



VIDEOCONFERENCING GUIDELINES

Introduction

The Board adopted these guidelines in the context of the Government of Canada's response to the COVID-19 public health crisis. We anticipate that the current public health measures will be lifted only slowly and that the Board and parties will continue to face limitations with respect to carrying out a full schedule of in-person proceedings, for the foreseeable future. Accordingly, the Board will use videoconferencing as part of its strategy to fulfil its mandate to resolve labour relations and employment disputes, in collaboration with the parties that appear before it.

Supporting the guidelines are these technical reference documents:

- Technical guide to participate in videoconferences with the FPSLREB;
- Tips and Tricks; and
- Witness guidelines.

The member or the mediator assigned to a particular proceeding has the discretion to decide whether to use videoconferencing.

These guidelines do not address the issue of whether a matter should proceed by way of videoconferencing if a party objects. Ultimately, the member/mediator will make this determination.

A member/mediator may wish to modify these guidelines to suit a specific proceeding, after consulting the parties.

Nothing in these guidelines affects any powers of a member/mediator under the *Federal Public Sector Labour Relations Act*, the *Federal Public Sector Labour Relations and Employment Board Act*, the *Public Service Employment Act*, the *Parliamentary Employment and Staff Relations Act*, or any other applicable legislation, regulations, or collective agreements.

Videoconferencing platform

The member/mediator, in consultation with the parties, will direct the online platform to use to conduct the proceedings remotely. Given its predominant use, these guidelines are based on Zoom Pro but may be modified to suit any other platform.

Obligations - the Board

The member conducting a hearing by videoconference must do so in a manner consistent with the principles of natural justice and allow the parties sufficient opportunity to present evidence and argument.

The mediator conducting a mediation session by videoconference must do so in a manner consistent with the Board's [Standard of practice](#).

The member/mediator must ensure that she or he has the necessary technical expertise to conduct the proceeding by videoconference alone or with staff support and that the necessary technical assistance is made available by a neutral third party or service provider.

Obligations - the parties

Parties will be provided with the opportunity to familiarize themselves with the videoconference platform ahead of the proceedings. They must adjust their equipment to ensure that they have readily available the tools to participate in the videoconference, such as access to the videoconferencing platform, a microphone, and a camera. Parties may contact the Board's Registry or its Mediation and Dispute Resolution Services, as appropriate, with any questions or may refer to "Tips and Tricks".

Each party should review with its witnesses and any individual appearing under summons the obligation to provide evidence without resorting to any outside information or contact, other than that specifically prescribed by the member, including documents put to a witness by counsel during the hearing.

Each party will need to address the internal communication mechanisms (cell phone, text, WhatsApp, and Zoom chat) among members of their participant group.

Each party should ensure that its participants, including witnesses and any individual appearing under summons, are given advance notice of the need for access to the videoconferencing platform and to an Internet connection with sufficient capacity to connect to the hearing. It is recommended that all participants use wired rather than wireless connections, if possible.

All participants will need to have access to a camera and either a microphone or a telephone, as the platform permits. They will also need to be directed to ensure that they participate from a quiet room.

In general, while laptops or desktop computers are preferable to cell phones or tablets for the purposes of being able to see counsel or witnesses, it is recognized that in some cases, computers may not be available. Parties are responsible for making their best efforts to put in place satisfactory arrangements with respect to their witnesses and any individual appearing under summons.

Preparing for the proceeding

At his or her initiative or upon the parties' request, the member/mediator will convene a pre-proceeding videoconference call to ensure that the technology will work at the key locations where it will be employed. An external service provider may be used for this purpose. The goal is to familiarize counsel and, as appropriate, the parties or potential witnesses with the use, operation, and capabilities of the platform.

The member/mediator will conduct a case management or pre-hearing/pre-mediation teleconference or videoconference to discuss and resolve relevant pre-proceeding matters, which may include but are not limited to the following:

- these guidelines;
- the videoconferencing platform to be used;
- the identification of preliminary issues;
- the production and exchange of particulars and associated timelines;
- the manner of adducing evidence and any associated timelines, including the production of any agreed statements of facts;
- the production and exchange of documents and any associated timelines;
- the compilation and pagination of each party's or a joint book of documents, if agreed, to be circulated to all parties and the member before the proceeding;
- how to deal with video or other physical evidence;
- how many breakout rooms are needed for the mediation or hearing;
- the breakout room assignments before or at the start of the hearing or otherwise; and
- any other matters raised by the parties, including providing notice to affected parties.

Notice of proceeding

A notice of proceeding will be sent by the Board as soon as practicable. Among other things, it should include the following:

- the start time of the session;
- the session's meeting ID;
- a functioning link to sign into the session;
- general information on how to join the session;
- a prohibition against sharing the sign-in link or information with anyone not legitimately expected to attend the session; and
- a prohibition against any form of recording the proceedings.

