

## Hearings Using Video Conference – When and How?

In the Spring 2020 CaleyWray newsletter [<https://www.caleywray.com/resources/publications>], we provided information on the use of Zoom and other multi-media technology. Since the release of the newsletter, several decisions have provided some guidance as to when a hearing by video conference may be considered appropriate, despite the objections of one of the parties.

AMAPCEO and The Crown in Right of Ontario (Ministry of the Attorney General) (GSB# 2018-1346): OPSEU as the intervening union requested an adjournment. The request was denied, in part because the sole remaining witness was an expert who would not be a long witness and whose testimony would not affect OPSEU or its members. In this case, the fact that the main parties to the dispute were in agreement to proceed by way of video conferencing appears to have been determinative.

OLRB Case No: 0472-19-JD: In declining a motion to have the jurisdictional dispute heard by videoconference, the Board relied on its finding that the case was “factually complex” and involving “hundreds if not thousands of pages of documents”. Also material was the finding that one of the parties had completed their case in chief in person. The Board found it owed all parties “equitable treatment” and that denying oral presentations to other parties could be prejudicial in light of the complex and disputed facts.

Court, tribunal, and private arbitration decisions have issued on the question of how to conduct a hearing by videoconference. While the decisions vary in their details, as a general rule all decision makers outline parameters for the following:

1. Who can attend/speak;
2. When and how documents must be disclosed/provided (drop box, etc.);
3. The physical environment of participants;
4. Recording the proceedings;
5. The dress of participants;
6. Witness behaviour.

There are also guidelines which have been collaboratively developed by representatives of both union and management labour law firms, and by the Ontario Labour-Management Arbitrators’ Association. The “Tripartite Guidelines for Videoconference Labour Mediation and Adjudication in Ontario” are now available at:

<https://www.labourarbitrators.org/resources/guidelines>

While not binding or exhaustive, the Guidelines are a helpful tool when considering the various procedural matters that may need to be addressed in the videoconference mediation or hearing process.

Application of the “when” and “how” criteria are determined on a case-by-case basis. Please consult with your CaleyWray Lawyer to discuss the decision most appropriate for your particular matter.