



# **CONSOLIDATED PRACTICE DIRECTION REGARDING PROCEEDINGS IN THE COURT OF APPEAL DURING THE COVID-19 PANDEMIC**

Effective: March 29, 2021

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## I. PREAMBLE

1. This Practice Direction provides direction for practices at the Court of Appeal during the COVID-19 pandemic. It consolidates, updates and replaces all existing COVID-19 practice directions and notices. The Practice Direction Concerning Civil Appeals at the Court of Appeal for Ontario and the Practice Direction Concerning Criminal Appeals at the Court of Appeal for Ontario continue to apply except to the extent that they are varied by this Practice Direction.
2. This Practice Direction will be updated as circumstances require. Amendments will be listed in Appendix A.

## II. SERVICE AND FILING OF DOCUMENTS

### A. Timelines for Service and Filing of Documents

3. The timelines for serving and filing documents in many proceedings at the Court of Appeal were extended between March 16, 2020 and July 15, 2020. Effective July 16, 2020, the court reinstated the regular timelines for serving and filing documents as prescribed by legislation and/or the rules of court.
4. Unless the court directs otherwise, the period of any extension of time granted under the following practice directions will not be considered in calculating the time prescribed to take a step in any Court of Appeal proceeding:
  - (i) Practice Direction Concerning the Reinstatement of Times Prescribed in Criminal Proceedings in the Court of Appeal for Ontario (June 25, 2020);
  - (ii) Practice Direction Concerning the Reinstatement of Times Prescribed in Civil Proceedings in the Court of Appeal for Ontario (June 25, 2020); and
  - (iii) Practice Direction Concerning the Reinstatement of Times Prescribed in Proceedings Arising Under the *Provincial Offences Act* in the Court of Appeal for Ontario (June 25, 2020).
5. In criminal proceedings, the court will accept for filing Crown notices of appeal where service has been effected within the prescribed appeal period, even if the notice of appeal is filed outside the prescribed period, so long as the notice of appeal is filed within a reasonable time following service.

### B. Requirements for Electronic Materials

#### (a) **General Requirements for All Electronic Materials**

6. Counsel and litigants must comply with the Court of Appeal's requirements for electronic documents found in the Guidelines for Filing Electronic Documents at the Court of Appeal for Ontario.

7. Electronic materials filed at the court should:

- (i) be a text-searchable format (e.g., Word, Adobe PDF). Scanned PDF documents must use an Optical Character Recognition format;
- (ii) use PDF page references when citing to a PDF document. For example, if a factum refers to a page in an appeal book that is filed in PDF format, the factum should refer to the PDF page number in the appeal book; and
- (iii) use electronic bookmarks that describe the content of the electronic tab. For example, use bookmarks with names such as “Tab 1 – Notice of Appeal”.

**(b) Electronic Signatures Permitted**

8. Electronic signatures are deemed to have the same effect as ink signatures. Acceptable forms of electronic signatures include:

- (i) a scanned copy of a physically signed document;
- (ii) a scanned signature pasted in the signature block of an electronic document; and
- (iii) a signature created using a touchscreen and pasted in the signature block of an electronic document.

**(c) Issued and Entered Orders Required in Civil Proceedings**

9. An issued and entered order is required for the purpose of an appeal to the Court of Appeal in civil proceedings.

10. For information on obtaining an order from the Ontario Superior Court of Justice during the COVID-19 pandemic, please see [section D.5 of the Superior Court's Consolidated Notice to the Profession, Litigants, Accused Persons, Public and the Media](#).

**(d) Factums**

11. All text in factums must be double-spaced, except for quotations longer than four lines and footnotes. Margins must be approximately 40 millimeters on the left-hand side.

12. Factums must use 12-point or larger font. The court encourages the use of Arial or Times New Roman for all text in factums, including citations and footnotes.

13. Factums must be signed using an electronic signature.

14. Factums should contain hyperlinks to the cases cited. The hyperlinks must link to either:

- (i) the party's book of authorities; or
- (ii) the judgment databases found on the websites of Canadian courts or [www.canlii.org/en/index.html](http://www.canlii.org/en/index.html), and where not available on these websites, to LexisNexis Quicklaw or WestlawNext Canada.

15. Where possible, factums should also contain hyperlinks to the documents referred to in the factums.
16. If a party provides hyperlinks to the sources in their book of authorities, they must file the factum and book of authorities when the factum is due.

**(e) Books of Authorities**

17. Electronic books of authorities allow the judges to effectively consider the parties' submissions. Parties should file electronic books of authorities containing copies of the cases and relevant extracts from the secondary sources cited in the factums. Parties are strongly encouraged to highlight or side-bar the relevant passages in the authorities to assist the judges in identifying the passages being relied on.
18. Electronic books of authorities should include bookmarks with the name of each case or secondary source. It is helpful to include in the index hyperlinks to the cases or secondary sources in books of authorities.

**(f) Appeal Books and Exhibit Books**

19. Appeal books and exhibit books should include electronic bookmarks with the tab number and name of each document. It is helpful to include in the index hyperlinks to the documents in appeal books and exhibit books.
20. A party may file a large appeal book or exhibit book in multiple volumes.
21. Sealed materials, electronic or otherwise, will not be released to the parties without a court order.
22. In criminal proceedings, motions for the release of original electronic exhibits entered at trial are not required for counsel matters. Electronic exhibits released to counsel must be included in the appeal book.

