

BEST PRACTICES FOR REMOTE HEARINGS

The Social Security Tribunal (SST) is a federal adjudicative tribunal. The two sections of its General Division (GD) hear Employment Insurance and Income Security appeals. Its Appeal Division (AD) hears appeals from the GD. Many appellants are among the most vulnerable members of Canadian society.

Our Members have put together this document of practical tips for each form of hearing in the hope that it may assist other adjudicators who are beginning to conduct remote hearings. We recognize that the SST's operating environment may be quite different from other tribunals.

The SST is designed to operate remotely. Unlike most tribunals, most hearings take place by teleconference. In-person hearings are held less frequently. Videoconferences are also held, which require parties to attend a Service Canada Centre. For the past year, the SST has been testing Zoom software for video hearings, to allow parties to participate in a videoconference from their home or a location of their choice. Zoom is currently being expanded for broader use.

The SST's GD hearings generally occur with only the appellant in attendance. Representatives, legal counsel, multiple parties, and witnesses are occasional additions. At the AD, legal counsel and formal submissions are more common.

HEARING MANAGEMENT: Whichever remote hearing option you choose, this advice applies to **all options**:

- Explain in detail the process of the hearing, including who speaks first, how witnesses will be included, how to enter new documents at the hearing etc. Many parties will think of their hearing as if it is a court process. We find it critical to reduce anxiety about the formality of the process. This is done by explaining at the outset that the hearing is more like a conversation than a court trial. At the same time, we explain that there are rules and a process to be followed.
- Identify everyone on the record, including yourself, and ask people how they would like to be addressed. We find that sometimes parties do not understand our roles, so it is important to explain your role in relation to the body that made the decision under appeal.
- If you record hearings, have a backup recorder. Our teleconference hearings are recorded through the Government of Canada teleconferencing service. For videoconference and Zoom hearings you will likely have a separate recording device anyway, but it is also important in teleconference hearings as the teleconference recording system may get overloaded and sometimes not record. It is also important to make sure the parties know the hearing is being recorded.
- When everyone is remote, it is essential to pause at certain points and repeat evidence or summarize points to ensure you're capturing the testimony correctly. This also shows the parties that while they cannot see you, you are paying attention. It is important to verbalize what would normally be body language in an in-person hearing. (e.g. saying "okay", "if I understand, you're saying..." etc.)
- It is obviously important to make sure everyone can hear you in a remote hearing, but that is an ongoing obligation. To avoid situations where a party may believe they were prejudiced because they could not hear elements of the hearing, it is important to confirm that everyone can hear you, that all parties are still present (when you cannot see them), and then state that you will presume they can hear you throughout the remainder of the hearing, so the onus is on the parties to tell you if there is a problem.
- If you have an interpreter, ensure the party and interpreter understand each other. Also make sure the interpreter interprets everything, not just what the party giving testimony in another language is saying. It is equally important that the party requiring interpretation understands what everyone else is saying.

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TELECONFERENCE HEARINGS

Benefits and tips

- By far, this is the most convenient form of hearing. It can be scheduled quickly, and virtually everyone has access. It is the most efficient use of time, since there is rarely an issue with the technology, and it is inexpensive. Not only are there no travel costs, but the parties can sometimes participate over a lunch hour or break and do not have to take full days off work for short matters.
- While it may seem obvious, make sure you have a headset. The parties will understand you much better, and the recording of the hearing will be of higher quality.
- Make sure you eliminate all distractions when conducting teleconference hearings. While this is important in any type of hearing, extra focus is needed when the parties cannot see you.
- Implicit biases in assessing credibility are removed in a teleconference, since you cannot see the parties. As demeanour generally recognised as an unreliable tool for credibility assessment, this is an advantage.
- If the hearing deals with contentious matters or there is a history of violence or discord between the parties, a teleconference can be an excellent way to minimize tension and avoid security concerns.
- Make regular reference to the time in your hearing notes so you can easily find it on the recording without having to listen to the entire file.
- Know the features of your teleconference equipment—the government software has multiple features using * and a number to do different things, like lock the call so no one else can enter, or tell you how many participants are on the line.
- If new documents are presented at the hearing, have a process in place to accept or agree to review them, if permitted by your tribunal's processes. For example, the party could read the document into the record and send it to the tribunal following the hearing for comment by other parties, or you could allow the party a definite period of time to submit evidence. If choosing to do this, make sure you set a date and tell the party that if the tribunal does not hear from them, you will presume they are not submitting documents and you will proceed with the decision.

Drawbacks and things to avoid

- You must be aware of your parties to determine if a teleconference is appropriate. For example, a hearing impaired person may not be able to participate fully in this form of hearing.
- Multiple parties can be an added challenge since you need to ensure only one person is speaking at a time. This requires adjudicators to firmly control the hearing process.
- If evidence in the file will be visual, such as physical items the parties want the adjudicator to see, this may not be the right form of hearing.
- If your tribunal offers pre-hearing settlement conferences where you want to speak separately to parties, this can be difficult to coordinate by teleconference. It is possible to set different telephone call times for parties and operate the process like you would in person, but it is time consuming and eliminates the efficiency of a teleconference.
- Since you cannot see the parties, you will not be able to assess visual cues, such as expressions of confusion. This is a disadvantage in terms of hearing management.
- If you have multiple witnesses, a teleconference may not be appropriate because it is very difficult to exclude witnesses. An option is to set up separate call times for the witnesses to call in to the hearing, but this again reduces efficiency.
- While it is possible to lock the conference call line so no one else can log in after you start, it is not possible to be sure that a party is alone in the room when participating in a hearing. We recommend

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asking if there is anyone else in the room with the party, and stating that the party must tell you if any are joined by anyone.

