

Basic Approach for Remote Signing¹

REQUIREMENTS

1. Video Conferencing Capability

Lawyers will need to utilize a video conferencing capability (“VC”) that is easily accessible by their clients.

In light of the fact that some clients may not have video cameras on their computers the VC should be useable by the client on their cell phone (which will in all likelihood have a camera).

Lawyers and clients may have preferred VCs, and there are several options available at little or no cost in the marketplace right now. As long as the video and sound quality are good and all of the parties can use it, the choice of VC doesn’t really matter.

2. Document Scanning and Transmission

Clients may need to have access to a reliable document scanning capability in order to upload documents (via cell phone) and transmit them to lawyer. Otherwise, lawyers should ensure that documents can be couriered to them.

3. Virtual Commissioning

Although legislation has been introduced to provide for virtual commissioning, regulations are not in place to define the applicable requirements related thereto. The closing protocol discussed in this document relies on the information in the Law Society’s Corporate Statement re: COVID-19, as set out on Schedule A.

4. Electronic Signatures

The process described in item 5 below contemplates clients affixing wet signatures to paper documents. This process may evolve to the use of electronic signatures once this type of functionality can be factored into the procedure below.

5. Virtual Closing Procedure

Establish a time for video conference with client at least 48 hours before closing to allow for time to courier documents if necessary.

¹ This document has been prepared by Maurizio Romanin, Merredith MacLennan and Ian Speers. The information provided herein is of a general nature only and is not intended to provide legal advice.

Client to provide scanned copies of identification before scheduled video conference for lawyer's review.

Send electronic copies of documents to be reviewed with and/or signed by client in advance of the video conference meeting.

Client downloads and prints paper copies of documents.

Lawyer reviews documents with client during video conference and witnesses/commissions wet signature of documents by client. (see attached Schedule B for Video Conferencing check list).

Client scans signed documents and emails them to lawyer and/or couriers signed documents to lawyer's office.

Lawyer affixes wet signature to complete witnessing/commissioning function to applicable scanned and/or original copies of documents from client.

Schedule A

LSO information on Virtual Commissioning

On March 16, 2020 the Law Society on Ontario published a [Corporate Statement re: COVID-19](#), which included information regarding using virtual means of identifying or verifying the identity of a client and virtually commissioning documents.

Per the FAQ in the Corporate Statement:

Commissioning is governed by the *Commissioners for Taking Affidavits Act* and is not regulated by the Law Society. Although the law is evolving in this area, the best practice for commissioning documents remains for the lawyer or paralegal who is acting as a commissioner to be in the *physical presence of the deponent* to commission the document(s). For more information, please review the Law Society's [Virtual Commissioning](#) resource.

However, as a result of COVID-19, until further notice:

- The Law Society will interpret the requirement in section 9 of the *Commissioners for Taking Affidavits Act* that “every oath and declaration shall be taken by the deponent in the presence of the commissioner or notary public” as not requiring the lawyer or paralegal to be in the physical presence of the client.
- Rather, alternative means of commissioning such as commissioning via video conference will be permitted.
- If lawyers and paralegals choose to use virtual commissioning, they should attempt to manage some of the risks associated with this practice as outlined below.

Managing the Risk of Virtual Commissioning:

If a lawyer or paralegal chooses to use virtual commissioning, the lawyer or paralegal should be alert to the risks of doing so, which may include the following issues:

- Fraud
- Identity theft
- Undue influence
- Duress
- Capacity
- Client left without copies of the documents executed remotely
- Client feels that they did not have an adequate opportunity to ask questions or request clarifying information about the documents they are executing.

To manage some of the risks:

- Consider whether there are red flags of fraud in the matter. To review these red flags, see the Federation of Law Societies' [Risk Advisories for the Legal Profession](#) resource.
- Assess whether there is a risk that the client may be subject to undue influence or duress. If there is such a risk, consider if you are able to assist the client at this time without meeting in person.
- Determine how to provide the client with copies of the document executed remotely.
- Confirm your client's understanding about the documents they are executing and provide adequate opportunity for them to ask questions during the video conference.
- Be alert to the fact that persons may attempt to use the current circumstances and resulting confusion as an opportunity to commit fraud or other illegal acts. Where lawyers and paralegals choose to use virtual commissioning, they must be particularly alert to these red flags in order to ensure that they are not assisting, or being reckless in respect of any illegal activity.

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Schedule B

Video Conference Checklist

DATE AND TIME OF MEETING: _____

MEDIUM FOR MEETING: _____

[INCLUDE FILE REFERENCE HEADER]

START OF MEETING

- Test video and sound quality.
- Have the client scan the entire room they are in to ensure no one else is in the room.
Any other parties present, and reason for presence: _____
- Have all parties introduce/identify themselves.
Clients present: _____

Ask of clients:

- not to mute their audio at any time during the call.
- hold to camera ID that was previously provided and confirm that it is the client.

DOCUMENTS

- Confirm the client has received and printed the following documents:
[INCLUDE LIST OF DOCUMENTS SENT TO CLIENTS]
- Review and explain each document
- Confirm client's understanding of the documents and provide sufficient opportunity for client to ask questions
- Have client angle camera, if required, when signing so signing of documents can be witnessed
- Have client hold documents to camera after signing to ensure signed correctly.

After all clients have signed any **affidavits** ask them (and obtain an affirmative response from all signatories):

- If sworn: "Do you swear that the contents of this affidavit as subscribed by you are true, so help you God?" or

- If affirmed: “Do you solemnly affirm and declare that the contents of this affidavit as subscribed by you are true?”
- After all clients have signed any **statutory declaration** ask them (and obtain an affirmative response from all signatories):

“Do you make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath?”
- Provide the client with a unique phrase or code to write in a particular place on each document.

Unique phrase / code given to clients: _____

END OF MEETING

Confirm how client will be returning documents with wet ink signature.

- Scan
- Courier
- Mail
- Other: _____