



Update #9 and Consolidated COVID-19 Practice Direction (October 24, 2022)

[1] This practice direction replaces and supersedes *Update #8 and Consolidated COVID-19 Practice Direction (June 24, 2022)* [Update #8 PD]¹ with changes in particular to paragraphs 11 – 17. Those provisions addressed the mode of hearing (in-person and remote) for matters scheduled to be heard in September of this year or later. Although renumbered, the other paragraphs of Update #8 PD are continued in this consolidation.

SUMMARY: New Presumptions for Hearing Modes		
	In-person	Remote
January 2023 and beyond	<ul style="list-style-type: none"> • All hearings on the merits for: <ul style="list-style-type: none"> ○ actions; ○ applications other than those brought under the <i>Immigration and Refugee Protection Act</i> [IRPA]; ○ applications made pursuant to the IRPA, in respect of decisions by (i) any of the divisions of the Immigration and Refugee Board, and (ii) pre-removal risk assessment by assessment officers at Immigration, Refugees and Citizenship Canada; ○ appeals of a final decision or order; and • All non-urgent motions in excess of two hours. 	<ul style="list-style-type: none"> • All hearings not described under the left hand column, including for: <ul style="list-style-type: none"> ○ all other types of inland applications under the IRPA; ○ all applications under the IRPA from outside Canada; ○ Applications under <i>Citizenship Act</i>; and ○ all motions scheduled for two hours or less, including at General Sitings.
April 2023 and beyond	<ul style="list-style-type: none"> • All hearings described above plus hearings on all other inland applications under the IRPA. 	<ul style="list-style-type: none"> • All hearings on applications under the IRPA from outside Canada; • All hearings on applications under <i>Citizenship Act</i>; and • all hearings on motions scheduled for two hours or less, including at General Sitings,

¹ See Notices at: <https://www.fct-cf.gc.ca/en/pages/law-and-practice/notices#cont>

		and requests for stays of removal from Canada.
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Background

[2] In Update #8 PD, the Court announced that all matters scheduled for 3 hours or longer would be presumptively scheduled to be heard in-person. The purpose of this Practice Direction is to announce the next two phases of the Court's transition back to in-person hearings.

[3] This transition will be subject to the continued evolution of the COVID-19 pandemic. The Court is hopeful that by the end of the second of the phases described below, an appropriate balance between in-person and remote hearings will have been achieved.

[4] As this process unfolds, the Court will seek to optimize the extent to which it can provide parties with the mode of hearing they prefer, while ensuring that the Court maintains a physical presence throughout Canada. The Court will also continue to actively pursue the digital shift described in its *2020-2025 Strategic Plan*, as it simultaneously safeguards its foundational itinerant nature.

New Presumptions for Hearings Scheduled to be Heard in January 2023 and Beyond

[5] For all proceedings scheduled to be heard in January 2023 and beyond, the in-person presumptive mode hearing will be expanded to include all *hearings on the merits* for the following categories of matters:

- A. All actions;
- B. All applications other than those brought under the *Immigration and Refugee Protection Act [IRPA]*;
- C. All applications made pursuant to the IRPA, in respect of decisions by (i) any of the divisions of the Immigration and Refugee Board, and (ii) pre-removal risk assessment by assessment officers at Immigration, Refugees and Citizenship Canada; and
- D. All appeals of a final decision or order.

[6] All non-urgent motions with an estimated duration in excess of (2) hours will also be presumptively scheduled to be heard in-person.

[7] For all other matters, hearings will continue to be presumptively scheduled to be conducted remotely (by video or teleconference). For greater certainty, this includes all types of applications made pursuant to the IRPA and not mentioned above, as well as applications under the *Citizenship Act* and all motions scheduled to be heard for a duration of two (2) hours or less (including motions scheduled for General Sittings and motions for a stay of removal from Canada).

[8] The Court encourages parties to all modes of hearings to proceed on the basis of an electronic record, subject to the availability of any electronic equipment (including extended monitor screens) required for the hearing. The parties' preferences as to whether they wish to proceed on the basis of an electronic or paper record should be provided within the same timelines as set out in paragraph 15 below. For further information, see section entitled [Format of Court Record of Hearing](#), below.