Any summons issued by the Board will include the information required in the notice of proceeding. A summon issued for a videoconference hearing shall have the same force and effect as one issued for an in-person hearing.

The adjudication/mediation process

The member/mediator or a neutral designate that he or she appoints will convene and host the proceeding and operate the platform.

Appearance notices, including email and phone number contacts of all attendees, should be provided to the Board in advance of the proceeding so that the appropriate room assignments can be made.

The host will establish at least four breakout rooms for hearings and as many as are necessary for a mediation. In the case of a hearing, the rooms should consist of at least the following:

- the hearing room, in which anyone can be present at any time;
- a bargaining agent breakout room;
- an employer breakout room;
- a sidebar room or rooms; and
- any additional rooms agreed by the parties or determined by the member.

The member/mediator should ensure that precautions are put in place to ensure the privacy and integrity of the proceeding. Neither the member/mediator nor any of the participants will record any part of the proceeding.

Any connectivity issues will be addressed as they arise, with the member/mediator ensuring that the proceedings are put in abeyance while they are resolved.

Guidelines specific to mediations

A. Documents

The mediator will provide the parties with the “Agreement to Mediate”. They will need to review it and consent to proceed with a videoconference/teleconference mediation. The mediator will determine the means to provide their consent, in consultation with them.

If or when parties need to exchange documents in preparation for mediation or at a mediation, they will do so via an agreed format. The mediator will initiate a discussion with them on the appropriate format to use, when necessary.

B. Confidentiality

The mediator will ensure that the necessary measures are taken to ensure that confidential discussions can take place.

As outlined in the Agreement to Mediate, the parties understand that they and their representatives shall treat all information exchanged during the mediation process as confidential. Furthermore, they shall not take photos or screenshots of the videoconference or record any part of the proceeding.

Guidelines specific to hearings

A. Documents

Parties must follow the Board’s [“Policy on the Pre-Hearing Exchange of Document Lists”](#).

To the extent possible, parties will be encouraged to agree to a joint book of documents to be submitted on consent. Each party will also prepare a book of any additional documents it intends to rely on at the hearing. These documents must be in a format that can be shared with

parties and witnesses electronically and paginated for ease of reference during the hearing. They will be provided in advance to the Board and other parties, in accordance with deadlines established by the member.

A party seeking to rely on a document not included in a joint or in a party's book of documents must ensure that

- the document is in a format that can be shared with the other parties electronically;
- it is provided to the member and the other parties; and
- the other parties are provided an opportunity to make submissions on its admissibility.

The member will determine if a document should be admitted based on the parties' submissions.

B. Witnesses

Parties will provide the Board with the contact information of those intended to be called as witnesses, to facilitate implementing these guidelines.

The member will administer the oaths and affirmations per the usual course.

Witnesses will be informed that they are prohibited from making any recording (audio, video, or otherwise) of the proceedings and that they shall not take photos or screenshots of the videoconference.

Unless the parties otherwise agree or are directed by the member, or as appropriate in response to any accommodation or related issue, a witness should be alone in a room while giving evidence. The witness should also be directed not to look at or refer to notes or any other documents or material (electronic, physical, or other) unless so directed by a representative of one of the parties or by the member.

The member will ensure that the room's setup allows for an optimal view of the witness and may direct using appropriate options on the Zoom platform, such as "Pin" or "Spotlight".

The member will ensure that the necessary measures are taken so that confidential discussions can take place and that rules and procedures with respect to the exclusion of witnesses are put into effect. On the Zoom Pro platform, witnesses may be placed in the "Waiting Room" for this purpose.

C. Book of authorities

The parties will compile and circulate a digital book of authorities to each other and to the member before the closing arguments and in the form directed by the member.

When citing authorities in their written submissions, parties should include hyperlinks to publicly available databases such as CanLII, the Board's website, or the Supreme Court of Canada's website. In addition, parties should provide an electronic list of their authorities with

the same hyperlinks. If the authorities they cite are unavailable on those websites, they should send electronic copies of them and highlight the relevant passages that they wish to bring to the member's attention.

D. Closing arguments

Closing arguments may be made in writing on such terms as the parties agree or as directed by the member.

E. Open court principle

To satisfy the open court principle, members of the public may consult the hearings list posted on the Board's website to find out about the matters that are to be heard by videoconference and when they are to be heard. To obtain a link to the virtual hearing, individuals may write to the Registry no later than two business days before the hearing is scheduled to begin.

The parties will be invited to provide to the Registry the name and contact information of anyone who wishes to view the hearing as a member of the public no later than two business days before the hearing is scheduled to begin.

The Board will email an invitation to register for the hearing on Zoom Pro or on the platform chosen. The public will be able to observe the proceedings but will not be able to participate. The member and parties will not hear or see the public, as the public's microphones will be muted, and their cameras will be turned off.

F. Implementation

The Board adopted these guidelines, Wednesday July 8, 2020.