



Hospital Appeal Board

Practice Directive No. 3

Electronic Hearing Practice and Procedure

The Hospital Appeal Board (the “Board”) can convene electronic hearings by videoconferencing in appropriate circumstances. Using its authority under section 13 of the *Administrative Tribunals Act*, the Board has established the following Practice Directive regarding practice and procedure for videoconference hearings. This Practice Directive is primarily informational and intended to assist participants in hearings before the Board to understand and prepare for electronic hearings.

1.0 - Suitability of Electronic Hearings

The Board will assess the suitability of holding an electronic hearing by weighing several factors including but not limited to:

- the existence of any public health restrictions or guidelines on in-person gatherings;
- whether the number of parties can effectively be managed in the circumstances through a videoconference hearing;
- the parties’ abilities to meaningfully participate in the hearing process by videoconference, including whether they have adequate access to technology;
- any procedural fairness concerns;
- the public interest; and
- whether a videoconference hearing would permit the appeal to be considered in a timely, efficient, fair, and/or accessible fashion.

After considering the above and other factors or special circumstances, the Board may make an order regarding the form of a hearing, including in person, electronic or hybrid, and the Board may order any terms or conditions it deems appropriate.

2.0 - Videoconferencing Software

The Board uses Microsoft Teams (“MS Teams”) and a corresponding teleconference number.

MS Teams is a videoconferencing service that forms part of the Microsoft Office suite of software. It allows voice and video communication, screen sharing capability, and a variety of functions to allow the Board to facilitate the oral hearing. It is available to everyone either through a website or an application that can be downloaded to a computer or smart phone.

MS Teams allows telephone access simultaneously with videoconferencing. This can be used in circumstances where there is insufficient Internet bandwidth to carry video and audio over a network.

3.0 - Pre-Hearing Procedure

3.1 – Evidentiary Issues

In addition to the Board’s Rules for Appeals which set out requirements for the exchange of documents, witness lists, witness will-say statements, expert reports and other evidentiary issues, the Board has additional requirements for parties involved in a videoconference hearing as follows:

3.1(a) - Information about individuals attending the hearing

All Parties must provide to the Board a list of individuals they intend to have participate in the videoconference hearing. This list must be provided in advance of the hearing on a timeline that the Board orders. The list is to be in a table or list format, and indicate the full name, email address, and telephone number of each individual.

Users may include:

- the party themselves (including corporate representatives, if appropriate);
- counsel/representatives;
- support staff; and/or
- witnesses.

3.1(b) - *Documentary Evidence*

Handling exhibits in an electronic hearing requires attention to details that cannot be attended to in the same way as for an in-person hearing, where physical copies of exhibits may be distributed to parties and handed to the panel.

Because of the limitations involved in sharing information during electronic hearings, all material that may be relied upon as exhibits must be provided to the panel and the other parties in advance of the electronic hearing.

The parties are strongly encouraged to work together to compile a Joint Book of Documents to facilitate efficiency, however, parties are permitted to provide their own book of documents to be relied on if agreement on a joint book of documents cannot be reached.

For all hearings convened electronically, the Board will generally require the provision of a book of documents (either individually from each party, or a joint book) to be relied on at the hearing **at least three weeks** in advance of the hearing.

Books of documents are to be filed with the Board electronically and in hard copy in the numbers requested by the Board in its pre-hearing conferences.

3.2 - *Teams Testing*

Where possible and practicable, the Board will schedule Teams testing with individuals who will be attending hearings in advance of the scheduled hearing. Before this testing takes place, all attendees are encouraged to review the **MS Teams User Guide**, which is available on the Board's website.

The Teams testing will serve the following objectives:

- confirm individuals are able to connect via Teams and test audio, video and other functionality of Teams prior to the scheduled hearing;
- confirm that individuals have conformed to the requirements for location set-up;
- set expectations for settings and conduct during the electronic hearing; and
- address any questions and identify and plan for any technical problems.

4.0 – Hearing Conduct and Procedure

4.1 – Hearing Set up and Etiquette

Persons participating in electronic hearings before the Board must ensure that they are set up in an appropriate location. Any incoming telephone, email, reminder/notification alerts must be turned off or set to silent. Smart speakers must be turned off. Individuals should be in a private room where they will not be interrupted and, to the extent possible, distracting background noise or visual displays will not be present.

Individuals are to ensure they are visible at all times and are not to use electronic backgrounds. If a party or witness is in attendance without counsel being physically present, they should be alone or disclose any other people in the immediate area or room. Any person giving evidence must not be prompted or influenced by any other person in the immediate area or room where the person is giving evidence.

Individuals should mute their microphones to avoid distracting others in the electronic hearing with background noise. Individuals are responsible for unmuting their microphone when they wish to speak.

Persons appearing before the Board at an electronic hearing should dress in the same manner as if they were appearing before the Board in person.

4.2 – Speaking in Hearings and Interruptions

One significant limitation of videoconference hearings compared to in-person hearings is the relative ease for panel members to quickly identify who is speaking. As a result, it is important that procedures surrounding speaking and interruptions are adhered to by all electronic hearing attendees.

Typically, anyone wishing to speak will need to be invited to do so by the panel. The panel will make efforts to ensure that every party to the hearing has an opportunity to address each issue as it arises, in line with established oral hearing procedures.

4.2(a) – Translation

If translation is required, generally it will be done on a consecutive basis (where those speaking must pause so the translator can translate each segment), rather than a continuous basis (where a translator speaks at the same time as those speaking), due to the potential for confusing audio input through most electronic hearing systems.

4.2(b) – Interruptions

When starting to interrupt, it is appropriate to interject politely (e.g. “Excuse me”) and to identify who is speaking, either by name or role (e.g. “This is Ms. Ahmed” or “The Respondent wishes to object...”) before explaining exactly why the interruption is occurring. The person interrupting should also use the raise hand function in Teams to create a visual cue that an objection or point of order is being raised.

The cooperation of all parties is important for videoconference hearing to work efficiently. When interrupted, parties are expected to stop speaking until the panel can hear the reasons for the interruption, solicit submissions (if needed), and make a ruling or otherwise provide instructions.

Stacy F. Robertson, Chair
February 10, 2023