

Suggested Protocol for Telephonic and Video Conference Motions on the Commercial List During COVID-19 Period

1. Ensure that the Notice of Motion specifically refers to the fact that it is proceeding by way of video conference (or telephonic hearing) and provide clear instructions to the Service List on how to access the hearing, such as by reference to an attached Schedule "A" or as set out in the preamble to the Notice of Motion.
2. If the Commercial List Office has already confirmed the actual time that the hearing will commence, include that time in the Notice of Motion. If the materials need to be served prior to the Court Office confirming the **exact time** that the videoconference or telephonic hearing will commence on the scheduled date (i.e. based on the Judge's evolving schedule), state that fact clearly in the Notice of Motion and advise that an email will be sent to the Service List as soon as the time has been confirmed.
3. When serving materials, and in the preamble to the Notice of Motion, ask all parties: (i) to confirm by way of responding email if they will be participating on the motion; and (ii) to ensure that they have provided their name, email address and identity of the party they represent / their interest.
4. Make sure that the Court and the Judge hearing the motion have all necessary materials in one place for the motion. They should not have to flip between various screens or devices. Work cooperatively with all counsel involved to make it efficient for the Court and all counsel (the "3 C's of the Commercial List"!). A ShareFile (or similar) link is one way to ensure that all parties' materials can be accessed in one place.
5. Confirm with the Commercial List Office if it is OK to copy the Judge directly by email when the calendar invitation and dial in / videoconference details are provided to the Court. (Our experience has been that this is preferred, but best to check and not assume.)
6. When the calendar invitation is being sent to the Court and the Judge, ensure that all motion materials are included in the invitation when it is sent, or send an updated calendar invitation if additional materials arise. The ShareFile (or similar) link should be included in the calendar invitation, as well as a direct link to access the videoconference or dial in platform.
7. For confidential appendices to Court Reports, remember that if a calendar invitation to the Court or the Judge includes a ShareFile or similar link with un-redacted documents for which a sealing order is sought, and that same calendar invitation is then forwarded to anyone else, the un-redacted versions will be available to be viewed by the party receiving the forwarded invitation. Send a separate calendar invitation containing the link for motion materials to parties on the Service List who are not to receive confidential appendices.
8. If a matter is not opposed or no one else is expected to join, advise the Commercial Court Office by email as soon as you know that to be the case, even if that's not confirmed until the afternoon prior to the motion.
9. Have a Counsel Slip ready to be sent to the Judge and the Commercial Court office listing all participants on the videoconference / call (name of lawyer, firm, email address, party represented).
10. Ensure that any draft Order that is sought includes reference in the preamble to the fact that the matter "proceeded by way of videoconference [telephonic hearing] due to the COVID-19 crisis".
11. All Orders should include the following provision:

THIS COURT ORDERS that, notwithstanding Rule 59.05, this order is effective from the date that it is made, and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.