**(g) Oral Hearing Compendiums**

23. In advance of an oral appeal hearing, parties are encouraged to file an electronic "Oral Hearing Compendium" containing:
  - (i) an outline of 500 words or less of the party's anticipated oral argument; and/or

- (ii) extracts of those documents or cases essential to the hearing that the parties intend to refer to during argument.

The Oral Hearing Compendium may be in a traditional written document and/or a slide presentation to be presented during argument.

- 24. The Oral Hearing Compendium must be served on the parties and filed with the court by email to [coa.e-file@ontario.ca](mailto:coa.e-file@ontario.ca) at least five business days before the scheduled hearing. The court is experiencing a high volume of emails during the pandemic. Oral Hearing Compendiums filed less than five business days before the hearing may not be received in time for the judges to be able to rely on them at the hearing. Parties are encouraged to serve and file their Oral Hearing Compendiums as far as possible in advance of the hearing.

#### **(h) Motion Records**

- 25. Motion records that are filed on motions heard by a three-judge panel of the court must contain electronic bookmarks. It is helpful to include in the index hyperlinks to the documents in the motion record.
- 26. Single-judge motion records that are 100 pages or more must be bookmarked. It is helpful to include in the index hyperlinks to the documents in the motion record.
- 27. It is not necessary to bookmark or hyperlink single-judge motion records that are less than 100 pages.
- 28. For more information on requirements for motion materials for bail-related matters (including bail pending appeal applications, applications to vary bails, applications to extend bails, and bail reviews), see [Bail Matters \(Part V\)](#).

#### **(i) Inmate Appeal Books in Criminal Proceedings**

- 29. [Subrule 25\(3\)](#) of the *Criminal Appeal Rules*, S.I./93-169, sets out what the Crown must include in appeal books for inmate appeals (i.e., appeals brought by persons who are in custody at the time the notice of appeal is filed and are not represented by counsel).
- 30. Pursuant to [subrule 25\(4\)](#), the Crown is excused from strict compliance with the requirements of [subrule 25\(3\)](#). Instead, subject to the court's discretion to direct otherwise, the Crown is only required to include those documents that may be relevant to an argument raised on appeal.
- 31. In determining what documents may be relevant to an argument raised on appeal, after filing an inmate appeal book or books containing transcripts and any other documents identified by the Crown as being potentially relevant, the Crown must consult with the appellant and duty counsel.

32. Where the parties disagree on the contents of the appeal book, they may seek direction from the court. The letter may be directed to the attention of the Deputy Registrar, who will place it before the Designated Inmate Appeal Judge for direction.

**C. Electronic Service of Documents**

**(a) Service Rules Applicable to Criminal and Civil Proceedings**

33. Unless the court orders otherwise, parties may electronically serve documents by email, either by attaching the documents to an email or by using a file-sharing service that provides shared links to online or cloud drives. Parties are responsible to ensure that any such file-sharing services enforce appropriate safety, security and confidentiality protocols.
34. Electronic service in accordance with paragraph 33 constitutes proper service unless the intended recipient of the document(s) shows otherwise. The requirements of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the *Criminal Appeal Rules*, the *Family Law Rules*, O. Reg. 114/99, and all existing practice directions and guidelines requiring the service of paper copies of documents for proceedings in the Court of Appeal are dispensed with unless otherwise ordered by the court.
35. If an affidavit of service is required and cannot be commissioned for reasons related to COVID-19, the affidavit must still be completed, signed by the affiant and e-filed, and be accompanied by either an acknowledgment of receipt from the recipient of the document(s) or by an explanation of why an acknowledgment could not be obtained.

**(b) Service Rules Specific to Criminal Proceedings Only**

**(i) Appeals by the Crown**

36. The Crown is not required to personally serve notices of appeal and notices of abandonment.
37. When the respondent is self-represented, the Crown may serve the notice of appeal:
- (i) by email, registered mail or courier on trial counsel (if any) so long as trial counsel confirms in writing that they have instructions to accept service;
  - (ii) by registered mail or courier to the respondent's last known address, where a reasonable effort has been made to obtain a current one; or
  - (iii) by email to the respondent.
38. When the respondent is represented, the Crown may serve the notice of appeal on counsel by email.

39. If the Crown serves the notice of appeal on counsel by email, the Crown may file the notice of appeal with the court in the same email. The email address for filing at the court is [coa.e-file@ontario.ca](mailto:coa.e-file@ontario.ca). The Crown should include in the email counsel's confirmation that they have instructions to accept service.
40. In Part XX.1 appeals, the parties should continue to be aware of special considerations when serving court documents, as outlined in [subsection 18.2\(1\) of the Practice Direction Concerning Criminal Appeals at the Court of Appeal for Ontario](#).

***(ii) Appeals by the Accused***

41. When the appellant is the accused person, notices of appeal should be served and filed in accordance with [rule 5](#) of the *Criminal Appeal Rules*. In addition to the requirements in rule 5, if the appellant is represented by counsel, counsel must also provide a copy of the notice of appeal to the Crown by email through the applicable Crown Attorney's e-service address.

