

# Best Practices for Remote Hearings

## Second Edition

May 28, 2021

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



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## Best Practices for Remote Hearings

### 1) Introduction

#### a) Purpose and Overview

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

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<sup>1</sup> See [Appendix B](#) for information regarding specific platforms, including links to user tutorials and training videos. See [Appendix C](#) (Zoom), [Appendix D](#) (MS Teams), and [Appendix E](#) (CaseLines) for advanced features and tips for specific platforms.

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

7. While these Best Practices relate primarily to video hearings, many of them may be adapted to telephone hearings.
8. These Best Practices should be read by lawyers and paralegals in conjunction with their applicable Rules of Professional Conduct.
9. The term “counsel” is intended to apply to a lawyer, paralegal, student-at-law or other licensing candidate representing a party to the proceeding. Where the term “party” is used, the principles apply to the party directly and to any counsel acting on their behalf.
10. Where the term “judge” is used, reference is to the judicial officer, adjudicator or decision-maker hearing the matter, including, but not limited to, a judge or master.

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

11. Parties must consult the Practice Directions and Notices to the Profession applicable to the Court and judicial region in which the remote hearing will take place before planning the hearing.<sup>2</sup>
12. Regularly reviewing Practice Directions and Notices to the Profession is particularly important during the COVID-19 situation because the courts are continually updating their procedures and guidance.

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

13. While these Best Practices were primarily developed for counsel, self-represented litigants may also find them helpful.
14. [Section 3](#) below includes principles directed at lawyers, paralegals or students-at-law/other licensing candidates where their matter includes a self-represented litigant.
15. [Appendix F](#) includes resources for self-represented litigants and other resources.

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

16. Remote hearings require civility, professionalism, cooperation, communication and collaboration between parties, both before and during the hearing.
17. Parties should be willing to adapt and cooperate in good faith in the preparation and conduct of remote hearings to achieve the just, most expeditious (fastest) and least costly resolution of proceedings.
18. If this is not already the case, counsel should become familiar with the technology used for remote hearings, understand how it works, and, where practicable, have the necessary hardware and software to participate meaningfully. Where it is not possible to access the required

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<sup>2</sup> See [Appendix F](#) for links to Practice Directions and Notices to the Profession.

technology, counsel should consider how they can facilitate a remote hearing using alternate tools or raise the issue with opposing parties and the court.

19. While the parties are engaged in an adversarial process regarding the argument of the legal and factual issues in the case, judges are entitled to expect that counsel will not be adversarial in assisting the court to facilitate fair and efficient hearings proportionate to the matters in issue.

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

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

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

23. Any party who becomes aware that a person who is supposed to participate in the hearing has been disconnected or is otherwise no longer participating in the hearing should immediately bring this information to the attention of the judge.

24. Counsel have discretion to determine the accommodations to be granted to opposing counsel and litigants in all matters that do not affect the merits of the case or prejudice the client's rights. Counsel should not accede to a client's demands that counsel act in an unreasonable or uncooperative manner. Counsel should discuss what is expected of counsel and clients during a remote hearing, including the duty to be civil and cooperative with opposing counsel and parties and to assist the court.

25. Parties should address their remarks to the court and avoid crosstalk with other counsel or parties. It is important to remember that a remote hearing is not a virtual meeting.

26. At all times during a remote hearing, parties should adopt a respectful attitude and be mindful of their facial expressions as they always have a camera on them. They should focus on the hearing and not do other tasks (such as checking emails) while appearing in court.

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

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

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

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

30. In addition, counsel should:

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

#### **4) Pre-Hearing Preparation**

##### **a) Collaboration with Opposing Parties**

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

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

- (i) the hearing format, including whether certain issues may be effectively argued in writing, with oral submissions at the judge's request only;
- (ii) any training needs on the relevant technology platform(s).<sup>3</sup> Where appropriate, parties should coordinate to ensure that all members of their teams are trained at the same time on the programs and procedures to be used;
- (iii) the need for any language interpretation, court reporting, or other services. Parties must ensure that these services are able to access the technology platform(s);
- (iv) the format of documents and a timetable, procedure and technology for document exchange, including reasonable arrangements for electronic service and, where appropriate, the use of a common platform from which documents can be downloaded;

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<sup>3</sup> See [Appendix B](#) for links to user tutorials and training videos for various platforms.

- (v) in cases involving documents subject to publication bans, sealing orders, or pertaining to particularly confidential or sensitive matters, whether such documents require special treatment when being transmitted or filed;
- (vi) the preparation of a draft order to be provided to the judge, if appropriate; and
- (vii) the hearing protocol (an agreement on procedures for the hearing) described below.

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

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

35. Parties should ensure that all transcripts, evidence and documents necessary for the hearing, including relevant materials in the court file (e.g., pleadings, past endorsements and orders), are assembled and available electronically in an organized and easily accessible format. Recognizing the need to prepare and the fact that judges, counsel and parties have varying levels of comfort with technology, parties should agree to serve the relevant documents on opposing parties and send them to the judge well in advance.

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

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

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

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

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



the document can be uploaded to the court's document sharing platform (e.g., CaseLines) at the time of the examination or cross-examination.

**c) Preparing Yourself for the Hearing – Testing the Technology and Planning Effective Participation<sup>4</sup>**

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

41. In advance of the hearing, participants should allow sufficient time for:

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

42. Participants should test their internet connection ahead of time at least once, and preferably twice, from the places where they will participate in the remote hearing.<sup>5</sup> Participants should avoid using public Wi-Fi because connection speeds are slow, and security is unknown. If possible, participants should use a hard-wired internet connection instead of Wi-Fi. If the internet connection in their location is slow, participants should consider using a phone as the audio connection to the hearing and the computer system for video streaming only. Most mobile phones have a tethering option (linking of a computer to a smartphone to connect to the internet) that can be used, but additional data rates may apply. A Wi-Fi dongle (a device that allows internet access) can also be used. If participants are sharing an internet connection with others in their household, the connection may be improved if they have sole use of the bandwidth and by limiting other audio and video streaming not related to the hearing. Another option is to have a second internet line for the household.

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<sup>4</sup> This section should be read in conjunction with "[Appendix B](#) — Recommended Hardware and Software".

<sup>5</sup> See [Appendix B](#) for information regarding required internet speed.

43. Participants should refrain from connecting to the internet through a virtual private network (VPN) or remote desktop, as this can create interruptions.
44. Parties should ensure that they have a system for their own use during the hearing that will allow them to both: (a) be connected to the video and audio stream of the hearing, and (b) view the documents they need during the hearing. If a party's remote access or VPN system does not permit a video and audio platform to function well, the party should have a separate set-up for the video and audio platform.
45. Where possible, two screens are recommended for the hearing: one screen to view and participate in the hearing, and a second screen to view documents locally. A second device (computer or tablet) to view documents locally is another option. If more than one screen is used, it is important to remember to look in the direction of the camera as much as possible when making submissions and addressing the court. The webcam should be installed on the screen with the video feed.
46. Parties should be mindful that changing positions during the hearing may make them go in and out of focus, which can be distracting for the judge and other parties. Sitting or using a standing desk are often better to reduce movement than use of a podium, for example. Parties should test their physical set-up in advance of the hearing to check whether the camera focus changes when they are making submissions.
47. Parties should consider how they will take notes throughout the hearing (e.g., paper or tablet/computer). Parties should not type on their keyboard while their microphone is unmuted, as the sound is distracting.
48. It is strongly recommended that each person who appears before the court – witness, self-represented litigant and every counsel (even if they are part of the same team) – have their own device/camera/microphone so that they appear in their own “window” on the video stream that is seen by the judge and all the other participants and are heard properly. Different set-ups, such as using one device for more than one person or one camera for an entire boardroom, often do not allow the judge and parties to see and/or hear the participants clearly.
49. Counsel should consider a way to communicate with clients and co-counsel privately during the hearing (e.g., email, text messages, WhatsApp, Jabber, etc.) in a manner that ensures confidentiality, is separate from communication channels with opposing parties, and allows counsel to keep a record of client instructions. Parties should avoid using the chat function of the video platform for such communications because they may be recorded or viewed by the judge or other participants in the hearing.
50. If applicable, parties should also discuss with their witnesses how they will communicate after the start of the hearing, in conformity with the relevant Rules of Professional Conduct.<sup>6</sup>
51. Participants should consider installing the relevant software on a secondary device such as a smart phone or tablet as a back-up if the connection to the hearing is lost.

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<sup>6</sup> See, in particular, the restrictions set out in rule 5.4-2 of the [Rules of Professional Conduct](#) regarding communications with witnesses giving evidence.

52. The devices from which participants connect to the remote hearing should be placed on a stable and stationary surface and not held. Movement requires more bandwidth and reduces both video and audio quality.
53. Participants who connect to the remote hearing using their phone should use the landscape mode instead of the portrait mode.
54. Participants should minimize background noise. Using a wired or Bluetooth headset with a microphone is recommended. If the headset runs on a battery, it should be sufficiently charged. Using the microphone installed on a computer is not recommended, as it may pick up background noise and can muffle the sound of the participant's voice.
55. Participants should close all applications on their computer that are not needed for the hearing. They should mute any notifications, such as those for email or other messaging applications, and their phone and other devices (such as home electronic systems like Google Home, Alexa, Echo and Siri) during the hearing.
56. Parties should ensure that the computer they will use at the hearing has completed any outstanding system updates before the hearing. To avoid any automatic update launching during a hearing, parties should ensure that their system is set to update outside business hours.
57. Parties should ensure that they have their phones (in silent mode) with them at all times during the proceeding so that they can be reached should the need arise.

