



UPDATED DIRECTIVE AND INSTRUCTIONS FOR VIRTUAL HEARINGS – COURT OF APPEAL OF NEW BRUNSWICK

Date: September 13, 2022

To: **Public, Lawyers, Media**

From: The Honourable J.C. Marc Richard, Chief Justice of New Brunswick

Subject: **NBCA COVID-19 – UPDATED DIRECTIVE AND INSTRUCTIONS FOR VIRTUAL HEARINGS**

This Updated Directive replaces previous directives on the operations of the Court of Appeal of New Brunswick during the COVID-19 pandemic. It applies to both civil and criminal appeals.

INTRODUCTION

For the past two years, New Brunswick courts have adapted their operations to the pandemic context and adopted their own measures to reduce the spread of the coronavirus and its variants and to protect the health of participants in the justice system, court employees, and other members of the public, while maintaining the rule of law. As sanitary conditions have improved since the beginning of the pandemic, the Court has decided to ease its COVID-19 restrictions. The Court will continue to evaluate sanitary conditions and may reinstate some measures should these conditions deteriorate.

In the exercise of its inherent jurisdiction to control its own process, the Court directs that the measures and instructions described in this Updated Directive apply to its proceedings and in its courtrooms until further notice from the Court.

This Updated Directive applies to the Court of Appeal. The individual home pages of the [Court of King's Bench](#) and the [Provincial Court](#) of New Brunswick should be consulted, as needed, for information on directions given by these courts.

ACCESS TO COURTROOMS, USE OF MASKS AND PHYSICAL DISTANCING

Anyone who has symptoms of COVID-19 or has recently tested positive for COVID-19 and has not yet recovered, or anyone who has been in contact with such person in the previous five days, may not attend a hearing in person at the Court of Appeal. In these circumstances, participants whose presence at the hearing is required must immediately contact the office of the Registrar by phone at (506) 453-2452, or by email at nbca-canb@gnb.ca, to arrange to attend the hearing by video or telephone conference.

Masking is no longer required to enter a courtroom and to circulate inside. However, **attendees are strongly encouraged to wear an adequate mask in courtrooms.** If the circumstances require (for example, if the Court is made aware of the presence of a vulnerable person or the courtroom is particularly crowded), the presiding judge may order those present to wear a mask.

As of November 1, 2022, and subject to change, the Court will no longer impose restrictions on capacity in its courtrooms due to the pandemic. To the extent possible, attendees should maintain a distance of at least one metre between them. As there is still a limited number of seats available, priority will continue to be given to parties, their counsel, and members of the accredited news media.

The presiding judge may impose any other health measures in the courtroom.

FILING AND SERVICE OF DOCUMENTS

A document may be filed with the Registrar of the Court, Ms. Caroline Lafontaine, by:

- (a) filing the document in person with the Registrar's staff in the Justice Building, in Fredericton;
- (b) sending the document and any prescribed fee by courier or by mail; or
- (c) leaving the document and any prescribed fee in a secure box located outside the Registrar's office.

In both civil and criminal appeals, Appeal Books, Submissions and Books of Essential References may also be filed with the Registrar by emailing them to nbca-canb@gnb.ca, or by faxing them to (506) 453-7921. The original document and any prescribed fee are then to be sent to the Registrar by mail or courier without delay. This prescribed fee is to be paid by a lawyer's cheque, a certified cheque, or a money order.

Filing by email or by fax of other documents, such as Notices of Appeal, is no longer accepted.

The Registrar enforces the hours during which her office is open for business, as set by Rule 3.03 of the *Rules of Court*, in determining the date on which a document was filed by email or fax.

Unless the *Rules of Court* provide otherwise, registry staff will not send a party's document to the other parties. Any party to a proceeding who files a document by email or fax must serve an exact copy of the document on every other party to the proceeding within the time prescribed by the *Rules of Court* for service. Service on a solicitor may be effected by email as provided by Rule 18.07.1 of the *Rules of Court*.

For any inquiries regarding the filing and service of documents, please contact the Registrar by phone at (506) 453-2452, or by email at nbca-canb@gnb.ca.

AFFIDAVITS

Some accommodation continues to be made for the commissioning of affidavits in circumstances where it is not possible, or it is medically unsafe, for the deponent to physically attend before a lawyer or commissioner. Subject to the discretion of the Court of Appeal or a judge thereof to require the best evidence, affidavits to be used in the Court may still be sworn or affirmed, as the case may be, by video technology in the following manner:

1. Any affidavit to be sworn using video technology must contain a paragraph at the end of the body of the affidavit describing that the deponent was not physically present before the commissioner, but was linked with the commissioner utilizing video technology and that the process for remote commissioning of affidavits was used;
2. While connected via video technology, the deponent must show the commissioner the front and back of the deponent's current government-issued photo identification and the commissioner must compare the video image of the deponent and information in the deponent's government-issued photo identity document to be reasonably satisfied that it is the same person and that the document is valid and current. The commissioner must also take a screenshot of the front and back of the deponent's government-issued photo identity document and retain it;
3. The commissioner and the deponent are both required to have a copy of the affidavit, including all exhibits, before each of them while connected via video technology;
4. The commissioner and the deponent must review each page of the affidavit and exhibits to verify that the pages are identical and, if so, must initial each page in the lower right corner;

5. At the conclusion of the review, the commissioner will administer the oath, the deponent will state what needs to be said to swear or affirm the truth of the facts, and the commissioner must watch the deponent sign his or her name to the affidavit;
6. The deponent will then send the signed affidavit with exhibits electronically to the commissioner;
7. Before completing the affidavit, the commissioner must compare each page of the copy received from the deponent against the initialled copy that was before him or her in the videoconference and may affix his or her name to the jurat only upon being satisfied that the two copies are identical;
8. The two copies will then be attached together with a certificate signed by the commissioner stating that the commissioner was satisfied that the process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and the commissioner to be physically present together; and
9. The completed package would then be permitted to be filed.

