

**Anne M. Wallace, Q.C.**  
LL.B., C.Arb., C.Med., CTAJ, IMI Cert.  
**Anne Wallace Legal Professional Corporation**  
PO Box 22114 RPO Wildwood  
Saskatoon, SK S7H 5P1

**Guidelines for Virtual Labour Arbitration Hearings**  
**Anne M. Wallace, QC**  
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**1. Introduction**

- 1.1 I have developed these Guidelines from available resources and from my experience to date with virtual hearings.
- 1.2 In these Guidelines:
  - a. I will refer to the arbitrator or arbitration panel as the “Board”.
  - b. I will refer to the presenting lawyers and/or other presenters as “counsel”.
- 1.3 These Guidelines are intended to be the template for how we will carry out the virtual hearing process, subject to changes that may be advisable in any particular case. Each party has the right to ask for directions or clarifications or to seek a variation of these Guidelines. In that event, the Board will discuss the situation with counsel and the parties and issue any additional directions that may be warranted.
- 1.4 Please share these Guidelines with the parties, any individual grievor and any witnesses. In cases involving a three-person panel, I will share the Guidelines with the other panel members.
- 1.5 My platform of choice is Zoom. This platform is easy to use. I have included some basic information on the use of Zoom in Section 7 of these Guidelines. You don’t need to be a techie to use Zoom, and you can become comfortable with it fairly quickly.
- 1.6 For a successful virtual hearing we need to adequately prepare. This includes orienting everyone involved to the Zoom platform, organizing how we will deal with things like documents, and knowing what to expect at the hearing itself. Everyone needs to be patient, flexible and cooperative. Once we prepare and become familiar with the technology, the hearing itself should run fairly smoothly – or at least as smoothly as an in-person hearing.

**2. Appointment of the Board and Scheduling the Hearing**

- 2.1 Upon appointment of the Board, I will provide counsel with these Guidelines and arrange for a Scheduling Meeting by video or phone.

- 2.2 The agenda for the Scheduling Meeting will include:
- a. Setting the dates and times for the hearing;
  - b. Discussing whether there should be any modification to these Guidelines;
  - c. Setting dates by which the parties will prepare any agreed statement of facts and/or will complete the document process (see Section 4); and
  - d. Any other preliminary matters in relation to the hearing. For example, is there going to be expert evidence?
- 2.3 If a hearing has already been scheduled without addressing b, c and d above, then I will send these Guidelines to counsel and arrange for a meeting to discuss those items.

### **3. Agreed Statement of Facts**

- 3.1 I encourage the parties, as always and where appropriate, to explore the possibility of an agreed statement of facts with respect to all or part of the case.

### **4. Documents**

- 4.1 Documents are a usually a necessary part of any hearing. How we handle documents in a virtual hearing will assist us on a path to a smooth process. Unless the Board directs otherwise after hearing from the parties, we will handle documents in this way:
1. As is expected before any hearing, the parties will identify and exchange the documents they intend to enter as exhibits during the hearing.
  2. The parties will assemble the documents into one PDF file (the PDF Document Book”) in three parts:
    - Part A – Documents to be entered by consent of the parties, which will be marked as an exhibit at the start of the hearing.
    - Part B – Documents the Union intends to enter which will not be entered by consent.
    - Part C – Documents the Employer intends to enter which will not be entered by consent.
  3. Once the documents are assembled, the parties will sequentially number the pages of the PDF Document Book for ease in reference during the hearing. Ideally the documents should also be numbered and should be “bookmarked” for easy viewing of the PDF Document Book on the Zoom share screen.
  4. Ordinarily, the parties will send the completed PDF Document Book to the Board by email.

5. If the volume of documents in a hearing is not conducive to using the PDF Document Book process, then the parties should discuss how best to share the documents, such as through Dropbox or similar software or by delivering paper copies or a memory stick to the parties and the Board. In such event, the parties will advise the Board of their choice. In the absence of agreement, the parties should contact the Board before the hearing for guidance.
6. Counsel and the parties should make every effort to identify and include in the PDF Document Book all documents they anticipate entering during the hearing. If, however, a party wishes to enter an additional document during the hearing, then the party will email the document to the other counsel and to the Board by email. The document can also be shared by way of the Zoom share screen or by downloading using the Zoom chat function.

