

Quick Reference Guide

Modifying Courtcraft for Virtual Hearings

BEFORE THE HEARING

The Setup

1. **Shut down all applications** other than those necessary for the hearing (Internet and Skype or Teams to communicate with Associate/Tipstaff/bench clerk).
2. **Raise your computer:** The most professional angle for the camera to capture your face is from the same level or slightly above your face.
3. **Use a background:** Use a Court provided background screen, standard screen or have a plain background with no features.
4. **Consider lighting:** The light source should be in front of you rather than behind or beside you which will produce a silhouette and can interfere with the virtual background.
5. **Consider sound:** Consider a test run with your associate, bench clerk or a colleague to test the clarity of video and audio and try both with and without a headset to identify which works best for you.
6. **Communicate key expectations to parties:** For example, how and when to join the hearing, timing, remaining seated, compliance with normal Courtroom protocols and etiquette including dress for all participants including witnesses, provision of documents and whether virtual breakout rooms will be made available etc. Some jurisdictions and divisions have created a template email that can be sent prior to the hearing covering all these issues.
7. **Consult jurisdiction/division specific technical guides** to set up a method of communication with your team, provide clarity around document management, recording and transcript arrangements and available technical support as well as the availability of virtual breakout rooms.
8. **Prevent unanticipated interruptions:** Turn off mobile phone and/or place chambers phone on silent. If sitting from Chambers, place a sign on the door stating Court is in session.

AT THE START OF THE HEARING

Setting Expectations

Setting clear expectations will save time

1. **Start with eye contact:** Try to look directly at the camera at the top of your screen so that the participants feel like you are looking at them.
2. **Avoid reading from a script:** Although you may need to glance at notes, try to regularly come back to looking into the camera for this part of the hearing.
3. **Pay additional attention to your body language and facial expressions:** Focus on relaxing your face – multitasking and a lack of familiarity with technology or the online process may lead to a look of worry or concern. Relax your forehead and jaw and remember that your facial expressions, gestures and movements are amplified. **Avoid:** Slouching, spinning in a chair, touching your face or clothing.
4. **Establish the environment**

Consider:

 - confirming who is present for the benefit of parties, any observers and the transcript;
 - confirming all parties can see and hear clearly;
 - reminding parties how to get in contact or signal that they are experiencing technical difficulties (email, phone, raising a hand if they cannot hear etc.);
 - acknowledging the additional stress the pandemic has caused in the community;
 - providing reassurance about the successful conduct of previous online hearings;
 - thanking the parties for their flexibility and professionalism.
5. **Include an overview of how to interact**

Consider:

 - inviting non-speaking parties to turn off their camera and microphone;
 - confirming receipt of electronic documents provided prior to the hearing;
 - reiterating any instructions about how and when to use the chat function and how to hand up additional documents;

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- confirming time allocations for oral submissions and any examination or cross-examination;
- acknowledging that appearing online can be more tiring than appearing in person;
- signposting opportunities for clarification and breaks;
- checking preparedness to engage and any preliminary concerns;
- reminding parties the proceeding should not be recorded and the process for obtaining transcript (See sections 4A and 4B of the *Court Security Act 1980*);
- advising the parties as to whether any media is present;
- if appropriate for the type of hearing, confirming the purpose of the hearing, issues in dispute and acknowledging areas of agreement by reference to written materials.

See Self-Represented Litigants QRG for additional considerations in relation to setting expectations.

DURING THE HEARING - ENGAGEMENT

- 1. Check in with eye contact:** You will not be able to look down the barrel of the camera for the duration of the hearing however it is important to check in from time to time, to give participants the feeling of eye contact.
- 2. Explain any pauses:** You may need to take a few moments to think or read over material. Explain this to participants so they are not concerned about technical glitches or the internet connection. Similarly, you might remind participants to flag any pauses with the Court.
- 3. Introduce yourself to new participants:** When entering a physical Courtroom, the witness can immediately identify the roles of participants based on their physical location. These cues are lost in the virtual Courtroom. When a witness joins the hearing, take a moment to introduce yourself, check that they can see and hear you and the other participants clearly and relay any important information set out at the beginning of the hearing.

4. Check understandings and invite clarification:

Check your understanding as the hearing proceeds. This will assist you to identify whether any further steps need to be taken to achieve procedural fairness in the online context. For example, you may consider offering an opportunity for further written submissions on a point.

CLOSING THE HEARING

- 1. Avoid reading from a script:** Once again, try to mimic eye contact by looking directly at the camera at the top of the screen.
- 2. Thank all participants:** Consider acknowledging the cooperation of the participants in the conduct of the hearing and thanking them for their contributions.
- 3. Procedural fairness question:** Consider explicitly asking the parties whether they have any concerns about the manner in which the proceeding was conducted and whether they feel that they have been deprived, to any degree, of the opportunity to present their case. You will need to be prepared to take steps to respond to any concerns raised. This may include allowing for supplementary written submissions.
- 4. Outline next steps:** Confirm the next steps for the parties and whether they will be required to appear again whether that be at a further hearing or for judgment hand down.

ACKNOWLEDGEMENTS OF COUNTRY

It is important to acknowledge country where it would have been appropriate to do so in a face to face context. A suggested acknowledgement for online gatherings is included below.

I would like to acknowledge the traditional custodians of the land on which I am situated, the Wurundjeri People of the Kulin Nation. I also acknowledge the traditional custodians of the lands on which each of you are working remotely from today. I pay my respects to their Elders – past, present and emerging.