

PRACTICE NOTE:

PROVINCIAL COURT OF ALBERTA

NOTICE TO THE PROFESSION

COURTROOM VIDEO LINK APPEARANCES

USE OF VIDEO CONFERENCE IN CRIMINAL PROCEEDINGS

Introduction

The Chief Judge of the Provincial Court of Alberta issues the hereinafter Video Link Practice Note to enhance the administration of justice.

Commencing July 4th, 2006, video link shall be used at each of the following Court and Remand locations to conduct judicial interim release hearings, appearances, enter pleas, hear applications and receive submissions as provided by the following Criminal Code provisions in addition to such other matters as the presiding Judge may allow:

Sherwood Park	Lethbridge
Breton	Taber
Edmonton Criminal	Fort Macleod
Edmonton Youth	Westlock
High Level	Pincher Creek
Assumption	Cardston
Fort Vermilion	Medicine Hat
Fort McMurray	Brooks
Fort Chipewyan	Red Deer
Peace River	Rimbey
Fairview	Rocky Mountain House
Falher	Stettler
Red Earth Creek	Drumheller
Slave Lake	Strathmore
Wabasca/Desmarais	Grande Prairie
Ponoka	Vermilion
Valleyview	Lloydminster
Vegreville	High Prairie
Drayton Valley	Wainwright
Lac La Biche	Leduc
Boyle	Camrose
Evansburg	Wetaskiwin
Whitecourt	St. Paul
Hinton	Bonnyville
Edson	Cold Lake
Jasper	Stony Plain
Fort Saskatchewan	Edmonton Young Offender Centre
St. Albert	Calgary Young Offender Centre
Athabasca	Edmonton Remand Centre
Barrhead	Calgary Criminal
Morinville	Calgary Youth

The Court shall (subject to the Court directing otherwise) require all persons in custody to appear in these locations by video link for:

- a. judicial interim release hearings
- b. adjournment applications
- c. entry of elections and/or not guilty pleas and the scheduling of a preliminary hearing or trial.

At this time, persons in custody will not be required to appear by video link where:

- a. the evidence of a witness will be taken at the hearing, or
- b. the Court is unable to conclude that the accused understands the proceedings and can make voluntary decisions during the proceedings, or
- c. the accused has filed a designation with the court (subject to other Court direction)

Guilty pleas may be entered and sentencing hearings conducted by video link with the consent of the Court and the parties.

Relevant Criminal Code Sections

1. To receive evidence of “vulnerable” witnesses s.486(2.11) and (2.2)

s.(2.101) Testimony outside court room - Notwithstanding section 650, where an accused is charged with an offence referred to in subsection (2.102), the presiding judge or justice, as the case may be, may order that any witness testify

- a. outside the court room, if the judge or justice is of the opinion that the order is necessary to protect the safety of the witness; and
- b. outside the court room or behind a screen or other device that would allow the witness not to see the accused, if the judge or justice is of the opinion that the order is necessary to obtain a full and candid account from the witness.

s.486(2.11) Same procedure for opinion - Where the judge or justice is of the opinion that it is necessary for the complainant or witness to testify in order to determine whether an order under subsection (2.1) or (2.101) should be made in respect of that complainant or witness, the judge or justice shall order that the complainant or witness testify pursuant to that subsection.

s.486(2.2) Condition of exclusion - A complainant or witness shall not testify outside the court room pursuant to subsection (2.1), (2.101) or (2.11) unless arrangements are made for the accused, the judge or justice and the jury to watch the testimony of the complainant or witness by means of closed-circuit television or otherwise, and the accused is permitted to communicate with counsel while watching the testimony.

