court Civil Rule 12-2(4) for an order respecting the manner a person is to attend a trial management conference or exempting a person from attending a trial management conference.
5. ☐ Application pursuant to Supreme Civil Rule 23-5(4) for directions that an application be heard by way of telephone, video conference or other communication medium and the manner in which the application is to be conducted.

Term of order sought:

1. ☐ The notice of case planning conference must be served on the .....[name of party]..... by .....[set out date]..... .
2. ☐ .....[name of lawyer or party]..... is exempted from attending the case planning conference in person and may attend by .....[set out method of attendance].... .
3. ☐ .....[name of lawyer or party]..... may attend the case planning conference by .....[set out manner of attendance]..... .

4. ☐ .....[*name of lawyer or party*]..... may attend the trial management conference by .....[*set out manner of attendance*]..... .

or

.....[*name of lawyer of party*]..... is exempt from attending the trial management conference.

5. ☐ The application of .....[*name of party*]..... be heard by .....[*set out method of hearing*]..... . (*If required*) The application be heard in the following manner; .....[*set out manner of hearing*]..... .

This requisition is supported by the following: [*include reasons why the order is sought*]

---

---

---

Position of the other party(ies):

---

---

---

Date: ..... .

Signature of

☐ filing party ☐ lawyer for filing party(ies)

\_\_\_\_\_  
[*type or print name*]

Address of applicant:

---

Phone number: \_\_\_\_\_

**Order granted** ☐

or

**Application denied** ☐

\_\_\_\_\_  
Judge/Master of the Supreme Court

Date: \_\_\_\_\_



**SUPREME COURT OF BRITISH COLUMBIA**

**Effective Date:** 2022/03/31

**Number:** FPD - 18

**Title:**

**Practice Direction**

**Applications made by Requisition**

**Supreme Court Family Rules 7-1(4), 14-3(4), 22-1(3) and (4) and 22-6(4)**

**Summary:**

A Requisition in Form F17 varied as set out in Schedule A to this Practice Direction may be filed by the applicant in the referenced Supreme Court Family Rules. The modified Requisition will take the place of a separate letter, if required, setting out the reasons why the order is sought. The party filing the Requisition must indicate the position of the other party(ies) on the application.

**Direction:**

1. This Practice Direction replaces FPD-13 (*December 15, 2015*) which is rescinded.
2. The following applications may be made by filing a Requisition in Form F17 in the form attached as Schedule A. The modified Requisition will take the place of a separate letter, if required, setting out the reasons why the order is sought:
  - a. an application pursuant to Supreme Court Family Rule 7-1(4) to relieve a party from the requirement of a judicial case conference prior to serving a Notice of Application or an affidavit in support
  - b. an application pursuant to Supreme Court Family Rule 22-1(3) and (4) for directions that a person attend a judicial case conference by telephone, video conference or other communications medium and the manner in which the judicial case conference is to be conducted

- c. an application pursuant to Supreme Court Family Rule 14-3(4) for an order respecting the manner in which a person is to attend a trial management conference or exempting a person from attending a trial management conference
  - d. an application pursuant to Supreme Court Family Rule 22-6(4) for directions that an application be heard by way of telephone, video conference or other communication medium and the manner in which the application is to be conducted.
3. The party filing the Requisition must note on the Requisition the position of the other party(ies) on the application.

**Chief Justice C E Hinkson**

## Schedule A

Form F17

Court File No.: .....  
Court Registry: .....

*In the Supreme Court of British Columbia*

Claimant:

Respondent:

### REQUISITION – GENERAL

Filed by: .....[party]

Required:

1. ☐ Application pursuant to Supreme Court Family Rule 7-1(4) to relieve a party from the requirement that a judicial case conference be conducted prior to serving a notice of application or an affidavit.
2. ☐ Application pursuant to Supreme Court Family Rule 22-1(3) and (4) for directions that a person attend a judicial case conference by telephone, video conference or other communications medium and the manner in which the judicial case conference is to be conducted.
3. ☐ Application pursuant to Supreme Court Family Rule 14-3(4) for an order respecting the manner in which a person is to attend a trial management conference or exempting a person from attending a trial management conference.
4. ☐ Application pursuant to Supreme Court Family Rule 22-6(4) for directions that an application be heard by way of telephone, video conference or other communication medium and the manner in which the application is to be conducted.

Term of order sought:

1. ☐ .....[name of party]..... is exempt from the requirement that a judicial case conference be conducted prior to serving on another party a notice of application or an affidavit in support.
2. ☐ .....[name of lawyer or party]..... may attend the judicial case conference by .....[set out communications medium]..... . The judicial case conference be heard in the following manner [set out manner of conference]..... .

3. ☐ .....[name of lawyer or party]..... may attend the trial management conference by .....[set out manner of attendance]..... .
4. ☐ The application of .....[name of party]..... be heard by .....[set out communication medium]. The application be heard in the following manner [set out manner of hearing]..... .

This requisition is supported by the following: [include reasons why the order is sought]

---

---

---

Position of the other party(ies):

---

---

---

Date: .....

.....

Signature of

☐ filing party ☐ lawyer for filing party(ies)

\_\_\_\_\_  
[type or print name]

Address of applicant:

---

Phone number: \_\_\_\_\_

**Order granted** ☐

or

**Application denied** ☐

\_\_\_\_\_  
Judge/Master of the Supreme Court

Date: \_\_\_\_\_





THE LAW COURTS  
800 SMITHE STREET  
VANCOUVER, B.C.  
V6Z 2E1

## Notice to the Profession, the Public and the Media Regarding Criminal Proceedings

### COVID-19: METHOD OF ATTENDANCE FOR CRIMINAL PROCEEDINGS

COVID-19 Notice No. 51

Date: March 31, 2022

This notice replaces the following notice:

- COVID-19 Notice No. 48

#### I. INTRODUCTION

Due to the current state of the COVID-19 pandemic and the easing of public health restrictions, effective April 11, 2022, and until further notice, the Court is expanding the range of matters for which counsel and accused persons should appear in person in the courtroom.

#### II. DEFAULT METHOD OF APPEARANCE BY COUNSEL AND ACCUSED PERSONS

The following chart sets out the default method of appearance, **effective April 11, 2022**, for counsel and accused persons by hearing type unless otherwise ordered or directed. “Teams video” indicates that the appearance is by video using the Microsoft Teams platform. “Audio” indicates that the appearance is by audio only, also using the Microsoft Teams platform. Participants may join a Teams audio hearing using a telephone or other device, by dialing the conference call numbers provided:

Hearing Type	Default Method of Appearance
Trials	In Person
Sentencing hearings	In Person
<i>Voir dres</i> and pre-trial applications	In Person
Jury selections	In Person
Extradition hearings	In Person
Judgments	In Person
Summary conviction / traffic ticket appeals	In Person
Applications under s. 490 of the <i>Criminal Code</i>	In Person
Judicial interim release (bail) and bail review hearings	<ul style="list-style-type: none"><li>• Counsel in person</li><li>• Accused by video</li></ul>

