



PRINCE EDWARD ISLAND COURT OF APPEAL

16. PRACTICE DIRECTIONS

Electronic Hearings by Telephone or Video Conference – May 1, 2020

The open court principle is the hallmark of a democratic society. As a general principle courts are open to the public. This ensures the integrity of court proceedings and promotes public confidence. This general principle is subject to some exceptions. Some limitations need to be applied to protect other societal values of prime importance.

The public health restrictions necessitated by COVID-19 introduce an additional challenge: in-person appeal proceedings are temporarily precluded. In any event, it is essential to give effect to the open court principle, even in the presence of a pandemic. The Court of Appeal can utilize technology to facilitate appeals being heard remotely. Where appropriate, oral appeal hearings can be conducted by telephone or video conference. While this mode of hearing introduces new concerns around protecting the integrity of the appeal process, the Court of Appeal is proceeding on the basis that, subject to lawful exceptions, the general public and the media should have access to appeal hearings.

The P.E.I. **Rules of Civil Procedure** and Court of Appeal Practice Directions maintain in balance the open court principle and the integrity and decorum of court proceedings and privacy interests. The media and members of the public are generally permitted to attend and report on court proceedings, subject to exception by publication bans or statutory restrictions, and subject to the limitation that court proceedings shall not be rebroadcast in any manner. Only lawyers and self-represented litigants can use electronic devices in the courtroom, and only for note-taking. Any person can report on a court proceeding. However, everyone is prohibited from broadcasting all or part of a proceeding.

On this foundation, electronic hearings by telephone or video conference can occur in appropriate circumstances, on terms that are just. The Court of Appeal has developed the following protocol and directions for participation from remote locations by parties, lawyers, self-represented litigants, media, and the general public.

- (i) **General Direction** – Electronic hearings before the Court of Appeal are open to parties, their lawyers, accredited media representing the public interest, and subject to limits necessitated by court technology to members of the public.

The Court of Appeal contact for any question regarding attendance in an electronic hearing is Sheila Gallant (sfgallant@gov.pe.ca or by phone 902.368.6024).

- (i) **Media Media** – Accredited media may attend and observe the electronic hearing.
- (ii) **Deputy Registrar as convener** -- Court of Appeal deputy registrar Sheila Gallant will coordinate attendance of parties, lawyers, self-represented litigants, accredited media, and members of the public.
- (iii) **Electronic devices in the courtroom** -- The Court of Appeal policy on the Use of Electronic Devices in Courtrooms (Practice Direction 12(b)) continues to apply. Only

lawyers, self-represented persons, and members of the media are persons authorized to use electronic devices in the courtroom, and only for notetaking.

- (iv) **Parties represented by a lawyer** – A party can hear or view the electronic hearing at their lawyer’s office or at another or separate location as their lawyer arranges in advance with the deputy registrar.
- (v) **Members of the public** – Attendance of non-parties in electronic hearings may be limited by practical and logistical considerations, including video platform and bandwidth. The Court of Appeal deputy registrar will give priority to persons who have a direct interest in the proceeding; and attendance is on a first-come/first served basis. Any person who is not a party who wishes to observe the proceeding must obtain the call-in link from the Court of Appeal deputy registrar prior to the hearing date.
- (vi) **Undertaking by all non-lawyer participants** – All persons who are not a lawyer or member of the accredited media who wish to attend an electronic hearing are required to sign an Undertaking that they will not record or broadcast the court proceeding. The purpose of this Undertaking is to avoid the risk of compromising the integrity of the court proceeding. As a condition of attendance in the electronic hearing, all self-represented litigants and members of the public must sign and submit this Undertaking prior to the date of the electronic hearing.
- (vii) **Court decorum: video hearings** – Judges will appear in court attire. Lawyers and self-represented litigants should wear business attire.
- (viii) **Participation** – As in in-person oral hearings, unless otherwise directed by the Court, only the judges, lawyers and self-represented litigants will be heard during the hearing. All other persons may observe the audio or video hearing. Lawyers and self-represented litigants should generally keep their audio microphone in “mute” mode, except when they are presenting or engaged in a dialogue with the Court. Persons observing a video hearing should have their audio microphone in “mute” mode and their video camera in “camera off” mode.

Dated May 1, 2020
The Hon. David H. Jenkins (Sgd.)
Chief Justice of Prince Edward Island



PRINCE EDWARD ISLAND COURT OF APPEAL

Undertaking for Electronic hearing

Appeal No. S1-CA- _____

Case Name: _____

Undertaking not to publish or broadcast court proceedings

I am a party, self-represented litigant, or other person who has informed the Court of Appeal that I wish to attend this oral electronic appeal hearing. I understand that in light of the restrictions necessitated by the COVID-19 pandemic the Court of Appeal has decided to conduct this appeal hearing by telephone or video conference. I understand this Undertaking is designed to ensure the integrity of the appeal hearing, and my attendance is conditional upon me giving this Undertaking.

I undertake and agree not to record or broadcast in any manner the Court proceeding which I attend. **Exception** for recording only by self-represented litigants: a self-represented litigant is given the same privileges as a lawyer of record to record for note-taking but not to publish or broadcast proceedings (Practice Direction 12(b)).

I acknowledge that if I breach this undertaking and agreement, I may be denied access to electronic hearings and be subject to legal sanction, including proceedings for civil contempt of court.

Dated this _____ day of _____, 20 .

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(print name)

(signature)

(print address, telephone, and email)