

CONFIDENTIAL

**REPORT TO THE
STANDING COMMITTEE ON PROCEDURE, PRIVILEGES AND
LEGISLATIVE OFFICERS
REGARDING
VIRTUAL SITTINGS OF THE HOUSE**

BY

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The purpose of this report is to summarize the issues that may require consideration in relation to virtual sittings of the Legislative Assembly of New Brunswick as requested by the Standing Committee on Procedure, Privileges and Legislative Officers on February 19, 2021.

OTHER JURISDICTIONS

For information purposes, the following is a brief summary of virtual sittings in other Canadian jurisdictions.

House of Commons

The House of Commons has adopted a motion to temporarily implement a virtual sitting model in the House, allowing any Member to participate virtually. In practice, they have utilized the model and there appears to be a preference to always have a certain number of Members participate in-person.

The Senate

The Senate has adopted a motion to temporarily implement a virtual sitting model in the Senate, allowing any Senator to participate virtually. In practice, they have utilized the model and there appears to be a preference to always have a certain number of Senators participate in-person.

British Columbia

The Legislative Assembly of British Columbia has adopted special orders to temporarily implement a virtual sitting model in the House, allowing any Member to participate virtually. In practice, they have utilized the model and there appears to be a preference to always have a certain number of Members participate in-person.

Alberta

The Legislative Assembly of Alberta has not implemented or utilized a virtual sitting model in the House.

Saskatchewan

The Legislative Assembly of Saskatchewan has not implemented or utilized a virtual sitting model in the House.

Manitoba

The Legislative Assembly of Manitoba has adopted special orders to temporarily implement a virtual sitting model in the House, allowing any Member to participate virtually. In practice, they have utilized the model and there appears to be a preference to always have a certain number of Members participate in-person.

Ontario

The Legislative Assembly of Ontario has not implemented or utilized a virtual sitting model in the House.

Quebec

The National Assembly of Quebec has not implemented or utilized a virtual sitting model in the Assembly.

Nova Scotia

The Nova Scotia House of Assembly has not implemented or utilized a virtual sitting model in the House. [*Update: Following the release of this report to the Committee on March 5, 2021, the Nova Scotia House of Assembly sat on March 9, 2021, and utilized a virtual sitting model, allowing some Members to participate virtually while other Members participated in-person.*]

Prince Edward Island

The Legislative Assembly of Prince Edward Island has adopted revisions to the standing rules to implement a virtual sitting model in the House, allowing any Member to participate virtually, in “urgent or extraordinary” circumstances, at the discretion of the Speaker. In practice, the model has not been implemented.

Newfoundland and Labrador

The Newfoundland and Labrador House of Assembly has adopted revisions to the standing orders to implement a virtual sitting model in the House, allowing some Members to participate virtually, while others are required to participate in-person, in “emergency or extraordinary” circumstances, at the discretion of the Speaker, after consultation with certain officials. In practice, the model has not been implemented.

Yukon

The Yukon Legislative Assembly has adopted a motion to implement a virtual sitting model in the House, allowing any Member to participate virtually, at the discretion of the Speaker. In practice, the model has not been implemented.

Northwest Territories

The Legislative Assembly of the Northwest Territories has adopted revisions to the standing rules to implement a virtual sitting model in the House, allowing any Member to participate virtually, in certain circumstances, at the discretion of the Speaker. In practice, the model has not been implemented.

Nunavut

The Legislative Assembly of Nunavut has not implemented a virtual sitting model in the House. However, at the discretion of the Speaker, one Member was recently granted permission to participate virtually due to travel restrictions as a result of the pandemic.

ISSUES FOR CONSIDERATION

For information purposes, the following is a brief summary of the issues related to virtual sittings that may require consideration.

All-Party Agreement

Implementing and utilizing a virtual sitting model will significantly change how the Legislature functions. The Canadian jurisdictions that have implemented such a model have generally obtained agreement from all parties represented in the House, as opposed to a simple majority, to ensure the model is accepted and considered appropriate in the circumstances. Consideration should be given to ascertaining such agreement.

Temporary or Permanent

The Canadian jurisdictions that have implemented a virtual sitting model have specified it is either temporary in nature, subject to expiration on a fixed date, or subject to review after a certain period and possibly extended if all parties agree. Consideration should be given as to the purpose of implementing a model and the corresponding required duration of its use.