[9] Video conference hearings will be conducted over Zoom. The Court's approach to such hearings is explained [here](#), including an Introduction to Zoom Best Practices.

Expanded In-person Presumption for Hearings Scheduled for April, 2023 and Later

[10] Beginning in April 2023, the category of hearings that will be presumptively scheduled to be heard in person will be further expanded to include all other inland applications under the IRPA. As of that time, the provisions set forth above will apply to that expanded category of hearings.

[11] For greater certainty, and consistent with paragraph 3 of the *Consolidated Practice Guidelines for Citizenship, Immigration and Refugee Protection Proceedings*, available [here](#), inland applications are those that have been described as such in the required cover letter accompanying a Notice of Application.

[12] Also for greater certainty, applications arising outside Canada, as well as motions to stay a removal from Canada, will remain presumptively scheduled to be heard remotely for the foreseeable future.

Option to Request Alternative Mode of Hearing

[13] Parties to a proceeding described in paragraphs 5, 6 or 10 above will have the option to request a remote (video or teleconference) hearing where circumstances warrant, pursuant to the process described below.

- A. A party wishing to make such a request shall first consult the other party or parties, with a view to making a joint request.
- B. In any event, a party seeking a remote hearing shall submit a letter to the Judicial Administrator to explain the basis for their request in writing. Subject to any views that may be expressed by another party, the Court expects that requests will be granted when made on medical grounds or where distance or the time/cost associated with travelling to the Court would be particularly significant. Before making a request based on the location of their client, counsel should keep in mind that they can participate in person while their client participates remotely, subject to the availability of equipment. (See paragraph 13.D below.)
- C. A party who does not agree with another party's request for a remote hearing shall provide a written explanation in support of its position no later than the applicable time set forth in paragraph 15 below.

- D. The Court will remain open to conducting hybrid hearings, subject to the availability of the required equipment. Such hearings permit some participants to appear in person and others to appear remotely.

[14] Parties to a proceeding described in paragraph 7 or 12 above will have the option to request an in-person hearing. A party wishing to make such a request is encouraged to consult the other parties, with a view to making a joint request. Where parties have not agreed to proceed by way of an in-person hearing, they shall each provide a written explanation in support of their position.

[15] Before a matter is scheduled, a party who does not wish to proceed in accordance with the presumptive mode of hearing shall communicate their position no later than the following times:

- A. Hearing on the merits for actions – In their pre-trial conference memorandum (or during the pre-trial conference).
- B. Hearing on the merits for applications (T files) – In the Requisition for Hearing, preferably by way of a joint proposal. The Respondent may submit a separate letter within 3 days of the effective date of service of the Requisition for Hearing if it is unable to agree with the Applicant.
- C. Hearing on the merits for applications (IMM files) – By letter filed no later than the due date for the Applicant’s Reply.
- D. Motions – For urgent motions, in the request for the motion or in the response thereto. For non-urgent Special Sittings motions, the mode of hearing should be addressed in the Rule 35 letter setting out a joint proposal. The responding party may submit a separate letter within 3 days of the effective date of service of the Notice of Motion if they take a different position than the moving party.

Requests to Change Mode of Hearing After it has been Scheduled

[16] In general, once the hearing has been scheduled, any party may request the opportunity to participate by way of a different mode, i.e., the opportunity to have a hybrid hearing. They may also request a change in the mode of hearing as a whole, based on unforeseen or exceptional circumstances. For each of these two types of request, the Court will make its determination after considering any submissions that the other party or parties may make, as well as the availability of court staff and equipment. The Court will also consider the evolution of the COVID-19 pandemic.

[17] To make such a request, the party shall submit a letter explaining the basis for their request to the Judicial Administrator via the Registry as soon as possible.² In any event, subject

² See paragraphs 13 and 14 above. If submitted electronically, such requests should be filed using the E-filing portal.

to urgent considerations (such as a COVID-19 infection), such requests shall be filed no later than the following:

- A. For applications filed pursuant to the IRPA, within 21 days of the date of the Order granting Leave for Judicial Review.
- B. For all other matters, at least 4 weeks prior to the hearing.