Detention review hearings under s. 525 of the <i>Criminal Code</i>	See <a href="#">CPD-4</a> <ul style="list-style-type: none"> <li>• Counsel in person</li> <li>• Accused by video</li> </ul>
Regular fix-date appearances	<ul style="list-style-type: none"> <li>• Counsel by Teams video or audio</li> <li>• Accused who is required or wishes to attend: <ul style="list-style-type: none"> <li>○ In custody: Video</li> <li>○ Out of custody: Teams video or audio</li> </ul> </li> </ul>
Pre-trial conferences and case management conferences	<ul style="list-style-type: none"> <li>• Counsel by Teams audio</li> <li>• Accused who is required or wishes to attend: <ul style="list-style-type: none"> <li>○ In custody: Video</li> <li>○ Out of custody: Teams audio</li> </ul> </li> </ul>
Scheduling hearings for s. 525 detention review hearings	See <a href="#">CPD-4</a> <ul style="list-style-type: none"> <li>• Counsel by Teams audio</li> <li>• Accused by video</li> </ul>
Any other types of criminal matter	Contact Supreme Court Scheduling

### III. ATTENDANCE BY OTHER THAN DEFAULT METHOD

Anyone seeking to attend a particular hearing by a method other than the default method of appearance listed above must take one of the following steps:

- If there is a scheduled court appearance prior to the hearing for which a participant wishes to change the method of appearance (e.g. a fix date appearance or pre-trial conference), the participant may apply to the court during the earlier appearance.
- If there is no earlier appearance, the participant may complete and submit the online application form available on the Supreme Court Scheduling webpage under the “Online Request Forms” heading, and [here](#). Anyone who is unable to access the online application form may obtain a hard copy of the form by visiting the Supreme Court Scheduling counter in the court registry or by telephoning Supreme Court Scheduling at the relevant court location.

### IV. JOINING A TEAMS VIDEO OR AUDIO HEARING

The court registry will send an email to participants at or around 8:45 a.m. on the date of the Teams video or audio hearing, with instructions on how to join the hearing, including the Teams video link and conference call numbers if the hearing is by audio, or in the event a participant is unable to connect by video.

The above-noted email will be sent to the email addresses provided to the Court by participants either when the proceedings were initiated or when the Teams video or audio hearing was scheduled. Counsel and self-represented accused persons should ensure to provide the court registry with their current email addresses to avoid any issues with receiving the Teams video link and conference call details. Counsel are responsible for forwarding the Teams video link or the conference call details to any co-

counsel who will be participating in the hearing. Defence counsel are responsible for forwarding the details to their accused client if the accused is out of custody.

Where in custody accused are attending an appearance by video, arrangements will be made for them to join the hearing.

For Teams video hearings, participants must use their cameras unless there is a technical or other reason why they are unable to do so (e.g., their computer does not have a camera). Cameras may be turned off when a participant is not speaking, unless the presiding judge requests that cameras remain on.

Participants who are unable to use video may alternatively dial in using the Teams conference call numbers provided and participate by audio only.

## **V. GENERAL INFORMATION REGARDING TEAMS VIDEO HEARINGS**

Anyone participating in a hearing by Teams video must read and comply with the minimum technical standards and other directions in [COVID-19 Notice No. 47](#).

The Policy on Use of Electronic Devices in Courtrooms applies to all proceedings taking place by Teams video or audio. Any recording of a proceeding is prohibited unless expressly permitted under that Policy or by court order.

Questions regarding attendance at a Teams video or audio hearing should be directed to the registry contact in the court location where the proceeding is scheduled, as identified in the Appendix to this Notice.

Participants should not contact Supreme Court Scheduling with questions about connecting to a Teams video or audio hearing.

## **VI. ATTENDANCE BY MEDIA AND THE PUBLIC**

For information regarding attendance at Supreme Court proceedings by members of the media or public, refer to [COVID-19 Notice No. 49](#).

**THE FOREGOING IS SUBJECT TO CHANGE. ANY UPDATED DIRECTIONS WILL BE POSTED ON THE COURT'S WEBSITE.**

Dated March 31, 2022, Vancouver, British Columbia

By Direction of Associate Chief Justice Heather J. Holmes

## Appendix 2(P)(i): British Columbia Court of Appeal (Notice)

THE HONOURABLE ROBERT J. BAUMAN  
CHIEF JUSTICE OF BRITISH COLUMBIA



THE LAW COURTS  
400 - 800 HORNBY STREET  
VANCOUVER, B.C.  
V6Z 2C5

### COURT OF APPEAL

#### Notice Regarding Modified Court of Appeal Procedures and Access to Court Proceedings during the COVID-19 Pandemic

Effective April 11, 2022

***This Notice replaces the Notice Regarding Modified Court of Appeal Procedures and Access to Court Proceedings during the COVID-19 Pandemic dated February 9, 2022.***

***The information in section 2 is updated to reflect changes to pandemic related measures in courthouses and courtrooms that take effect on April 11, 2022.***

## 1. How to File Documents and Materials

- Filing directions are provided in the [Notice to the Public Regarding Modified Filing Directions in Civil and Criminal Appeals](#).

## 2. Appeal Hearings and Chambers Proceedings

### *Changes to pandemic related measures in courthouses and courtrooms*

- The Chief Justice of British Columbia directs that beginning on 11 April, 2022, the following changes to pandemic related measures in courthouses and courtrooms will take effect:
  - Sheriffs will no longer conduct a health screening for people entering a courthouse.
  - In the public areas of the courthouse, wearing face masks will be a matter of personal choice.
  - In a courtroom, wearing (or not) of face masks is subject to the direction of the presiding judge or registrar. A supply of face masks will be made available in the courthouses and courtrooms.
  - Hand sanitizer will be available in the courtroom and plexiglass barriers remain in place.
  - Capacity limits in courthouses and courtrooms are lifted.
  - Parties, counsel, and other courtroom participants may not bring their own water into the courtroom. Water will be supplied.
  - Physical distancing requirements will be removed.

### *Mode of Hearing*

- The Chief Justice of British Columbia directs that appeal hearings and chambers proceedings continue to take place in person in the courtroom, unless parties request, or elect, to appear remotely, as described below.
- For appeal hearings or reviews, if a party wishes to appear by video conference** they must apply for permission by filing the [Request to Appear Remotely](#) at least ten (10) business days before the appeal hearing takes place. Appearances by telephone are not permitted for appeals.

If the request form is not received on these timelines, the Court will presume the party wishes to appear in person.

- **For chambers proceedings (applications)**, a party must file the [Request to Appear Remotely](#), but will not require permission unless ordered otherwise; they will check a box on the request form to elect to appear by video conference. The [Request to Appear Remotely](#) must be filed with the notice of motion, or, in the case of a responding party, together with any response to the application, at least two (2) business days before the chambers proceeding takes place. If a form is not received on these timelines, the Court will presume the party wishes to appear in person.
- Directions on video conference hearings and etiquette are provided in the [Notice to the Public Regarding Video Conference Proceedings](#).

#### *Scheduling of chambers proceedings*

- Counsel/litigants must coordinate their availability and check the online list of available dates **before** filing a chambers application in accordance with [Booking Civil Chambers Applications \(Civil Practice Note, 8 May 2017\)](#), and should check again just before e-filing.
- For all video conference chambers hearings counsel/litigants will be assigned an appointment time and must log in to their Zoom call at least 20 minutes before their matter is scheduled to be heard. Counsel/litigants will then be placed in a virtual waiting room from which they will be called forward for their hearing.
- The chambers scheduler, as a Deputy Registrar, has the final say on the reassignment of dates and times, if necessary.