***D. Electronic Filing of Documents***

**(a) Electronic Filing Required**

42. Parties must file all documents electronically. Paper copies of documents are not required. The requirements of the *Rules of Civil Procedure*, the *Criminal Appeal Rules*, the *Family Law Rules*, and all existing practice directions and guidelines requiring the filing of paper copies of documents in the Court of Appeal are dispensed with unless otherwise ordered by the court.
43. Counsel and litigants must comply with the Court of Appeal's requirements for filing electronic documents, as set out in the [Guidelines for Filing Electronic Documents at the Court of Appeal for Ontario](#).

**(b) Manner of Electronic Filing**

44. Until further notice, public counter services at the Court of Appeal are closed. Members of the public should avoid non-essential attendance at Osgoode Hall.
45. Unless otherwise advised by the court, and subject to the rules set out at paragraph 46 for bail-related matters, parties may electronically file materials with the Court of Appeal:
  - (i) by email to [coa.e-file@ontario.ca](mailto:coa.e-file@ontario.ca), with attached documents or a link to a file-sharing service; or
  - (ii) by delivery of a USB key labelled with the court file number.
46. All materials for bail-related matters (including bail pending appeal applications, applications to vary bails, applications to extend bails, and bail reviews) must be



filed by email. For more information on filing materials for bail-related matters, see [Filing Materials for Bail Matters \(Section V.A\)](#).

47. All documents that are served and filed electronically must be labelled with the court file number and in accordance with the file-naming rules set out in the [Guidelines for Filing Electronic Documents at the Court of Appeal for Ontario](#). Documents that are not covered in the existing Guidelines must be labelled with the court file number and a name that identifies the content of the document.
48. An automatic reply is sent when the court receives documents by email for filing. The automatic reply is not confirmation that the documents have been accepted for filing. If there are problems with the documents and they are not accepted for filing, the court will contact the affected party.
49. Documents filed by email cannot be larger than 35MB. Documents larger than 35MB should be divided into smaller parts and labelled accordingly or should be sent using a file-sharing service that provides shared links online or in the cloud. Parties should be aware that their internet service/email provider may have lower limits on the permitted size of attachments.
50. The court can access the following file-sharing services, provided the documents are shared with a direct link:
  - (i) Microsoft OneDrive;
  - (ii) Google Drive;
  - (iii) Dropbox; and
  - (iv) Enterprise Attachment Transfer Service.

The court cannot access cloud-based file-sharing services that use two-stage verification, require online registration, or are blocked by the court's network due to firewall restrictions, including WeTransfer.

**(c) Electronic Filing of Documents Under Seal**

51. Electronic documents that are filed under seal must be labelled as sealed and must be filed in password-protected format.
52. The party filing the sealed document must give the password by telephone to the Deputy Registrar and Manager of Court Administration at 416-327-6017.
53. If parties have questions about the electronic filing of sealed documents, they should contact the Deputy Registrar and Manager of Court Administration.

**(d) Replacement Copies of Paper Documents Required**

54. Unless otherwise directed by the court, if only paper copies of the materials have been filed to date in a pending proceeding, the parties must file replacement electronic copies of all materials needed for the hearing as soon as reasonably possible, and in any event no later than 45 days before the hearing date.

**III. SCHEDULING AND CONDUCT OF HEARINGS**

**A. Scheduling of Hearings and Urgent Matters**

55. The Court of Appeal recognizes that the COVID-19 pandemic has caused significant disruptions and stresses in the personal and professional lives of counsel and litigants. The court expects counsel and litigants to be flexible and reasonable when scheduling appeals and motions in the Court of Appeal, and to have due consideration for the personal circumstances of others.
56. The operational impacts of the COVID-19 pandemic on the Court of Appeal are such that it may be necessary to schedule some appeal hearings outside the four-to-six-month timeline set out in subsection 12.1(1) of the Practice Direction Concerning Civil Appeals at the Court of Appeal for Ontario and subsection 10.2(1) of the Practice Direction Concerning Criminal Appeals at the Court of Appeal for Ontario.
57. Taking into consideration the very significant impact the pandemic has had on court operations, in July and August 2021, the court will only be hearing appeals on grounds of urgency.
58. Requests to schedule an appeal in July or August 2021 on grounds of urgency must be made to a judge of the court who has been designated by the Chief Justice to serve as a List Judge.
59. A conference call before a List Judge may be requested by emailing [coa.e-file@ontario.ca](mailto:coa.e-file@ontario.ca). The subject line of the email should include “Urgent Hearing Request” followed by the file number. The Appeal Scheduling Unit will contact the parties with the date, time and the dial-in details for the conference call.

**B. Manner of Hearing**

60. As of November 16, 2020, the Court of Appeal is not conducting in-person appeals or motions until further notice.
61. At this time, all appeals and motions will be conducted:
- (i) remotely by video and/or audio conference; or
  - (ii) in writing.