[18] Such requests should set out:

- i. the position of other parties;
- ii. all facts relevant to the request; and
- iii. the party's submissions relevant to the request.

Health and Safety Measures

[19] All Court offices are open. The Courts Administration Service has posted two guides on its website to inform the public regarding the special health and safety measures that have been, or shall be, implemented within the Court's facilities. The first deals with general matters and measures applicable within the courtroom (available [here](#)). The second deals with security screening (available [here](#)). The Court's Covid-19 Guide for in-person hearings also remains applicable (available [here](#)).

Filing Documents

[20] Pursuant to [Rule 71](#), a document may be sent to the Registry for the purpose of filing by delivery, mail, fax or electronic transmission. Parties are therefore free to file paper or electronic versions of documents.

[21] Parties shall use the Court's [E-filing portal](#) to file all electronic documents that do not contain confidential information. (Confidential information is subject to the special provisions in paragraph C. below.) For more information regarding electronic filing, please consult the Federal Court's E-Filing Portal [webpage](#), as well as the E-Filing Resources [webpage](#), which includes an Electronic Guide for preparation of Digitized Court Documents.

- A. Paper copies: Parties wishing to file paper copies may do so in the usual manner. Parties who file documents electronically are exempted from any requirement to file paper copies unless otherwise directed by the Court.
- B. Electronic Payment of Court filing fees: the E-Filing portal now offers secure online payment.
- C. Confidential Documents: Confidential materials filed pursuant to a confidentiality order or direction should be filed in a manner that preserves the confidentiality of the document. For electronic versions, one acceptable procedure is to submit a password-

protected PDF or a secure electronic file transfer to the appropriate e-mail address set forth in the [Appendix below](#). The password or instructions shall be provided separately to the Registry by email or telephone as appropriate. Such documents must be clearly identified as confidential and broken down into separate files not exceeding 18 MB, or by such other means as may be directed by the Court. Paper copies of confidential documents may be filed at the Registry.

- D. Page numbering and pinpoints: Electronic files should display page numbers on each page in the file, consecutively numbered. Pinpoint references to those page numbers shall be provided when referring to such materials in written submissions.
- E. Bookmarks: Bookmarks shall be included in all electronic files that contain more than one document. Each such document, and each appendix, exhibit or schedule shall be separately bookmarked. Many PDF conversion tools include a setting to automatically generate bookmarks from heading styles that are formatted in the document. Parties should verify that their bookmarks are accurate. Documents shall be formatted in a manner that permits the Court to add its own bookmarks.
- F. Hyperlinks: The Memorandum of Fact and Law or Memorandum of Argument, as applicable, shall include hyperlinks to all cases, articles, statutes and other materials available on public and free websites where possible. If parties file their documents electronically and provide hyperlinks (including pinpoint citations) for all cases that are included in their Memorandum, along with an alphabetical index to the list of cases cited, this shall be deemed to constitute a book of authorities, and parties are thereby relieved from the obligation to prepare a separate book of authorities pursuant to Rule 70(1)(g) of the [Federal Courts Rules](#).
- G. Optical Character Recognition (OCR): Before filing electronic documents that include scanned content or images, parties shall process the document with an OCR application – this allows other parties and the Court to search the document using key words. If possible, documents should be converted directly from digital format to PDF, rather than being printed and then scanned to PDF. However, if a document is scanned, the OCR process should be completed before submitting the document to the Court.
- H. Selection of Local Office in E-Filing Portal: parties are requested to select their local office in the appropriate drop-down menu when e-filing a document. Files that are under case management should be directed to the office where they are being managed. For documents submitted for an upcoming in-person hearing, the document should be directed to the office where the hearing is scheduled.
- I. Inability to Submit Documents Electronically: Parties who are not able to submit documents electronically as described above may submit a paper copy to the Registry (see [office addresses](#)). Alternatively, they may contact the Registry by phone at 1-800-663-2096 (or see this [Telephone List](#) for

local office telephone numbers) or by email (see e-mail list in [Appendix](#)) for assistance.

Service of Documents between Parties

[22] A party may serve a document electronically pursuant to the following *Federal Courts Rules*: Rules 139(1)(e), 141, 143, and 146(1) and forms 141A (Notice of Consent to Electronic Service), 141B (Withdrawal of Consent to Electronic Service), and form 146A (Affidavit of Service).