### **3. Hearings before the Registrar**

- All hearings set to proceed before the Registrar will follow the same process described above for chambers proceedings (applications).

### **4. Access to Hearings**

#### *Hearings in a Courtroom*

- To observe matters proceeding in the courtroom, check the [Court's weekly hearing list](#) or the bulletin board in the lobby at 800 Smithe Street. The lists will indicate the name of the proceeding, the mode of hearing and the courtroom number. Seating in the public gallery in courtrooms is not restricted, subject to any directions issued by the presiding judge.

#### *Appeal hearings with at least one party appearing by Zoom [hybrid appeal hearings]*

- For appeal hearings where at least one party will appear by video conference, the Court's weekly hearing list will include a publicly accessible video link and members of the public will

have the option of observing the hearing remotely by clicking on the link. Hybrid appeal hearings will also be open for members of the public to observe from the courtroom.

- The Court understands that providing video links to all appeal hearings has made appeal hearings easier to access and continues to consider accessibility to court proceedings on an ongoing basis.

#### *Policy on Use of Electronic Devices in Courtrooms*

- The Court's [Policy on the Use of Electronic Devices in Courtrooms](#) applies to all court proceedings including those conducted remotely by video or teleconference. This means that members of accredited media may audio record proceedings for the limited purpose of verifying their notes. Any other audio or video recording of the proceeding including screen shots or other photographs is prohibited. Anyone who uses an electronic device in a manner prohibited by the policy is subject to sanction, including prosecution for contempt of court.

#### *Media Access to Digital Audio Recordings (DARS)*

- Any requests for access to court audio recordings (post-hearing) by accredited media should be made by completing the usual [access to audio request form](#) and attaching a [remote access to DARS undertaking](#) to the automatically generated email before submitting the request. Requests will be processed by Court Services Branch personnel in the usual manner. If access is granted, the requestor will receive an email confirmation and a link to a digital FTP site to remotely access the requested audio recording.

## **5. Self-Represented Litigants**

- Self-represented litigants are expected to comply with the processes set out in this notice.
- Anyone e-filing materials in the Court of Appeal or preparing to appear before the Court by Zoom video conference may contact the Canadian Bar Association BC Branch at [members@cbabc.org](mailto:members@cbabc.org) for technical support with managing PDF Adobe or Zoom software.

## **6. Registry Contact Information**

Mail or Courier to the <b>Vancouver Registry</b>	<b>Telephone Contact</b>
BC Court of Appeal The Law Courts 400 – 800 Hornby Street Vancouver, British Columbia V6Z 2C5	General Inquiries: 604.660.2468 Maria Littlejohn, Court Scheduler: 604.660.2865 Matthew Soo, Chambers Scheduler: 604.660.2859 Kristine Dhamrait, Registrar Scheduler: 604.660.2729 Fax filings: 604.660.1951

**The forgoing is subject to change. Any updates will be posted on the BCCourts.ca website.**

Dated 5 April 2022, at Vancouver, British Columbia

A handwritten signature in black ink, appearing to read 'R. Bauman', with a stylized, flowing script.

By Direction of Robert J. Bauman, Chief Justice of British Columbia



COURT OF APPEAL

## REQUEST TO APPEAR REMOTELY

If you wish to appear by Zoom, please fill out the form below.

**INSTRUCTIONS:** Complete parts A - C if applying for **chambers** and parts A - D if applying for an **appeal**.

For **appeals** this form must be filed at least ten (10) business days before the hearing, and you must apply for and receive permission from the Court to appear by Zoom (see Part D).

For **chambers** this form must be filed with your Notice of Motion or Appointment, unless you are responding to a chambers application, then it must be filed at least two (2) business days before the hearing. Unless the Court directs otherwise, permission is automatically granted to appear by Zoom in chambers.

### PART A: COURT OF APPEAL FILE NUMBER & STYLE OF PROCEEDING

Court of Appeal File No.

v.

Name of First Appellant on Notice of Appeal

Name of First Respondent on Notice of Appeal

### PART B: HEARING DETAILS

Type of Hearing: ☐ Chambers ☐ Appeal ☐ Case Management

Date of Chambers or Appeal Hearing

The party or parties you represent (self-represented parties, put your name here as well):

Name of Party

Role of Party



### PART C: WHO IS APPEARING

Complete this section by giving your name, email and phone number that you can be reached at during the hearing. Ensure your name matches your Zoom username when you join the hearing. List only parties who will require separate video or telephone connections. If parties are sharing a video connection, only include one nominee.

NAME OF PERSON APPEARING (if requesting Zoom, must match username during the hearing)	EMAIL (where you can be reached during the hearing)	PHONE NO. (where you can be reached during the hearing)
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		

### PART D: APPEAL (Only complete this section if you are seeking to appear for an appeal, **not** for Chambers).

For appeals, you must seek permission to appear by Zoom addressing the following criteria:

- Travel cost and convenience to the party
- The nature of the interests involved and the impact on the community where the appeal originates,
- Any sealing orders or publication bans, safety issues, or public health orders in place,
- The circumstances of any litigant or lawyer,
- Any other relevant factor

**Unless you are representing yourself, this form should be electronically filed through Court Services Online.** Select "Letter" and "Request to Appear Remotely (Appeal/Chambers)" when filing. For those self-represented, this form can be submitted to [CACounter@BCCourts.ca](mailto:CACounter@BCCourts.ca). This email address should **NOT** be used for any other filings.

# COURT OF APPEAL FOR BRITISH COLUMBIA

## COVID-19 OVERVIEW OF THE PROCESS FOR APPELLANTS

**NOTE:** This process is **ONLY** applicable during the COVID-19 crisis and **is to be used TOGETHER with the attached footnotes.**

### START

Determine whether you have the right to appeal or whether you need leave to appeal

Leave to appeal

Right to appeal

#### Initial Documents:

- File<sup>1</sup> your [Notice of Application for Leave to Appeal \(Form 1\)](#) within **30 days** of the decision you want to appeal
- Serve a filed copy on each respondent
- File<sup>1</sup> proof of service within **10 days** of serving all respondents

#### Hearing Documents:

- File<sup>1</sup> your [Notice of Motion for Leave to Appeal \(Form 3\)](#) and your [Motion Book \(Form 4\)](#) within **30 days** of filing your Notice of Application for Leave to Appeal
- Serve a filed copy on each respondent at least **10 business days** before the hearing

#### The Hearing:

- Your application will be heard<sup>2</sup> by a single judge sitting in [Chambers](#) who will grant or refuse leave to appeal
- If **leave is granted** you must serve a copy of the order granting leave on each respondent who did not file a Notice of Appearance

Leave Refused

Leave Granted

#### Application for Review:

- You *may* ask a division of three judges of the Court to review the decision of the single judge who heard your application
- You must file<sup>1</sup> and serve a [Notice of Application to Vary an Order of a Justice \(Form 15\)](#) and if necessary, an [Affidavit](#) to support your case within **7 days** of the day leave was refused
- You must file<sup>1</sup> and serve [Motion Book \(Form 16\)](#) within **14 days** of the Notice of Application to Vary an Order of a Justice. If you wish to appear by videoconference, you must complete and submit a [Request to Appear Remotely](#) at least 10 business days before the hearing
- Attend the hearing<sup>3</sup> – the division of the Court will either allow your application or end your appeal