62. Appeals and motions will be scheduled to be heard by way of Zoom video conference, unless otherwise directed.

**C. Counsel Slip and Hearing Information Form**

63. The court requires that parties to all appeals and motions must fully and accurately complete and submit a Counsel Slip and Hearing Information Form within the times specified in this section of the Practice Direction. The Counsel Slip and Hearing Information Form contains information that is essential to the effective hearing of matters in the Court of Appeal.
64. The Counsel Slip and Hearing Information Form is found at Appendix B to this practice direction, and at this link.
65. For appeals and panel motions being heard by video, audio conference and/or in writing, parties must submit the completed Counsel Slip and Hearing Information Form to the court's e-filing email address at coa.e-file@ontario.ca at least 10 business days before the hearing. All other parties should be copied on the email. Parties are encouraged to collaborate and submit one form on behalf of all parties.
66. For single judge motions being heard by video, audio conference and/or in writing, moving parties must submit the completed the Counsel Slip and Hearing Information Form to the court's e-filing email address at coa.e-file@ontario.ca at the same time as they file their notice of motion. Responding parties must submit their form 24 hours before the hearing (excluding weekends and holidays).
67. All information on the Counsel Slip and Hearing Information Form must be filled out except the name and contact information for the other parties, if completing the form separately. If the information on the Counsel Slip and Hearing Information Form changes for any reason before the hearing, an updated form must be filed immediately.

**D. Zoom Hearings**

68. Unless otherwise directed, the court will be using the Zoom video conferencing platform for video appearances.

**(a) Preparing to Use Zoom**

69. To participate in a Zoom appearance by video, parties will need an internet connection and a computer or similar device with a webcam, microphone, speaker, and sufficient bandwidth (3 Mbps or greater). Parties are encouraged to use headsets or earbuds to improve the audio quality.
70. Parties can download or subscribe to Zoom at <https://zoom.us/> and test Zoom prior to their appearance at <https://zoom.us/test>. It is not necessary to purchase a subscription to Zoom. Participating in a hearing scheduled by the Court of Appeal is free.

71. User tutorials for Zoom are available at <https://support.zoom.us/hc/en-us/articles/206618765-Zoom-Video-Tutorials>.
72. If a party experiences technical difficulties with Zoom, they should consult the Zoom Help Center at <https://support.zoom.us/hc/en-us>.
73. Best practices for participating in Zoom appearances at the Court of Appeal can be found in [Appendix C](#) to this Practice Direction and in the E-Hearings Task Force's [Best Practices for Remote Hearings](#). Parties should follow any direction given by the panel or presiding judge.

**(b) Participating in Zoom Hearings**

74. Prior to the hearing of an appeal or motion by Zoom, the court will send parties an email with the following information:
  - (i) a hyperlink to access the Zoom hearing;
  - (ii) the meeting ID and password for the Zoom hearing; and
  - (iii) the telephone numbers that may be used to access the Zoom hearing.
75. Parties to a hearing may share the Zoom link, webinar/meeting ID and password, and telephone numbers for the hearing with anyone who wishes to observe, unless the hearing is closed to the public in accordance with a statutory provision or a court order. When sharing this information with observers, it is the responsibility of the parties to also share this warning:

Unless permission is given by the court, it is an offence under s. 136 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, punishable by a fine of not more than \$25,000 or imprisonment of up to six months, or both, to record any part of the hearing, including by way of screenshot/capture and photograph, as well as to publish, broadcast, reproduce or disseminate any such recording.

This warning will be included with the Zoom link, webinar/meeting ID and password, and telephone numbers for the hearing provided to the parties by the court.

76. Parties can join a Zoom hearing by clicking on the link provided in the hearing email, or by opening Zoom, clicking on the “Join” or “Join a Meeting” icon, and entering the meeting ID and password provided.
77. Parties to the Zoom hearing should label themselves with their full names and roles in the proceeding, not with pseudonyms or aliases.
78. The Zoom hearing will be open to parties beginning 30 minutes before the appeal or motion is scheduled to be heard. Parties must sign into Zoom well in advance of the scheduled hearing time to address any issues with technology.

79. All parties in the appeal or motion must be present for the pre-hearing check-in, which will occur approximately 15 minutes before the scheduled hearing time.
80. The court uses the Zoom webinar platform for all matters except for *in camera* proceedings (i.e., proceedings that are closed to the public) and inmate appeals (i.e., appeals brought by persons who are in custody at the time the notice of appeal is filed and are not represented by counsel). When joining Zoom, parties and observers will join as attendees in the Zoom webinar. Parties making submissions, as listed on the Counsel Slip and Hearing Information Form, will be promoted to panelists to the hearing by court staff once the pre-hearing check-in is ready to commence.
81. The court uses the Zoom meeting platform for *in camera* proceedings and inmate appeals. For *in camera* proceedings and inmate appeals, parties and observers will be placed in a Zoom meeting waiting room and then admitted into the hearing by court staff once the pre-hearing check-in is ready to commence.

**(c) Dealing with Technical Difficulties in Zoom Hearings and Joining by Audio Conference**

82. If a party is unable to participate in a Zoom hearing by video conference, the party may seek the permission of the panel or the presiding judge to join the hearing by telephone. A party joining by phone must call the phone number provided and follow the directions on entering the meeting ID and password. Parties should join by telephone only if they experience technical issues with the video conference and only with the approval of the panel or the presiding judge.
83. During a hearing, the courtroom registrar may contact a party by phone or email as indicated on the Counsel Slip and Hearing Information Form if that person appears to be experiencing connection issues with the virtual courtroom. Parties should ensure that they have their phones with them at all times so that they can be reached, should the need arise.

