Virtual discoveries 101: Eight tips for the COVID-19 age

July 30, 2020

Prior to COVID-19, examinations for discovery typically took place in a small boardroom with various lawyers, a witness and a transcriptionist in close quarters. With the ongoing need for physical distancing, it is no surprise that the discoveries model has changed.

We are in an age where virtual discoveries are the new normal, and with that comes new considerations. It seems physical distancing and remote meetings are here to stay for the near future.

With the benefit of four months of virtual discovery experience, we offer the following tips to make your virtual discovery as smooth as possible.

1. Test your system before the discovery day

At this stage, most of us have used Zoom or a similar platform. If you had any issues on those video calls – from your internet cutting out, to your voice being too soft or the room being too dark – address those issues before your discovery. If you will have to look at documents during the discovery, practice this beforehand (whether on the same screen, a second screen or on a hard copy in front of you).

2. Have a backup plan if your internet fails

Murphy's Law says that when you are unprepared for something bad to happen, it will happen. So be ready for your internet to fail. Your backup plan could be turning your phone into a hotspot, pre-arranging internet access with a friendly neighbour or, if you have concerns about the reliability of your connection, conduct the discovery at your office.

3. Get rid of distractions

Whether it be your phone, children, spouse or pet, ensure the room you conduct the discovery in is distraction-free, so you can devote all your attention to the questions you are being asked and your answers. If your computer has pop-up notifications, disable those beforehand.

4. Do not speak over others

While this is important in normal discoveries, it is even more important on virtual discoveries. When two people speak over each other on a virtual call, it makes it impossible to hear what anyone is saying. Take your discovery slow and make sure the lawyer questioning you has finished their question before you answer.

5. Keep an eye on your lawyer's video feed

At an in-person discovery, if your lawyer believes you are being asked an improper question, they'll often put their hand out to signal to you not to answer. This can be more difficult on a virtual discovery, where there may be time lags and you have several video feeds in front of you. Make sure your video feeds are on "grid" format so you can see your lawyer at all times. If you see your lawyer raise their hand or look like they are about to speak, pause for a moment.

6. On breaks, turn off your video and mute your sound

We've all seen videos online of people saying or doing something on a video call they did not intend others to see or hear. If the discovery is on break, make sure you've turned sound and video off.

7. Speak up if someone gets cut off or freezes

Others in the discovery may not know that their feed cut out, that they are frozen on your screen or that you only heard part of the question. If you see any hint of a connection issue, let everyone else know. If you missed any part of the question, do not assume what counsel meant to ask – ask them to repeat the question.

8. Use headphones with a microphone

Your voice will come through much clearer through a microphone on your headphones than it will speaking a foot or two away from the microphone on your computer. This will also help you hear everyone more clearly.

Ultimately, the discovery procedure and substance has not changed. Many witnesses actually find it more comfortable than in-person discoveries, as you often have the benefit of doing it from a familiar environment.

If your first virtual discovery is coming up, the tips above will help ensure you are prepared. If you have any questions or concerns, check in with your lawyer beforehand.

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