



THE NUNAVUT COURT OF JUSTICE

PRACTICE DIRECTIVE #29

THE USE OF VIDEOCONFERENCING IN CRIMINAL MATTERS

Explanatory Note:

The Court incurs significant expense for out of jurisdiction witness travel. This Directive seeks to facilitate the use of videoconferencing technology to defray these expenses where it is practical to do so.

Part 1 of this Practice Directive only applies to those communities listed in Schedule 1. This Directive will be phased in to communities outside Iqaluit when the Court acquires the portable videoconferencing equipment and installs the “hard wiring” necessary to use the technology effectively in the communities.

PART 1

Before the Court issues an Ex Juris Subpoena in relation to:

- a. a summary conviction offence where the witness is resident in Canada;
- b. a hybrid offence that is proceeding summarily where the witness is resident within Canada;
- c. any indictable offence within the absolute jurisdiction of a judge (Section 553 of the Criminal Code or applicable offences under the Controlled Drugs and Substances Act) where the witness is resident in Canada;

the party seeking such a subpoena must bring an application under section 714.1 of the Criminal Code to have the proposed witness testify by video conference link.

Such an application will be in writing in Form 29A and must be supported by an affidavit addressing the criteria set out in section 714.1 of the Criminal Code, namely:

- a. The location and personal circumstances of the witness;
- b. The approximate costs that would be incurred if the witness had to be physically present;
- c. The nature of the witness's anticipated evidence.

The application must be filed no later than 45 days before the scheduled trial date.

Five clear business days notice of this application must be provided to the Respondent. If the Respondent does not file a Notice of Objection and Request for a Hearing in Form 29B within 5 days of receipt of this notice, the Court shall rule on the application and grant such order as it deems appropriate in the circumstances without a hearing.

If a Notice of Objection is filed, the Court shall set a hearing date for argument at a time and date convenient to the Court and the parties. The Court will rule on the merits of the application after hearing argument in open court.

Where a Court grants leave for the witness to testify by videoconference the applicant shall prepare and serve a subpoena in accordance with section 700.1 of the Criminal Code.

The onus is on the applicant to provide the Court in a timely fashion with all necessary information to establish the videoconferencing link, including the location, contact number and personnel responsible for the witness's video link. Any delay resulting from the applicant's failure to provide the information necessary to establish a viable video link will be attributable to the requesting party.

The applicant shall pay any costs associated with the use of the videoconferencing technology if required to do so by the Court pursuant to section 714.7 of the Criminal Code.

PART 2

This part applies to all applications for videoconferencing not covered by Part 1 or Part 3 including all indictable offences that are not absolute jurisdiction offences.

Any party wishing a witness to testify by videoconferencing must file an application under section 714.1 no later than 45 days in advance of the scheduled trial date. This application will be in Form 29A and must be supported by an affidavit addressing the criteria set out in section 714.1 of the Criminal Code.

Five clear business days notice of the intended application must be provided to the Respondent.

If the respondent consents in writing to the application the Court will consider the merits of the application and grant such order as is appropriate without a hearing.

If the Respondent does not consent to the application, the application will be heard in open court at such time, date and place as the Court directs and a ruling will then be made on the merits of the application.

If leave is granted to allow the witness to testify by videoconferencing link the applicant shall prepare and serve a subpoena in accordance with section 700.1 of the Criminal Code.

The onus is on the applicant to provide the Court in a timely fashion with all necessary information to establish the videoconferencing link, including the location, contact number and personnel responsible for the witness's video link. Any delay resulting from the applicant's failure to provide the information necessary to establish a viable video link will be attributable to the requesting party.

The applicant shall pay any costs associated with the use of the videoconferencing technology if required to do so by the Court pursuant to section 714.7 of the Criminal Code.

PART 3

In accordance with section 714.2 of the Criminal Code, a witness who is out of the country will testify by videoconferencing link unless otherwise ordered by the Court.

A party who requires a witness to testify by videoconferencing in this Part shall serve the Respondent with a Notice to Show Cause in Form 29C supported by an affidavit confirming the location of the proposed witness. If the Respondent does not file a Notice of Objection and Request for Hearing in Form 29B within 5 clear business days of being served with the Form 29C Notice, the Court will direct that a Subpoena issue under section 700.1 to compel the testimony by videoconferencing.

If a Notice of Objection and request for a hearing is filed with the Court, the Court will direct that the Objection be heard in open court at such time date and place as the Court may direct.

If the Court is not satisfied by the objecting party that the reception of testimony by videoconference would be contrary to the principles of fundamental justice, the Court will direct that a subpoena issue to compel the testimony by videoconference.

The onus is on the applicant to provide the Court in a timely fashion with all necessary information to establish the videoconferencing link, including the location, contact number and personnel responsible for the witness's video link. Any delay resulting from

the applicant's failure to provide the information necessary to establish a viable video link will be attributable to the requesting party.

This practice directive comes into force on February 1st, 2010. Practice directive # 12 is rescinded effective this same date.

Issued this 21st day of December 2009 at the direction of the Judges of the Nunavut Court of Justice.

Mr. Justice R. Kilpatrick

Mr. Justice E. Johnson

Mr. Justice N. Sharkey