Refused

Allowed

END

#### Initial documents:

- File<sup>1</sup> your [Notice of Appeal \(Form 7\)](#) within **30 days** of the decision you want to appeal
- Serve a filed copy on each respondent
- File<sup>1</sup> proof of service within **10 days** of serving all respondents

#### The Appeal Record and Transcript:

- File<sup>1</sup> your [Appeal Record \(Form 9\)](#) within **60 days** of the date of your Notice of Appeal or the date when leave to appeal was granted
- If witnesses testified at your trial, file a [Transcript](#) at the **same time**
- Serve a filed copy of the Appeal Record and (if applicable) the Transcript on each respondent

#### The Factum and Appeal Book:

- File<sup>1</sup> your [Factum \(Form 10\)](#) within **30 days** of filing your Appeal Record
- File<sup>1</sup> your [Appeal Book \(Form 12\)](#) at the **same time** as your Factum
- Serve a filed copy of your Factum and the Appeal Book on each respondent
- If applicable, file<sup>1</sup> your [Reply \(Form 11\)](#) within **7 days** of being served with the respondent's Factum

#### The Certificate of Readiness:

- File<sup>1</sup> a [Certificate of Readiness \(Form 14\)](#) **immediately** after your factum has been filed (must be filed within 365 days of the Notice of Appeal or Notice of Application for Leave to Appeal)
- Contact the [Registry](#) and reserve a time and date for your appeal
- File<sup>1</sup> a [Notice of Hearing \(Form 34\)](#) within **2 months** of your Certificate of Readiness
- Serve a filed copy on each respondent
- If you wish to appear by videoconference, you must complete and submit a [Request to Appear Remotely](#) at least 10 business days before the hearing

#### The Appeal:

- Your appeal will be heard<sup>3</sup> by a division of three judges who will either allow or dismiss your appeal
- After the hearing, you may need to draft or approve the [Court Order](#)

END

## Appeal Process Chart - Covid-19 Edition - Footnotes

### 1. Filing of Documents During COVID-19

All documents must be filed in the way described in the [Notice Regarding Modified Filing directions for Civil and Criminal Appeals](#). Parties must use electronic filing through [Court Services Online](#) (CSO) for most documents.

### 2. Chambers Proceedings During COVID-19

Effective February 14, 2022, chambers proceedings (applications) will take place in the courtroom, unless parties elect to appear remotely by Zoom video conference. If a party wishes to appear by video conference they must file a [request to appear remotely](#) with the notice of motion, or, in the case of a responding party, together with any response to the application, at least two (2) business days before the chambers proceeding takes place. Parties do not require the Court's permission, they simply check a box on the request form to elect to appear by video conference.

Please see section 2 of the [Notice Regarding Court of Appeal Procedures and Access to Court Proceedings during the COVID-19 Pandemic](#) and the [Notice to the Public Regarding Appearing by Video](#) for more information.

### 3. Appeal Hearings During COVID-19

Effective February 14, 2022, appeal hearings will take place in the courtroom, unless parties request to appear remotely by Zoom video conference. If a party wishes to appear by video conference they must apply for permission to do so by filing the [Request to Appear Remotely](#) at least ten (10) business days before the appeal hearing takes place. If the request is not received on these timelines, the Court will presume the party wishes to appear in person.

Please see section 2 of the [Notice Regarding Court of Appeal Procedures and Access to Court Proceedings during the COVID-19 Pandemic](#) and the [Notice to the Public Regarding Appearing by Video](#) for more information.



## THE NUNAVUT COURT OF JUSTICE

### **PRACTICE DIRECTIVE #4**

#### ***ATTENDANCE BY TELEPHONE IN CRIMINAL AND CIVIL MATTERS***

Explanatory Note: In Nunavut, the costs associated with travel and weather delays can severely impact the lawyer's ability to provide a cost effective service to clients. This practice directive facilitates counsel's attendance by telephone to speak to matters in Court that do not involve the calling of viva voce evidence. Access to justice can be enhanced by reducing the costs associated with service delivery in Nunavut's remote communities.

---

#### **ATTENDANCE BY COUNSEL**

Counsel wishing to speak to a regularly scheduled civil or criminal chambers application may do so by telephone in accordance with the following directions.

##### **Civil Chambers**

Counsel must file with the Clerk of the Court a Notice of Appearance by Telephone in Form 4A no later than 3 clear business days before the scheduled hearing date. Filing is to be done by transmitting this form electronically in PDF format to [NCJ.Civil@gov.nu.ca](mailto:NCJ.Civil@gov.nu.ca).

If counsel for the moving party has filed a notice of appearance by telephone and is not available to speak to the motion when called upon to do so by the Court, the application will be adjourned sine die at the discretion of the Court. Costs may be assessed against the defaulting party. If counsel for the Defendant/Respondent has filed a Notice of Appearance by telephone and is not available to speak to the motion when called, the application may proceed to hearing in their absence at the discretion of the Court.

## Criminal Chambers or Criminal Docket Appearance

Counsel wishing to appear by telephone to speak to a matter on criminal docket may do so by filing a Notice of Appearance by Telephone in Form 4B with the Clerk of the Court no later than three days before the scheduled court appearance. Form 4B is to be transmitted electronically in PDF format to [NCJ.Criminal@gov.nu.ca](mailto:NCJ.Criminal@gov.nu.ca) .

## Special Civil or Criminal Chambers

Absent special leave of the Court, counsel must attend in person for the purpose of arguing any matter scheduled for special chambers or any other matter involving the calling of viva voce evidence.

### **ATTENDANCE BY PARTY/LITIGANTS**

Members of the public (party/litigants) in any matter other than a child protection application wishing to listen to chambers applications in a community other than their own must make arrangements with their counsel to be joined into the teleconference by completing the appropriate section in form 4A. Counsel are responsible for ensuring that their client does not interfere with or disrupt the teleconference by interrupting proceedings when not called upon to speak.

Members of the public (party/litigants) who wish to listen to or participate in a child protection application in a community other than their own must complete a Form 4C and fax or email this document to the court registry no later than one clear business day before the scheduled hearing date. Privacy considerations preclude the litigants in this type of proceeding from simply calling into a public teleconference. The Court Clerk will contact the party/litigant when the Court reaches the matter for which he/she has an interest in accordance with the direction set out in Form 4C.

### **ATTENDANCE BY WITNESSES**

When witness appearance by telephone is by consent, counsel must file a Notice of Appearance by Telephone in Form 4D with the Clerk of the Court no later than three days before the scheduled court appearance. Form 4D is to be transmitted electronically in PDF format to [NCJ.Criminal@gov.nu.ca](mailto:NCJ.Criminal@gov.nu.ca).

If the witness appearance by telephone is contested, upon successful application to the Court, counsel must file a Notice of Appearance by Telephone in Form 4D with the Clerk of the Court no later than three days before the scheduled court appearance. Form 4D is to be transmitted electronically in PDF format to [NCJ.Criminal@gov.nu.ca](mailto:NCJ.Criminal@gov.nu.ca).

This practice directive replaces the directive replaces the directive issued on the 1<sup>st</sup> day August 2010 and comes into effect immediately.

Issued this 13<sup>th</sup> day of July, 2012 upon the direction of the Judges of the Nunavut Court of Justice.