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

58. At least one day in advance, parties should conduct a joint test run to familiarize themselves with the agreed-upon process and the technology. Parties should deal with any foreseeable technical issues before the hearing to avoid delays at the hearing itself.
59. All counsel and parties who will be participating in the remote hearing should participate in the test run.<sup>7</sup> They should do so from the location from which they plan to attend the hearing so that potential lighting, noise, background and other issues are addressed. Participants should configure the equipment in the exact way that they will use it at the hearing. This will reduce the likelihood of logistical or technical difficulties at the hearing.
60. Typical things that are covered during a test run include:
- (i) confirming the name, location and method of connection of each participant;
  - (ii) ensuring that the technology is functioning properly for everyone;
  - (iii) testing the video and/or audio feed of each party, including video clarity and audio quality;

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<sup>7</sup> If all parties to the remote hearing are experienced in participating in remote hearings using the same technology platform that will be used, a test run may take very little time or may not be required.

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

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

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

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

63. After the parties have discussed the matters listed in sections [4a](#)) and [4b](#)) above, the judge and all parties should discuss how the remote hearing will proceed. This discussion may take place either at a case conference before the hearing or, if it is not possible to do so, at the start of the hearing. It should deal with the practicalities of the hearing to the extent that they are not dealt with in existing guidance from the relevant court. It is particularly important to speak to the judge about how objections will be made, whether parties who are not making submissions should have their cameras on or off and whether screen sharing may be used. Individual judges may have different preferences.

64. The following is a non-exhaustive list of issues that parties may wish to raise with the presiding judge (or such other person as the judge may designate), should the judge wish to discuss such matters:<sup>8</sup>

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<sup>8</sup> The parties should give careful consideration to which issues in the list apply to their case, and create a tailored list of issues adapted to their situation.

**a) The Substance of the Hearing**

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

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

- (i) any directions from the judge regarding etiquette and formality that differ from Notices to the Profession or Practice Directions or the best practices outlined in [section 10](#) below
- (ii) how to ensure that the parties can see the judge at all times during the hearing
- (iii) whether microphones and cameras should be on or off when a participant is not speaking, and whether the court would like participants to have a photograph rather than just their name as their screen identifier when their video is off
- (iv) display names and how participants will be identified on the platform (e.g., John Smith for the D Acme Inc.)
- (v) whether breakout rooms will be available for counsel on recess
- (vi) attendance of the clients and the conduct of a roll call to ensure that all the persons who are expected to participate in the hearing are present and have been admitted into the remote hearing room

**c) The Logistics of the Hearing**

- (i) structure of the hearing, including the order of presentation, turn-taking, time limits, and any need for participants to take a break to attend to personal matters (particularly during the COVID-19 pandemic)
- (ii) how participants should alert the judge if they encounter any technical difficulties, including if they are disconnected during the hearing
- (iii) how counsel or a self-represented litigant can make it known that they want to speak or object
- (iv) a mechanism by which a self-represented litigant can indicate to the judge a lack of understanding or need to interrupt for clarification
- (v) whether the judge will have the technological resources available to allow viewing the hearing while simultaneously navigating electronic documents
- (vi) the use of compendiums (see [section 8c](#)) below)
- (vii) a standard approach to referencing documents during the hearing (see [section 8e](#)) below)

- (viii) how documents referenced in the hearing will be shared with the court and the other parties (e.g., by sharing a screen, for example, through CaseLines, or by reference to the electronic materials in the possession of parties and the court)
- (ix) if applicable, how any private or sensitive information will be referred to and protected during the hearing (see also [section 8d](#) below)
- (x) what participants should do during breaks (e.g., turn off their cameras and mute their microphones rather than disconnecting from the Zoom session) and to signal that they have returned from breaks (e.g., turn on their cameras)
- (xi) if applicable, the practicalities surrounding the testimony of witnesses, including:
  - o exclusion of witnesses
  - o appropriate instructions to be given to witnesses with respect to communications while they are testifying, including in cases where some witnesses are appearing remotely from the same office or household
  - o how the court can see the witness and the physical room in which the witness testifies to ensure that the witness is alone and does not have access to documents, notes or messages that they are not entitled to have during their testimony
  - o whether witnesses should be in a separate virtual waiting room before joining the hearing to give their testimony
  - o the administration of the oath or affirmation
  - o how a witness can be excluded to deal with an objection
  - o the provision of documents to witnesses and, where applicable, the procedure to be followed for documents or exhibits that are not capable of being reduced to an electronically-stored format
  - o marking of exhibits, and
  - o how exhibits will be housed electronically
- (xii) the logistics of the attendance and participation of expert witnesses, including whether counsel require expert witnesses to attend the full hearing or the testimony of the opposing party's expert witness
- (xiii) the logistics of interpreters' participation (including sign language interpreters, where applicable) and how to facilitate their involvement, including the choice of platform for their participation. The interpreter should also be consulted about this
- (xiv) whether, how and when participants can distribute a document or legal authority that has not been circulated before the hearing

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

- (i) whether the proceedings will be recorded or otherwise transcribed and available to the parties after the hearing
- (ii) how interested non-participants will be permitted to access the proceeding, including whether a separate attendee room will be available (e.g., using Zoom’s webinar format)
- (iii) how interested non-participants will be permitted to access evidence filed during the hearing, where appropriate
- (iv) whether any special measures are to be followed in cases subject to a publication ban, sealing order, or any other confidential requirements

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

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

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

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

- (i) whether clients have the right to speak during the hearing and, if so, when and how they can do so;
- (ii) the process and the technology. Counsel should keep in mind that some clients may be anxious about taking part in a remote hearing without being physically in the same room as their counsel and having to deal with unfamiliar technology;
- (iii) potential technology-related issues that may arise during the hearing, the best way of avoiding such issues and ways of handling them (see [section 4c](#) above);
- (iv) keeping instructions regarding any contingency plans (e.g., alternative dial-in instructions) nearby throughout the course of the hearing;
- (v) how clients will be able to communicate with one another and with counsel privately during the hearing (e.g., email, secure instant or text messaging) while maintaining lawyer-client privilege;
- (vi) where applicable, how clients will access the documents used in the hearing;
- (vii) the potential audience who may view the proceeding; and
- (viii) [section 10](#) and [Appendix A](#) of these Best Practices (“Court Etiquette and Dignity During the Hearing” and “On-Screen Tips for Counsel, Parties and Witnesses”).

68. If the proceedings involve or concern any children, counsel should discuss with their clients how to ensure that those children cannot hear the proceedings.

## **7) Witnesses**

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

### **a) Preparation**

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

71. Parties should:

- (i) prepare witnesses as to appropriate behaviour and etiquette in a remote hearing, and any specific requirement from the court regarding their participation;
- (ii) explain the hearing process to their witnesses and the importance of being alone in a quiet room for their testimony;
- (iii) advise witnesses that, at the beginning of their testimony, they may be asked by the judge or counsel to conduct a video survey of their physical space to ensure, among other things, that no one else is present, the witness has no notes or documents that they are not allowed to have, the witness has (and can view) no other screens and has no other devices within reach, except where required to view documents put to them during their examination;
- (iv) take steps to familiarize witnesses with the technology and software before the hearing. It is ideal to do a test run using the technology with witnesses beforehand;
- (v) draw a witness's attention to the need to pause before answering a question to allow for any objections that may be raised. This is especially important when using video technology because the format may impede opposing parties' ability to object;
- (vi) discuss the witnesses' preferred method of taking the oath or affirmation and whether the witnesses require any religious items to be on hand for that purpose;
- (vii) ensure that witnesses have copies of all relevant documents to which they may be referred during their examination. Parties should discuss with witnesses the procedure that will be used during the hearing to show them documents (e.g., screen sharing, reference to an electronic joint book of documents, etc.);
- (viii) make witnesses aware of the potential audience who may view the proceeding; and



- (ix) review [section 7b](#)), [section 10](#) and [Appendix A](#) of these Best Practices (“Attendance at the Hearing and Access to Documents”, “Court Etiquette and Dignity During the Hearing” and “On-Screen Tips for Counsel, Parties and Witnesses”) with witnesses.

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

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

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

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

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

76. If it is necessary for someone else to be in the same room as the witness while the witness testifies (e.g., IT support staff), the court’s permission should be sought. Any individual in the room with the witness should be clearly identified for all participants and should be instructed not to communicate with the witness while the witness is testifying.

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

78. Witnesses should not use a digital background so that the judge and parties can see that they are alone and to avoid any distractions.

79. Witnesses should have recently read all affidavits or statements that they made in the proceeding. During their testimony, they should not review any documents or access any electronic resources (using the Internet or otherwise), other than: (a) the documents put to them during their examination; (b) any documents they may ask for and receive permission to review; and (c) in the case of expert witnesses, their own expert reports and other expert reports, provided that any such reports do not contain any notes or annotations made by the witness or anyone else.

80. Witnesses should not refer to or rely on a script or any notes while giving evidence. If, prior to their examination, witnesses are given documents intended to be referred to during the examination, they should not make any notes or annotations on the documents.

81. Witnesses should not communicate with anyone outside the remote hearing room during their testimony. While giving evidence, witnesses should not have another open window on their

screen/monitor or have any other open device visible, except if this is required to view documents put to them during their examination.

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

83. If a party has legitimate concerns regarding the ability and/or willingness of a witness to respect the applicable rules while testifying remotely, the party should seek directions from the court. Where it is shown to be warranted, it may be possible for the witness to attend and testify from a more controlled environment, such as a court reporting office.

