

NOTICE TO THE PROFESSION RE: MODE OF APPEARANCES IN HAMILTON OCJ CRIMINAL COURTS AS OF APRIL 4, 2022:

Recently, the OCJ released an interim plan for mode of appearances in criminal court as of *April 4, 2022*, which included the caveat "unless otherwise directed by the judicial officer and/or the RSJ or RSJP".

As LAJ, in consultation with RSJ Paul Currie, I am issuing the following Notice to the Profession for the OCJ in Hamilton which outlines the mode of appearances, as of April 4, 2022, for JPT's, Guilty Pleas/Judge-led Intensive Case Management Court (JICMC), Trials, Preliminary Inquiries, Youth Court, Drug Treatment Court and POA Appeals. Any changes to this policy will be made by further Notice to the Profession. [All modes of appearance outlined below are subject to the caveat: "unless otherwise directed by the presiding judge and/or the RSJ"](#)

1. **JPT's (both with counsel and self-represented): VIDEO** unless the presiding judge, RSJ or designate authorizes a JPT by audio or in-person.
2. **Trials/Preliminary Inquiries: IN PERSON** for all participants (counsel, accused, witnesses) *unless the presiding judge, RSJ or designate orders otherwise*, and subject to the following where the parties **consent** (**NOTE: "Consent" to Trials or Preliminary Inquiries proceeding virtually or hybrid, , in whole or in part, must be communicated to the Trial Coordinator by e-mail when the date is scheduled and must be confirmed on the Court record when the date is set**):

- a. **Trials:**

- i. **Indictable matters:**

The parties can consent to any part of the trial being conducted virtually (with counsel and the accused attending by videoconference) or hybrid, *except any part of the trial in which the evidence of a witness is taken* (s. 650(1.1) *Criminal Code*). For any part of a trial in which the evidence of a witness is taken, the accused and counsel must be present in person (s. 650(1.1) *Criminal Code*), unless exceptional circumstances are established pursuant to s. 650(2) *Criminal Code*.

For any portion of the trial where an in-custody accused is appearing by videoconference, they must be given the opportunity to communicate privately with counsel if they are represented by counsel (s. 650(1.2) *Criminal Code*).

Where an accused person (in or out of custody) is appearing by videoconference, counsel for the accused person must also appear by videoconference to facilitate private communication.

ii. Summary Conviction:

The parties can consent to any part of the trial being conducted virtually (with counsel and the accused attending by videoconference) or hybrid, provided that an in-custody accused is given the opportunity to communicate privately with counsel if they are represented by counsel (s. 800(2.1) *Criminal Code*).

Where an accused person (in or out of custody) is appearing by videoconference, counsel for the accused person must also appear by videoconference to facilitate private communication.

b. **Preliminary Inquiries:**

The parties can consent to any part of the preliminary inquiry being conducted virtually (with counsel and the accused attending by videoconference) or hybrid, except any part of the preliminary inquiry where the evidence of a witness is taken (s. 537(1)(j) *Criminal Code*).

For any part of the inquiry in which the evidence of a witness is taken, the accused and counsel must be present in person.

Also, the judge may require an in-custody accused to appear by videoconference for any part of a preliminary inquiry, except any part of the preliminary inquiry where the evidence of a witness is taken (s. 537(1)(j) *Criminal Code*).

Where an accused person (in or out of custody) is appearing by videoconference, counsel for the accused person must also appear by videoconference to facilitate private communication.

c. **Trials/Preliminary Inquiries previously pre-tried and scheduled (ie. before April 4, 2022) as Virtual or Hybrid will continue in the mode agreed upon and/or scheduled unless the presiding judge, RSJ or designate orders otherwise. For matters that were scheduled before April 4, 2022, counsel must confirm by e-mail to the Trial Coordinator, no later than one week before the Trial or Preliminary Inquiry, whether it will be proceeding as Virtual, Hybrid or In Person.**

3. **Guilty Pleas/JICMC:**

- a. Out of Custody: The Crown and the accused can consent to the GP/JICMC appearance being conducted virtually (with counsel and the accused attending by videoconference) or hybrid, except where a custodial sentence is being sought, in which case both the accused and their counsel must appear in person. Where an accused person is appearing virtually, their counsel must also appear virtually to facilitate private communication.

b. *In Custody:*

The accused can consent to attending their GP/JICMC appearance by videoconference from the custodial facility.

At the time of scheduling an in-custody Guilty Plea or JICMC appearance, the accused or, if the accused is represented by counsel, counsel or agent for the accused, must declare whether the matter is proceeding in person or virtually. *The accused's request will be endorsed on the warrant of remand, and the matter will proceed as requested. The accused or their counsel will not be permitted to change their mode of appearance between the time of scheduling and the date of the GP/JICMC appearance.*

If an accused is attending their GP/JICMC appearance in person, counsel for the accused must also appear in person.

As of April 4, 2022, GP/JICMC court will be conducted in Courtroom 206 until further notice. Courtroom 206 does not allow for defence counsel to appear in person when their client appears virtually, as there is no means to allow for private communication. Therefore, if the accused is appearing virtually for GP/JICMC in courtroom 206, their counsel must also appear virtually to facilitate private communication. The virtual coordinates for GP court are as follows:

Courtroom 206

OCJ Virtualcourtroom-Hamilton-9 is inviting you to a scheduled Zoom meeting.

Topic: OCJ Virtualcourtroom-Hamilton-9's Zoom Meeting
Time: This is a recurring meeting Meet anytime

Join Zoom Meeting

<https://ca01web.zoom.us/j/64165060725?pwd=R3I0Q2lsUHF3Yzd2WEdFRE8yejlNUT09>

Meeting ID: 641 6506 0725

Passcode: 091652

Dial by your location

Due to an ongoing construction project at the Hamilton Wentworth Detention Centre (HWDC), many inmates who would typically be housed at the HWDC are transferred to other detention centres throughout the province, including Maplehurst Correctional Complex. Having inmates appear on video for in-custody guilty pleas from these other locations throughout the province has created

challenges due to the number of courthouses serviced by these other jails. We expect that these challenges will continue after we transition to the new model as of April 4th. Consequently, we urge counsel with accused persons housed at jails other than HWDC to give serious consideration to electing to have the accused appear in person for their GP/JICMC appearance.

4. **Youth Court and Drug Treatment Court: IN-PERSON in Courtroom 302 on Wednesdays starting April 6, 2022 unless the presiding judge, RSJ or designate orders otherwise.**
5. **POA Appeals: IN-PERSON as of Tuesday May 3, 2022 unless the presiding judge, RSJ or designate orders otherwise.**

Notice to the Profession Issued: March 29, 2022

Justice J.P.P. Fiorucci

**Local Administrative Judge
Hamilton**