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Notice to the Public and to the Profession – Clarifying the Mode of Counsel’s Appearance under the Interim Guidelines re Mode of Appearance for Ontario Court of Justice Criminal Proceedings

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In response to the easing of COVID-19 public health measures, which increased the Ontario Court of Justice’s capacity to accommodate in person proceedings, the Court issued Interim Guidelines re Modes of Appearance for Ontario Court of Justice Criminal Proceedings, which came into effect April 4, 2022.

The interim guidelines focus on identifying how the accused person will appear for particular proceedings. In response to inquiries with respect to the mode of appearance for counsel, the Court is clarifying its expectation regarding the mode of appearance for counsel in criminal proceedings.

The Court’s expectation is that counsel – both the Crown and defence/duty counsel – will attend all court hearings other than case management appearances in person if the accused person is appearing in person, unless a judicial officer directs otherwise.

The Court recognizes that there may be situations in which it is feasible and otherwise appropriate for counsel to attend a particular hearing by video even though the accused is attending in person. In making such requests, counsel should be prepared to address the factors set out in the applicable *Criminal Code* provision(s) authorizing a remote appearance, as well as the following: (i) any obstacle or hardship associated with an in-person appearance; (ii) whether requiring counsel to attend in-person would result in an adjournment or delay in the proceeding, particularly if the accused person is in custody; (iii) the availability of technology to accommodate a hybrid hearing; (iv) what arrangements have been put in place to facilitate private consultation between the accused person and their counsel, or between counsel, should the need arise.

Counsel should be mindful that it may be difficult to facilitate private consultation between participants who attend court using different modes of appearance. In any such situation, counsel should consult in advance with their client (where applicable) and with one another to ensure a meaningful appearance.

The Court continues to consult with its justice partners to determine how best to implement its vision of using technology to better serve court users and improve access to justice, including the use of remote technology (video or telephone) in appropriate cases.