Mr. Justice R. Kilpatrick

Mr. Justice E. Johnson

Mr. Justice N. Sharkey

Madam Justice S. Cooper

Mr. Justice A. Mahar

Madam Justice B. Tulloch



## Northwest Territories Courts

**Denise Bertolini, Courts Administrator**

May 24, 2022

**TO:** All Members of the Law Society of the Northwest Territories  
Public Prosecution Service Canada  
Legal Aid Commission of the NWT  
City of Yellowknife  
Media outlets

### **COVID 19**

Since March 2020, the Supreme Court of the Northwest Territories has issued directives to respond to the COVID-19 crisis. Over the last 2 years, the Court has continued hearing cases as much as possible and has adjusted its directives and practices, over time, to comply with public health orders and ensure everyone's safety.

As announced in the Directive issued March 28, 2022, the Court resumed all normal operations effective May 2, 2022. Among other things, this has meant a return to in-person appearances being the norm, except for Pre-Trial Conferences, which will continue to be held by teleconference until further notice.

Aside from each courtroom's capacity and subject to any Order made in a specific case, there are no restrictions on the number of persons who can access the courtrooms.

Finally, effective June 13, 2022, masking will no longer be mandatory in courtrooms and in the public areas of the courthouse.

If there are any questions, please feel free to contact me.

Thank you.

Denise Bertolini  
Courts Administrator



## SUPREME COURT OF YUKON

### NOTICE TO THE PROFESSION AND PUBLIC COVID-19

**February 28, 2022**

**This supercedes all previous COVID-19 notices.**

#### **COURTROOM APPEARANCES**

The Supreme Court of Yukon will resume in-person hearings beginning **March 1, 2022**.

This includes all applications, trials, family law case conferences, chambers appearances, and judicial settlement conferences.

The presiding judge at any hearing has the discretion to direct certain precautions depending on the circumstances of a particular court hearing.

Case management conferences and pre-trial conferences will continue to be held by phone. In exceptional circumstances on approval of the presiding judge they may be held in person or by video.

As always, the Court will allow appearances by video or phone if circumstances require. Notice must be provided in advance to the court technologist, in accordance with Practice Direction-24 Best Practices for Videoconferencing.

#### **Masks**

Mask-wearing remains mandatory within the Courts side of the courthouse and the Supreme Court of Yukon courtrooms. This includes the entrances, atrium, Court Registry, restrooms, witness and interview rooms, Supreme Court boardroom, main floor boardroom, law library, stairways, hallways, and elevators.

Everyone is required to wear masks in the Supreme Court courtrooms at all times, subject to the discretion of presiding judge or judicial officer in exceptional situations based on the individual circumstances of each case, including the space in the courtroom, the nature of the case, and the parties and participants. There are certain other exceptions set out below.

Counsel in the courtrooms are not required to wear masks when they are speaking in front of the bar at counsel tables, or at podiums, but are required to wear them at all other times. Clients sitting at counsel tables are required to wear masks at all times.



Witnesses are required to wear a mask at all times before and after their testimony, including while walking to the witness stand. Once the witness is in the witness stand, they are not required to wear a mask while testifying.

People sitting in the gallery of the courtrooms are required to wear masks at all times.

Everyone is encouraged to bring their own mask, but if you do not have one, a supply will be available in the atrium, or a Sheriff will provide one to you.

Acceptable masks are the medical/surgical masks (available in the atrium), a medical/surgical mask with a cloth mask on top, an N-95 or KN95 mask, or equivalent. Cloth masks on their own are no longer acceptable.

### **Screening Process for Persons Entering the Courtrooms**

The Government of Yukon continues to recommend self-assessment based on the following symptoms:

- Fever;
- chills;
- cough;
- shortness of breath;
- runny nose;
- sore throat;
- headache;
- loss of sense of taste or smell;
- fatigue;
- loss of appetite;
- nausea and vomiting;
- diarrhea;
- muscle aches.

You shall not attend the courthouse if you are experiencing one or more symptoms or have tested positive for COVID-19:

- within the past 7 days if you are fully vaccinated, meaning 2 doses of the vaccine with the last dose received **less** than 6 months ago, or 3 doses of the vaccine, not immune compromised, and you have mild or moderate illness;
- within the past 10 days if you have had 2 doses of the vaccine and the last dose was **more** than 6 months ago or you are not vaccinated, not immune compromised and have mild or moderate illness; or

- within the past 20 days if you are moderately or significantly immune compromised, have severe illness or have been diagnosed with COVID-19 pneumonia

If you suffer from any pre-existing conditions, consider what are normal symptoms for you. If any of the above symptoms are usual symptoms of one of your pre-existing conditions, then you may not need to get tested or stay home.

You shall not attend at the courthouse if you have been in contact with someone who has COVID-19 in the past 7 days and you are not vaccinated.

If you are experiencing symptoms of COVID-19 or have tested positive for COVID-19, as outlined above, and you are a party, an accused, or a witness whose presence is required in court, please ensure that you inform your counsel or the Trial Co-ordinator of your health situation before the time of your scheduled court appearance.

Counsel and self-represented parties may be asked to confirm at any in-person court appearance that to their knowledge, no one involved on their side, including witnesses and support persons, has any symptoms of illness that may be COVID-19, as outlined above, or has had recent contact with anyone who has symptoms that may be COVID-19.

The Sheriffs will screen people entering the courtrooms. If they observe anyone displaying symptoms that may be COVID-19, Sheriffs have the discretion to exclude observers from the courtroom, subject to the Judge's direction. Sheriffs and/or counsel will advise the Court of any court participants displaying such symptoms, at which time the Court will address the issue if necessary.

If during the proceedings, counsel, parties, or participants become aware that they or someone they have been in contact with in accordance with guidelines listed above have tested positive for COVID-19, they shall notify the clerk.

### **Cleaning and Sanitation**

Anyone entering the courthouse shall use hand sanitizer upon entry. Hand sanitizer will be available by the entrances and exits of the courthouse.

Anyone entering any courtroom shall use hand sanitizer again upon entry. Hand sanitizer will be available at the entrance to the courtroom, court clerk's desk, witness box, bench and counsel tables.

The gallery seats and surface areas, door handles, clerk's desk, witness box, witness chair, microphones, prisoner box, witness rooms, counsel tables and chairs, and bench, will be cleaned after each use. All courtrooms will be cleaned in their entirety at the end of each day.

If a witness swears an oath, the Bible will be disinfected after its use.

### **Courtroom Layout**

Physical distancing measures among all people in the courtroom must be maintained. Each counsel will have their own podium at the respective ends of each counsel table.

There will be stickers in the gallery seating indicating where people must sit in order to maintain physical distancing.

There will be plexiglass installed around the witness box, in front of the clerk's desk, and available at counsel tables, recognizing that physical distancing may be difficult to be maintained in those areas at all times.

If required, brief adjournments will be granted to counsel during a hearing to communicate with their client or co-counsel outside the courtroom to accommodate physical distancing and confidentiality.

### **Numbers of People in the Courtroom**

The continued need for physical distancing may mean, in some cases, that it will not be possible for everyone to be present in the courtroom, especially in the smaller courtrooms. Priority will be given to participants in the hearing and support people including family, victim services workers, FASSY workers, mental wellness counsellors, and probation officers.