**(d) Hearing Protocols**

84. Subject to any direction of the panel or presiding judge, only parties providing submissions will appear on video in the virtual courtroom.
85. Counsel are not expected to gown for remote appearances.
86. Screensharing should be used only after requesting permission of the court to do so.
87. Parties to a hearing are reminded that, unless permission is given by the court, it is an offence under section 136 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, punishable by a fine of not more than \$25,000 or imprisonment of up to six months, or both, to record any part of a hearing, including by way of screenshot/capture and

photograph, as well as to publish, broadcast, reproduce or disseminate any such recording.

**E. Interpretation and Accessibility Requests**

88. All requests for interpretation services should be made at the earliest opportunity before a hearing date. The Ministry of the Attorney General provides court interpreters in select circumstances, as outlined at this [link](#). The parties must otherwise retain their own interpreters for court hearings. More information about court interpretation for matters before the Court of Appeal can be obtained from the court's Intake Office at 416-327-5020.
89. The Court of Appeal is committed to ensuring that it is accessible to persons with disabilities. If a party has questions about a disability-related accommodation request, the party may contact the court's Accessibility Coordinator at 416-326-1029 or [coa.registrar@ontario.ca](mailto:coa.registrar@ontario.ca).

**IV. PUBLIC AND MEDIA ACCESS TO ZOOM HEARINGS**

90. Unless there is a legal provision or a court order that requires a hearing to be held *in camera* (closed to the public), members of the public and the media may observe hearings remotely.

**A. Recording Proceedings Without the Court's Permission is Strictly Prohibited**

91. Hearing observers are reminded that, unless permission is given by the court, it is an offence under [section 136](#) of the *Courts of Justice Act*, punishable by a fine of not more than \$25,000 or imprisonment of up to six months, or both, to record any part of a hearing, including by way of screenshot/capture and photograph, as well as to publish, broadcast, reproduce or disseminate any such recording.

**B. Parties May Share the Zoom Details for the Hearing**

92. Parties to a hearing may share the Zoom link, webinar/meeting ID and password, and telephone numbers for the hearing that they receive from the court with anyone that wishes to observe, unless the hearing is *in camera*. The same Zoom link, webinar/meeting ID and password, and telephone numbers will work for parties/counsel and for observers. When sharing this information with observers, it is the responsibility of the parties to also share this warning:

Unless permission is given by the court, it is an offence under s. 136 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, punishable by a fine of not more than \$25,000 or imprisonment of up to six months, or both, to record any part of the hearing, including by way of screenshot/capture and photograph, as well as to publish, broadcast, reproduce or disseminate any such recording.

This warning will be included with the Zoom link, webinar/meeting ID and password, and telephone numbers for the hearing provided to the parties by the court.

**C. How to Request Access to a Hearing from the Court**

93. Members of the public and the media who wish to observe a hearing and have not received the Zoom link, webinar/meeting ID and password, and telephone numbers for the hearing from the parties may send a request for access to the hearing to the Office of the Registrar at [coa.registrar@ontario.ca](mailto:coa.registrar@ontario.ca) at least 48 hours in advance of the hearing (excluding weekends and holidays). So long as the hearing is not being held *in camera*, the Office of the Registrar will provide the observer with the Zoom link, webinar/meeting ID and password, and telephone numbers for the hearing, as well as the warning set out above.

**D. How to Connect to the Hearing**

94. Generally, members of the public and the media may observe the hearing remotely by connecting to the hearing by Zoom or by telephone. Connecting by Zoom allows an observer to watch and listen to the hearing. Connecting by telephone allows an observer to listen to the hearing. Observers need not seek the permission of the panel or the presiding judge to join the hearing by telephone.
95. To connect to the hearing by video, observers can either click on the Zoom link for the hearing or go to <https://join.zoom.us> and enter the meeting/webinar ID and password.
96. To connect to the hearing by phone, observers can either dial the telephone number for the hearing that contains their preferred area code or dial the toll-free number for the hearing. Observers connecting by phone must enter the meeting/webinar ID and password when prompted.
97. Observers can download or subscribe to Zoom at <https://zoom.us/>. It is not necessary to purchase a subscription to Zoom. Observing a hearing scheduled by the Court of Appeal is free.
98. User tutorials for Zoom are available at <https://support.zoom.us/hc/en-us/articles/206618765-Zoom-Video-Tutorials>.
99. If an observer experiences technical difficulties with Zoom, they should consult the Zoom Help Center at <https://support.zoom.us/hc/en-us> as Zoom is a third-party remote appearance service.

**E. Privacy Information for Observers**

100. Except in inmate appeals (i.e., appeals brought by persons who are in custody at the time the notice of appeal is filed and are not represented by counsel), when an observer connects by Zoom or by telephone to a hearing, the other participants and observers will not be able to see them. The judge(s), parties making submissions,

and court staff involved in the hearing will be able to see all observers' screen names (if connecting by Zoom) or telephone area codes and the last three digits of their telephone numbers (if connecting by telephone). No one else will see this information.

101. When an observer connects by Zoom or by telephone to an inmate appeal, if their camera and/or microphone is turned on, all participants and observers in the hearing will be able to see and/or hear them; however, the court will typically ask observers to turn off their cameras and mute their microphones. Whether or not an observer's camera is off and/or microphone is muted, the observer's screen name (if connecting by Zoom) or the observer's telephone area code and the last three digits of their telephone number (if connecting by telephone) will be seen by all participants and observers in the hearing.

