VIRTUAL PLEA APPLICATION (ON CONSENT)

Rules 1.4 and 2.7, Criminal Rules of the Ontario Court of Justice and
Practice Direction: Mode of Appearance for Ontario Court of Justice Criminal Proceedings

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| --- | --- |
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| **ONTARIO COURT OF JUSTICE** |  |  |
|        |  |        |
| (Region) |  | Information Number(s) |
|        |  |  |
| (Court location) |  |  |

BETWEEN

**HIS MAJESTY THE KING**

**and**

|  |  |  |
| --- | --- | --- |
|  |        |  |
|  | Defendant(s) |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| The Applicant(s) |        |  | and the Respondent(s) |        |
|  |  |  |  |  |

request, on consent, an order allowing the participant(s) identified below to appear by video for a plea proceeding, as described below.

**Accused person**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Name: |        |  | Date of birth |        |  |[ ]  In Custody |
|  |  |  |  |  |  |  |  |

**Next Court date:**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Date |        | Time |        | Court Location |        | Courtroom |        |
|  |  |  |  |  |  |  |  |
| **Charge(s):** |        |
|  |  |
| **Proposed proceeding details** |
|  |[ ]  Guilty plea and sentencing |  |[ ]  Guilty plea and adjournment of sentencing |
|  |[ ]  Other: |       |
|  |  |  |  |

Proposed plea proceeding date (if different than next court date:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Date |        | Time |        | Court Location |        | Courtroom |        |
|  |  |  |  |  |  |  |  |

**Parties/Participants seeking to appear by video**

|  |  |  |
| --- | --- | --- |
|  |[ ]  Accused person | (Provide additional information below unless accused person is in custody) |
|  |  |[ ]  Will be in same location as defence counsel.  |
|  |  |[ ]  Defence counsel has confirmed the accused person’s contact details for the proposed plea. |
|  |  |  | If not, please provide the accused person’s contact details |
|  |  |  | Email |        | Tel: |        |
|  |  |  |  |  |  |  |
|  |[ ]  Crown  | Email: |        | Tel. |        |
|  |  |  |  |  |  |  |
|  |[ ]  Defence Counsel | Email: |        | Tel. |        |
|  |  |  |  |  |  |  |
|  |[ ]  Other: |        | Tel. |        |
| **Reason for request to appear remotely for the plea proceeding**Please set out why a virtual plea is appropriate in all the circumstances, taking into account the factors enumerated out in the applicable *Criminal Code* provision(s):       |

Is the accused proposing to appear virtually from a location outside of Ontario [ ]  Yes [ ]  No

|  |  |  |
| --- | --- | --- |
|  | If yes, provide details |        |

Is there a joint submission with respect to disposition? [ ]  Yes [ ]  No

Is either party seeking a custodial sentence (including a conditional or intermittent sentence)? [ ]  Yes [ ]  No

|  |  |  |
| --- | --- | --- |
|  | If yes, provide details |        |

Anticipated length of the plea proceeding (including submissions and imposition of sentence, including orders):

|  |  |
| --- | --- |
|  |        |

Do any victim(s) intend to attend the plea proceeding and/or give a victim impact statement? [ ]  Yes [ ]  No

|  |  |  |
| --- | --- | --- |
|  | If yes, provide details |        |

**Acknowledgements**

The parties will make all the necessary arrangements to ensure that the virtual plea will proceed as a fair and efficient hearing, including the following:

* Every accused person/counsel/witness/participant who proposes to appear by video has reviewed, and will comply with, the [Ontario Court of Justice Remote Appearance Code of Conduct](https://www.ontariocourts.ca/ocj/notices/remote-court-appearances-guide/). This includes appearing from a suitable location and using appropriate technology.
* Any materials will be filed electronically in advance of the plea and/or arrangements have been made for the electronic display of any exhibits that may be tendered during the proceeding.
* Arrangements are in place for any documents or orders associated with the proceeding (e.g. DNA orders or probation orders imposed on sentencing) to be distributed among participants, including the accused person
* Arrangements have been made for simultaneous virtual interpretation (if needed).
* Arrangements have made to facilitate private consultation between the accused person and their counsel, or between counsel, should the need arise.

The parties acknowledge that, if this application for a virtual plea is granted, the judge presiding over the virtual plea proceeding may, at any time, cease the virtual proceeding and take any measure that the judge considers appropriate in the circumstances to have the person(s) appear at or participate in the proceedings, in accordance with s. 715.222 of the *Code*.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Dated this  |        | day of |        | , yr.  |        |  |  |
|  |  |  |  |  |  |  |  |
|  |        |  |        |
|  | Applicant or Legal Representative |  | Respondent or Legal Representative |

|  |
| --- |
| **FOR JUDICIAL USE ONLY** |
|[ ]  Virtual plea authorized as requested |        |
|  |  |  |
|[ ]  Application to be heard in Court: |        |
|  |  |  |
| Additional comments / directions: |        |
|  |  |
| Dated this  |        | day of |        | , yr.  |        |  |         |
|  |  |  |  |  |  |  | Judge |

## Practice Direction: Mode of Appearance for Ontario Court of Justice Criminal Proceedings(Section A.(4) – Guilty Pleas)

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## Mode of appearance for OCJ criminal proceedings

### (4) Guilty Pleas

**All participants** (including an accused person, counsel, and witness) must appear in person for a guilty plea (including sentencing), unless the Court allows a virtual plea.