## **8) Documents**

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

84. The recommended format for documents used at the hearing is a searchable PDF that is bookmarked.<sup>9</sup>

85. Documents and files should not be password-protected unless there are special reasons for doing so.

86. Where possible, parties should hyperlink authorities in their written argument to websites where the authorities may be viewed without charge, such as the judgment databases found on the websites of Canadian courts or [www.canlii.org](http://www.canlii.org). If the written argument refers to a specific paragraph of an authority, the hyperlink should be to that specific paragraph, where feasible.

87. Parties should ensure that the page numbers that appear on the documents correspond to the PDF page numbers and/or the page numbers assigned to the documents by any software used for the hearing, such as CaseLines.

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

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

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

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

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<sup>9</sup> Electronic bookmarks work in much the same way as paper tabs in printed briefs. They are simply shortcuts to specific sections of a document which, when clicked, will take the reader directly to that section. Once added to a PDF document, bookmarks appear in a navigation panel, typically on the left-hand side of the screen.

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

92. The parties should discuss how the documents in the JBD will be treated for the purpose of the hearing, including whether the authenticity of the documents is admitted, whether the documents are admitted for the truth of their contents, and whether there are any documents in the JBD that a party wishes to treat as exceptions to the general agreement on the treatment of the documents in the JBD.<sup>10</sup>

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

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

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

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

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

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

98. Parties should prepare submissions with reference to the page numbers in the software platform that will be used at the hearing. For example, where it is used for a hearing, the CaseLines page references should be the only page references used in preparation for the hearing.

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

99. Some proceedings involve documents that contain information that is sensitive or private to a party or a witness. If no specific disclosure restrictions apply (such as a statutory provision or a publication ban), parties should discuss and try to reach an agreement before the hearing as to how to identify and refer to such evidence during the hearing, especially in cases involving

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<sup>10</sup> See *Girao v Cunningham*, [2020 ONCA 260](#), with respect to JBDs generally.

webcasting or other electronic transmission. For example, parties may agree that it is unnecessary to display a specific document or page that contains detailed medical or financial information about an individual, and that parties may instead refer to the page number and the information without displaying or expressly mentioning the details.

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

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

101. During the hearing, examining parties should ensure that they refer to documents clearly for the record and for all participants to follow along, including the document name, the page number in the document sharing platform that will be used at the hearing (e.g., CaseLines) or where a JBD is used, the tab number and the page number in the JBD (or other PDF document where the document is located) and/or the document number. Parties should not refer to a paper copy page number.

102. Parties should consider proceeding more slowly than usual when referring to documents as it may take longer for the judge and the other parties to locate the electronic documents.

103. It is preferable for the parties to work with the electronic version of documents instead of a printed version. It is easier and less confusing if the parties and the court are using the same medium for reviewing documents during the hearing.

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

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

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

107. Before using the screen sharing function, parties should consider that screen sharing reduces the size of all participants’ windows on the screen, and that the focus of the video will be the document, not the images of the participants. Screen sharing could thus interfere with the judge seeing a witness clearly and up close during the party’s cross-examination of the witness. Screen sharing is not a replacement for providing to the court the precise document reference in the document sharing platform that is used at the hearing.

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

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

## **9) Hybrid Hearings**

109. A hybrid hearing is a hearing that is conducted in part in-person, and in part remotely. There are different permutations for hybrid hearings, including when the judge and all parties are in the courtroom and a witness appears remotely; when the judge and at least one party are in the courtroom and one or more party appears remotely; and when a hearing starts in-person but is completed remotely.

110. Whether a hybrid hearing is appropriate must be assessed on a case-by-case basis. The form of hearing is in the discretion of the judge presiding over the hearing.

111. These Best Practices do not address when it is appropriate to have a hybrid hearing. However, most of these Best Practices apply or may be adapted to hybrid hearings.

112. In considering whether to request a hybrid hearing, parties should consider the individual circumstances of the case, including whether there are particular circumstances that require remote witness testimony and whether a hybrid hearing could achieve efficiencies. For example, a witness may have personal circumstances that make travelling to a hearing difficult or there may be some efficiency achieved by an out-of-town witness giving brief testimony remotely.

113. Once it is recognized that a hybrid hearing may be required, efforts should be made to engage with opposing parties to discuss and agree on a hearing protocol (see [section 4b](#) above). If the type of hybrid hearing requires the use of cameras, screens and other equipment in the courtroom, parties should consult with court staff in advance to determine the availability of equipment, as well as applicable technological capabilities or restrictions.

114. Hybrid hearings that necessitate the use of a video platform, such as where a party is participating remotely, may create challenges like strain on courtroom Wi-Fi and feedback when multiple parties in the courtroom log into the video platform. Wi-Fi capability should be tested in advance of the hearing. To reduce feedback, it is recommended that in-person participants use a headset. Each participant in the courtroom should also have their own camera.

115. The format of documents used in a hybrid hearing should be consistent for in-person and remote participation.

116. Portions of a hearing may need to be converted to another format during the course of the hearing for a variety of reasons. Parties should consider in advance how a sudden change in the format of the hearing will be accomplished. It may be necessary for parties to ask the judge for some additional time to prepare to proceed in the new format.

117. Parties should not use requests for remote hearings to gain an advantage or create unfairness.

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

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

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

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

121. Professional etiquette should be maintained. In particular:

- (i) Business attire is required for anyone with a speaking role. Counsel should dress as if they were attending court, pursuant to current Practice Directions.<sup>11</sup>
- (ii) Participation in the hearing should be from appropriate surroundings.
- (iii) Reasonable steps should be taken to reduce the risk of interruptions during the hearing.
- (iv) Participants should ensure that the background visible on the screen is appropriate for a court hearing. The background should be as neutral as possible and, except for witnesses, may be replaced by an appropriately dignified artificial digital background. However, digital backgrounds should not be used if they distort the image of the participant, as this may be distracting.
- (v) Participants should not move away from the screen or turn off their cameras during the hearing without permission of the judge.
- (vi) The usual restrictions on eating and drinking in a courtroom apply. Parties may therefore have water available to drink, but nothing else unless the judge allows otherwise.
- (vii) The judge and counsel should be addressed as if they were in a physical courtroom.
- (viii) Unless directed otherwise by the court, it is not necessary to stand when a judge joins the hearing or when addressing a judge. In lieu of bowing to the judge, counsel may nod or bow their heads when the judge enters the video.
- (ix) Background noises should be reduced to a minimum and avoided where at all possible. Participants should mute their home and mobile phones, and turn off notifications on any digital devices. It is ideal to use a headset and microphone to reduce background noise and for clarity of audio.
- (x) Participants should speak one at a time, and remember to pause and speak slowly and clearly, especially where there is any audio/video lag.
- (xi) Participants should look at the camera when they are speaking, if possible.

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<sup>11</sup> By Practice Direction, the requirement to gown has been suspended during the COVID-19 pandemic. See [Appendix F](#) for links to the Practice Directions.

- (xii) Participants should ensure that they are adequately lit to allow their face to be seen. They should remember that they always have a camera on them and be mindful of their facial expressions even when they are not speaking.
- (xiii) If applicable, participants should select an appropriate display name. The display name should be the participant's first and last names. Counsel may also indicate in their display name the name of the party that they represent or an abbreviation thereof (e.g., "P" for plaintiff and "D" for defendant).
- (xiv) Unless addressing the judge, or otherwise requested to speak, all participants should have their microphones muted.

122. Parties should be mindful that regular court hours continue to apply, and that court staff and participants to the hearing are entitled to take breaks on a regular basis.

### **11) Recording the Hearing**

123. Unless authorized by the judge or a Practice Direction, participants shall not make any recording (audio, video or otherwise) of the proceedings, and shall not take photos or screen captures of the proceedings.<sup>12</sup>

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

### **12) Post-Hearing**

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

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<sup>12</sup> See [section 136](#) of the *Courts of Justice Act*, RSO 1990, c C.43. See also the [Consolidated Provincial Practice Direction regarding the use of electronic devices in the courtroom](#) which permits counsel, self-represented parties, the media and journalists to use electronic devices to make an audio recording of the proceeding for note-taking only.

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

1. This section should be read together with [section 10](#) above (“Court Etiquette and Dignity During the Hearing”).

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

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

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

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

4. Be mindful of what is behind you. Choose a solid neutral wall if possible and remove any clutter or personal items that may distract others. Alternatively, many virtual platforms have a feature that allows you to put up a neutral background. If using one, however, ensure that it does not distort your image and it is tasteful and not distracting. A high-resolution background is preferable. Using a solid colour background and a higher quality camera results in a better virtual background. Because virtual backgrounds sometimes fail, make sure that what is behind you is appropriate.

5. You should sit throughout the hearing. If you prefer standing, be prepared to stand for the duration of the hearing. Alternating between sitting and standing during a hearing may make you go out of focus and require camera adjustments that could be distracting. If no camera adjustments are required, you may be further from the camera than you should be to ensure that the judge and the participants in the hearing see you well.

6. Sit or stand close enough to the camera so that your face appears clearly. Consider using a “medium close up” frame (from just below the shoulders to the top of your head). However, if you speak with your hands, frame your image so that your hands are visible. Position the camera at eye level or slightly above eye level. Remember that movement can make you go out of focus. Be particularly mindful of this if your camera has an auto-focus function.