## **V. BAIL MATTERS IN THE COURT OF APPEAL**

102. This part applies to all bail-related matters, including bail pending appeal applications, applications to vary bail, applications to extend bail, and bail reviews.

### **A. Filing Materials for Bail Matters**

103. All materials for bail matters should be filed with the court electronically using the following email address: [coa.e-file@ontario.ca](mailto:coa.e-file@ontario.ca).

104. Please include in the subject line of the email:

- (i) the title of the proceeding;
- (ii) the court file number;
- (iii) the fact that it is an application pertaining to bail; and
- (iv) a proposed date of hearing.

105. Counsel bringing the application should contact the motions clerk at 416-327-5025 to advise that the application is being filed.

106. Counsel should confirm with the motions clerk that their application materials have been received.

### **B. Draft Orders Required**

107. For all bail-related applications, whether contested or on consent, appellant's counsel should work with Crown counsel to draft proposed conditions for release and submit a draft release order with their application materials.

108. The draft order must be submitted using the court's "all-in-one" release order format (see [section V.B\(a\)](#) below).



109. The draft order must include the proposed conditions that have been agreed on, should the court order release. Any additional conditions that are in dispute between the parties must be identified as such and set out in a separate document.

**(a) “All-in-One” Release Order**

110. The Court of Appeal created an “all-in-one” release order in April 2020. Until further notice, the “all-in-one” release order is the only form of release order being used by the Court of Appeal.

111. Appendix A to the “all-in-one” release order must be completed by the sureties (if any), the appellant, and a judge, justice, or clerk of the court. No additional forms or orders are required to effect a release.

112. The “all-in-one” release order allows for releases to be effected through the Court of Appeal without needing to take the order to the Ontario Court of Justice to effect release.

113. Counsel may obtain a sample electronic copy of the “all-in-one” release order from the Crown.

**(b) Sureties**

114. If the appellant is proposing a release order with sureties, in addition to providing the names of the sureties and the amount for which each is to be liable (as required by subrule 32(1)(i) of the *Criminal Appeal Rules*), counsel are also asked to provide the following additional information on the draft release order about each surety:

- (i) full legal name, as depicted on government-issued identification;
- (ii) date of birth;
- (iii) home address;
- (iv) phone number; and
- (v) email address (if available).

115. Surety declarations under section 515.1 of the *Criminal Code*, R.S.C. 1985, c. C-46, are not required.

116. Surety affidavits continue to be required as part of the application materials in accordance with subrule 32(1) of the *Criminal Appeal Rules*.

**(c) Surrender Conditions**

***(i) New Standard Wording***

117. Given the unprecedented circumstances of the COVID-19 pandemic, the court has changed the standard wording of the surrender condition that must be included in all orders for release from custody pending appeal.
118. Unless otherwise ordered by a judge, the following surrender condition must be included in all orders for release from custody pending appeal:

The appellant will surrender into custody at the institution from which the appellant is released, or such other institution as may be specified in the order, by 7:00 a.m. on the morning the judgment is to be released or such other day as is specified in the order, whichever is earlier.

***(ii) New Release Orders***

119. Unless otherwise ordered by a judge, the new standard wording of the surrender condition set out in paragraph 118 must be used in all release orders made by the court as of March 29, 2021.

***(iii) Existing Release Orders***

120. This Practice Direction does not alter existing release orders. Existing release orders must be complied with.
121. If an appellant wishes to vary the surrender condition in the appellant's existing release order to reflect the new standard wording set out in paragraph 118, the court would encourage the appellant to apply well in advance of the hearing date.

***(iv) Sunset Clauses***

122. The phrase "or such other day as is specified in the order, whichever is earlier" in the standard wording set out in paragraph 118 allows for the use of a "sunset clause". A "sunset clause" is like an expiry date for a release order, and it helps the court monitor the progress of these appeals. In light of the challenges associated with the COVID-19 pandemic, in appeals where a "sunset clause" is appropriate, the court would encourage the parties to consider proposing a longer period of time before the release order expires pursuant to the sunset clause. The court would also encourage the parties to bring applications to extend the date in a "sunset clause" well in advance.

**(d) Interpreters**

123. If interpreters are required for any of the individuals signing a release order, counsel are to make the necessary modifications to the draft release order to provide for this circumstance.

**C. Process for Finalizing Release Order**

124. If the court orders release, the court will name the sureties (if any), and specify the financial obligations and conditions it requires in the release order. If any revisions are required by the court, counsel are to revise the draft release order and then submit it to the court for signing and entering in the records of the court.
125. Once the release order is signed and entered by the court, Court of Appeal staff will send the order back to counsel for the appellant, who will then immediately facilitate the signing of Appendix A of the release order by the sureties (if any) and the appellant (if out of custody).
126. The new release order allows for counsel to verify the identities of sureties and confirm their signatures. This may be done in person or by remote means, such as Facetime, Skype, etc. These signatures must be witnessed, remotely or in person, by a member of the Law Society of Ontario.
127. After counsel has facilitated the signatures of the sureties (if any), the process for finalizing the release order depends on whether the appellant is out of custody (see paragraphs 128-133) or in custody (see paragraphs 134-139).