## **5. Virtual Pre-Hearing Meeting**

### **5.1 The Meeting:**

At a convenient time around one week before the hearing, I will organize a Virtual Pre-Hearing Meeting with counsel, the instructing parties, any individual grievor and the witnesses.

This meeting will take about one-half hour.

### **5.2 Zoom Log-In Information:**

Before the Virtual Pre-Hearing Meeting, I will provide counsel with the Zoom Link and Password for the meeting to be shared with all those who will be attending the meeting. For security reasons, I will send the Zoom Link and the Password in two separate email messages.

### **5.3 List of participants:**

The day before the Virtual Pre-Hearing Meeting, counsel will provide me with the email addresses and phone numbers of all participants, including counsel, instructing parties, grievors and witnesses, so that if there are any technical or other issues, we can contact people to address them. Counsel should share my number with everyone: 306-229-5436.

### **5.4 Agenda:**

The Agenda for the Pre-Hearing Meeting includes:

1. Identifying and finding solutions for any technology issues.

2. Demonstration of how we will use Zoom during the hearing including things like:
  - a. What to do if there are tech problems during the hearing.
  - b. Waiting room.
  - c. Managing the video and audio functions of Zoom.
    1. Mute and unmute microphone.
    2. Start and stop video.
  - d. Speaker view and gallery view.
  - e. Break-out rooms.
  - f. Share screen.
  - g. Leave the meeting.
3. Any other questions about Zoom or the hearing process.

## **6. Arbitration Hearing Process**

### **6.1 Zoom Link and Password:**

Before the Arbitration Hearing, I will provide counsel with the Zoom Link and Password for the hearing to be shared with all those who will be attending the hearing.

If counsel have already provided me with participant contact information at the Virtual Pre-Hearing Meeting stage, I will include the participants from that list in the email sending the Zoom link, but counsel are responsible to make sure every person attending the hearing has the connection information.

Unless I advise otherwise, we will use the same Zoom Link and Password for the entire hearing.

### **6.2 Contact Information:**

If counsel have not previously done so, the day before the hearing counsel will provide me with the email addresses and phone numbers of all participants, including witnesses, so that if there are any technical or other issues, we can contact people to address them. Counsel should share my number with everyone: 306-229-5436.

### **6.3 Organizing Witnesses:**

Just as with an in-person hearing, counsel will need to organize the hearing days to ensure witnesses are ready to testify when it is their turn. This can be done by counsel arranging to email, call or text the witness to let them know when to join the meeting. When the witness enters the meeting, they will be in the waiting room.

Witnesses can be kept in the waiting room until they are called testify. As host, I can always tell who is in the waiting room.

#### 6.4 Before the Hearing Starts:

I will open the meeting 30 minutes before the scheduled start time. Everyone should join the meeting at least 15 minutes before the start time.

Anyone who joins will be placed in a waiting room until I bring them into the meeting. In the waiting room, you are by yourself until I let you into the meeting room.

If counsel would like to meet separately with their instructing party and others before the hearing, you can let me know and I will create a breakout room for you and put everyone in your group into that breakout room to chat before the hearing starts. This is like meeting in the hallway or at the back of the room at the in-person hearing. Participants have found this works well for them for their last-minute preparations and discussions.

If there is a three-person panel, I will bring the panel members into the meeting shortly before the start time.

At the appointed time, I will bring everyone from the break-out rooms and/or the waiting room into the meeting room.

Once everyone is present, we will check on video and audio connections and get set to proceed.

While we are in the hearing, I will ask everyone to mute their microphone unless they are speaking.

#### 6.5 Breakout Rooms:

For the hearing, I will set up virtual breakout rooms for the following groups:

1. Union counsel, union representatives, and the grievor.
2. Employer counsel and employer representatives.
3. The Board.
4. Counsel for the parties to meet with each other if necessary.

Zoom allows for the creation of breakout rooms along the way and allows for changes to who is in the break-out room as well, so there is a lot of flexibility.

During breaks and whenever otherwise necessary (such as when a party needs to seek instructions or counsel is preparing for cross-examination), the parties can go into their virtual breakout room.

As the meeting host, I can send everyone to their breakout rooms, send messages to the breakout rooms and return everyone from the breakout rooms. Anyone in the breakout room can ask me for assistance. During the Virtual Pre-Hearing Meeting, I will review the use of the breakout rooms and do a short demonstration.

#### 6.6 Technology Problems During Hearing:

If we all lose connection, we will all sign in again and reconvene as quickly and possible. Before we proceed, I will make sure everyone is on the same page as to what was happening when we disconnected.