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

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

9. Make sure to turn off any video filter before the hearing begins.



**c) Attire and Etiquette**

10. Observe all normal court etiquette and procedures in the virtual courtroom environment.
11. If not directed to robe, wear neutral, muted or solid coloured business clothing. Avoid plaids, stripes, polka dots, very bright colours, and the colours white or red — they can cause distracting effects on screen. If you are using a virtual background, avoid having the colour of your clothes match the colour of the virtual background or wall behind you.
12. Even though you will likely be seated throughout the hearing (unless directed otherwise by the judge), you should still wear appropriate clothing from the waist down in the event you are required to suddenly stand up or your video is not off when you take a break or convene for the day.
13. Whether you are speaking or not, if your video is on, be wary of unwanted facial expressions.
14. Drinking should be limited to water and you should use a clear drinking glass to avoid any unnecessary distractions.
15. Do not swivel your chair or rock back and forth.

**d) Communicating Effectively**

16. Remember to unmute before speaking.
17. When speaking, it is best to look directly at the webcam, not at the screen or the person to whom you are speaking, as this gives the other participants direct eye contact with you. At the same time, when making submissions or asking questions, you will want to see the judge to understand their body language and non-verbal cues. Optimize your set-up so that it allows you to see the other participants, your notes and the other documents that you need while also generally looking in the direction of the camera.
18. If possible, use a set of headphones with a microphone as your voice will come through clearer and louder than if you are speaking into your computer microphone a foot or two away. This will also reduce the amount of background noise.
19. Speak directly into the microphone. Do not turn your head from side to side while talking or your voice will fade in and out. If using your computer microphone, do not sit too far away from the microphone. Do not shout at the microphone.
20. Avoid moving around or making sudden gestures as that can make the video choppy. Avoid shuffling papers or making other distracting noises like tapping on a keyboard while your microphone is unmuted.
21. Refrain from speaking over other participants to assist with the court's transcription. Be mindful of any lag in the audio to ensure that a participant is done speaking before you begin to speak.

22. Consider pausing at regular intervals during your argument or examination to allow the judge to ask questions and to ensure that other participants have an opportunity to speak if necessary and appropriate.

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

**e) Referring to Documents**

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

25. Provide the court with the document page numbers in the document sharing platform that is used at the hearing (e.g., CaseLines).

26. Proceed more slowly than usual when referring to documents as it may take longer for the judge and the other parties to locate the electronic documents.

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

## APPENDIX B: Recommended Hardware and Software

### **Hardware**<sup>13</sup>

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

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

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

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

#### ***Recommendations***

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

#### A. Required

##### 1. High-speed internet

##### ○ **Zoom:**

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

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<sup>13</sup> Quoted technical specifications and links are as of April 2020 and may change over time as hearing software platforms are updated. Consult the hearing software provider's website before your hearing to ensure your devices are adequate.

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

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

- **Zoom:**
  - Processor—single core 1Ghz or higher dual core 2Ghz or higher (i3/i5/i7 or AMD equivalent)
  - RAM—4Gb recommended
- **Microsoft Skype:**
  - Windows:
    - RAM: 512 MB
    - Processor speed: 1GHz
  - Mac:
    - RAM: 512 MB
    - Processor speed: 1GHz
- **Microsoft Teams:**
  - Windows:
    - RAM: 4 GB RAM; 2 GB RAM (32-bit)
    - Processor speed: 2.0 GHz
  - Mac:
    - RAM: 4 GB RAM
    - Processor speed: Intel processor
- **Cisco Webex:**
  - Processor speed for resolution of 360p:
    - Sending: 1 GB of RAM and a dual-core processor
    - Receiving: 1 GB of RAM and a dual-core processor
  - Processor speed for resolution of 720p:
    - Sending: 2 GB of RAM and a quad-core processor
    - Receiving: 2 GB of RAM and a dual-core processor

- **CourtCall:**
  - Test equipment compatibility here: <https://demo.courtcall.com/troubleshooting/webrtc/>
- **CaseLines:**
  - No specific requirements: any computer generally capable of reliably streaming internet video will suffice

### 3. Webcam

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

### B. Optional But Recommended

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

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

## **Software**<sup>14</sup>

### **General Comments**

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

These Best Practices make no representations as to the safety or security of the programs described herein. Parties should ensure that their devices employ standard security features (e.g., virus protection software), and that they review the security and privacy information and follow recommendations made by the vendors to ensure privileged and confidential information remains secure.<sup>15</sup>

### **Recommendations**

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

#### A. Required

##### 1. Hearing software designated by the court<sup>16</sup>

###### ○ **Zoom:**

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

###### ○ **Microsoft Skype:**

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

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<sup>14</sup> Quoted technical specifications and links are as of April 2020 and may change over time as hearing software platforms are updated. Consult the hearing software provider's website before your hearing to ensure your devices are adequate.

<sup>15</sup> Refer to the National Security Agency's document "[Selecting and Safely Using Collaboration Services for Telework](#)" for more information on internet-based collaboration tools.

<sup>16</sup> At time of writing, no platform has been designated by the Ontario Superior Court of Justice, but several hearings have been conducted by the Court via Zoom. For the purposes of this Appendix, we presume that the platform most likely to be used is Zoom, but have, where possible, provided information concerning commonly used alternative platforms.

- **Microsoft Teams:**

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

- **Cisco Webex:**

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

- **CourtCall:**

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

- **CaseLines:**

- Registration and demonstration video: <https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/supplementary-notice-september-2-2020/faq-caselines/>

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

- **Zoom:**

- macOS X with macOS 10.7 or later
- Windows 10 (Windows 10 Home, Pro, or Enterprise; S Mode is not supported)
- Windows 8 or 8.1
- Windows 7
- Windows Vista with SP1 or later
- Windows XP with SP3 or later
- Ubuntu 12.04 or higher
- Mint 17.1 or higher
- Red Hat Enterprise Linux 6.4 or higher
- Oracle Linux 6.4 or higher



- CentOS 6.4 or higher
- Fedora 21 or higher
- OpenSUSE 13.2 or higher
- ArchLinux (64-bit only)
- **Microsoft Skype:**
  - Windows Desktop:
    - Windows 10 Version 1507 or above
    - Windows 8.1
    - Windows 8
    - Windows 7 (32-bit and 64-bit versions supported)
  - Windows 10:
    - Version 12—Windows 10 (version 1607 and 1703)
    - Version 14—Windows 10 (version 1709) or higher
  - Mac:
    - Mac OS X 10.10 or higher
- **Microsoft Teams:**
  - Windows:
    - Windows OS: Windows 10 SAC, Windows 8.1, Windows Server 2019 or Windows Server 2016
  - Mac:
    - One of the three most recent versions of macOS; when a new version of macOS is released, the macOS requirement becomes one of the then-current three most recent versions: the new version of macOS and the previous two versions
- **Cisco Webex:**
  - Windows—any of:
    - Windows 10
    - Windows XP SP3

- Windows Vista (32-bit/64-bit)
    - Windows 7 (32-bit/64-bit)
    - Windows 2008 Server (64-bit)
    - Mac—any of:
      - Mac OS X 10.6 Snow Leopard
      - Mac OS X 10.7 Lion
      - Mac OS X 10.8 Mountain Lion
    - Smartphone
      - Apple iPhones and iPads: iOS 5.0 and later
      - Android devices: Android 2.1 and later
  - **CourtCall:**
    - Test equipment compatibility here: <https://demo.courtcall.com/troubleshooting/webrtc/>
  - **CaseLines:**
    - Windows: Windows 8 or higher
    - Mac: OS X 10.6 Snow Leopard or higher
    - Apple iPhone/iPad iOS 5.0 or higher
    - Android: 2.1 or higher
3. PDF software to read documents filed in the proceeding
- Adobe Acrobat
    - Home page: <https://www.adobe.com/ca/>
    - Support: <https://helpx.adobe.com/ca/support/acrobat.html>
    - User guide: <https://helpx.adobe.com/ca/acrobat/user-guide.html>
  - Nuance: [https://shop.nuance.com/store/nuanceus/en\\_US/Content/pbPage.home](https://shop.nuance.com/store/nuanceus/en_US/Content/pbPage.home)
4. Microsoft Word to read factums filed in the proceeding in Word format (if ordered by court)
- Word help & learning: <https://support.office.com/en-us/word>

## B. Optional But Recommended

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

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

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

## APPENDIX C: Zoom Advanced Features & Tips

### *Advanced Features of Zoom*

- Use “**Share Screen**” to [share documents on your computer](#). If sharing a file from your computer, share the document, not the “screen,” so that you share only the document.
- Use the mobile Zoom app to attend proceedings by phone (if attendance via computer is not possible).
- Icons may be used (e.g., raised hand; thumbs up) for agreed-upon purposes such as raising objections or asking to speak without interrupting verbally.
- [Use a Virtual Background](#) to hide clutter or eliminate distractions but be prepared if the background fails – set a background in your Zoom app in Settings > Virtual Background. Note that you need a very good camera to use this setting.
- [Touch-up my appearance](#) using Zoom’s built-in filter. To turn it on, go to Settings > Video > Touch-up my appearance.
- To [always join a meeting with your mic muted](#), in the Zoom app, go to Settings > Audio > and check the option to “Mute my microphone when joining a meeting”.
- Use “[Meeting chat](#),” if given permission to do so, to:
  - Upload files to be shared with all participants
  - Type information to be shared with all participants (e.g., spellings of names, hyperlinks to websites including CanLII cases or statutes)

### *Tips*

- Do NOT use the chat to:
  - speak to individual participants
  - communicate with witnesses giving testimony
  - carry on otherwise-privileged conversations with clients

### *Video Layouts*

- There are [three video layouts](#) when there is no screen sharing: speaker, gallery, and floating thumbnail.
- To [pin](#) or [spotlight](#) video during a meeting, go to “Manage Participants”, click on the participant’s name and select “Pin Video.” Pinning a video during a meeting will allow you only to see that specific speaker.