- A. Deemed consent: Parties shall provide an electronic address on each document filed with the Court. Exceptions will be made for self-represented parties who do not have access to the necessary technology to receive / send documents electronically. If a party has provided an electronic address on a document filed in Court, or if counsel for a party has an electronic address publicly listed by the counsel's law society, that party shall be deemed, *until further notice*, to have consented pursuant to Rule 141 to electronic service of documents at the electronic address on the last document filed. Where multiple email addresses are listed on a document, counsel are encouraged to include all of those email addresses when serving materials. Pursuant to Rule 148, on informal request by a party who did not have notice of a served document or did not obtain notice of it at the time of service, the Court may set aside the consequences of default or grant an extension of time or an adjournment.
- B. Originating documents: Personal service of an originating document filed electronically by a party other than the Crown in proceedings brought under the *Immigration and Refugee Protection Act* or the *Citizenship Act* shall be effected by the Registry on the Crown, the Attorney General of Canada or any other Minister of the Crown in accordance with the practice under Rule 133 of the *Federal Courts Rules*. Service effected in this fashion will relieve an applicant from the requirement to effect personal service.
- C. Until further notice, the Registry may issue an originating document electronically. This shall be deemed to meet the requirements for issuance under the *Rules*.
- D. Where service of a document that is required to be served personally cannot practicably be effected, parties may apply informally by letter (sent electronically) for an order for substituted service (Rule 136) or to validate service (Rule 147).

Public Access to Documents on the Court Record

[23] The Federal Court case index may be searched and individual case information (the "case history") viewed [here](#). Information available includes a record of each document filed in Court. Before contacting the Registry to request a document, please review this online case history to determine which document(s) you require.

[24] Members of the media and general public seeking access to documents on the Court record may request copies of non-confidential documents by writing to their local Registry office (see list of e-mail addresses in the [Appendix below](#)). For documents only available in paper format, there is a tariff under the *Federal Courts Rules* of \$0.40 per page for the Registry to prepare a copy of documents on the Court record.

Format of Court Record for Hearing

A. Remote Hearings: Electronic Documents Requirement

[25] The Court will require electronic copies of all documents that are necessary for any telephone or videoconference hearing. As noted at paragraph [21] above, when electronic documents are filed, parties will be exempted from the requirement to file paper copies of those documents unless otherwise directed by the Court. An exception to the requirement to file documents electronically may be made where a party is unable to file documents in that manner. Where documents have previously been filed in paper only, electronic copies of those documents may be required to be filed at the request of the Court at least 10 days prior to a hearing that is conducted remotely.

B. In-person Hearings: Equipment Requirement for Electronic Record

[26] The Court is in the process of building out capacity at its facilities across the country to ensure that parties have the option of conducting in-person hearings on the basis of either a paper record or an electronic record. Although some Courtrooms are equipped for electronic hearings, others have only an electrical outlet at counsel tables, and neither hardwired internet nor wifi is generally available. Until such time as that build-out has been completed, parties who prefer to proceed by way of electronic materials should inform the Court of their preference and their anticipated requirements. This should include whether they require a full electronic courtroom or simply an extended monitor screen to connect to their laptop / tablet during the hearing. Among other things, a full electronic courtroom would permit counsel to display documents on a large screen that may be viewed by all participants in the Courtroom. In addition, the Court, counsel and witness would see the same document on their respective screens. In contrast, simply having a single extended monitor screen would permit counsel to privately view one or more additional documents during the course of the hearing. Neither the Court nor other counsel would see those documents, unless they brought them up on their own monitor screens.

[27] The Court will endeavour to accommodate parties' equipment needs. However, for the time being, this will be subject to the availability of the equipment required for the hearing. No later than three weeks before the hearing, parties should contact the office where the hearing will be held to confirm the equipment set-up available for their hearing.³ If the assigned hearing room has no extended monitors available, counsel may wish instead to consider bringing their own portable monitor screens. If counsel is unable to bring an extended monitor screen in such circumstances, the hearing will need to be conducted on the basis of a paper record.

