



COVID-19: SUPREME COURT OFFERING VIRTUAL HEARINGS AND SETTLEMENT CONFERENCES

Thursday, May 7, 2020

The Nova Scotia Supreme Court is now offering virtual court hearings and settlement conferences for some non-urgent matters at the Law Courts in Halifax. This will help improve access during the COVID-19 pandemic without compromising the health and safety of staff and the public.

The Supreme Court continues to operate under an essential services model when it comes to in-person proceedings; however, over the past two weeks the Court has made advances to expand service, where it is safe to do so. This most recent step allows the Court to further expand its operations without the need for additional staff working at the courthouses.

Thanks to the extensive efforts of the Judiciary, the Nova Scotia Department of Justice Court Services Division and the province's Digital Services team, the Supreme Court has developed a virtual court setup using Skype for Business and the existing court recording system. Under this new setup, matters can be heard entirely remotely by telephone or video to protect the lawyers, parties, court staff and judges involved.

Judicial assistants and judges tested the setup in mock hearings to ensure that actual court proceedings can be properly recorded and conducted in a functional, reliable and secure way. To start, four judicial assistants in Halifax were set up to work remotely from home. Training for more judicial staff and judges is continuing.

The first virtual court hearings were held on the record on April 30, 2020, as part of a pilot project. One was a motion in a civil matter, the other a criminal pre-trial hearing. The first virtual settlement conference took place on May 5, 2020. All matters went smoothly from a technological standpoint.

Accordingly, the Supreme Court will now permit the use of Skype as an option for judicial settlement conferences where the judge, counsel and the parties all agree to proceed virtually.

The Court is also prepared to offer virtual court hearings in civil motions or applications that meet the following criteria:

- Parties are represented by counsel;
- The matter will take four hours or less;
- There is no *viva voce* evidence, including cross-examination; and
- All parties consent, or a judge otherwise orders.

The eligibility criteria will likely be expanded in time to allow for more matters, including lengthier matters, those requiring direct and cross-examination, those involving self-represented litigants and possibly trials. A decision will be made about expanding these criteria as the Court continues live testing to ensure the integrity of any proceeding is not detrimentally affected by using technology to hear the matter.

Despite extensive testing and training, the Court expects that there may still be difficulties with the technology and people's comfort with it. For virtual court hearings to be successful, counsel and the parties involved are encouraged to be patient, cooperative and flexible. In turn, the judges presiding over virtual court hearings will make every effort to be flexible, where feasible and appropriate.

If at any point during a virtual court proceeding a judge feels the new environment is affecting the integrity of the proceeding, the judge will have the sole discretion to adjourn the matter to another time or to await resumption of in-person hearings.

To begin, virtual court hearings and settlement conferences will be available only for eligible matters at the Law Courts in Halifax. As training and setup continues, the Court expects to expand this service to the Supreme Court (Family Division), as well as the General Division in the districts.

Counsel who have a matter that meets the eligibility criteria and that they feel would be appropriate for a virtual court hearing should contact their respective Prothonotary to request that the matter proceed virtually.

Conduct and Decorum in Virtual Court Hearings

Counsel, parties, members of the media, and others who may participate in virtual court hearings are expected to conduct themselves as though they were physically appearing in a courtroom. All manner of decorum, formalities and court practice must be adhered to, including proper business attire.

All virtual court hearings have the same expectations and rules as in-person hearings.

Prior to the commencement of a virtual court hearing, the judicial assistant will schedule a 15-minute virtual test for counsel only, to identify any issues with the technology, connectivity or video quality. This dry run will help ensure fewer issues during the actual hearing. Please note that court staff are not able to advise on what equipment to purchase for technology or troubleshoot connectivity issues.

Considerations for Participants in Virtual Court Hearings

When participating in a virtual court hearing, counsel and the parties are asked to please consider the following before connecting to the session:

- 1) Participation in virtual court hearings requires a commitment to technology. Counsel and the parties involved must have the ability to effectively connect to a video/audio conference in a consistent and reliable manner.
- 2) The required technology to participate by video includes a web camera for video display, audio and a microphone.
- 3) A reliable headset with a microphone is strongly recommended. This provides a better audio experience and reduces background noise for others when you are speaking. Earphones also work well.
- 4) To help avoid Internet interruptions or failure, participants are encouraged to have a hard-wired connection to your network. Wi-Fi connections will work but are not recommended. Counsel must also have their own Internet network to connect.
- 5) Devices such as Google Home, Alexa and Echo should be turned off during your participation in the hearing.
- 6) While the Court will offer a dry run prior to the hearing, you are encouraged to engage support from an independent IT expert who can provide you with help and advice. Court staff are not responsible to troubleshoot connectivity issues for counsel and parties.
- 7) Counsel and the parties are encouraged to regularly test the technology required for video conferencing, especially after installing additional hardware or software to your device. Participants are encouraged to connect to the virtual session at least 10 minutes early to allow time to troubleshoot any unexpected issues.
- 8) Ensure you are set up in quiet, private area with appropriate lighting. Avoid setting up your device in front of a window, as you will appear in shadow.
- 9) Counsel and parties are not permitted to record video or audio of any virtual court hearings or virtual judicial settlement conferences.

As the COVID-19 pandemic continues to affect Nova Scotians, the Supreme Court is acutely aware of the importance of continuing operations as much as is safely possible. With the flexibility and cooperation of the Bar and parties, the Court can offer this additional means to achieve timely, just and fair hearings.

The Judiciary thanks the Bar and parties who choose to use this virtual technology for their patience and commitment to this new process.

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