- Spotlight video puts up to 9 participants as the primary speakers with video.
- [During screen sharing](#), the view will be like speaker view, and the shared content will be below the video tiles.
- [Video order can be customized](#) by dragging and dropping any participant video tile to the location on the screen you want.

**Sources**

- Zoom Help Centre, [Zoom video tutorials](#)

## APPENDIX D: MS Teams Advanced Features & Tips

### *Advanced Features of MS Teams*

- Use “**Share Screen**” to share documents on your computer (unless documents have been uploaded to a shared file in Teams, in which case, use the version in the shared folder). If sharing a file from your computer, share the document, not the “screen,” so that you share only the document.
- Use the mobile MS Teams app to attend proceedings by phone (if attendance via computer is not possible).
- Icons may be used (e.g., raised hand; thumbs up) for agreed-upon purposes such as raising objections or asking to speak without interrupting verbally.
- Use “**Background filter**” to add a virtual background if you are unable to appear from a visually appropriate location. Teams has several templates; those that look like offices or other sparsely-decorated rooms are recommended.
- Use “[Meeting chat](#),” if given permission to do so, to:
  - Upload files to be shared with all participants
  - Type information to be shared with all participants (e.g., spellings of names, hyperlinks to websites including CanLII cases or statutes)

### *Tips*

- Do NOT use the chat to:
  - speak to individual participants
  - communicate with witnesses giving testimony
  - carry on otherwise-privileged conversations with clients

### *Video Layouts*

- There are [several video layouts](#): gallery, large gallery, together mode, and focus. On the Teams desktop or mobile app, select the “More options” button in the meeting controls to choose a layout.
- To [spotlight](#) someone else’s video during a meeting, right-click on the person’s video and select “Spotlight.” You can also select “Show Participants” to see a list of everyone in the meeting, then select a person’s video from the list to spotlight.
- Note that you cannot spotlight video if your view is set to large gallery or together mode and only one video can be put into spotlight at a time. You cannot spotlight on the mobile app, but you will see a spotlight if one is started from the desktop app.

- To [pin](#) someone else's video during a meeting, select "More Options" from the person's video and select "Pin."

### **Sources**

- Canadian Bar Association, [MS Teams and Virtual Hearings in the Provincial Court of BC](#)
- Justice Quebec, [Hearings Conducted Through Technological Means: Microsoft Teams User Guide for the General Public](#)
- Microsoft, [Microsoft Teams video training](#)
- Provincial Court of British Columbia, [Guide for Appearing in the Provincial Court Via Microsoft Teams](#) (Appendix "A" to the Guide to Virtual Proceedings)
- Provincial Court of British Columbia, [Q & A: Virtual hearings and MS Teams in the Provincial Court of BC](#)
- Tribunals Ontario, [Microsoft Teams User Guide](#)



## APPENDIX E: CaseLines Advanced Features & Tips

### *Advanced Features of CaseLines*

- **“Find”** functions:
  - Lets you jump to any page in any case document almost instantly by typing the CaseLines-assigned page number into the “Find Page” box
  - Lets you [direct others to a page](#); you control what pages they see
  - Lets you [search for words](#) anywhere in the case
  - “Viewing History” tab lets you jump back quickly to previously viewed pages
- **“Notes”** function:
  - Lets you add virtual “sticky notes” that can be private (invisible to everyone else), or shared with just your team, or visible to everyone with access to the case
  - Notes can be added to specific document pages, or to the case generally
  - Notes can be downloaded any time you wish
  - Choose different colours for different topics / issues
- **“Present”** mode: allows you to share pages of the case from within the shared case file (without sharing your own dashboard or notes)
- **“Download”** function lets you download:
  - [Individual “documents”](#) (note that a “document” includes an entire Motion Record, Book of Authorities, etc., if these are uploaded as single PDFs)
  - The [entire “bundle”](#) (i.e. the whole case) as a single PDF with each document bookmarked
  - An [“eBridge” PDF](#) that hyperlinks to all your current CaseLines cases (and lets you skip login)
  - [Notes](#) (except for the private notes of others) in PDF, Word or spreadsheet format
- **“View”** function lets you:
  - Zoom in and out, and pan and zoom
  - View metadata from the source file
  - Rotate document

- “**Extra Pane**” function (page icon at top right of displayed page) allows you to view two documents side-by-side

### **Tips**

- [Download a copy of your case](#) so you can prepare for your hearing offline (you’ll need to work from copies with the CaseLines-assigned page numbering), and in case there is a problem with CaseLines on the hearing day
- Follow your court’s mandated document naming convention for documents when uploading to CaseLines. For example, the Ontario Superior Court of Justice protocol is as follows:
  - Document type (including the form number in family cases),
  - Type of party submitting the document,
  - Name of the party submitting the document (including initials if the name is not unique to the case), and
  - Date on which the document was created or signed, in the format DD-MMM-YYYY (e.g. 12-JAN-2021).

Example of a respondent’s filings, as provided by the Ont. SCJ:

- Factum – Respondent Smith – 01-JAN-2021
  - Responding Record — Respondent Smith – 01-JAN-2021
  - Oral Argument Compendium – Respondent Smith – 01-JAN-2021
  - Transcript Brief – Respondent Smith – 01-JAN-2021
  - Exhibit Book – Respondent Smith – 01-JAN-2021
  - Financial Statement 13.1 – Applicant Smith – 01-JAN-2021
- Create an index of key documents and pages, and use CaseLines-assigned page numbers in your notes
    - You will likely be required to refer to CaseLines-assigned page numbers rather than document names and tab numbers when directing the court to pages within the case file
    - You will need to enter CaseLines-assigned page numbers into the “Find Page” field to navigate the case file during your hearing
    - The quickest way to achieve this is to have an index of key pages so you can cut and paste page numbers into the “Find Page” field quickly

- Consider uploading your index to the appropriate CaseLines folder prior to your appearance, to assist the Court in following your argument
- Upload draft Orders (in Word) in the appropriate folder of your case bundle (e.g. if you are the moving party, upload the draft Order to your motion materials folder in the case bundle)
- Hyperlinks:
  - Hyperlinks within documents uploaded to CaseLines will still work. Their use is encouraged
  - Use CaseLines' built-in "hyperlinks" function (see [instructional video](#)) to link documents to other documents (e.g. link your factum)
- Note that CaseLines will not permit password-protected documents to be uploaded.

### **Sources**

- Ontario Superior Court of Justice, [CaseLines Demonstration - August 10 2020](#)
- Ontario Superior Court of Justice, [CaseLines Hearings – Tips for Counsel and Self-represented Parties](#)
- CaseLines, [Best Practice Guide to using a CaseLines bundle in a virtual hearing](#)
- CaseLines, [Reference Guides](#)
- Ministry of the Attorney General, [CaseLines Information Sheet](#)
- Thomson Reuters, [An introduction to using CaseLines](#)

## APPENDIX F: Resources

### I. ONTARIO COURT POLICIES AND PRACTICE DIRECTIONS

#### A. Ontario Superior Court of Justice

[Practice Directions and Policies](#)

[Notices and Orders – COVID-19](#)

#### B. Ontario Court of Justice

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

[COVID-19 Notices and Information](#)

#### C. Court of Appeal for Ontario

[Practice Directions and Guidelines](#)

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

### II. RESOURCES FOR SELF-REPRESENTED LITIGANTS

#### A. Get Legal Advice

[Legal Aid Ontario](#)

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

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

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

[Law Society Referral Service](#)

[Family Law Limited Scope Services project](#)

[Justice for Children and Youth](#)

#### B. Get Legal Information

[Ontario Legal Information Centre](#)

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

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

[CliquezJustice.ca](#)

[Justice Ontario](#)

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

[Canadian Judicial Council, Criminal Law Handbook For Self-Represented Accused](#)

[Canadian Judicial Council, Family Law Handbook For Self-Represented Litigants](#)

[Canadian Judicial Council, Civil Law Handbook For Self-Represented Litigants](#)

### **III. ELECTRONIC FILING OF COURT DOCUMENTS<sup>17</sup>**

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

[Notice to Profession – Divisional Court](#) (see D.4. Submitting Electronic Documents for Hearings)

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

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

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

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

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

[Paperless Trials Manual](#)

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<sup>17</sup> Parties should also refer to the specific Practice Directions, Notices and guidelines released for the COVID-19 pandemic period which may supplement or alter the general guidelines.

## VI. COURT GUIDANCE FOR REMOTE HEARINGS

Parties should consult guides or other resources provided by the courts of their province, as well as other jurisdiction-specific guidance.