³ In addition to confirming availability of an extended monitor screen (if requested) in the Courtroom assigned for their hearing, it is recommended that parties confirm whether they should bring a monitor cable compatible with their laptop (with either an HDMI or VGA connector to connect to the onsite extended monitor).

Observing Court Hearings and Access to Audio and Video Recordings

[28] Hearings of the Federal Court, other than pre-trial or dispute resolution conferences, are generally open and accessible to the public and media. Members of the public and the media who wish to observe a remote hearing must notify the Court of their interest at least 24 hours in advance of the hearing. The Court will provide these individuals with a link to connect to the hearing. See the [Hearing Lists page](#) for a national listing of hearings and to register to observe a hearing held by video conference.

[29] Except with leave of the Court, livestreaming the hearing is not permitted, and everyone is expressly prohibited from making a recording of a hearing. This is subject to the [Court's Policy on Public and Media Access](#). The Registry will retain an official audio recording of Court hearings. Copies will be accessible pursuant to the notice entitled [Pilot Project for Access to Digital Audio Recordings](#).

[30] Except with leave of the Court, access to video recordings will not be provided.

Gowning and Decorum

[31] Until further notice, the requirement to gown for an appearance in Federal Court remains suspended for all hearings that proceed by video conference. Counsel and parties are expected to dress in appropriate business attire. Judges and Associate Judges [previously referred to as prothonotaries] will similarly dress in business attire. Gowning for in-person hearings remains subject to the [Consolidated General Practice Guidelines](#) (issued June 8, 2022).

[32] Counsel and Witnesses shall ensure that they have a professional background – *whether actual or virtual* – when appearing for a Court hearing by video conference. A blurred background is acceptable.

[33] Where there is any risk of background noise, Counsel and Witnesses shall use a headset with an integrated boom microphone or a tabletop conference or gooseneck directional microphone.

Oral Advocacy

[34] Counsel are encouraged to be prepared to highlight their arguments and direct the Court to relevant jurisprudence, instead of simply reading a prepared script or repeating their written submissions. In addition, they should be prepared to answer questions and to reply to the submissions of opposing counsel. Counsel or self-represented litigants who wish to observe Court hearings at which experienced counsel are appearing before the Court may consult the [Hearings List](#) and register to observe a hearing. At the [Court Index and Docket](#) tab, the Federal Court case index may be searched and individual case information viewed, including the name of counsel under the “Parties” icon.

Preparation of a Compendium for a Court Hearing

[35] For the hearing on the merits of an application (in both T-files and IMM files), parties are encouraged in appropriate cases (such as where the record is large) to prepare a short compendium containing key excerpts from their record on which they intend to rely at the hearing. When a compendium is prepared, a copy shall be provided to both the Court (submitted electronically via the e-filing portal) and opposing counsel no later than 3 business days before the hearing. For actions, the topic of a compendium should be discussed at the pre-trial conference.

APPENDIX – LOCAL REGISTRY OFFICE EMAIL ADDRESSES

- Vancouver and Yukon: VAN_reception@fct-cf.ca
- Calgary: CAL_reception@fct-cf.ca
- Edmonton and Northwest Territories: EDM_reception@fct-cf.ca
- Winnipeg, Regina and Saskatoon: WPG_reception@fct-cf.ca
- Toronto: TOR_reception@fct-cf.ca
- Ottawa: fc_reception_cf@cas-satj.gc.ca
- Montreal and Nunavut: MTL_reception@fct-cf.ca
- Quebec: QUE_reception@fct-cf.ca
- Halifax: HFX_reception@fct-cf.ca
- Charlottetown: CHA_reception@fct-cf.ca
- Fredericton: FRE_reception@fct-cf.ca
- Newfoundland and Labrador: STJ_reception@fct-cf.ca

* Note: The maximum e-mail size is 25 MB. However, attachment of a PDF document to an e-mail increases the effective size of the PDF document by approximately 30 %. Larger PDF documents (i.e., over 18 MB) must be split into smaller parts before sending. Please consult sections 3.2.1.1 and 6.8 of the E-filing Guide for information on reducing the size of PDF documents: <https://www.fct-cf.gc.ca/content/assets/pdf/base/E-filing-Guide-May-7-2020-Final-EN.pdf>