Members of the media and the public, as always, are permitted to attend court (except in family matters or in exceptional court-ordered circumstances or where there are statutory requirements). If there is insufficient space in the courtroom to accommodate everyone, a conference call number will be provided for the media and members of the general public to call in to hear the proceedings.

The Sheriff's office has discretion to allow people into the courtroom on the basis of these priorities, subject to the presiding judge's direction.

## **COURT REGISTRY**

### **In-Person Attendances and Filing**

The public door into the Registry will continue to be locked but the Registry will accommodate in-person attendances as long as physical distancing measures are respected. Registry staff may refuse access to the Registry to anyone who does not comply with physical distancing requirements.

### **Email Filing**

**Email filing is no longer permitted unless there are exceptional circumstances related to the COVID-19 pandemic.** The Court currently does not have an electronic filing system.

### **Service and Delivery**

All documents are required to be served or delivered according to the *Rules of Court* of the Supreme Court. No email service is permitted unless it is done according to the *Rules of Court*.



---

Chief Justice S.M. Duncan

Federal Court



Cour fédérale

**Update #8 and Consolidated COVID-19 Practice Direction (June 24, 2022)**

[1] This practice direction consolidates and supersedes all prior COVID-19 practice directions.<sup>1</sup>

**Health and Safety Measures**

[2] All Court offices are open. The Courts Administration Service has posted two guides on its website to inform the public regarding the special health and safety measures that have been, or shall be, implemented within the Court's facilities. The first deals with general matters and measures applicable within the courtroom (available [here](#)). The second deals with security screening (available [here](#)). The Court's Covid-19 Guide for in-person hearings also remains applicable (available [here](#)).

**Filing Documents**

[3] Pursuant to [Rule 71](#), a document may be sent to the Registry for the purpose of filing by delivery, mail, fax or electronic transmission. Parties are therefore free to file paper or electronic versions of documents.

[4] Parties shall use the Court's [E-filing portal](#) to file all electronic documents that do not contain confidential information. (Confidential information is subject to the special provisions in paragraph C. below.) For more information regarding electronic filing, please consult the Federal Court's E-Filing Portal [webpage](#), as well as the E-Filing Resources [webpage](#), which includes an Electronic Guide for preparation of Digitized Court Documents.

- A. Paper copies: Parties wishing to file paper copies may do so in the usual manner. Parties who file documents electronically are exempted from any requirement to file paper copies unless otherwise directed by the Court.
- B. Electronic Payment of Court filing fees: the E-Filing portal now offers secure online payment.
- C. Confidential Documents: Confidential materials filed pursuant to a confidentiality order or direction should be filed in a manner that preserves the confidentiality of the document. For electronic versions, one acceptable procedure is to submit a password-protected PDF or a secure electronic file transfer to the appropriate e-mail address set forth in the [Appendix below](#). The password or instructions shall be provided separately to the Registry by email or telephone as appropriate. Such documents must be clearly identified as confidential and broken down into separate files not exceeding

---

<sup>1</sup> See Notices at: <https://www.fct-cf.gc.ca/en/pages/law-and-practice/notices#cont>

18 MB, or by such other means as may be directed by the Court. Paper copies of confidential documents may be filed at the Registry.

- D. Page numbering and pinpoints: Electronic files should display page numbers on each page in the file, consecutively numbered. Pinpoint references to those page numbers shall be provided when referring to such materials in written submissions.
- E. Bookmarks: Bookmarks shall be included in all electronic files that contain more than one document. Each such document, and each appendix, exhibit or schedule shall be separately bookmarked. Many PDF conversion tools include a setting to automatically generate bookmarks from heading styles that are formatted in the document. Parties should verify that their bookmarks are accurate. Documents shall be formatted in a manner that permits the Court to add its own bookmarks.
- F. Hyperlinks: The Memorandum of Fact and Law or Memorandum of Argument, as applicable, shall include hyperlinks to all cases, articles, statutes and other materials available on public and free websites where possible. If parties file their documents electronically and provide hyperlinks (including pinpoint citations) for all cases that are included in their Memorandum, along with an alphabetical index to the list of cases cited, this shall be deemed to constitute a book of authorities, and parties are thereby relieved from the obligation to prepare a separate book of authorities pursuant to Rule 70(1)(g) of the [\*Federal Courts Rules\*](#).
- G. Optical Character Recognition (OCR): Before filing electronic documents that include scanned content or images, parties shall process the document with an OCR application – this allows other parties and the Court to search the document using key words. If possible, documents should be converted directly from digital format to PDF, rather than being printed and then scanned to PDF. However, if a document is scanned, the OCR process should be completed before submitting the document to the Court.
- H. Selection of Local Office in E-Filing Portal: parties are requested to select their local office in the appropriate drop-down menu when e-filing a document. Files that are under case management should be directed to the office where they are being managed. For documents submitted for an upcoming in-person hearing, the document should be directed to the office where the hearing is scheduled.
- I. Inability to Submit Documents Electronically: Parties who are not able to submit documents electronically as described above may submit a paper copy to the Registry (see [office addresses](#)). Alternatively, they may contact the Registry by phone at 1-800-663-2096 (or see this [Telephone List](#) for local office telephone numbers) or by email (see e-mail list in [Appendix](#)) for assistance.

## Service of Documents between Parties

[5] A party may serve a document electronically pursuant to the following *Federal Courts Rules*: Rules 139(1)(e), 141, 143, and 146(1) and forms 141A (Notice of Consent to Electronic Service), 141B (Withdrawal of Consent to Electronic Service), and form 146A (Affidavit of Service).

- A. Deemed consent: Parties shall provide an electronic address on each document filed with the Court. Exceptions will be made for self-represented parties who do not have access to the necessary technology to receive / send documents electronically. If a party has provided an electronic address on a document filed in Court, or if counsel for a party has an electronic address publicly listed by the counsel's law society, that party shall be deemed, *until further notice*, to have consented pursuant to Rule 141 to electronic service of documents at the electronic address on the last document filed. Where multiple email addresses are listed on a document, counsel are encouraged to include all of those email addresses when serving materials. Pursuant to Rule 148, on informal request by a party who did not have notice of a served document or did not obtain notice of it at the time of service, the Court may set aside the consequences of default or grant an extension of time or an adjournment.
- B. Originating documents: Personal service of an originating document filed electronically by a party other than the Crown in proceedings brought under the *Immigration and Refugee Protection Act* or the *Citizenship Act* shall be effected by the Registry on the Crown, the Attorney General of Canada or any other Minister of the Crown in accordance with the practice under Rule 133 of the *Federal Courts Rules*. Service effected in this fashion will relieve an applicant from the requirement to effect personal service.
- C. Until further notice, the Registry may issue an originating document electronically. This shall be deemed to meet the requirements for issuance under the *Rules*.
- D. Where service of a document that is required to be served personally cannot practicably be effected, parties may apply informally by letter (sent electronically) for an order for substituted service (Rule 136) or to validate service (Rule 147).

## Public Access to Documents on the Court Record

[6] The Federal Court case index may be searched and individual case information (the "case history") viewed [here](#). Information available includes a record of each document filed in Court. Before contacting the Registry to request a document, please review this online case history to determine which document(s) you require.