### A. **Canada (Federal)**

Federal Court of Appeal, [Best Practices: Zoom Virtual Hearings](#)

Federal Court, [E-hearings](#)

Federal Court, [Virtual hearings at the Federal Court – User Guide for Participants](#)

### B. **Alberta**

Court of Queen’s Bench of Alberta, [Remote Hearing Protocol & Troubleshooting](#)

Provincial Court of Alberta, [Conduct Guide for Remote Appearances](#)

### C. **British Columbia**

Canadian Bar Association, [MS Teams and Virtual Hearings in the Provincial Court of BC](#)

Provincial Court of British Columbia, [Guide to Virtual Proceedings](#)

Provincial Court of British Columbia, [Guide for Appearing in the Provincial Court Via Microsoft Teams](#) (Appendix “A” to the Guide to Virtual Proceedings)

Provincial Court of British Columbia, [Virtual conferences and hearings](#)

Provincial Court of British Columbia, [Q & A: Virtual hearings and MS Teams in the Provincial Court of BC](#)

Supreme Court of British Columbia, [COVID-19: Expansion of Court Operations—Remote Video Conference Hearings](#)

### D. **Manitoba**

Manitoba Courts, [Virtual Courts](#)

Manitoba Courts, [How to Attend Court Using Microsoft Teams](#)

**E. New Brunswick**

New Brunswick Courts, [COVID-19 Trial Directives](#)

**F. Newfoundland**

N/A

**G. Nova Scotia**

Nova Scotia Judiciary Executive Office, [Conduct, Decorum and Expectations in Virtual Court Proceedings](#)

The Courts of Nova Scotia, [Virtual Court](#)

**H. Ontario**

Ontario Court of Justice, [Remote Court Appearances Guide for Participants](#)

Superior Court of Justice, [At-A-Glance Guide to Virtual Hearings](#)

Superior Court of Justice, [Best Practices and Etiquette for Remote Hearings](#)

Superior Court of Justice, [Frequently Asked Questions About Thomson Reuters CaseLines](#)

Superior Court of Justice, [CaseLines Demonstration - August 10 2020](#)

Hamilton Law Association, [CaseLines Hearings—Tips for the Bar](#)

Tribunals Ontario, [Guide to Videoconferencing Proceedings and Microsoft Teams](#)

**I. Prince Edward Island**

Prince Edward Island Court of Appeal, [COVID-19: Electronic Hearings by Telephone and Video Conference](#)

**J. Quebec**

Court of Appeal of Quebec, [Virtual Hearings: Guide to Best Practices](#)

Justice Quebec, [Courtroom hearings held in virtual rooms](#)

Justice Quebec, [Hearings Conducted Through Technological Means: Microsoft Teams User Guide for the General Public](#)

**K. Saskatchewan**

Courts of Saskatchewan, [COVID-19 Update—Court of Appeal](#)

Courts of Saskatchewan, [COVID-19 Update—Court of Queen’s Bench](#)

Courts of Saskatchewan, [COVID-19 Update—Provincial Court](#)

**VII. OTHER HELPFUL RESOURCES**

[CiteRight COVID-19 Resources: Practice directives across Canadian courts](#)



## APPENDIX G: The Court Reporter's Perspective & Tips

*By Kim Neeson*

Zoom and Teams are wonderful tools to keep the wheels of justice turning. From the court reporter or transcriber's perspective, it can also be an extremely frustrating experience. The only way a full and proper record can be prepared is if all participants can be heard clearly and succinctly.

- Overlapping speech? There is no way to recover what can't be heard.
- Audio cutting in and out? You can't transcribe what you can't hear or make out.
- Bad connection? Again, if you can't be heard properly, you won't be recorded any differently.

### **Audio**

If you say it clearly and audibly, it will be recorded that way. If you are breaking up, if you have a bad connection, if you speak otop of others, what you say will not be recorded clearly – if at all – and it will not be transcribed later.

In court, often, there is no one who will intervene in the proceedings to ensure the integrity of the record. If you are lucky enough to have an experienced court reporter present at your hearing, you may find they will interrupt the proceedings when the audio is compromised.

**TIPS** for counsel:

- Ensure a clear connection
- Audio clarity (a headset with a microphone or external microphone is the best way to ensure high-quality audio)
- No overlapping speech (a visual cue with Zoom is the person it deems is speaking has a green box around them)

### **The Transcript**

You may be surprised to learn that court proceedings recorded in Zoom are re-recorded by the court reporter as they are happening. In other words, the Authorized Court Transcriptionist who prepares your transcript does not get a recording of the Zoom hearing as you see it but gets a secondary recording (a recording of the recording) with no visual component.

With in-person hearings, each participant is recorded on a separate channel which can be isolated later. If someone is overtalking, for example, the transcriber can isolate each individual separately and transcribe what they say. With the Zoom recording, everything is recorded on one channel, and there is no way to separate out individual speakers. This has a profound effect on the transcript. In a hearing where everyone is speaking one at a time and each person's audio is clear, the transcript can be prepared to a high standard. Take away any one component with any participant, and the accuracy of the transcript will suffer.

In the freelance arena, court reporters and transcribers are given access to the original recording which contains both audio and video, thereby enhancing the transcription process. Being able to see and hear each participant is an incredibly important way to identify speakers and understand what is being said (body language playing a significant role in communication).

### **Spellings, Speaker Identification and Citations**

When attending in-person hearings, there is an opportunity for the court reporter to ask questions of counsel and witnesses to obtain unique spellings, case names, acronyms, names of people, places and things and note them for the transcriber's use later. A court reporter can look at the exhibits filed to seek out spellings and clarifications.

Additionally, the court reporter can see the participants to note who is speaking, and as well identify each speaker on the recording system's channels. Each channel is annotated to a participant, i.e., Judge Smith on microphone 1; Bob Jones on microphone 2; Martha Wallace on microphone 3; the witness on microphone 4.

On a virtual platform, these tasks become much more problematic.

There are no breaks now to gather the information required to create an excellent transcript, so that names are correctly spelled, clarifications can be sought, and documents reviewed. Unless counsel take the time to provide spellings, often the transcriber is left guessing.

It is incumbent on counsel to take the time as they go along to spell out unusual names, places, case names, etc., if you have any hope of an accurate transcript later. Remember, you've lived with the case for a long time; the court reporter and transcriber have no history with a new file.

**TIPS** for counsel:

- Spell as you go in the proceedings
- Stay on Zoom during a break or after the hearing to give spellings to the court reporter (ensure you make arrangements to do this before the hearing starts)

On Zoom or Teams, be sure to identify yourself before speaking, at least the first one or two times that you are on your feet. Recalling that the Authorized Court Transcriptionist only gets a re-recording of the hearing and does not get the visual aspect, some voices sound familiar and at times it may not be easy to discern who is speaking. Speaking clearly and intentionally will help aid in speaker identification.

### **Exhibits**

It is good practice both in-person and virtually to give a clear description of any document you are putting to a witness, including exhibits. This will ensure no confusion over what document or item is being discussed and will make for a clearer record.

**APPENDIX H: Checklists**  
**Preparing Your System for a Remote Hearing**

No	Item	Check
<b>As soon as the remote hearing is scheduled</b>		
1.	Confirm everyone, including clients, have the hardware and software required.	
2.	Confirm formats for documents and ensure everyone has access to the software needed to view documents (e.g., CaseLines, Adobe Acrobat).	
3.	If applicable, determine who will present the documents on-screen and what software will be used.	
<b>A few days before the remote hearing</b>		
4.	Receive technology access details, ideally at least two days before the hearing.	
5.	Schedule a test run at least one day in advance of the hearing with all parties and, if they wish to participate, the judge and/or the registrar/judicial assistant, to go through the checklist.	
6.	For the test run, prepare computer, screens, microphone, headset, camera, phone, battery chargers, power adapters, and confirm they are functioning properly.	
7.	Confirm access to CaseLines or other software to be used for viewing documents. Familiarize yourself with how to use the platform. See <a href="#">Appendix E</a> for more information.	
8.	From the space where you will be working during the hearing, test camera to ensure a clear line of sight and test microphone settings to ensure clear audio. Adjust lighting for clear video and remember to look into the camera to make eye contact.	
9.	Prepare a secondary device such as a phone or tablet by installing and testing relevant software as a back-up in the event the primary device fails.	
10.	Familiarize yourself and your team with the meeting platform, including entering and leaving, toggling audio and video, pinning a speaker, changing speaker views, and breakout rooms.	
11.	<p>Test internet speed: <a href="https://www.speedtest.net/">https://www.speedtest.net/</a></p> <p><b>TIP:</b> use hard-wired internet connection if possible.</p> <p><b>TIP:</b> sit as close as possible to the internet modem / router if using Wi-Fi.</p> <p><b>TIP:</b> request sole access of internet bandwidth or limit use of bandwidth by others.</p> <p><b>TIP:</b> use your phone for the audio portion of the hearing and computer for video streaming if the internet connection is slow.</p> <p><b>TIP:</b> do not use public Wi-Fi because connection speeds are slow, and security is unknown.</p> <p><b>TIP:</b> turn off Alexa, Siri, Google Home – they are listening, and they may respond!</p>	
12.	Check location of documents you may need to access to confirm you have what you need.	
13.	Confirm with all parties how documents will be called and efficiently located in materials.	
14.	Confirm with all parties how documents will be shared during the hearing.	
15.	Be prepared for internet connections to fail and confirm what procedures to follow if a participant's connection drops, and they cannot log back into the hearing room.	
16.	Plan and set-up how you will communicate privately with your client, your team, and opposing counsel.	
<b>Day of the remote hearing</b>		
17.	Arrive 15-30 minutes early and test that audio and video connections are clear.	
18.	Ensure devices are plugged into power outlets and wireless devices are fully charged.	
19.	Close all programs not needed during the trial and mute messaging and phone notifications.	
20.	Change your display name on screen and follow agreed naming protocol.	
21.	Test internet speed and use a hard-wired internet connection if possible.	
22.	If using Wi-Fi, sit as close to the Wi-Fi access point as possible.	
23.	Check any folders with documents needed for the hearing.	
24.	Test private communications with client, team, and opposing counsel.	

