

Criminal Justice Transformation Group Video Conferencing Working Group

PROTOCOL: USE OF VIDEO CONFERENCING BY THE DEFENCE

The use of video conferencing is now common practice in Provincial Courts throughout Nova Scotia. It is possible for witnesses, defendants, counsel and even judges to appear and participate in the Court process by video. This memo is meant to provide Defence Counsel with some direction as to when it would be appropriate for Counsel, or a client in custody, to appear in Court by video.

Ultimately, whether a client appears by video should be his or her choice. It is the client's liberty that is at stake and so the choice should be left to him or her. However, quite often Court appearances are brief, involving simple adjournments to set further dates. Clients who are in custody may not want to be transported to the courthouse where they can spend hours in cells waiting for that brief appearance in Court. Clients who are not in custody, and who are unable to travel to the Court for a scheduled appearance, may also benefit from the opportunity to appear in Court by video.

Where the client is in custody, the process for arranging a client appearance by video has been designed to provide Counsel with as much flexibility as possible while still allowing Court Staff and Sheriff Services, where the client is in custody, enough notice to make the needed arrangements to have the client appear by video. In most instances a properly completed [Court Video Appearance Request Form - Accused Appearance](#) received by the Court up to 3:30 pm the day before the scheduled Court hearing will allow an 'in person' appearance by the client to be done by video.

It is possible as well to arrange for a client in custody in a correctional facility outside of Nova Scotia, or a client who is not in custody, to appear in Court by video from a location with video capability. Such requests will need to be made further in advance than a regular video request addressed above so Court Staff can ensure the video link can be established successfully.

Without intending to be exhaustive, or absolute, Counsel are strongly encouraged to discuss with their clients in custody video appearances in the following instances:

1. Adjournments of Election or Plea;
2. When making elections, or entering pleas;
3. Adjournments of bail proceedings;
4. Setting of trial or Preliminary Inquiry dates;
5. Pre-trial Conferences;
6. Uncontested Pre-trial motions (such as unsealing of warrants, application concerning witnesses or disclosure);
7. Setting of sentencing dates;
8. Requests to adjourn.

The entering of guilty pleas, changes of plea to guilty and even sentencing hearings are now being done with clients appearing by video, and Counsel should consider this option. Counsel should also consider advising the Crown, and obtaining the Court's permission before arranging a sentencing by video, especially for contested or more serious matters. Just because Counsel arranges a sentencing by video does not mean the Crown, or the Court, must agree.

The key to successfully navigating through these types of video appearances is preparation: the client must be fully informed of how the appearance will progress and, as much as possible, what possible outcomes will be.

Again, without intending to be exhaustive, Counsel should confirm with the client the following matters before a video appearance for entry of a guilty plea, or pleas, and possibly for sentencing:

1. The charges to which guilty pleas are to be entered;

2. The pre-conditions to the acceptance of guilty pleas set out in s. 606 of the *Criminal Code*;
3. The facts that will be alleged by the Crown concerning the charges;
4. The sentence to be recommended by the Crown, including the conditions of any probation or conditional sentence orders, or any ancillary orders such as DNA, firearms, driving prohibitions.

The necessary instructions to complete the appearance should be confirmed in writing beforehand. The more thorough Counsel is in preparing the client to be sentenced by video, the more likely the hearing will proceed without the need to recess to allow Counsel and client to confer, which can be very problematic where the client is appearing by video.

Where there is a requirement that documents be signed, court and corrections staff will use videoconferencing to facilitate signing, following the hearing.

Counsel should also avoid using court appearances by clients in custody as an opportunity to have lengthy meetings to review disclosure or obtain instructions. Sheriff Services and the facilities available at Court are not designed for this purpose, and the Courts are now providing video rooms to allow Counsel to speak to clients remotely to allow for preparation for a video appearance. Hopefully, correctional facilities around the Province will soon be able to provide video services allowing consultations with clients in custody from Counsels' office.

Finally, Defence Counsel should keep in mind that it is now possible to appear by video in Provincial Courts throughout Nova Scotia. These appearances will save time and expense for counsel and clients.

The forms to arrange video appearances by counsel are available on the Courts of Nova Scotia website:

[Court Video Appearance Request Form - Accused Appearance](#)

[Court Video Appearance Request Form - Appearance of Counsel](#)

[Practice Direction - Applications for Appearance of Witness Via Video Conferencing](#)

[Flow Chart - Nova Scotia Provincial Court Video Appearance Request Procedure for Witness to Appear](#)

[Appearance of Witness Form](#)