[7] Members of the media and general public seeking access to documents on the Court record may request copies of non-confidential documents by writing to their local Registry office (see list of e-mail addresses in the [Appendix below](#)). For documents only available in paper format, there is a tariff under the *Federal Courts Rules* of \$0.40 per page for the Registry to prepare a copy of documents on the Court record.

## **Format of Court Record for Hearing**

### **A. Remote Hearings: Electronic Documents Requirement**

[8] The Court will require electronic copies of all documents that are necessary for any telephone or videoconference hearing. As noted at paragraph [4] above, when electronic documents are filed, parties will be exempted from the requirement to file paper copies of those documents unless otherwise directed by the Court. An exception to the requirement to file documents electronically may be made where a party is unable to file documents in that manner. Where documents have previously been filed in paper only, electronic copies of those documents may be required to be filed at the request of the Court at least 10 days prior to a hearing that is conducted remotely.

### **B. In-person Hearings: Equipment Requirement for Electronic Record**

[9] The Court is in the process of building out capacity at its facilities across the country to ensure that parties have the option of conducting in-person hearings on the basis of either a paper record or an electronic record. Although some Courtrooms are equipped for electronic hearings, others have only an electrical outlet at counsel tables, and neither hardwired internet nor wifi is generally available. Until such time as that build-out has been completed, parties who prefer to proceed by way of electronic materials should inform the Court of their preference and their anticipated requirements. This should include whether they require a full electronic courtroom or simply an extended monitor screen to connect to their laptop / tablet during the hearing. Among other things, a full electronic courtroom would permit counsel to display documents on a large screen that may be viewed by all participants in the Courtroom. In addition, the Court, counsel and witness would see the same document on their respective screens. In contrast, simply having a single extended monitor screen would permit counsel to privately view one or more additional documents during the course of the hearing. Neither the Court nor other counsel would see those documents, unless they brought them up on their own monitor screens.

[10] The Court will endeavour to accommodate parties' equipment needs. However, for the time being, this will be subject to the availability of the equipment required for the hearing. No later than three weeks before the hearing, parties should contact the office where the hearing will be held to confirm the equipment set-up available for their hearing.<sup>2</sup> If the assigned hearing room has no extended monitors available, counsel may wish instead to consider bringing their own portable monitor screens. If counsel is unable to bring an extended monitor screen in such circumstances, the hearing will need to be conducted on the basis of a paper record.

[11] The parties' position (if any) regarding preferred use of a digital or paper record at the hearing, and requirements for a large-screen monitor, should be communicated to the Court at the same time as their notice regarding preferred Mode of hearing (see immediately below).

---

<sup>2</sup> In addition to confirming availability of an extended monitor screen (if requested) in the Courtroom assigned for their hearing, it is recommended that parties confirm whether they should bring a monitor cable compatible with their laptop (with either an HDMI or VGA connector to connect to the onsite extended monitor).



## **Mode of hearing: In-Person or Remote**

[12] For all matters scheduled to be heard in September 2022 or later, the presumptive mode for all hearings of 3 hours or longer in duration will be in-person. Parties will have the option to request a remote hearing. Those who wish to do so shall submit a request in accordance with the same process set out below.

[13] For all other matters being scheduled for September 2022 or later, parties should advise the Court of their preferred hearing mode (video hearing, teleconference, or in-person hearing) as soon as possible. Ideally, this should be done by way of a joint position submitted following consultation between parties. Where parties have not agreed regarding the mode of hearing, they should provide submissions in support of their stated hearing mode preference. If neither party advises the Court of a preference, the hearing will presumptively be set down for a remote hearing.

[14] The parties' position regarding their preferred mode of hearing should be communicated to the Court no later than the following times:

- a. Hearing on the merits for Actions – at the pre-trial conference (mode of hearing should be addressed in PTC memoranda)
- b. Hearing on the merits for Applications (T files) – In the Requisition for Hearing, preferably by way of a joint proposal. The Respondent may submit a separate letter within 3 days of the effective date of service of the Requisition for Hearing if it is unable to agree with the Applicant.
- c. Hearing on the merits for Applications (IMM files) – In the Applicant's Record / Respondent's Memorandum of Argument (i.e., before a determination is made on the Application for Leave and for Judicial Review).
- d. Motions – until further notice, the presumptive mode of hearing for General Sittings and urgent motions will be video. For non-urgent Special Sittings motions, the mode of hearing should be addressed in the Rule 35 letter setting out a joint proposal. The responding party may submit a separate letter within 3 days of the effective date of service of the Notice of Motion if they take a different position than the moving party.

**Transitional:** the notice process regarding parties' preferred mode of hearing and the presumptive scheduling mode set out above will apply to proceedings in which the above documents are filed or procedural steps take place at least one week after the date that this Practice Direction is issued. For example, if an Applicant perfects their application record before this Practice Direction is issued, or within the week immediately following, the proceeding will presumptively be scheduled to be heard remotely.

[15] The Court will endeavor to schedule the hearing according to the parties' common preference as expressed prior to the scheduling of the hearing. For in-person hearing requests that are to proceed with an electronic record, this will be subject to availability of any electronic

equipment (including extended monitor screens) required for the hearing. In the event that parties disagree on the hearing mode, the Court will make a determination after considering the parties' submissions. Although most hearings will proceed either entirely in person or entirely by video, the Court may proceed with a hybrid hearing (with some participants appearing in person and others appearing remotely).

[16] Video conference hearings will be conducted over Zoom. The Court's approach to such hearings is explained [here](#), including an Introduction to Zoom Best Practices.

### **Informal Requests to Change Mode of Hearing: In-person to remote / Remote to in-person**

[17] Once the hearing has been scheduled, any party who wishes to request a change in the mode of hearing shall submit a letter to the Judicial Administrator via the Registry<sup>3</sup> as soon as possible. For requests to change from remote to in-person hearing mode, such requests shall be made at least 4 weeks prior to the hearing, or shorter notice if there are urgent reasons (e.g., COVID-19 infection). The request should set out:

- a. the position of other parties;
- b. all facts relevant to the request; and
- c. the party's submissions relevant to the request.

### **Observing Court Hearings and Access to Audio and Video Recordings**

[18] Hearings of the Federal Court, other than pre-trial or dispute resolution conferences, are generally open and accessible to the public and media. Members of the public and the media who wish to observe a remote hearing must notify the Court of their interest at least 24 hours in advance of the hearing. The Court will provide these individuals with a link to connect to the hearing. See the [Hearing Lists page](#) for a national listing of hearings and to register to observe a hearing held by video conference.

[19] Except with leave of the Court, livestreaming the hearing is not permitted, and everyone is expressly prohibited from making a recording of a hearing. This is subject to the [Court's Policy on Public and Media Access](#). The Registry will retain an official audio recording of Court hearings. Copies will be accessible pursuant to the notice entitled [Pilot Project for Access to Digital Audio Recordings](#).

[20] Except with leave of the Court, access to video recordings will not be provided.

### **Gowning and Decorum**

[21] Until further notice, the requirement to gown for an appearance in Federal Court remains suspended for all hearings that proceed by video conference. Counsel and parties are expected to dress in appropriate business attire. Judges and Associate Judges [previously referred to as

---

<sup>3</sup> If submitted electronically, this should be filed using the E-filing portal.

prothonotaries] will similarly dress in business attire. Gowning for in-person hearings remains subject to the [Consolidated General Practice Guidelines](#) (issued June 8, 2022).