### Counsel Preparation in Advance of Meeting with Adjudicator

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

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

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

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

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

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



### Preparing Your Witness for a Remote Hearing

No.	Item	Check
<b>Before giving evidence, explain and advise the witness of the following:</b>		
1.	Business attire is appropriate as if they were attending court in person. Although the hearing is remote, the proceeding may be public and recorded.	
2.	They will swear or affirm before giving evidence.	
3.	The process for exclusion of the witness from the remote hearing to deal with an objection.	
4.	The witness must be on their own while giving evidence. Close the door to the room and notify others in the household of the need for privacy and quiet.	
5.	They may have water and a box of tissues and no other food or drink while on camera or while giving evidence.	
6.	They should not have access to documents, notes, or messages that they are not entitled to have during their testimony and while under oath.	
7.	They must become comfortable with the meeting platform - including entering and leaving, toggling audio and video, how to pin the speaker, how to change views, breakout rooms, where the witness should look when being asked questions, and where the witness should look when giving evidence (into the camera to establish eye contact).	
8.	What to do if the witness cannot see or hear counsel or the judge.	
9.	Contact information, including the phone number, access codes, and passcodes to enter the hearing should they need to call back in. <b>Be prepared for internet connections to fail. Have a back-up plan.</b>	
10.	To close programs not needed during the hearing, mute messaging, and phone notifications. Turn off home devices such as Google Home, Alexa, Echo, and Siri.	
11.	How to find documents and pages within documents using tools such as CaseLines and Adobe Acrobat. Provide instructions and familiarize the witness with navigating the platform from their computer - test CaseLines or other platform logins before the hearing.	
12.	Prepare equipment such as a computer, screens, microphone, headset, camera, phone, battery chargers, and power adapters. Confirm they function correctly. Make sure wireless devices are charged and have charging cables nearby.	
13.	Test internet speed: <a href="https://www.speedtest.net/">https://www.speedtest.net/</a> <b>TIP:</b> use hard-wired internet connection if possible or sit as close as possible to the internet modem/router if using Wi-Fi. <b>TIP:</b> request sole access of internet bandwidth or limit use of bandwidth by others. <b>TIP:</b> use a phone for the audio and computer for video streaming if internet is slow. <b>TIP:</b> do not use public Wi-Fi because connection speeds are slow, and security is unknown.	
<b>Explain and advise the witness that on the day of the hearing, they should:</b>		
14.	Arrive 15-30 minutes early and test that audio and video connections are clear. Test internet speed.	
15.	Ensure devices are plugged into power outlets and wireless devices are fully charged.	
16.	Close all programs not needed during the hearing and mute messaging and phone notifications.	
17.	Change their display name on screen and follow agreed naming protocol.	
18.	Check CaseLines login or access to any folders with documents needed for the hearing.	
19.	Review the back-up plan should connections fail.	

**APPENDIX I: Sample Virtual Hearing Protocol**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

and Plaintiffs

Defendants

**VIRTUAL HEARING PROTOCOL<sup>18</sup>**

**TECHNOLOGY FOR THE TRIAL**

1. This trial will proceed virtually using the Zoom platform.
2. No party nor witness shall record video or other images of the proceeding.
3. The registrar for the trial hearing will be the “host” of the Zoom sessions. During witness examinations, the video feed will be restricted to the trial judge, the witness, the examining lawyer and one opposing counsel. Other than those individuals, and the registrar, all other participants will be muted and will have no video feed during the examination.
4. Trial participants shall not use the Zoom chat functionality for any private discussions. However, with prior notice using the audio channel, trial hearing participants may use the Zoom

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<sup>18</sup> This protocol was developed by Sana Halwani, Paul-Erik Veel, Jonathan Chen, Veronica Tsou, Anna Hucman, Jessica Kras, Angela Hou, Tanya Rumo, Bruce Stratton, Alan Macek, and Michal Kasprowicz.

chat functionality to share information intended to be disseminated to all parties (e.g., a password to a document).

## **DOCUMENT MANAGEMENT**

5. The parties shall prepare and agree upon a Joint Book of Documents. The Joint Book of Documents shall contain such documents as the parties may agree, and the documents shall be identified by sequentially numbered tabs and pagination. The evidentiary value, if any, of documents in the Joint Book of Documents shall be addressed in a separate agreement. The parties are not precluded from introducing additional documents at the trial of this action that are not contained within the Joint Book of Documents.

6. After consulting with the trial judge, Court staff, and the Court reporter, counsel to the parties shall jointly prepare an email distribution list to which documents intended to be used during this trial may be circulated (the "Trial Distribution List").

7. In addition, counsel to the parties shall jointly prepare a list with back-up phone numbers of the Court staff, the Court reporter, and all counsel to the parties, so that all stakeholders can communicate with one another in the event that the Internet connection of one or more stakeholders is interrupted. Prior to a witness being called to testify, a phone number for the witness will be provided to the registrar, and the witness will be provided with the phone number for the registrar.

8. Where a document to be sent to the Trial Distribution List is smaller than 5 megabytes, that document shall be sent as an attachment to an email to the Trial Distribution List.

9. Where a document to be sent to Trial Distribution List is 5 megabytes or larger, the document shall be sent to the Trial Distribution List using an agreed-upon file transfer system.

10. The registrar shall maintain the exhibits and exhibits list. The parties are responsible for ensuring that all documents intended to be marked as exhibits are provided to the registrar electronically in accordance with this protocol and, in particular, that the registrar has copies of

such documents when they are intended to be put to a witness and marked as an exhibit. The parties will provide all assistance requested by the registrar to ensure that the exhibits and exhibit list are complete and accurate.

11. The parties agree that the exhibits may be maintained by the registrar in electronic form only. While parties and the trial judge may use paper copies of documents as they find convenient, the parties agree that electronic documents may be marked as exhibits and that no paper copies need to be maintained of such exhibits.

12. At the end of each day of trial hearing, or otherwise at the direction of the court, the registrar shall email electronic copies of all exhibits marked that day with electronic exhibit stamps to the Trial Distribution List. When referring to a document that has been marked as an exhibit, the parties will use the marked version that has been distributed by the registrar.

### **COUNSEL PREPARATION**

13. Counsel shall take reasonable steps to ensure that they have suitable technology, including Internet and audio-visual connections, to allow for the conduct of this trial. In the course of doing so, counsel shall consider the best practices described in the handout for witnesses attached as Schedule "A".

### **WITNESS PREPARATION AND TESTIMONY**

14. Counsel shall advise each person they intend to call as witness in advance of their examination in chief of the contents of this protocol and provide them with a copy of the handout for witnesses attached as Schedule "A".

15. The following protocol applies to the witnesses while they are giving evidence, and counsel shall specifically advise each witness of this protocol:

- a. While the witness is giving evidence, they should always keep their camera and microphone on unless the judge instructs otherwise;

- b. While the witness is giving evidence, the camera should be positioned so that the trial participants can clearly see the witness, particularly their whole face and their hands if possible;
  - c. While the witness is giving evidence, the witness shall not review any documents or access any electronic resources (Internet or otherwise), other than:
    - i. Those documents put to them during their examinations as described in this protocol;
    - ii. Such documents as they may ask and be permitted to review; and
    - iii. In the case of expert witnesses, their own expert reports and other expert reports in this action, provided that any such reports they review during their testimony do not contain any notes or annotations made by the witness or anyone else;
  - d. While the witness is giving evidence, the witness shall not refer to nor rely on a script or any notes; and
  - e. While the witness is giving evidence, the witness shall not communicate in any way with any other persons about the substance of their examination.
  - f. The prior paragraph shall not preclude the witness from communicating with counsel or another person while on a break prior to the commencement of their cross-examination, provided that any such communication is consistent with counsel's professional obligations and applicable rules of the Court.
16. Prior to the witness beginning to give evidence, the trial judge may caution the witness in accordance with this protocol.

#### **DOCUMENTS TO BE PUT TO WITNESSES**

17. With respect to documents to be put to witnesses during their examinations in chief:

- a. For fact witnesses, insofar as it is feasible, all documents intended to be put to such a witness as part of that witness' examination in chief shall be prepared into a single PDF brief;
- b. For expert witnesses, insofar as it is feasible, all documents intended to be put to such a witness as part of that witness' examination in chief, other than any expert reports delivered in this action, shall be prepared into a single PDF brief;
- c. All PDF documents shall be OCR'd, such that they are text-searchable;
- d. All PDF briefs that contain multiple documents shall be bookmarked into different tabs and paginated. Other than in any expert reports delivered in this action (which may remain as previously delivered), each tab should be named;
- e. A copy of any documents intended to be put to a witness during that witness' examination in chief shall be provided to the witness prior to the commencement of that witness' examination in chief;
- f. A copy of any documents intended to be put to a witness during that witness' examination in chief, other than documents contained in the Joint Book of Documents, shall also be emailed to the Trial Distribution List at the outset of that witness' examination in chief.

18. In addition to the steps described above, counsel who wishes to put documents to witnesses during their examinations in chief may send one or more hard copy documents or briefs of documents to the witness in advance of their testimony. The witness may testify with the benefit of such hard copy documents, provided that such documents do not contain any notes or annotations made by the witness or anyone else.

19. With respect to documents to be put to witnesses during their cross-examination or re-examination, counsel conducting such an examination may choose to use any one or more of the following methods to send documents to the witness:

- a. Individual documents in electronic format may be emailed or transferred using an agreed-upon file transfer system simultaneously to the witness and the Trial Distribution List during that witness' cross-examination immediately prior to such time as the party intends to put that document to the witness;
- b. A brief of documents or a series of individual documents may be emailed or transferred using an agreed-upon file transfer system (depending on the size of such documents) to the witness and the Trial Distribution List prior to the witness' examination. If counsel so chooses, such document(s) may be password-protected, and the password(s) may be provided during the course of the examination; and
- c. One or more hard copy documents or briefs of documents may be sent to the witness in advance, with directions that such documents not be opened until an appropriate time during that witness' examination. In that case, all such documents shall also be circulated electronically to the Trial Distribution List at the outset of that witness' cross-examination.

20. Regardless of the choice made by counsel, with respect to any documents being put to witnesses electronically on cross-examination or re-examination:

- a. Insofar as it is feasible, such documents shall be in PDF format;
- b. All PDF documents shall be OCR'd, such that they are text searchable.

