

2020 OEA SPRING CONFERENCE

# Virtual Hearings: Advocacy from your Home Office

June 17, 2020

Presented By

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Special thanks to Calvin Weekes for research assistance



**Tribunals Ontario**  
Environment & Land Division



**BLG**  
Borden Ladner Gervais



# STATUS UPDATE: COURTS AND TRIBUNALS

## ○ LOCAL PLANNING APPEAL TRIBUNAL

[Covid-19 Updates on Tribunals Ontario Operations- LPAT- May 14, 2020 https://elto.gov.on.ca/covid-19/#lpat](https://elto.gov.on.ca/covid-19/#lpat)

- The LPAT is continuing to receive and process new claims.
- scheduling hearings by teleconference or written submissions, on a case-by-case basis. Has been mostly used for settlement conferences in planning cases, but dates are being granted for land compensation cases;
- responding to requests and issuing directions;
- scheduling teleconferences with parties to receive updates on their efforts to resolve their dispute and may issue procedural directions;

## ○ **BOARD OF NEGOTIATION**

[Covid-19 Updates on Tribunals Ontario Operations-BON- May 14, 2020 https://elto.gov.on.ca/covid-19/#bon](https://elto.gov.on.ca/covid-19/#bon)

- The BON continues to hold mediations by teleconference
- Do not appear to have adopted any videoconferencing method, but this may have changed recently

## ○ **PRIVATE MEDIATION**

- Business as usual

## [Memo to the Profession- March 27, 2020](#)

<https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/memo-to-the-profession/>

## [Consolidated Notice to the Profession OSCJ- May 19, 2020](#)

<https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/consolidated-notice/>

- ONSC plans to resume in-person hearings on July 6, 2020.
- ONSC will continue to hear matters virtually, and expects to shortly further expand the scope of matters that will be heard virtually.
- Toronto Region of the ONSC has further expanded the matters which it will hear virtually—special practice directions for urgent hearings

## [Notices No Longer in Effect](#)

<https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/notices-no-longer-in-effect/>

# DIVISIONAL COURT

[Notice to the Profession- Divisional Court- May 13, 2020](https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/notice-div-ct/) <https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/notice-div-ct/>

- Early adopter for full virtual hearings via Zoom broadcast on Youtube.
- All previously scheduled in-person matters that are now cancelled may be rescheduled for hearing by videoconference or other means directed by the court.
- Any previously scheduled in-person matters that are now cancelled, and which are not rescheduled for hearing by videoconference, will not be scheduled for in-person hearings until further Notice to the Profession, and will be scheduled thereafter in accordance with a scheduling protocol that will be provided by way of Notice to the Profession at a future date.
- All Divisional Court matters (in all Regions of Ontario) scheduled for in-person hearings on a date after August 31, 2020 are still scheduled for those dates for now.

[Notices No Longer in Effect](https://www.ontariocourts.ca/scj/covid-19-suspension-fam/) <https://www.ontariocourts.ca/scj/covid-19-suspension-fam/>

## [Practice Direction Concerning Extensions of Time in Civil Proceedings in the COA- March 30, 2020](https://www.ontariocourts.ca/coa/en/notices/covid-19/practice-direction-civil.pdf)

<https://www.ontariocourts.ca/coa/en/notices/covid-19/practice-direction-civil.pdf>

## [Practice Direction Concerning Extensions of Time in the COA- FAQs- May 26 ,2020](https://www.ontariocourts.ca/coa/en/notices/covid-19/faq.htm)

<https://www.ontariocourts.ca/coa/en/notices/covid-19/faq.htm>

- Conducting hearings in writing and scheduling virtual hearings on CourtCall
- The extension is retroactive to March 16, 2020. This means that if you were required to but did not complete (or have not yet completed) a step in an existing or intended proceeding on or after March 16, 2020, the deadline for doing so is automatically extended unless an exception applies.
- The extension continues until further direction by the Court. The Court may also direct that the regular prescribed timelines apply in a particular case.
- For civil proceedings in which a notice of hearing has been sent and which proceedings have not been adjourned, the prescribed timelines will continue to apply, without suspension or extension.
- For civil proceedings that are being case managed, the prescribed timelines will also continue to apply, without suspension or extension, unless otherwise ordered by the case management judge