**(a) Out-of-Custody Appellants**

128. If the appellant is out of custody, counsel must also facilitate the signing of Appendix A of the release order by the appellant.
129. As with sureties, counsel may verify the identity of the out-of-custody appellant and confirm their signature (whether in person or by remote means). The appellant's signature must be witnessed, remotely or in person, by a member of the Law Society of Ontario.
130. The release order, with the signatures of the sureties (if any), the appellant, and the Law Society witnesses, must then be re-submitted to the court.
131. If the court is satisfied, it will sign the order on the last page of Appendix A and indicate if the order is complete.
132. If the appellant is out of custody (and therefore their signature is already on the release order), the release order will be complete and in effect upon the court signing it on the last page of Appendix A.
133. Court of Appeal staff will email copies of the completed order to the appellant's counsel and to the Crown. The matter will then be concluded.

**(b) In-Custody Appellants**

134. If the appellant is in custody, the release order, with the signatures of the sureties, and the Law Society witnesses, must be re-submitted to the court.

135. If the court is satisfied, it will sign the order on the last page of Appendix A and indicate that the order requires the appellant's signature.
136. After the court signs the order on the last page of Appendix A, it will send the order to the institution in which the appellant is detained.
137. The revised release order allows for a witness at the institution in which the appellant is detained (need not be a member of the Law Society) to confirm the appellant's identity and signature.
138. The release order will be complete and in effect upon the signing of Appendix A by the appellant and witness at the institution (their signatures are required on the second-to-last page of Appendix A).
139. The institution will send the completed order back to the court, and Court of Appeal staff will send copies to counsel for the appellant and the Crown upon receipt.

## **VI. CONSOLIDATION AND REVOCATION OF PRIOR PRACTICE DIRECTIONS AND NOTICES**

140. This Consolidated Practice Direction Regarding Proceedings in the Court of Appeal During the COVID-19 Pandemic updates, consolidates and revokes the following practice directions and notices regarding COVID-19 effective March 29, 2021:
  - (i) Practice Direction Concerning Public and Media Remote Observation of Oral Hearings During the COVID-19 Pandemic (January 25, 2021);
  - (ii) Practice Direction Regarding the Electronic Conduct of Matters During the COVID-19 Pandemic (October 26, 2020) [revised December 16, 2020];
  - (iii) Notice Regarding the Scheduling of In-Person and Remote Appeals (November 16, 2020);
  - (iv) Notice of Public Counter Services (October 29, 2020);
  - (v) Notice Regarding Videoconference Appearance Technology (Zoom) (July 6, 2020);
  - (vi) Amended Practice Direction Concerning Manner of Service, Inmate Appeal Books, and Orders for Release of Electronic Exhibits in Criminal Matters Given the Exceptional and Evolving Circumstances Concerning COVID-19 (June 25, 2020);
  - (vii) Practice Direction Concerning the Reinstatement of Times Prescribed in Criminal Proceedings in the Court of Appeal for Ontario (June 25, 2020);

- (viii) Practice Direction Concerning the Reinstatement of Times Prescribed in Civil Proceedings in the Court of Appeal for Ontario (June 25, 2020);
- (ix) Practice Direction Concerning the Reinstatement of Times Prescribed in Proceedings Arising Under the *Provincial Offences Act* in the Court of Appeal for Ontario (June 25, 2020);
- (x) Practice Direction Concerning Revised Court of Appeal Release Order Form for Use Only During the Exceptional and Evolving Circumstances Concerning COVID-19 (April 20, 2020);
- (xi) Practice Direction Concerning Applications for Bail Pending Appeal at the Court of Appeal for Ontario Given the Exceptional and Evolving Circumstances Concerning COVID-19 (April 5, 2020); and
- (xii) Notice Regarding Videoconference and Teleconference Appearance Technology (CourtCall) (March 27, 2020).



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Chief Justice George R. Strathy

March 15, 2021

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Date

## **APPENDIX A: AMENDMENTS**

There have been no amendments to this Practice Direction.

**APPENDIX B: COUNSEL SLIP AND HEARING INFORMATION FORM**



**COURT OF APPEAL FOR ONTARIO**

**Counsel Slip and Hearing Information Form**

Please send the completed form to [coa.e-file@ontario.ca](mailto:coa.e-file@ontario.ca). For single judge motions, moving parties must submit this form at the same time as they file their notice of motion. Responding parties must submit their form 24 hours before the hearing (excluding weekends and holidays). For panel motions and appeals, all parties must submit this form at least 10 business days before the hearing. Parties to panel motions and appeals are encouraged to collaborate and submit one form on behalf of all parties.

**CASE INFORMATION**

<b>Court of Appeal File Number (if applicable):</b>	
<b>Court of Appeal Motion Number (if applicable):</b>	
<b>Case Name:</b>	
<b>Date of Hearing:</b>	
<b>In criminal appeals, is the appellant on a release pending appeal?</b>	<input type="checkbox"/> No. <input type="checkbox"/> Yes. Write out the wording of the surrender condition below:

**COUNSEL SLIP<sup>1</sup>**

**For Appellant(s)/Moving Party(ies):**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Phone Number (where you can be reached during the appeal/motion, if necessary)</b>	<b>Email Address</b>

<sup>1</sup> Please include all counsel attending the hearing, even if they will not be making oral submissions.