Quorum and In-person Members

The majority of Canadian jurisdictions that have implemented a virtual sitting model have not specifically required a certain number of Members to participate in-person. These jurisdictions have allowed virtual Members to count towards a quorum. However, there appears to be an understanding among parties or House Leaders in these jurisdictions that a certain number of Members should participate in-person.

One jurisdiction has mandated that a specific number of Members are required to participate in-person. Given the unpredictability of the technology, and certain legal concerns that have been raised, consideration should be given to requiring a quorum of 14 Members to participate in-person out of an abundance of caution, to ensure the validity of the proceedings in case of technical issues, and to allow a sitting to continue in the event technical difficulties arise.

Utilizing a Virtual Model and Speaker's Discretion

Some jurisdictions allow any Member to utilize the virtual model for any reason at any time. Others have specifically stated that the goal should be to meet in-person at all times, and the virtual model should only be used in emergency circumstances, at the discretion of the Speaker, in consultation

with officials. In some jurisdictions, the discretion of the Speaker is based on public health concerns and travel restrictions. In another jurisdiction, the criteria are broader and relate to the general health and safety of the Members and their families. This option appears to be more subjective and may place the Speaker in a difficult position.

Consideration should be given as to what circumstances, if any, must exist to allow the House as a whole, or a Member individually, to utilize the virtual model. As well, consideration should be given to the possible ramifications of allowing any Member, including those in the Executive, to avoid sitting in the House, in person, for any reason. The House is mandated to ensure the Executive is accountable, which may be more challenging under a virtual model.

Regardless of the careful consideration of all the issues that may arise during a virtual sitting of the House, there will likely be a scenario that arises that was not contemplated. As such, consideration should be given to specifically providing the Speaker with the authority to resolve any issue related to a virtual sitting that was not addressed in revisions to standing rules or by special order of the House.

Rule Change or Special Order

Some jurisdictions have amended their standing rules to accommodate virtual sittings, while others have adopted special orders. If the measure is intended to be temporary in nature, special orders may be more appropriate. As well, the finer details surrounding a virtual sitting could be specified in “guidelines” as other jurisdictions have done.

Cost

The current virtual sitting model utilized for committee meetings in New Brunswick has an approximate rental cost of \$2,500 per day. If a decision is made to make the model permanent for use in the House, equipment could be purchased for \$10,000-\$15,000 to reduce the daily expenditure. As well, a new switcher may be required in the production room at an approximate cost of \$10,000, as one camera in the Chamber is currently offline for virtual meetings due to a lack of inputs to accommodate the virtual equipment.

Staffing

The approximate rental cost of \$2,500 per day includes the provision of one contracted private sector staff person to operate the entire virtual model. The Legislative Assembly of New Brunswick does not currently have the expertise or trained permanent staff on site to operate the virtual equipment. If a decision is made to make the model permanent, a full-time position in IT may need to be created and funded, to avoid having the Assembly’s ability to sit quickly dependent on the availability of private sector staff.

Internet Quality

The Legislative Assembly of New Brunswick does not have the resources or jurisdiction to ensure those Members participating virtually have the proper internet service. The onus will be on the Members to ensure their internet connections are secure and of a sufficient quality.

Sound Quality and Interpretation

Similar to the House of Commons, New Brunswick is legally required to provide simultaneous interpretation services for all House sittings. Since the implementation of its virtual sitting model, using the Zoom platform, the House of Commons has experienced a significant (approximately 30%) reduction in its interpretation staff purportedly due to the poor sound quality of the platform resulting in hearing issues, health incidents and stress. Incidents of “acoustic shock” have been reported by interpreters using the same platform in other venues, and on certain occasions the sound quality of the platform has been described as “toxic”.

The federal Translation Bureau reported approximately 55 health incidents from March to May 2020. Health incidents include protracted ear pain, hypersensitivity to noise, nausea, headaches and tinnitus. As a result, a committee of the House has been tasked with reviewing the issue to ensure the health and safety of interpretation staff are not compromised further.

If a decision is made to implement a virtual sitting model in New Brunswick, serious consideration should be given to requiring Members to utilize Legislative Assembly-approved equipment to participate. For health and safety purposes, if there is any issue with the sound quality of a Member’s virtual participation, the Member may no longer be allowed to participate until the matter is rectified.