# TIPS FOR VIRTUAL HEARINGS



# PREPARATION FOR A VIRTUAL HEARING / EXAMINATION

## Resources

- Advocates' Society Best Practices for Remote Hearings:  
[https://www.advocates.ca/Upload/Files/PDF/Advocacy/BestPracticesPublications/BestPracticesRemoteHearings/Best\\_Practices\\_for\\_Remote\\_Hearings\\_13\\_May\\_2020\\_FINAL\\_may13.pdf](https://www.advocates.ca/Upload/Files/PDF/Advocacy/BestPracticesPublications/BestPracticesRemoteHearings/Best_Practices_for_Remote_Hearings_13_May_2020_FINAL_may13.pdf)
- Always double-check the applicable practice direction

## Platform

- CourtCall (Court of Appeal), Zoom (Divisional Court), Microsoft Teams
- Virtual/in-person “hybrid” hearings: distancing/safety measures in place, separate rooms with video links
- Conducting practice runs in advance, especially with more specialized platforms (CourtCall)

## Technology

- Connectivity and microphones (one person can ruin it for everyone!)

## Documents

- Preparation of electronic record, searchable, bookmarking
- Embedded references to all cases/authorities (CanLii, Proview), evidence, reports
- Have all records clearly organized into local copies (really large documents separated to avoid load/display issues)
- Experts: excerpted key points to reports, spreadsheets, exhibits, and other visual evidence may need to be simplified from standard form reports (avoid inundating the record with unnecessary pages)
- Compendium or joint documents books (collaboration with opposing counsel) prepared are advised and increasingly required
- Second Chair in charge of documents
- Exhibits: Circulating documents versus screen sharing; pre-planned list (if possible)

# CONDUCT OF A VIRTUAL HEARING / EXAMINATION

## Interaction among client/counsel/experts

- **Client Side:** Platforms often have breakout rooms, but still consider a separate secured chat with your team: co-counsel, client, experts
- **Opposing Side:** Prepare as much in advance regarding the record, protocol etc.

## Witness Conduct

- Federal Court Case , Justice Lafrenière direction re witness conduct: *Rovi Guides, Inc. v. Videotron Ltd.* 2020 FC 637 <http://canlii.ca/t/j7vsc>
- Common sense rules apply
- Witnesses should generally not have access to any documents outside of the record
- Recording is generally not permitted; confirm with adjudicator for exceptions
- Putting documents to witnesses: screen sharing can be inefficient; consider circulating PDFs to all counsel simultaneously while entering new exhibits
- Additional preparation time with witnesses

## Submissions and Cross-examinations

- On-the-fly advocacy will be more constrained
- May need to adapt the number of document references compared to in-person attendances, especially if there are time limitations
- Having specialized exhibits, mapping, diagrams etc. can simplify the process
- Increased role for second chair (i.e. more tech savvy juniors) to be (1) controlling documentation and (2) preparing document references to assist first chair with cross-examination questions, re-examinations etc.



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**Frank** practises civil litigation and administrative law, with emphasis on expropriations, planning, environmental law, commercial litigation and regulatory prosecutions. Frank has acted as counsel in civil proceedings before the Ontario Superior Court of Justice, the Divisional Court, the Court of Appeal for Ontario and the Supreme Court of Canada, regulatory and quasi-criminal proceedings and appeals before the Ontario Provincial Court, as well as planning and expropriation proceedings before the Ontario Municipal Board, the Board of Negotiations, local Municipal Committees, Inquiry Officers, private mediators and arbitrators.



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**Andrew** practices administrative law and civil litigation, with an emphasis on environmental, expropriation, planning and regulatory law. He also represents clients in litigation involving real estate disputes and professional liability insurance.

Andrew advises clients on a variety of expropriation matters before environment and land tribunals and the civil courts. He acts for expropriating authorities, including municipalities, government agencies and school boards, in the following: multi-property acquisition strategy, dispute resolution, parallel civil litigation. He also acts for expropriation claimants in large infrastructure projects across the GTA.

THANK YOU!