

**ONTARIO LABOUR RELATIONS BOARD
INFORMATION BULLETIN NO. 37**

Video Hearings

GENERAL

This Information Bulletin describes the guidelines that parties, non-parties and participants (generally described as “participants” or “parties”) are expected to adhere to during a video hearing.

The Ontario Labour Relations Board (“the Board”) may conduct hearings by video. As procedural fairness in the Board’s proceedings is paramount, these guidelines are intended to facilitate a fair and smooth hearing process.

As hearings before the Board are public, anyone wishing to observe a video hearing should write to the Registrar’s office to obtain the details of the hearing.

All observers are expected to comply with the directions in this Information Bulletin and the directions of the presiding Vice-Chair. Observers are required to take all steps to minimize disruption of the proceeding.

VIDEO HEARINGS

There are benefits in conducting hearings by video. This includes increased accessibility, reduced costs, and more efficient allocation of resources. Successful management of a video hearing may require the Vice-Chair to deal with new issues such as technological challenges, ensuring that witnesses understand the requirements of candour and truth and managing digital evidence.

The Board recognizes that not every case is suitable for a video hearing. If proceeding by video is contested, a Vice-Chair will determine the appropriate format of the hearing. Otherwise, it may be the Registrar’s office that determines if a hearing will proceed by video.

The Board’s Rules of Procedure (“the Rules”) apply to video hearings. This Information Bulletin does not amend the Rules or limit the Board’s statutory powers. A video hearing, like any other hearing held by the Board, is a legal proceeding to determine rights and obligations under the Act. *If you do not*

attend, the hearing will proceed without you and your rights and obligations will be determined in your absence.

PRACTICE GUIDELINES

The following practice guidelines, which may be amended by a Vice-Chair on a case by case basis, apply to hearings conducted by video. A party seeking to amend a guideline for a particular hearing should make a submission to the Registrar's office.

Technology

The Board uses Zoom technology, but also has the capacity to use Skype or Microsoft Teams. If a party seeks to use another platform to host the video hearing, that party should make submissions to the Board with a detailed explanation about why an alternative platform should be used.

Participants are expected to check and test their technology in advance of the hearing. At a minimum, participants should have a computer (or smart phone or tablet), a microphone, a video/web camera, and an internet connection with sufficient bandwidth to support video hearings. The Board will provide a call-in number for participants lacking the required technology so they can participate in the hearing by telephone.

Electronic Filing

The Board's Rules stipulate the manner and restricted size of e-filing submissions and documents. Documents that are properly filed will usually be available to the Vice-Chair to use during the hearing. However, if the material is lengthy, the Vice-Chair may direct the parties to prepare the material in a specific manner for the purpose of the hearing.

A party seeking to rely on a significant number of documents or voluminous material should use a third-party Cloud tool (such as Drop Box, Google Drive, or Microsoft OneDrive) to share with the Vice-Chair and the other parties. Parties should provide access to the Cloud tool by including the link in a letter addressed to the Registrar's office and submitted using Form A-108. It is the party's responsibility to ensure that the use of the third-party Cloud tool is simple and straightforward for the Vice-Chair and the other parties to access. All documents and other material shared with the Vice-Chair in this manner for the hearing must also be filed with the Board in accordance with its Rules of Procedure.

If utilizing a third-party Cloud tool, a Vice-Chair may download the documents to his/her computer even prior to such documents being marked as exhibits. This may be necessary to ensure a smooth process and an organized utilization of the documents. A Vice-Chair will only download documents saved as PDFs, Microsoft (e.g. word or excel) formats, images and videos. Vice-Chairs will not download file types that could be harmful to their computers or network.

Documents should be labelled in a manner that identifies them clearly for the Vice-Chair so that it is not necessary to open the document to understand what it is. Documents filed with the Board must be arranged in consecutively numbered pages and must be accompanied by a table of contents describing each document.

Books of Authorities

Parties should not file a Book of Authorities with the Board. Instead, parties should simply include hyperlinks to publicly available databases such as www.canlii.org, a free legal information database. If the authority is not available on a publicly available database, parties may e-file a copy of the authority or utilize the third party cloud option as noted above.