VIDEO HEARINGS: Whether by videoconference or Zoom, this advice applies to both options

- Hearing management is generally easier than by teleconference.
- When there are concerns about a person's actual identity or location, the video format makes it easier to determine if the person is who and where they say they are.
- When there are witnesses testifying, you can easily exclude other witnesses to preserve the integrity of the oral evidence.
- It reduces the likelihood that people are whispering, writing, or otherwise suggesting answers for witnesses, or being coached by family or friends.
- When there is a representative, video can be useful for control. If you find a representative is testifying for the party or not letting them speak, it is easier to address when you can see each other.
- An interpreter can be present in the same room as the party (if videoconferencing from a neutral location). This helps to improve the accuracy and flow of interpretation.
- If there are many documents involved, you can see if the party actually has them or has trouble finding them. The party can also show you a document if there is any confusion.
- Think about how you appear in the video: it can be intimidating or unnatural if your video is too close to your face. Some Members set their chairs back and let the video capture their office workspace. Other Members use a background screen.
- Ensure that participants understand how to prepare for a videoconference hearing. They should set up their area so that there are no distractions or interruptions (for instance, from children or pets).
- Schedule extra time for the hearing – allow for technical problems, interruptions, or other things that could make the proceeding run longer than usual. Connect early to deal with any issues.
- Video hearings are not appropriate if more than one party is in the same room. If disagreements erupt, you are not in a position to intervene.

VIDEOCONFERENCE HEARINGS

Benefits and tips

- When working with a camera, it can be challenging to keep visual contact with the participants. Position yourself, your camera, and the screen shot of the videoconference feed so you can look straight at it. Have your notes right under the video feed on the screen. If this is not possible, explain why you might not appear to be looking directly at the participants. Make an effort to look at the camera as much as possible.
- Before the hearing, prepare your space. Use a backdrop. If you do not have one, make sure the wall behind where you sit is neutral with no personal identifiers.
- Ensure that nothing in your visible space has any logos or messages that could be perceived as offensive or biased. This includes items such as drink containers, photographs, and other indicators of personal identity.
- Do not wear bracelets or other noise making jewelry.
- Avoid light or glare that would make it difficult or uncomfortable to see you. Make sure the room is not too dark.

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- If you are using an external audio recorder, place it close to your speakers and far from your keyboard. Be conscious of noisy typing if you are taking notes.
- Put instant messaging systems on “Do Not Disturb”, disconnect outside phones, and close any unnecessary programs on your computer.
- Have the direct phone number to the videoconference centre/room handy.
- Join the conference early, so you can work through any technical difficulties.
- Do not hesitate to ask a party to move to a different chair if you cannot see or hear them. Make sure that everyone in attendance is in view.
- On the audio recording, identify everyone in attendance by name.
- Expect a slight audio/video delay. Pause briefly before speaking to avoid interrupting

BEST PRACTICES FOR HEARINGS VIA ZOOM

Before the Hearing

- Do a pre-test: check your own connection and have the other participants test their connections as well. It is important to do this test every time you use Zoom.
- Test your microphone. Zoom has a feature to test your microphone volume and sound quality. Consider using a headset for best audio quality.
- Using two monitors is ideal: you can use the second monitor for notes, use a private chat function, or to monitor other participants in the videoconference
- Think about whether this is the best method of hearing for participants with disabilities. For instance, this can be a difficult method of proceeding for people who are hearing impaired, or have difficulty concentrating.
- Understand and practice the “host” functions in Zoom. You can mute and unmute participants, manage their video, or block participants.

During the hearing

- Prepare an introduction for the participants
 - if you are using two monitors, remind them that you are still listening, even if you are looking away from the camera
 - explain what to do if there are technical problems – suggest that the other participants wait for you to reconnect before calling for help. Usually participants can quickly reconnect if they get disconnected.
 - remind participants that there is some time lag – give everyone a few extra seconds to finish speaking
- Use the introduction to establish a level of formality that is comfortable for you and appropriate for the proceedings
 - Participants are often in their own homes, and Zoom feels less formal than in-person proceedings.
 - Less formality can be useful if it means that the participants are more comfortable and willing to talk – but it also may make the proceeding less formal than is appropriate for your proceedings
 - Nevertheless, be prepared for less formality – it is a different environment
- Use the introduction to discuss techniques to manage participants – especially if there are several participants
 - Ask people to mute their microphones when they are not speaking
 - Use the “hand raise” function in Zoom
 - Use “gallery view” instead of “speaker view” to see all participants at the same time

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- You can exclude your own camera from the screen if you find your own image too distracting. Other participants will see your video, but you will not see yourself on the screen. If you choose to do this, you might not notice if your camera freezes or you have other technical problems.
- Be careful with screen sharing – other participants can see your entire desktop, depending on how you share your screen—and the content of both screens if you use two.