If one person loses their connection, we will wait for that person to reconnect and then make sure that person is made aware of anything they have missed.

#### 6.7 Objections and Other Issues:

If there are objections or other issues during the hearing requiring the Board to deliberate before making a ruling, the Board will convene in their breakout room and return to the meeting room once they have discussed the issue.

Others will remain in the meeting room or will be placed in their breakouts. If a witness is testifying at the time, the witness will be placed in the waiting room.

#### 6.8 Opening the Hearing:

Once we have tested the technology, we will begin the hearing process with:

1. Introductions

I will go through and identify each person in the hearing room and their role in the process.

2. Jurisdiction

I will ask counsel to confirm the Board is properly constituted and has jurisdiction over the grievance.

3. Preliminary Matters

I will ask counsel if there are any preliminary matters we need to address. If so, we will address those first.

4. Exclusion of Witnesses

Unless the parties otherwise agree, I will make the usual order for exclusion of witnesses.

5. Opening Statements

I will ask counsel for opening statements just like in an in-person hearing.

6. Marking PDF Document Book –

I will mark Part A documents as an Exhibit.

I will mark Part B and C documents for identification. Then when the Board accepts a document from Part B or C in evidence, I will mark those documents as full exhibits. At the end of the hearing, we will discard any Part B and C documents that were not entered in evidence.

## 6.9 Witnesses:

1. Parties will call witnesses in turn just as in any in-person case.
2. Counsel will notify each witness of the precise time when the witness should log in to the Zoom meeting to be placed in the waiting room.
3. Counsel should ensure they are able to reach their witnesses by phone or text to deal with any scheduling adjustments.
4. When counsel is ready to examine the witness, I will bring the witness from the waiting room into the main hearing room.
5. To ensure the integrity of the process, with respect to each witness:
  - a. I will ask the witness to show us the room in which the witness is testifying.
  - b. I will make sure everyone can clearly see the witness.
  - c. I will ask the witness to swear or affirm to tell the truth. If a witness wants to swear on the Bible or another holy book, they should have the book with them. Otherwise, I will affirm the witness.
  - d. I will instruct the witness as follows:
    - i. Once the witness starts to testify, the witness is not to communicate with anyone in any way about their evidence unless the Board permits it. This includes any means – audio, video, email, text or in person.
    - ii. The witness may not have anyone else in the room with them while testifying except in cases where support is required. Counsel should arrange for this ahead of time if necessary.
    - iii. The witness may not review any documents or access any electronic sources other than the documents put to them in their direct or cross-examination, unless permitted to do so by the Board.
    - iv. The witness may not review or rely on any script or notes or documents to refresh their memory unless they are given permission to do so by the Board.
6. Direct examination and cross-examination will proceed in the usual fashion.
7. If there are objections during witness testimony and the witness should not be present during discussion, I will place the witness back into the waiting room and bring the witness back once the discussion is concluded.
8. If the examining or cross-examining counsel intends to put documents to the witness, counsel must coordinate how this will be done. Possibilities include:
  - a. Put the document to the witness on the Zoom share screen. Everyone will have the ability to put documents up on the Zoom share screen.

- b. Send the PDF Document Book to the witness by email in advance.
  - c. Send specific documents to the witness by email in advance.
  - d. Arrange to deliver a paper copy of the Document Book or the specific documents to the witness in advance.
9. The counsel who puts documents to a witness is responsible to ensure safe return or disposal of those documents whether provided to the witness in paper copy or by electronic means.

6.10 Closing Arguments, Written Arguments and Authorities:

- 1. Counsel should provide any written arguments to the Board by email between the end of the hearing and the start of closing arguments.
- 2. To the extent possible, each counsel should prepare, in advance, a PDF file containing copies of all authorities on which counsel will rely in argument (the “Authorities PDF”). The pages of the Authorities PDF should be numbered sequentially and/or the cases should be “bookmarked” for ease of reference during argument.
- 3. Otherwise, at the end of the hearing, we will proceed with oral arguments just like in an in-person hearing.

6.11 The Decision:

Following the hearing, the Board meet virtually for deliberations, and will make and write the award. The Board will issue the award to counsel and/or the parties by email.

**7. Zoom Checklist and Information**

7.1 Where to Set Up:

A private space, with minimal background noise and interruption.

