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Notice to the Public and to the Profession – Interim Guidelines re Mode of Appearance for Ontario Court of Justice Criminal Proceedings

Published March 18, 2022; updated January 14, 2023**

The Office of the Chief Medical Officer of Health recently announced the easing of COVID-19 public health measures, including lifting capacity limits in public spaces such as courthouses. This has increased the Ontario Court of Justice’s capacity to return to in person proceedings.

The Court remains committed to using technology to better serve court users and improve access to justice, including the use of remote technology (video or telephone) in appropriate cases. Moving forward, OCJ criminal proceedings will be heard in-person, by remote technology (video or telephone) or a combination of in-person and remote technology. The Court will be engaging in consultations with its justice partners to determine how best to implement this vision in the long term. In the meantime, the Court has established interim guidelines for modes of appearance in criminal proceedings, which will come into effect April 4, 2022.

The chart below sets out the mode of appearance that will apply in OCJ criminal proceedings as of April 4, 2022. The mode of appearance identified below is always subject to a judicial officer directing otherwise. This will allow RSJs and RSJPs or their designate(s), to account for local circumstances. It will also allow the judicial officer presiding over a particular proceeding to address circumstances specific to that proceeding.

If the guideline set out in the chart conflicts with the content of any COVID-19 notice or directive previously issued by the Court, the guideline in the chart will prevail, unless a judicial officer directs otherwise.

OCJ Criminal Proceedings – Interim Mode of Appearances* as of April 4, 2022 (updated January 14, 2023)

****Note: The mode of appearance is subject to direction by the presiding judicial officer and/or RSJ or RSJP or designate.***

Before scheduling a matter to proceed by video, participants should confirm that the technology is available to accommodate the video appearance.

If the accused person is appearing in person for a proceeding other than case management appearance, the Court expects that counsel – both the Crown and defence/duty counsel – will attend the hearing in person, unless a judicial officer directs otherwise: see Notice – Clarifying the Mode of Counsel’s Appearance under the Interim Guidelines re Mode of Appearance for Ontario Court of Justice Criminal Proceedings (October 7, 2022).

Proceeding	Mode of Appearance (as of April 4, 2022 ; updated January 14, 2023)
Bail	
First appearances (from station; also WASH court)	Accused will appear by <u>video or audio</u> unless otherwise directed.
Bail hearings	<p>For <u>contested bail hearings</u>: Accused will appear <u>by video</u> unless otherwise directed.</p> <p>Note: If video is not available in the institution to accommodate the hearing, the accused must be brought in person, unless alternative arrangements for a video appearance can be made, e.g. bringing the accused to the courthouse to appear by video from a video suite within the courthouse.</p> <p>For <u>consent releases and remands</u>: Accused may attend by <u>video or audio</u> unless otherwise directed</p> <p><u>Sureties</u> may attend by <u>video or audio</u> unless otherwise directed</p>

Proceeding	Mode of Appearance (as of April 4, 2022 ; updated January 14, 2023)
Special bail hearings	The mode of appearance will be directed by the judicial officer presiding at the special bail hearing conference following discussion of the issue.
Special bail conference	<p><u>Video</u> unless otherwise directed</p> <p>Note: RSJ, RSJP or designate can authorize audio conferences as can the presiding judicial officer</p>
JPTs	<p><u>Video</u>, unless otherwise directed (for both counsel JPTs and self-rep JPTs)</p> <p>Note: RSJ or designate can authorize audio or in-person JPTs, as can the presiding judge</p>
Plea Court	<p>Accused will attend <u>in person</u> unless judge orders otherwise</p> <p><u>Exceptions for videos pleas on consent</u>: subject to a judge ordering otherwise, video pleas do not require prior approval of a judge in the following circumstances:</p> <p><u>In-custody</u> accused – if both the Crown and accused consent to the accused attending by video (revised January 14, 2023**)</p> <p><u>Out of custody</u> accused – if (i) both the Crown and accused consent to the accused attending by video <u>and</u> (ii) neither party is seeking a custodial sentence</p>

Proceeding	Mode of Appearance (as of April 4, 2022 ; updated January 14, 2023)
Trials / Prelims	<p><u>In person</u> for all participants (witness, counsel, accused), unless a judge has ordered otherwise</p> <p>Note: <u>Matters that have already been pre-tried and scheduled</u> (on consent) as virtual (or hybrid) hearings will continue in the mode scheduled, unless otherwise directed</p> <p>For <u>matters scheduled after April 4, 2022</u>, if all parties consent to some or all of a hearing being conducted on video (or as a hybrid hearing), the parties may presume the matter will proceed in the agreed-upon mode, subject to the presiding judge directing otherwise.</p>
Case management	<u>No immediate changes.</u>
Set date (case mgmt.) – in custody	<u>No immediate changes</u>
Set date (case mgmt.) – out of custody	<p><u>No immediate changes</u> – Appearances by accused persons and counsel will remain primarily by video unless otherwise directed.</p> <p>Note: Courthouses will continue local accommodations for in-person appearances by accused persons who are unable to attend by video or audio.</p>
Judge-led Case Mgmt Courts (JICMCs)	<u>No immediate changes,</u>
Trial Readiness	<u>No immediate changes:</u>
Specialized courts (e.g. drug treatment court)	<u>No immediate changes:</u>

Proceeding	Mode of Appearance (as of April 4, 2022 ; updated January 14, 2023)
Intake Court	<p>Applicants and Informants may attend in person; remote processes introduced during pandemic will remain as an alternative option (for consent bail variations, private prosecutions, private s. 810 applications)</p> <p>For peace officers, Eprojects (i.e. eIntake, eHub, eTelewarrant and eReports to Justice) will continue where applicable.</p>

** As of January 14, 2023, video pleas by accused persons who are in custody will require the consent of both the accused and the Crown to conform with s. 715.234 of the ***Criminal Code***, as amended by Bill S-4, ***An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts (COVID-19 response and other measures)*** (S.C. 2022, c. 17).