HEARING OF MOTIONS

In general, scheduled motions and status hearings before the Court of Appeal will be heard by videoconference if possible, or otherwise by telephone conference, unless the motion judge or the Chief Justice directs otherwise. The office of the Registrar will make the necessary arrangements and provide the parties or their counsel with instructions. Arrangements may also be made for represented parties to join the video or telephone conference provided that, once they have identified themselves, they place their phone on mute and do not interrupt the proceedings.

When appearing by videoconference at a motion hearing, counsel need not gown, but self-represented parties and counsel must wear appropriate business attire.

All lawyers and self-represented litigants who have a matter before the Court of Appeal must ensure the Registrar is provided with their current phone number and email address.

Except as provided for the accredited news media, recording of the hearing, in whole or in part, without prior permission of the motion judge or the Chief Justice is strictly prohibited and may constitute contempt of court.

Any request for adjourning the hearing of a motion or a status hearing may be addressed to the Registrar by phone at (506) 453-2452, or by email at nbca-canb@gnb.ca, and she will provide instructions.

HEARING OF APPEALS

Beginning in September 2022, the default mode of hearing for appeals will be in person, unless the panel or the Chief Justice directs otherwise.

However, self-represented parties or counsel may request to appear by video or telephone conference. If the request is granted, the office of the Registrar will make the necessary arrangements and inform the parties or their counsel. Arrangements may also be made for represented parties to join a video or telephone conference provided that, once they have identified themselves, they place their microphone or phone on mute and do not interrupt the proceedings.

The [list of appeal cases](#) will be updated regularly on the Court of Appeal's website to indicate whether an appeal will be heard in person, or by video or telephone conference.

When joining a video or telephone conference, self-represented parties and counsel must put their microphone or phone on mute after identifying themselves and must not interrupt the proceedings except to make appropriate representations.

When appearing by videoconference at an appeal hearing, counsel must gown, and self-represented parties must wear appropriate business attire.

All lawyers and self-represented litigants who have a matter before the Court of Appeal must ensure the Registrar is provided with their current phone number and email address.

Except as provided for members of the accredited news media, recording of the hearing, in whole or in part, without prior permission of the presiding judge or the Chief Justice is strictly prohibited and may constitute contempt of court.

The taking of photos or screen captures during a hearing held by videoconference without prior permission of the Chief Justice is strictly prohibited and may constitute contempt of court.

ACCESS BY THE PUBLIC AND THE ACCREDITED NEWS MEDIA

The Court of Appeal recognizes the critical importance of the “open court” principle in all but exceptional circumstances. The Court therefore permits remote access to its hearings when they are held by video or telephone conference. Members of the public or the accredited news media

may request remote access to a virtual hearing in the following manner and subject to the following restrictions:

1. Unless a statutory provision or an order of the Court requires that a hearing be held *in camera* (closed to the public), members of the public or the accredited news media may observe, or listen to, the virtual hearing;
2. Simultaneous translation into the other official language is not available during hearings;
3. Members of the public or the accredited news media may determine which motions or appeals are scheduled to be heard by video or teleconference by following these links to the Court's [list of motions](#) or [list of appeal cases](#). These lists are updated to reflect those cases being made accessible remotely;
4. Members of the public or the accredited news media who wish to monitor a virtual hearing may consult the [list of motions](#) or the [list of appeal cases](#) for the month in which the hearing is scheduled to be held. The video link and/or local telephone number for joining the hearing remotely will be added to those lists when hearings are held by video or telephone conference;
5. Members of the public or the accredited news media who ask to join a virtual hearing must ensure they have, at the relevant time, the technical means to do so. The Microsoft Teams platform is used to hold hearings by videoconference;
6. Access to court proceedings taking place by video or telephone may be subject to limits on the number of video or telephone conference participants who can be connected through a single conference number;
7. Other than identifying themselves if asked to do so, members of the public or the accredited news media joining a court hearing remotely must put their communications device on mute or remain silent throughout the proceeding;
8. A motion judge or the chair of an appeal panel may exclude from a virtual hearing anyone who disrupts the proceedings;
9. Members of the accredited news media only may make an audio recording of a proceeding for the sole purpose of verifying their notes. Recording of a proceeding, in whole or in part, by anyone else, except by the Court, without prior permission of the Chief Justice is strictly prohibited and may constitute contempt of court;

10. The broadcast or distribution, in whole or in part, of a recording of a proceeding and the taking of photos or screen captures during a proceeding without prior permission of the Chief Justice is strictly prohibited and may constitute contempt of court; and
11. Exceptionally, a member of the public who does not have access to email may contact the Registrar by phone at (506) 453-2452 and provide the requested information to receive instructions.

In rare cases, members of the public or the accredited news media may request remote access to a hearing to be held fully in person in the following manner and subject to the restrictions that apply to access to virtual hearings:

1. Members of the public or the accredited news media who wish to join an in-person hearing remotely must submit their request to the Registrar by email at nbca-canb@gnb.ca. Their email must contain the following information: their name, the name of their news outlet (if applicable), the case name, the case number, and the hearing date;
2. The Registrar will determine the request alone or in consultation with the presiding judge or the Chief Justice; and
3. Exceptionally, a member of the public who does not have access to email may contact the Registrar by phone at (506) 453-2452 when submitting a request for remote access to an in-person hearing, but a response to the request may be provided later.