2. Judicial interim release hearings

Unless otherwise arranged by counsel, persons in custody who have filed a designation of counsel under s. 650.01 (1) are not required to appear by video link unless otherwise directed by the Court. Where a designation is not filed, then persons in custody shall appear by video link for judicial interim release applications.

s.515(2.2) and (2.3)

s.515(2.2) Alternative to physical presence - Where, by this Act, the appearance of an accused is required for the purposes of judicial interim release, the appearance shall be by actual physical attendance of the accused but the justice may, subject to subsection (2.3), allow the accused to appear by means of any suitable telecommunication device, including telephone, that is satisfactory to the justice.

s.515(2.3) Where consent required - the consent of the prosecutor and the accused is required for the purposes of an appearance if the evidence of a witness is to be taken at the appearance and the accused cannot appear by closed-circuit television or any other means that allow the court and the accused to engage in simultaneous visual and oral communication.

3. Preliminary Inquiries

s.537(j), (j.1) and (k)

s.537(j) Where the prosecutor and the accused so agree, permit the accused to appear by counsel or by closed-circuit television or any other means that allows the court and the accused to engage in simultaneous visual and oral communication, for any part of the inquiry other than a part in which the evidence of a witness is taken.

s.537(j.1) Permit, on the request of the accused, that the accused be out of court during the whole or any part of the inquiry on any conditions that the justice considers appropriate; and

s.537(k) For any part of the inquiry other than a part in which the evidence of a witness is taken require an accused who is confined in prison to appear by closed-circuit television or any other means that allow the court and the accused to engage in simultaneous visual and oral communication, if the accused is given the opportunity to communicate privately with counsel, in a case in which the accused is represented by counsel.

4. Entering of Plea

s.606(5)

s.606(5) Video links - For greater certainty, subsections 650(1.1) and (1.2) apply, with any modifications that the circumstances require, to pleas under this section if the accused has agreed to use a means referred to in those subsections.

5. To facilitate appearances by designated counsel and the prosecutors

s.650 (.01), (.02), (1.1) and (1.2)

s.650.01(1) Designation of counsel of record - An accused may appoint counsel to represent the accused for any proceedings under this Act by filing a designation with the court.

s.650.01(2) Contents of designation - The designation must contain the name and address of the counsel and be signed by the accused and the designated counsel.

s.650.01(3) Effect of designation - If a designation is filed,

(a) the accused may appear by the designated counsel without being present for any part of the proceedings, other than

- (i) a part during which oral evidence of a witness is taken,
- (ii) a part during which jurors are being selected, and
- (iii) an application for a writ of *habeas corpus*;

(b) an appearance by the designated counsel is equivalent to the accused's being present, unless the court orders otherwise; and

(c) a plea of guilty may be made, and a sentence may be pronounced, only if the accused is present, unless the court orders otherwise.

s.650.01(4) When court orders presence of accused - If the court orders the accused to be present otherwise than by appearance by the designated counsel, the court may

(a) issue a summons to compel the presence of the accused and order that it be served by leaving a copy at the address contained in the designation; or

(b) issue a warrant to compel the presence of the accused.

s.650.02 Technological appearance - The prosecutor or the counsel designated under section 650.01 may appear before the court by any technological means satisfactory to the court that permits the court and all counsel to communicate simultaneously.

s.650(1.1) Video links - Where the court so orders, and where the prosecutor and the accused so agree, the accused may appear by counsel or by closed-circuit television or any other means that allow the court and the accused to engage in simultaneous visual and oral communication, for any part of the trial other than a part in which the evidence of a witness is taken.

s.650(1.2) Video links - Where the court so orders, an accused who is confined in prison may appear by closed-circuit in prison television or any other means that allow the court and the accused to engage in simultaneous visual and oral communication, for any part of the trial other than a part in which the evidence of a witness is taken, if the accused is given the opportunity to communicate privately with counsel, in a case in which the accused is represented by counsel.

s.650(2) Exceptions - The court may

(a) cause the accused to be removed and to be kept out of court, where he misconducts himself by interrupting the proceedings so that to continue the proceedings in his presence would not be feasible;

(b) permit the accused to be out of court during the whole or any part of his trial on such conditions as the court considers proper; or

(c) cause the accused to be removed and to be kept out of court during the trial of an issue as to whether the accused is unfit to stand trial, where it is satisfied that failure to do so might have an adverse effect on the mental condition of the accused.

