

## The Dos and Don'ts of Virtual Hearings<sup>1</sup>

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Shortly after in-person hearings stopped and virtual hearings began owing to the COVID pandemic, a judge in Florida wrote an open letter to the Bar, which contained the following:

One comment that needs sharing and that is the judges would appreciate it if the lawyers and their clients keep in mind these Zoom hearings are just that: hearings. They are not casual phone conversations. It is remarkable how many ATTORNEYS appear inappropriately on camera. We've seen many lawyers in casual shirts and blouses, with no concern for ill-grooming, in bedrooms with the master bed in the background, etc. One male lawyer appeared shirtless and one female attorney appeared still in bed, still under the covers. And putting on a beach cover-up won't cover up you're poolside in a bathing suit. So, please, if you don't mind, let's treat court hearings as court hearings, whether Zooming or not.<sup>2</sup>

The same level of audacity has not, thankfully, been witnessed in Ontario. Nonetheless, the comment is a good reminder to us all that whatever the medium, a hearing is a hearing. We must dress in a manner that reflects respect for the Tribunal or the Court (as the case may be), our client, our profession, and our personal brand. What was improper of old is no less improper in the new normal.

By now, much has been written about virtual hearings: what is involved, how to conduct one, and how to do it with finesse. I commend you to take a look at

1. [“Best Practices for Remote Hearings”](#) developed by the E-Hearings Task Force of The Advocates' Society, the Ontario Bar Association, the Federation of Ontario Law Associations, and the Ontario Trial Lawyers Association; and
2. [“Best Practices and Etiquette for Remote Hearings”](#) issued by the Superior Court of Justice.

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<sup>1</sup> Originally prepared for the Law Society of Ontario's Professionalism and Practice Management Issues in Administrative Law CPD held on September 23, 2020. Republished with author's permission.

<sup>2</sup> Letter from the Honorable Dennis Bailey, [“Virtual View from the Bench During the COVID-19 Pandemic.”](#) posted by the Weston Bar Association.

As with in-person hearings, preparation is key for effective virtual hearings. But the preparation needed for virtual hearings has more facets to it. Special care must be paid to document management to facilitate ready access to the right document during the hearing. There is also the technology piece to think about, not just for yourself, but for your client and witnesses as well.

Here are my suggested dos and don'ts when it comes to document management:

<b>Document Management</b>	
<b>Dos</b>	<b>Don'ts</b>
Use a Joint Documents Brief	File a massive Document Brief as a single large file that is prone to freeze someone's computer when they try to open it <sup>3</sup>
Make the Joint Documents Brief a searchable PDF	Have Briefs and other Records in image-only or scanned PDF form
Paginate and electronically bookmark <sup>4</sup> documents in the Brief	Leave your Briefs and Records as bundles of page-number-free mess
Make arrangement with Tribunal in advance regarding screen sharing; request to have the Tribunal clerk operate the screen-share function to display documents during the hearing <sup>5</sup>	Keep documents close to chest and not share them with opposing party and Tribunal in advance of the hearing

Here are some dos and don'ts when it comes to technology:

<b>Technology</b>	
<b>Dos</b>	<b>Don'ts</b>
Test run your audio and video equipment (camera, microphone, speaker, monitor(s), etc.) to ensure that they are in good working order	Order your webcam from Amazon on the day of the hearing

<sup>3</sup> Break up a large electronic brief into multi-part volumes, as you would a large physical brief. But before you do this, give some serious consideration to whether you really need every single document that is currently included in your brief.

<sup>4</sup> Electronic bookmarks create links to specific sections of a document which, when clicked, will take the reader directly to that section. They provide shortcuts for navigation, and can act as a table of contents.

<sup>5</sup> This will be very useful when you are running a hearing on your own.

Ensure you have sufficient Internet bandwidth for a video hearing; if possible, ask other members of the household/office to minimize use of bandwidth for duration of the hearing	On the day of the hearing, offer your Wi-Fi to your neighbours for the explicit purpose of streaming Netflix
Use a neutral virtual background if the room you will be using for the hearing has distracting elements	Set your virtual background to <i>Tiger King</i>
Position the camera at eye level or slightly above eye level, and such that your face and upper body show on the screen	Position the camera so that only your forehead is visible
Silence cellphone and other devices not in use for the hearing, and mute notifications on your computer during the hearing	Let your very popular daughter leave her cellphone, whose ringtone is set to bird whistling, on the table next to you
Advise your client/witness to do all of the above	Advise your client/witness to do whatever they want
Make sure that your client/witness receive the Zoom link to access the hearing	Ask your client, 5 minutes before the start of the hearing, to create their Zoom account
Log into the hearing 10-15 minutes before the scheduled start time to ensure that there are no technological issues	Join the hearing fashionably late
Select a screen name that readily identifies who you are and your role in the proceeding e.g., “[your name], counsel for [name of your client]”	Use screen names like “Why hello there,” “fast and the curious,” “Joe Not Exotic”