21. In respect of expert witnesses, the email addresses of such experts shall be exchanged in advance of that expert's testimony so that any documents intended to be put to such expert in cross-examination may be emailed to them directly at the same time as they are sent to the Trial Distribution List, as described in paragraph 17. In respect of the fact witnesses, either the process described in the previous sentence may be used or, if a fact witness does not wish to share their email address, documents intended to be put to a witness on cross-examination can be sent to

the Trial Distribution List, and the lawyer who called that witness can then forward that email to the witness. In the event of the latter, the lawyer who called that witness shall forward the email to the witness without any commentary or other communication.

22. Documents may be shown to a witness using Zoom's screen-sharing functionality, provided that the document is also provided to the witness in accordance with the above paragraphs so that the witness has the ability to review the full document, if they wish.

### **LOSS OF INTERNET CONNECTION**

23. In the event that there is a loss of an Internet connection to such a degree that an Essential Individual (as defined below) is no longer able to meaningfully participate in the trial, the trial shall be adjourned until all Essential Individuals have a sufficient Internet connection to be able to meaningfully participate in the trial.

24. Essential Individuals are the following:

a. During the examination of a witness:

- i. The trial judge;
- ii. The Court reporter(s);
- iii. Any interpreter required for that witness;
- iv. The Court registry officer;
- v. The witness;
- vi. The counsel conducting the examination in chief of that witness; and
- vii. The counsel conducting the cross-examination of that witness.

b. During any legal submissions or motions:

- i. The trial judge;
- ii. The Court reporter;
- iii. The Court registry officer;
- iv. The counsel making or responding to any legal submissions or motions.



25. If participants or observers to the trial, beyond the Essential Individuals, are not able to connect or their connection is interrupted, reasonable efforts will be made immediately to provide or restore their access. It is within the Court's discretion as to whether to continue or adjourn the trial, depending on the circumstances. The guiding principle is for the hearing to continue with all participants in attendance at all times.

### **OBJECTIONS**

26. Where counsel objects to a question being asked of a witness, the objecting counsel shall indicate such objection by physically raising their hand and/or verbalizing the objection.

27. In the event that Internet connection problems preclude counsel from objecting to a question being asked of a witness prior to the witness answering such question, counsel shall be permitted to raise the objection after the witness has already answered the question, provided that counsel objects as soon as reasonably possible. In such circumstance, the Court shall consider the objection and, if the objection is ruled by the Court to have been an appropriate one, the Court shall disregard the answer given by the witness, and the witness' answer shall form no part of the record in the case (as if the witness had never been permitted to answer the question).

28. Where a witness needs to be excused for the hearing of an objection or for any other reason, the registrar will place that witness in a separate "breakout room" of the Zoom session. The registrar will invite the witness to reattend the "main room" of the Zoom session upon direction from the trial judge.

### **TESTING PRIOR TO TRIAL**

29. Counsel shall ensure that, for counsel and for their witnesses:

- a. All persons have the necessary software installed or otherwise have the ability to use the necessary software;
- b. All persons can appropriately use the videoconferencing technology that will be used for the trial;

- c. All persons have the necessary hardware to allow for reliable and audible communication;
  - d. All persons can send and receive emails with attachments up to 5 megabytes in size;
  - e. All persons can send and receive documents larger than 5 megabytes using an agreed-upon file transfer system; and
  - f. All persons can open PDFs.
30. Counsel and the Court will make best efforts to conduct appropriate testing before the recommencement of the trial hearing.

**GENERAL**

31. The Parties acknowledge that nothing in this Protocol displaces the inherent jurisdiction of the Court to control its own processes. This Protocol may be subject to change at a later date by direction of the Court.
32. In the event that it becomes impracticable or unfeasible to comply with any part of this Protocol, the Parties may seek such further direction and orders as may be required.

**Schedule "A" – Handout for Witnesses**

Court File No. CV--00

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

and Plaintiffs

Defendants

**INFORMATION FOR WITNESSES**

**THE VIRTUAL TRIAL**

1. You are going to be a witness in a trial that will be conducted virtually over the Internet. This document is intended to help you understand your role and responsibilities as a witness. Please read the document carefully.

**YOUR OBLIGATIONS AS A WITNESS**

2. Your obligation as a witness is to be truthful with the Court. Although you might be sitting in your home or your office while you testify, you are fulfilling the very same role that you would as if you were sitting in Court. You must approach this task with the same degree of seriousness and solemnity as you would if you were testifying in person in a Courthouse.
3. You will swear or affirm, prior to testifying, that your evidence will be the truth. This obligation is fundamental to your evidence.
4. Once your cross-examination begins, until you are finished all your evidence, you are not permitted to talk, text, or communicate with any person about the case.
5. If, at any time, you are unable to hear or see clearly the information that is being delivered via the Zoom platform, or the document delivery platform, you must immediately indicate that this is the case.

6. Before you begin your evidence, you will be provided with an email address and a phone number to allow you to reach the court registrar if there is any technical issue that arises during your evidence.
7. Once you begin testifying, if there is a technical problem, your first call is to the Court official, not your lawyer.
8. The Zoom platform is for use to connect you to the hearing by audio and video you are prohibited from recording video or other images of the hearing.

### **RULES WHILE TESTIFYING**

9. The following are important rules for you to follow:
  - While you are testifying, you must always keep your camera and microphone on unless the judge instructs otherwise.
  - The camera should be positioned so that everyone can clearly see you, particularly your whole face and your hands if possible. You cannot use a digital background. The actual background should be neutral.
  - While you are testifying, you are not permitted to read or consult any documents, other than:
    - Those documents you are directed to by examining lawyers on the video call;
    - Such documents as you may be specifically asked and permitted to review; and
    - If you are an expert witness, you may also have your own expert reports and other expert reports in this action, provided that those reports do not contain any notes or annotations made by you or anyone else.
  - You cannot refer to a script or any notes while you testify.
  - While you are giving your evidence, you are not permitted to communicate (by email, text, in-person discussions, *etc.*) with any other persons about the substance or subject-matter of your examination, nor can you access electronic information on your computer, smartphone, or via the Internet if the information relates to your evidence or the case.

### **BEST PRACTICES FOR TESTIFYING VIRTUALLY**

10. In order to ensure that this trial runs as fairly and efficiently as possible, it is important that you have the appropriate technology and that you are taking appropriate steps to try to

minimize any disruption to your Internet connection. Here are some best practices you should consider in advance of your testimony:

- Appropriate hardware for a lengthy examination is required. If you have concerns about your hardware or software set up, please discuss this with the lawyer who is calling you as a witness, immediately. Hardware that may prove useful includes a personal computer, a second (external) monitor, a headset (if your personal computer does not have speakers and a microphone of sufficient quality), and a webcam (if your computer does not have a camera of sufficient quality built in).
- Review the environment around your computer and consider what you can do to reduce interruptions. For example, if you have family members at home, let them know that you will be testifying and will not be interrupted. Please also turn off other electronic devices that might make unwanted sounds while you are testifying.
- Ascertain the bandwidth on your Internet connection. If poor quality, consider whether there is anything you can do to increase your bandwidth.
- Consider connecting your computer to your modem or router by an ethernet cable, rather than by wireless connection.
- Close any unnecessary programs on your computer before you begin testifying. Refrain from being connected to the Internet through a virtual private network (VPN). This can create interruptions.
- If you are testifying from your home, consider asking others in the home to not use applications that might place a significant drain on available bandwidth (e.g., streaming video services) while you are being examined using the Zoom platform.

## APPENDIX J: Acknowledgements

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

The first edition of the Best Practices was released in May 2020. The members of the E-Hearings Task Force who participated in the development of the first edition are: Kathryn Manning (Co-Chair), Marie-Andrée Vermette (Co-Chair), Carolyn Anger, Brent Arnold, Sara Auld, Katy Commisso, Sheila Gibb, Charles Gluckstein, Scott Hutchison, Pheroze Jeejeebhoy, Trevor Kestle, Barb Legate, Andrew Little,<sup>19</sup> Sabrina Lucenti, Faisal Mirza, Kristin Muszynski,<sup>20</sup> Joseph Obagi, Michael Robb, Allison Speigel, Anne Turley, James Vigmond, Suzanne Amiel and Roy Bornmann.

The Task Force has since revised the Best Practices and is pleased to release this second edition in May 2021. The members of the E-Hearings Task Force who participated in the development of the second edition are: Kathryn Manning (Co-Chair), Michael Robb (Co-Chair), Carolyn Anger, Brent Arnold, Katy Commisso, Sheila Gibb, Charles Gluckstein, Scott Hutchison, Pheroze Jeejeebhoy, Trevor Kestle, Barb Legate, Sabrina Lucenti, Joseph Obagi, Allison Speigel, Anne Turley, William Woodward, Suzanne Amiel, Roy Bornmann, and Ebony Rose.

The Task Force would like to particularly acknowledge and thank Justice Marie-Andrée Vermette who was a Co-Chair of the Task Force prior to her appointment to the Ontario Superior Court of Justice in March 2021.

Prior to finalizing the first and second editions of the Best Practices, the Task Force sought and received feedback from the Courts and Pro Bono Ontario. We thank those who commented for taking the time to do so.

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<sup>19</sup> Justice Little was appointed to the Federal Court on April 28, 2020. We thank him for his significant assistance to the Task Force prior to his appointment.

<sup>20</sup> Justice Muszynski was appointed to the Ontario Superior Court of Justice on September 8, 2020. We thank her for her significant assistance to the Task Force prior to her appointment.