[22] Counsel and Witnesses shall ensure that they have a professional background – *whether actual or virtual* – when appearing for a Court hearing by video conference. A blurred background is acceptable.

[23] Where there is any risk of background noise, Counsel and Witnesses shall use a headset with an integrated boom microphone or a tabletop conference or gooseneck directional microphone.

### **Oral Advocacy**

[24] Counsel are encouraged to be prepared to highlight their arguments and direct the Court to relevant jurisprudence, instead of simply reading a prepared script or repeating their written submissions. In addition, they should be prepared to answer questions and to reply to the submissions of opposing counsel. Counsel or self-represented litigants who wish to observe Court hearings at which experienced counsel are appearing before the Court may consult the [Hearings List](#) and register to observe a hearing. At the [Court Index and Docket](#) tab, the Federal Court case index may be searched and individual case information viewed, including the name of counsel under the “Parties” icon.

### **Preparation of a Compendium for a Court Hearing**

[25] For the hearing on the merits of an application (in both T-files and IMM files), parties are encouraged in appropriate cases (such as where the record is large) to prepare a short compendium containing key excerpts from their record on which they intend to rely at the hearing. When a compendium is prepared, a copy shall be provided to both the Court (submitted electronically via the e-filing portal) and opposing counsel no later than 3 business days before the hearing. For actions, the topic of a compendium should be discussed at the pre-trial conference.

### **APPENDIX – LOCAL REGISTRY OFFICE EMAIL ADDRESSES**

- Vancouver and Yukon: [VAN\\_reception@fct-cf.ca](mailto:VAN_reception@fct-cf.ca)
- Calgary: [CAL\\_reception@fct-cf.ca](mailto:CAL_reception@fct-cf.ca)
- Edmonton and Northwest Territories: [EDM\\_reception@fct-cf.ca](mailto:EDM_reception@fct-cf.ca)
- Winnipeg, Regina and Saskatoon: [WPG\\_reception@fct-cf.ca](mailto:WPG_reception@fct-cf.ca)
- Toronto: [TOR\\_reception@fct-cf.ca](mailto:TOR_reception@fct-cf.ca)
- Ottawa: [fc\\_reception\\_cf@cas-satj.gc.ca](mailto:fc_reception_cf@cas-satj.gc.ca)
- Montreal and Nunavut: [MTL\\_reception@fct-cf.ca](mailto:MTL_reception@fct-cf.ca)
- Quebec: [QUE\\_reception@fct-cf.ca](mailto:QUE_reception@fct-cf.ca)
- Halifax: [HFX\\_reception@fct-cf.ca](mailto:HFX_reception@fct-cf.ca)
- Charlottetown: [CHA\\_reception@fct-cf.ca](mailto:CHA_reception@fct-cf.ca)
- Fredericton: [FRE\\_reception@fct-cf.ca](mailto:FRE_reception@fct-cf.ca)
- Newfoundland and Labrador: [STJ\\_reception@fct-cf.ca](mailto:STJ_reception@fct-cf.ca)



## NOTICE TO THE PARTIES AND THE PROFESSION

TO: Parties and the Profession

FROM: The Honourable Marc Noël,  
Chief Justice of the Federal Court of Appeal

DATE: September 1, 2020

SUBJECT: Resumption of in person hearings and the effect of the *Time Limits and Other Periods Act (COVID-19)*

### Hearings

[1] The Court's fall session begins on September 1, 2020. Three types of hearings will be held: hearings where all counsel appear in person, hearings where all counsel appear remotely and hearings where some counsel appear in person while others appear remotely (hybrid hearings). The Court's [Hearing lists](#) reflect which cases are being heard remotely or in person. Hybrid hearings will be identified as remote hearings.

[2] Counsel, parties and members of the public are invited to consult the information document prepared by Courts Administration Service titled [COVID-19: Recommended Preventive Measures – Resuming In-Person Court Operations](#). That document outlines the public health and safety measures in place on court premises and in the courtroom. Physical barriers have been installed in courtrooms. Counsel appearing in person are not required to wear a mask while addressing the Court but are invited to do if they wish.

[3] Physical distancing guidelines have significantly reduced space available in the public gallery for those wanting to attend a hearing. Until further notice, remote access to the hearings of the Federal Court of Appeal will be made available for all hearings, including those proceeding in person. Members of the public and the media are strongly encouraged to make use of the remote access to court proceedings. Additional information on public and media access to proceedings can be found on the [Court's website](#). Courtrooms remain accessible to the public and media. However, those attending court are required to wear non-medical masks and attendance will be greatly limited by the need to ensure physical distancing.

### Time Limits and Other Periods Act (COVID-19)

[4] The [Time Limits and Other Periods Act \(COVID-19\)](#) came into force on July 27, 2020. That Act suspends time limits set out in federal legislation, including the *Federal Courts Act* and numerous other acts pursuant to which proceedings can be instituted in the Federal Court of

Appeal. It suspends those time limits for the period that starts on March 13, 2020, and that ends on September 13, 2020. The Act does not, however, suspend the time limits established under the *Federal Courts Rules* or set by the Court in an order. For additional information about the time limits set out in the Rules, parties are invited to consult the Court's [Notice to Parties and the Profession dated June 11, 2020](#), addressing the gradual phase-out of the Suspension Period.

[5] Parties requiring additional information about the effect of the Time Limits and Other Periods Act (COVID-19) are invited to communicate with the Registry at [Information@fca-caf.gc.ca](mailto:Information@fca-caf.gc.ca).

---

“ Marc Noël ”  
Chief Justice,  
Federal Court of Appeal

## Appendix 2(V): Supreme Court of Canada

### SUPREME COURT OF CANADA

 

The Court	Cases	Judges	Act and Rules	Parties	Media	Visits	Library	Jobs
-----------	-------	--------	---------------	---------	-------	--------	---------	------

Home > The Court > Notice about COVID-19

**The Court**  
**Notice about COVID-19**  
Visit to Quebec City  
Warning about Fraudulent Emails  
Message from the Chief Justice  
Video about the Supreme Court and its work  
Role of the Court  
The Canadian Judicial System  
Accord to strengthen the independence of the SCC  
SCC Building  
Creation and Beginnings of the Court  
General Information about the Court  
On This Day  
Symposium 2017  
#SCCinWinnipeg  
Heraldic Emblems of the SCC

## Notice about COVID-19

The Supreme Court of Canada building is closed to visitors due to the COVID-19 pandemic. The Court has adapted the processes for [appeal hearings](#) to ensure the health and safety of all participants. Unless otherwise directed by the Chief Justice, counsel appear via videoconference. All hearings are livestreamed and are archived with certain exceptions.

Should you have any questions regarding filing of Court documents or other case-related matters, please consult [Answers to your questions in regards to the Registry and Courtroom practices and procedures during the COVID-19 pandemic](#).

Telephone calls made to the Registry's toll-free line (1-844-365-9662) are answered from 8:00 a.m. to 5:00 p.m. Eastern time. However, we strongly encourage you to continue to communicate with the Registry by email at [registry-greffe@scs-csc.ca](mailto:registry-greffe@scs-csc.ca). We appreciate your patience and understanding.

Thank you.

Date modified: 2022-04-26