**For Respondent(s)/Responding Party(ies):**

Name of Person Appearing	Name of Party	Phone Number (where you can be reached during the appeal/motion, if necessary)	Email Address

**For Other:**

Name of Person Appearing	Name of Party	Phone Number (where you can be reached during the appeal/motion, if necessary)	Email Address

**HEARING INFORMATION<sup>2</sup>**

Is there a legal provision or an existing court order<sup>3</sup> that requires this hearing to be held *in camera* (closed to the public) (e.g., proceedings under the *Child, Youth and Family Services Act*)?

Yes. Identify that legal provision or court order below and attach a copy of the court order if available:

No.

**Are there any privacy or publication concerns associated with this case (e.g., publication bans, sealing orders, identities of children, etc.)?**

Yes. Describe these concerns below. If there is a publication ban and/or sealing order in place, clearly describe the ban/order, its legal basis and what it specifically covers in the proceedings. Please also attach a copy of the court order if available:

No.

<sup>2</sup> Spaces on form for input can expand, if needed.

<sup>3</sup> Applications for a discretionary order to proceed *in camera* (close a hearing to the public) should be brought well in advance of the hearing date. The court will give notice to the media of any such application.



**Can the privacy/publication concerns identified above be mitigated through the use of specific strategies during oral submissions, such as using initials instead of names, avoiding potentially sensitive details not essential to the argument, etc.?<sup>4</sup>**

Yes. Identify those specific strategies that could be used to mitigate the privacy/publication concerns below:

No. Please explain why not on the following page:

**Can the full names of the individuals named in the title of proceedings be published?**

Yes.

No. Please explain why not below:

**REMINDER:** Unless permission is given by the court, it is an offence under s. 136 of the Courts of Justice Act, R.S.O. 1990, c. C.43, punishable by a fine of not more than \$25,000 or imprisonment of up to six months, or both, to record any part of the proceedings, including by way of screenshot/capture and photograph, as well as to publish, broadcast, reproduce or disseminate any such recording.

## CONFIRMATION

By checking this box, I/we confirm that I/we have reviewed the record in this case, and I/we have answered the questions about privacy/publication concerns to the best of my/our knowledge.

\_\_\_\_\_  
Signature

If you are unable to sign above, please check this box. This will represent your signature.

\_\_\_\_\_  
Signature

If you are unable to sign above, please check this box. This will represent your signature.

\_\_\_\_\_  
Name (Party)

\_\_\_\_\_  
Name (Party)

\_\_\_\_\_  
Law Society Number (*unless self-represented*)

\_\_\_\_\_  
Law Society Number (*unless self-represented*)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

<sup>4</sup> In considering this, parties should be aware of the increased risk for unlawful recording and dissemination associated with online proceedings.

## APPENDIX C: BEST PRACTICES FOR ZOOM APPEARANCES

The following are best practices for appearances by Zoom at the Court of Appeal. These practices are for guidance and are not intended to be exhaustive. Parties should follow any direction given by the panel or presiding judge. They may also wish to consult the E-Hearings Task Force's [Best Practices for Remote Hearings](#).

1. Identify an appropriate environment for the hearing and improve internet connectivity.
  - a. Choose a professional environment with a neutral backdrop and adequate lighting.
  - b. If possible, choose a location near a modem and/or connect directly to the internet via ethernet for better connectivity.
  - c. If connecting by Wi-Fi, to reduce potential connection problems, minimize the use of bandwidth by other members of the household or office.
  - d. Choose a quiet location with minimal distractions.
2. Prepare hardware and software in advance.
  - a. Fully charge and plug in devices during the hearing.
  - b. Place devices on a stable and stationary surface. Handheld devices should not be used.
  - c. Test accessing Zoom and the internet connection in advance of the hearing, in the location that will be used for the hearing (see <https://zoom.us/test>).
  - d. Ensure devices that will be used during the hearing meet Zoom system requirements (see <https://support.zoom.us/hc/en-us/articles/201362023-System-Requirements-for-PC-Mac-and-Linux>).
  - e. Select a screen name for Zoom containing your full name and role in the proceeding (e.g., Jane Doe, Counsel to the Appellant).
  - f. Position the camera on your computer or similar device in a way for it to be level with your face and 1-2 feet away from where you will be seated for the hearing.
  - g. Practice switching from computer audio to phone audio (cell phone or landline) or vice versa in advance of the hearing. This will enable you to quickly reconnect to the hearing by audio should your internet bandwidth unexpectedly weaken.
3. Plan for communicating with others.

- a. Consider how counsel will communicate with clients, co-counsel, and opposing parties (if necessary) privately during the hearing.
  - b. Exchange telephone numbers and email addresses in advance to communicate in the event technological or other issues arise during the hearing.
4. Take steps to minimize background noise.
  - a. Mute your microphone if you are not speaking. Parties who have not muted their microphones may be muted by the court.
  - b. Put cell phones and other devices on silent and mute notifications on your computer to avoid interrupting the hearing.
5. Adapt oral argument for a remote hearing.
  - a. Gowning is not required for any Zoom appearances at this time. Counsel should wear appropriate business attire.
  - b. Consider speaking more slowly than usual, to adapt to lag times in the video or audio technology.
  - c. Consider whether to proceed more slowly than usual when referring to documents, as it may take longer for judges to locate the electronic documents.