A “virtual plea” is a plea proceeding in which a participant (including an accused person, counsel, or a witness) attends virtually.

1. Under ss. 715.234 and 715.235 of the Code, the Court may, with consent of the prosecutor and accused, allow an accused person to appear virtually for a plea or sentencing proceeding.
2. An applicant may seek an order from the Court authorizing a virtual plea: (i) from the judicial officer presiding at a prior court appearance, including a judicial pre-trial; (ii) through a written application submitted to the Court; or (iii) through an oral application made to the judge presiding in plea court prior to the commencement of the plea, as set out below.
3. Written applications may be submitted to the Court using the Virtual Plea Application (On Consent) form. To allow time for the application to be considered by the Court, it should be submitted at least three (3) business days before the proposed plea date.

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1. In seeking judicial authorization for a virtual plea, an applicant should be prepared to address why a virtual plea is appropriate in all the circumstances, including the factors enumerated in the applicable *Criminal Code* provision(s), including:
	* 1. the location and personal circumstances of the participant(s);

Note: if any participant (including counsel or an accused person) proposes to appear virtually from a location outside Ontario, they must advise the court.

* + 1. the costs or other hardship (e.g. work, childcare) that would be incurred if the participant were required to appear in person;
		2. the suitability of the location from where the participant will appear;

Note: for accused persons who are in custody, this includes the availability of resources within the custodial institution to accommodate the video appearance.

* + 1. the accused’s right to a fair and public hearing;
		2. the nature and seriousness of the offence, including
		- the disposition proposed by each of the parties, including whether either party is proposing a custodial sentence (including a conditional or intermittent sentence);
		- whether there is a joint submission with respect to disposition;
		- the anticipated length of time for the plea proceeding;
		- whether any victim intends to attend the proceeding and/or give a victim impact statement; and
		1. confirming that logistical requirements are addressed prior to the proposed virtual plea to ensure a fair and efficient proceeding, including the factors set out in section (B)(3) below.

As set out in section (B)(1), all counsel (Crown and defence counsel) must attend plea proceedings in person if the accused person is appearing in person, unless a judge authorizes a virtual appearance.

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## Requirements for Virtual Appearances*.*

### **Counsel Mode of Appearance when Accused is Appearing In Person**

Facilitating private consultation between participants who attend court using different modes of appearance can be extremely difficult, particularly when the accused person appears in person and counsel appears by video. For that reason, counsel – both the Crown and defence/duty counsel – are expected to attend all criminal proceedings other than case management appearances in person if the accused person is appearing in person, unless a judicial officer directs otherwise.

Counsel requests to appear by video will be considered on a case by case basis, in accordance with the applicable *Criminal Code* provision(s).

Counsel making a request to attend by video should be prepared to address the factors set out in the applicable *Criminal Code* provision(s) authorizing a remote appearance, as well as what arrangement is in place to facilitate private consultation between the accused person and their counsel, or between counsel, should the need arise. Counsel must also consult in advance with their client (where applicable) and with one another to ensure a meaningful appearance.

### **Ontario** Court of Justice Remote Appearance Code of Conduct

Any person attending a criminal proceeding virtually must comply with the [Ontario Court of Justice Remote Appearance Code of Conduct](https://www.ontariocourts.ca/ocj/notices/remote-court-appearances-guide/). Failure to do so may, among other things, result in the presiding judicial officer ceasing the virtual appearance and taking any measure they consider appropriate in the circumstances to have the person appear at or participate in the proceedings.

Counsel are expected to review the Code of Conduct with their client and/or any witness who is expected to appear virtually, in advance of the proceeding, to ensure they understand their obligations during the virtual appearance.

### **Operational** requirements to ensure a fair and efficient proceeding

Participants in a virtual proceeding must ensure that all logistical requirements are addressed in advance to ensure a fair and efficient proceeding, e.g.

* ensuring that the virtual participant(s) will appear from a suitable location, and will use appropriate technology;
* filing all materials electronically in advance and/or making arrangements for the electronic display of any exhibits that may be tendered during the proceeding;
* arranging for simultaneous virtual interpretation, if needed;
* making arrangements for any documents or orders associated with the proceeding (e.g. DNA orders or probation orders imposed on sentencing) to be distributed among participants, including the accused person; and
* making arrangements to facilitate private consultation between the accused person and their counsel, or between counsel, should the need arise.

### **Discretion of the Judicial Officer Presiding over a Proceeding**

A virtual appearance required or allowed under with this Practice Direction is subject to the discretion of judicial officer presiding over the virtual appearance to cease the virtual appearance and take any measure that the officer considers appropriate in the circumstances to have the person appear at or participate in the proceedings, in accordance with s. 715.222 of the *Code*.