6. To receive evidence of any witness

s.714.1 to s.714.8

s.714.1 Video links, etc. - witness in Canada - A court may order that a witness in Canada give evidence by means of technology that permits the witness to testify elsewhere in Canada in the virtual presence of the parties and the court, if the court is of the opinion that it would be appropriate in all the circumstances, including

(a) the location and personal circumstances of the witness;

(b) the costs that would be incurred if the witness had to be physically present; and

(c) the nature of the witness' anticipated evidence.

s.714.2(1) Video links, etc. - witness outside Canada - A court shall receive evidence given by a witness outside Canada by means of technology that permits the witness to testify in the virtual presence of the parties and the court unless one of the parties satisfied the court that the reception of such testimony would be contrary to the principles of fundamental justice.

s.714.2(2) Notice - A party who wishes to call a witness to give evidence under subsection (1) shall give notice to the court before which the evidence is to be given and the other parties of their intention to do so not less than ten days before the witness is scheduled to testify.

s.714.3 Audio evidence - witness in Canada - The court may order that a witness in Canada give evidence by means of technology that permits the parties and the court to hear and examine the witness elsewhere in Canada, if the court is of the opinion that it would be appropriate, considering all the circumstances including

- (a) the location and personal circumstances of the witness;
- (b) the costs that would be incurred if the witness had to be physically present;
- (c) the nature of the witness' anticipated evidence; and
- (d) any potential prejudice to either of the parties caused by the fact that the witness would not be seen by them.

s.714.4 Audio evidence - witness outside Canada - The court may receive evidence given by a witness outside Canada by means of technology that permits the parties and the court in Canada to hear and examine the witness, if the court is of the opinion that it would be appropriate, considering all the circumstances including

- (a) the nature of the witness' anticipated evidence; and
- (b) any potential prejudice to either of the parties caused by the fact that the witness would not be seen by them.

s.714.5 Oath or affirmation - The evidence given under section 714.2 or 714.4 shall be given

- (a) under oath or affirmation in accordance with Canadian law;
- (b) under oath or affirmation in accordance with the law in the place in which the witness is physically present; or
- (c) in any other manner that demonstrates that the witness understands that they must tell the truth.

s.714.6 Other laws about witnesses to apply - When a witness who is outside Canada gives evidence under section 714.2 or 714.4, the evidence is deemed to be given in Canada, and given under oath or affirmation in accordance with Canadian law, for the purposes of the laws relating to evidence, procedure, perjury and contempt of court.

s.714.7 Costs of technology - A party who wishes to call a witness to give evidence by means of the technology referred to in section 714.1, 714.2, 714.3 or 714.4 shall pay any costs associated with the use of the technology.

s.714.8 Consent - Nothing in sections 714.1 to 714.7 is to be construed as preventing a court from receiving evidence by means of the technology referred to in sections 714.1 to 714.4 if the parties so consent.

The equipment being installed will provide for simultaneous video and oral communication for all parties.

Counsel will be advised of the following installations at those Remand Facilities and Court locations that are not included above, by an addendum to this Practice Note as they enter the system.

1. The Calgary Remand Centre will be brought on line in the Fall, 2006.
2. Remand Centres at Lethbridge, Medicine Hat, Red Deer, Grande Prairie and Peace River, with Calgary Corrections and Edmonton Corrections notice of the time of such locations coming on line will be sent to counsel as the completion schedules for these locations become known.
3. Court locations not included in the hereinbefore list.

Reviews of this program will be undertaken from time to time. These reviews will consider adjustments necessary to ensure the system provides the needs of the users of the system.

DATED this 20th day of June 2006

The Honourable A.G. Vickery
Chief Judge of the Provincial Court of Alberta