



SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
Rules of the Supreme Court, 1986

PRACTICE NOTE
P.N. No. 2022-01

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The following Practice Note is published pursuant to Rule 4.04 of the *Rules of the Supreme Court, 1986*.

VIRTUAL APPEARANCES

BACKGROUND AND PURPOSE

1. The Supreme Court of Newfoundland and Labrador has seen a significant increase in conferences, hearings and trials being held where all of the participants are appearing remotely (referred to throughout this Practice Note as a “virtual” appearance). While this increase has been driven, in large part, by the COVID-19 pandemic, the Court expects that the increased use of virtual appearances will remain a permanent part of the way the Court delivers its services to the public.
2. In light of the foregoing, the Court issues the following Practice Note to provide further guidance for participants appearing remotely at virtual appearances.

PRACTICE NOTE

General

3. This Practice Note applies to civil and family proceedings. Rule 47A (“Electronic Conferencing”) of the *Rules of the Supreme Court, 1986*, governs virtual appearances in civil proceedings and Rule F41 (“Appearing Remotely”) of the *Supreme Court Family Rules* governs virtual appearances in family proceedings.

4. Persons shall not record, photograph, publish, broadcast, reproduce, or otherwise disseminate the video or audio of any virtual appearance, without the express permission of the presiding judge.
5. Virtual appearances, and in particular virtual hearings and trials, require civility, cooperation, and communication between parties, both before and during the appearance. Parties should be willing to adapt and cooperate in good faith in the preparation and conduct of virtual appearances to achieve a just, expeditious and cost-effective resolution of proceedings.

Guidance Applicable to All Virtual Appearances

6. Parties and counsel must conduct themselves as if they were physically appearing in a courtroom, subject to any modifications to etiquette provided for in this Practice Note.
7. Parties and counsel are expected to join the virtual appearance at least 5 minutes early in order to resolve any technical issues that may arise. Pre-appearance testing of hardware and software should also be conducted at least 24-48 hours prior to the appearance, where possible.
8. Participants must ensure they are in a private, quiet space. If the matter involves children, parties must ensure the children cannot see or hear the proceeding.
9. Participants should speak slowly and clearly. They should pause frequently to permit the court to ask questions and to allow for interpretation, if required, to take place.
10. Participants must avoid speaking over others. Only one person should be speaking at a time. If a party finds it necessary to object to, respond to, or comment on something that an opposing party or witness has said and it cannot wait:
 - if on video, click on the raise hand button or raise your hand to signal to the judge that you wish to speak; or
 - if on audio, respectfully interrupt the conversation when appropriate to let the judge know that you have something to say.
11. Participants should mute their microphone when they are not speaking, if they are able to do so. Participants should ensure notifications on their devices are silenced so they do not interrupt the proceedings.
12. If technical difficulties are experienced which prevent a participant from hearing, seeing, or following the hearing, they should immediately notify the Court by speaking, raising their hand, or using the platform's "Raise Hand" button, if available.
13. Participants should ensure their device is charged or connected to a power source.
14. If a participant becomes disconnected, they should immediately try to rejoin the conference.

Videoconferences

15. Prior to the appearance, parties or their counsel shall jointly prepare a list of back-up phone numbers for the Court Officer as well as all other participants (parties, counsel, interpreters, etc.) in case one of the participants is disconnected and cannot rejoin the conference.
16. Counsel appearing by video are required to wear appropriate attire, as set out in the [Notice to the Profession on Court Attire](#). Other persons should dress appropriately, keeping in mind the formality of court proceedings. Dark business clothing is encouraged.
17. Participants are not required to stand when the judge joins the videoconference. Participants are also not required to bow during the proceedings.
18. Participants' screen name should be in the following format, "[surname], [given name]".
19. Participants should choose a neutral virtual background or position themselves in front of a neutral background.
20. Participants should sit facing their light source to ensure that their face is visible.
21. Participants should not eat food or drink anything, other than water, during their virtual appearance.

Teleconferences

22. Participants should state their names each time they begin to speak, so that other participants know who is speaking.

Documents

23. Parties must send documents they intend to introduce as exhibits during a virtual hearing or trial to the Court in hard-copy in advance of the hearing date, no later than 12:00 p.m. the day preceding the hearing or trial. Counsel should also ensure that such documents are exchanged with opposing parties by the same deadline in hardcopy, or in a format agreed to by the parties. Regardless of whether parties exchange documents electronically or in hardcopy, it is imperative that the documents submitted to Court and opposing parties are formatted identically.
24. During the virtual appearance, 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 and/or the document number.
25. 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 them.

26. Where a party requires additional directions with respect to the exchange or use of documents during the course of the trial, the party should seek directions from the presiding judge, either before or at the commencement of the hearing or trial.

Witnesses

27. Prior to a witness being called to testify, a phone number for the witness must be provided to the Court Officer and the witness will be provided with the phone number for the Court Officer.
28. The party intending to call a witness should remind the witness that if they intend to swear an oath, the witness must have the religious book or sacred object that they wish to use with them.
29. While the witness is giving evidence, they should always keep their camera and microphone on unless the judge instructs otherwise. The camera should be positioned so that the trial participants can clearly see the witness, particularly their whole face and their hands if possible.
30. Witnesses should not refer to documents or any other material while testifying, unless granted leave by the Court.
31. The witness shall not rely on a script or any notes and shall not communicate with any other persons about the substance of their examination.
32. 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.
33. Any individuals in the room with the witness while the witness is testifying (such as counsel or IT personnel) must be identified for the Court. They must not communicate with the witness while the witness is testifying.
34. A copy of any documents intended to be put to a witness during that witness' examination in chief must be provided to the witness prior to that witness' examination in chief.
35. With respect to documents to be put to witnesses during their cross-examination or re-examination, counsel conducting such examination must send a copy to the witness in advance, with directions that such documents not be opened until an appropriate time during that witness' examination.

Modifications of Practice where Required

36. The guidance provided in this Practice Note is subject to the directions of the judge presiding over the proceeding. In the event it becomes impractical or unfeasible to comply with the practices described above, the parties may seek such further orders and directions as may be required.

Authorized by:

Raymond P. Whalen
CHIEF JUSTICE

Susan Foss
REGISTRAR