7.2 Equipment:

- a. Computer or tablet with enough power to run the program.
- b. Computer to have speakers or headphone.
- c. Camera – built-in or external.
- d. You will find a larger monitor is better.



### 7.3 Stable Internet Connection:

- a. Wired preferred because more stable.
- b. If Wi-Fi, make sure you have a strong connection and are physically located close to the router.
- c. Shut down any unnecessary programs and/or websites during the meeting.

### 7.4 Download Zoom Meeting Application:

Participants will need to download Zoom to their computer. There is no cost to do this.

To download, go to <https://zoom.us/download> and follow the instructions.

Do this at some point before the Virtual Pre-Hearing Meeting or the Arbitration Hearing you will be attending.

You also have the option of signing up for a Basic Zoom Account which is free, but you do not need to do this.

### 7.5 Tutorials:

If you are not already familiar with Zoom, there are tutorials on the Zoom website at <https://zoom.us>.

### 7.6 Joining the Meeting:

To join the meeting, click on the meeting link and follow the instructions.

Enter the Password when asked.

### 7.7 Background and clarity:

- a. Try to be in a room with good lighting.
- b. Face away from dark and towards light.
- c. May have to close curtains or blinds.
- d. A bare wall behind you works well, but is not necessary.
- e. Test to make sure your set-up shows your face clearly. We will work on any issues at the start of the hearing. The goal is for everyone to be able to clearly see and hear everyone else.

### 7.8 Clothing:

- a. Avoid busy patterns and stripes.
- b. Solid colours are better.

- c. If in doubt, try out your video in advance.

#### 7.9 Connectivity problems during session:

- a. Even if you have the best connections, sometimes there can be issues. We will deal with them as they arise. Patience is the buzzword.
- b. I will get email addresses and cell numbers for everyone so we can discuss any connectivity issues.
- c. If there is an issue, we will put the session on hold until we have solved it.

#### 7.10 Recording:

- a. You are not permitted to record the hearing on any recording device.
- b. You are not permitted to take photos or screen shots during the arbitration.
- c. I will record the audio on a separate device, but only for my own personal use for back-up to my notes.

### **8. Special COVID-19 Considerations**

8.1 While these *Guidelines* were developed for virtual hearings generally, special considerations arise for hearings held during the COVID-19 pandemic, in particular before vaccines offer safe, full protection to all hearing participants. These *Guidelines* contemplate that each participant in a hearing, whatever their role, will participate remotely from their own safe location with nobody else in attendance. This is the “Gold Standard”, and it is especially important now because of the current dangers associated with the spread of COVID-19. The beauty of the Gold Standard virtual hearing is that it provides 100% safety to all participants. For this reason, the Board strongly recommends the Gold Standard.

8.2 If the parties ask to separate the Union and Employer delegations (in whole or in part), with the members of each delegation attending their own venue in person, using Zoom through that location, different considerations apply. While separating the parties into two groups reduces the COVID-19 risks to participants by roughly 50%, preventable health risks remain. This approach defeats the 100% safety protection offered by the Gold Standard. Individual participants, including witnesses, may have concerns about gathering in an office or meeting room setting because of the significant consequences of possible exposure to coronavirus.

8.3 If, knowing the risks involved, the parties still wish to proceed in the manner set out in 8.2, the following rules apply:

- a. Because the Board has no way to take safety precautions for those attending in person with their delegation, the onus falls upon counsel to take steps to provide an environment that is as safe as possible for participants. This includes ensuring availability of personal protective equipment, appropriate shields or dividers, and hand-sanitizer, together with rigorous site cleaning,

ample social distancing and a method to share documents that does not include participants passing documents from one person to another.

- b. The Board expects counsel to advise each participant:
  - i. of the details of the safety precautions that the party will put in place;
  - ii. that each participant has the absolute right to participate in the hearing remotely, at their safe location, and is not required to attend with the party's delegation, and they may attend the hearing by Zoom video from their safe location; and
  - iii. when the participant is a witness, that the Board will not issue a subpoena to require any witness to attend at the location of a party's delegation if the witness does not wish to take the risks associated with personal attendance. In such case, the Board will issue the subpoena to the witness to attend the hearing by Zoom video at their safe location.
- c. At the Virtual Pre-Hearing Meeting, the Board will remind the participants, including witnesses, of the right to attend the hearing remotely from their safe location.
- d. To be clear, the Board will not be responsible for exposing any participant in a hearing to the risk of contracting COVID-19.