



The Provincial Court of Saskatchewan

## **The Provincial Court of Saskatchewan**

### **Protocol for Telephone Appearances by Counsel in Criminal Matters**

#### **1. Obtaining leave to Appear by Telephone**

Where distance or other considerations make it impracticable to appear in court personally, Counsel may appear and make representations by telephone on most matters in Provincial Court<sup>1</sup> provided that he or she first obtains the leave of the Court to do so. This includes, but is not limited to, appearances by Counsel on an accused's behalf where the accused does not appear in person, such as appearances in summary conviction matters or where a designation has been filed under *Criminal Code* section 650.01. This does not foreclose the possible appearance or attendance by the accused by telephone at the same time.

The application for leave should ordinarily be made to the Judge who will be hearing the matter upon which Counsel wishes to appear and may be made by a faxed request, or telephone call to the Clerk of the Court or Court Manager, who will bring it to the attention of the presiding Judge. In the event that the presiding Judge is not available to decide the application, or that no Judge has been assigned, the Court Manager at the location where the matter is to be heard shall refer the matter to another Judge, and if no other Judge is available, the Court Manager will make the decision and will communicate same to Counsel. Leave granted by the Court Manager is subject to review by the presiding Judge. An application for leave to appear by telephone upon a subsequent occasion may be made during the course of a hearing related to that same matter, and the Judge who hears the application may grant leave regardless of whether that Judge will be presiding on the subsequent occasion.

#### **2. Appearance by Telephone**

Appearances by Counsel by means of telephone shall occur in the following manner unless the Court otherwise directs.

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<sup>1</sup> Subject, of course, to any restrictions contained in the relevant *Criminal Code* provisions, such as those found in s. 515(2.2), (2.3), s. 537, s. 606(5), s. 650, s. 650.01, s. 650.02 and s.800 (2.1).

- a. When the matter is to proceed before the Court, the Court will telephone Counsel.
- b. The Court may at any time terminate the leave to appear by telephone, adjourn the matter and require the personal attendance of Counsel.
- c. Documents that Counsel wishes to submit for purposes of the hearing shall be sent to the Court and the other parties prior to the hearing and at a time that will provide the Judge and other parties with a reasonable opportunity to examine the documents in preparation for the hearing.

### **3. Show Cause Hearings Conducted by Telephone**

If a Judge is not reasonably available to conduct a show cause hearing, and video teleconferencing is not available, the person entitled to the hearing, or the Crown, may request that the hearing take place by telephone. While the law would seem to be that the consent of the accused is not necessary, the Court does not anticipate conducting such hearings without the accused's consent. It is not necessary to apply for leave to allow the accused to appear by telephone for a show cause hearing, but arrangements have to be made as described below.

#### **a. If there is a Justice of the Peace available in the community where the accused is being held**

If there is a Justice of the Peace available at the location where the accused is being held, the request for a telephone hearing shall be made to that Justice of the Peace. The Justice of the Peace shall arrange for the matter to be brought before a Judge by way of telephone appearance at the earliest reasonable opportunity and will send a copy of the Information(s) to the Judge, to the Crown Counsel (if any) and to Defence Counsel (if any) by facsimile. The accused and the Justice of the Peace shall be present throughout the hearing and the Justice of the Peace will advise the Judge of any apparent or possible improprieties at the location where the accused is held.

Unless the Judge orders otherwise, the show cause hearing locations shall be as follows:

- a. If the accused is located in a community where the Court holds sittings, the accused will be taken to the facility where the Court holds such sittings and will be held there for purposes of the hearing.
- b. If the accused is located in a community where the Court does not hold sittings, the accused shall be taken to a facility to which the public can be granted access and will be held there for the purposes of the hearing.
- c. The public shall have access to the hearings at the location where the accused is held and at the Judge's location.

At the outset of the hearing, the Judge shall determine whether the accused consents to having the show cause hearing take place by telephone. If the Crown objects to having the matter heard by telephone, Counsel will make this known and will be heard on the question. The accused and his or her Counsel are entitled to engage in private conversation during the hearing, and therefore, if no other means of communication is available, the hearing may have to be adjourned for short periods of time to allow such communication to occur.

Unless the Judge orders otherwise, at the conclusion of the hearing documents such as Remand Warrants or Undertakings or Recognizances will be prepared by the Justice of the Peace and the accused will be released or remanded as the case may be.

**b. If there is no Justice of the Peace available in the community in which the accused is being held**

If there is no Justice of the Peace available in the community where the accused being held, the request for a show cause hearing shall be made to the Police Officer who has custody of the accused, who shall arrange for the matter to be brought before a Judge by way of telephone appearance at the earliest reasonable opportunity and will send a copy of the Information(s) to the Court, to the Crown Counsel (if any) and to Defence Counsel (if any) by facsimile.

Unless the Judge orders otherwise, the show cause hearing locations shall be as follows:

- a. If the accused is located in a community where the Court holds sittings, the accused will be taken to the facility where the Court holds such sittings and will be held there for purposes of the hearing.
- b. If the accused is located in a community where the Court does not hold sittings, the accused shall be taken to a facility to which the public can be granted access and will be held there for the purposes of the hearing.
- c. The public shall have access to the hearings at the location where the accused is held and at the Judge's location.

At the outset of the hearing, the Judge shall determine whether the accused consents to having the show cause hearing take place by telephone. If the Crown objects to having the matter heard by telephone, the Crown will make this known and will be heard on the question. The accused and his or her Counsel are entitled to engage in private conversation during the hearing, and therefore, if no other means of communication is available, the hearing may have to be adjourned for short periods of time to allow such communication to occur.

Unless the Judge orders otherwise, at the conclusion of the hearing documents such as Remand Warrants or Undertakings or Recognizances will be prepared by the Clerk sitting with the Judge,

and will be forwarded to the location where the accused is held by facsimile or other electronic means. In the event of release, the Clerk will attend upon the accused (and the surety, if any) for purposes of execution of the documents by use of telephone and facsimile machine. When the Clerk has received the release document, whether by facsimile or other means, apparently signed by the Accused (and surety, if any), the Accused shall be released.

#### **4. Obligations of Counsel**

Counsel appearing by telephone will adhere to the following rules.

- a. Bearing in mind that this is a proceeding before a Court, proper decorum must be observed at all times.
- b. Counsel must be immediately available when the Court calls.
- c. Counsel must take steps to ensure that the call from the Court is not answered by an answering machine, voice mail or similar system.
- d. Counsel shall ensure that there are no interruptions or background noises during the course of the hearing.

Failure to comply with these rules is likely to result in a termination of leave to appear by telephone and may influence future leave applications by the same Counsel.

Failure by Counsel to be available when the Court calls will be treated as a failure to appear.

#### **Procedural Matters**

The granting of leave to appear by telephone including the date that such leave was granted shall be endorsed upon the record.

The Clerk shall endorse on the record all pertinent information relating to the telephone appearance including, but not necessarily limited to, the fact that proceedings took place by telephone with full particulars as to who was appearing by telephone, the location and telephone number they were at, and the location of the Judge and Clerk

The proceedings shall be recorded at the Judge's location unless the Judge orders otherwise.

Before a document is signed by an accused appearing by telephone in a location where there is no Justice of the Peace, the Clerk shall read the document to the signor and shall note the fact that this has taken place upon the document. The document shall also note the location of the signor at the time of signing.