Conduct of the Hearing

The Notice of Hearing, issued by the Registrar's Office, will contain the details of the video hearing. These details are only to be shared with counsel, clients, participants, and witnesses.

Where technology permits, the Vice-Chair will utilize a waiting room for participants to remain until allowed into the hearing room by the Vice-Chair.

The Vice-Chair will commence the hearing at the stipulated start time in the Notice of Hearing. There may be some informality as parties get comfortable using the software and making any adjustments (e.g. lighting, microphone, headsets, etc). The Vice-Chair will take attendance to account for all persons participating in the hearing. The Board does not use a formal Hearing Appearance Sheet for video hearings.

All participants, other than counsel (or self-represented party) and the witness, are to have their microphones muted.

If the Vice-Chair engages in mediation, only the parties in the hearing will be permitted to participate in the mediation. The Vice-Chair may use virtual break-out rooms to facilitate the private discussions.

A typical break and lunch schedule will be utilized at the discretion of the Vice-Chair. A participant seeking to take a break for any reason, including to enable counsel to consult with an advisor may make such a request to the Vice-Chair.

Witnesses

Although witnesses testifying in a video hearing are testifying from a remote location, they are expected to conduct themselves in every respect as if they are in an in-person hearing.

All witnesses in the Board's proceeding must ensure that at any time they are giving evidence:

- i. They are alone in a room with a closed door;
- ii. They do not have any other electronic device in the room including a cell phone;
- iii. They use any computer or tablet only for the purposes of the video hearing, that all other applications are closed and that they do not use any of the communication functions of the computer (text, email, etc.) at any stage while they are still a witness testifying; and
- iv. They have with them only the exhibits that have been properly introduced in this proceeding and that they look at those exhibits only when asked to do so by counsel.

Witnesses may be required to demonstrate compliance with the above directions at any time by any means permitted by the Vice-Chair. A failure to comply with these directions may impact the credibility of the witness. As part of the swearing or affirmation oath, the witness will be asked to confirm their understanding and commitment as described in this section.

It is expected that counsel (or self-represented party) will review these guidelines with witnesses they intend to call at the hearing.

Summons To Witness

A party may serve a Summons To Witness on a potential witness in the normal course. The summons must be provided by the Board and contain the necessary hearing information. Reproductions or revisions of the Board's summons are not permitted. The Board has the authority to permit a

summons to be served by substituted service, although this will be rarely exercised. Parties are advised to consult the emerging jurisprudence on serving an electronic summons.

Etiquette and Decorum

Video hearings are formal hearings before a Vice-Chair. Participants are expected to dress appropriately and be situated in a location free from distractions. Participants should take appropriate steps to ensure proper lighting, suitable backgrounds and minimal external noise.

Recording of Proceedings

Participants are entitled to take notes of the proceeding. However, unless a participant advances a compelling reason and obtains the Board's permission in advance, audio and video recording of the proceeding is not permitted.

Pursuant to section 29 of the *Statutory Powers Procedure Act*, persons found to have improperly recorded Board proceedings, or distributed such recordings, may be liable to a fine of up to \$25,000.

Commitment to Procedural Fairness

The Board is committed to the principles of procedural fairness. At any time during the video hearing, the Vice-Chair may, on his/her own motion or on the motion of a party, end the proceeding and direct an in-person hearing be scheduled, if the Vice-Chair is concerned about the integrity or fairness of the hearing process.

IMPORTANT NOTE

IN ACCORDANCE WITH THE *ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005*, THE BOARD MAKES EVERY EFFORT TO ENSURE THAT ITS SERVICES ARE PROVIDED IN A MANNER THAT RESPECTS THE DIGNITY AND INDEPENDENCE OF PERSONS WITH DISABILITIES. PLEASE TELL THE BOARD IF YOU REQUIRE ANY ACCOMMODATION TO MEET YOUR INDIVIDUAL NEEDS.