This issue may require further study, as the Province of New Brunswick employs a limited number of interpreters, and any reduction in their staffing levels may jeopardize the ability of the House to sit. It may be prudent to further investigate the situation in Ottawa and to consult with the federal Translation Bureau to learn from their experience. As well, further consultation is required with our own interpretation bureau to discuss their experience with a limited number of virtual committee meetings.

To date, the Legislature has received complaints regarding sound quality and Members not using the proper equipment. One recommendation that may arise from further consultation is that consideration be given to reducing the sitting hours of the House on certain days to decrease the likelihood of subjecting interpretation staff to an unhealthy event.

Reliability of Technology and Testing

While there have been brief interruptions and technical difficulties during committee meetings utilizing the virtual model, the system has generally worked well. During these meetings, there may only have been a few Members and/or presenters participating virtually. If a decision is made to implement the model in the House for any Member, the more Members that utilize the

technology, the greater likelihood that technical issues may arise such as possible hardware shutdowns and slow connections during a sitting. As such, further testing may be required to simulate an actual sitting of the House. Mock sittings were undertaken in other jurisdictions.

Cyber Security

Assurances have been given that the Zoom platform used to date for hybrid virtual committee meetings is secure, but this remains a concern and further discussions may be required with the cyber security unit of government. Areas of concern include a limited awareness among Members of ongoing cyber security risks, such as phishing scams and downloadable malware; Members not having access to trusted computer software and hardware; existing vulnerabilities around the use of webcams, which could be accessed by unauthorized individuals; unauthorized individuals joining remote meetings; the confidentiality of *in camera* meetings held virtually; and storage of data by the platform in a manner that protects parliamentary privilege.

Decorum

Given the limited use of the virtual sitting model in other Canadian jurisdictions, it is too early to determine whether the decorum in other Legislatures has been negatively affected. However, it remains a concern that an environment as politically charged and potentially confrontational as that which exists in a Legislature could sustain a respectable level of decorum if the majority of its Members participate virtually for an extended period. As well, presiding over such an environment may be a challenge.

Decorum items for consideration include the following: maintaining the rule that Members who wish to participate wear business attire; prohibiting the use of displays, props and exhibits; requiring adequate lighting so that a Member's features can be recognized; requiring that cameras be in a fixed position; requiring that the video must be turned on for a Member to be recognized by the Speaker, or vote, but may be turned off when not participating; requiring Members participating virtually to remain in the virtual meeting and on-screen while the Speaker is putting a question and during a vote or quorum count; and prohibiting Members from entering the virtual meeting after a vote or quorum count has begun.

Participation in Proceedings

Guidelines should be developed to clarify how Members who are participating virtually will be recognized. Currently, the Speaker is often provided with a list indicating which Members wish to speak on a particular topic. Virtual Members can easily be added to the list. However, if they are not on a list, and still wish to speak, there needs to be a mechanism to ensure these Members are recognized. Options include raising a virtual hand in the platform (which requires the Speaker, Clerks, or other staff to constantly monitor the platform), unmuting a microphone to interrupt the proceedings (which may cause distortion if more than one Member tries to interrupt), or placing the onus on a House Leader or Whip, present in the Chamber in-person, to advise the Speaker on which virtual Members wish to speak.

Voting

One of the most important issues to determine is how Members are able to vote. For a voice vote, an option is to remind those Members participating virtually to unmute their microphones before a question is put to the House.

The more complex issue is recorded divisions. Consideration should be given as to how a Member participating virtually can request a recorded division instead of by standing as is currently required by the rules. Some jurisdictions have lowered the number of Members required to request a recorded division or have retained the same number but provided that a Member participating virtually may do so by raising a hand or otherwise so indicating. Another issue is determining whether there is an onus on the Speaker or Clerk to notify those Members participating virtually that a recorded division is imminent (as we ring the bells for in-person Members).

As well, consideration should be given as to how these Members are able to participate in a recorded division. Options include raising a virtual hand in the platform; asking each Member to raise a voting card; a roll call model where the Clerk asks each Member to state “yes” or “no”; using a dedicated e-mail address; or using another web-based application. Consideration should also be given to what course of action is required when a Member loses an internet connection during a vote. Options include deferring the recorded division for all Members to later in the day or the next day, continuing the vote without the Member, allowing time at the end of the vote and before the result is announced for the Member to contact the Speaker or Clerk, or implementing some form of proxy voting.

Parliamentary Privilege

One of the most important rights accorded to Members is the exercise of freedom of speech in parliamentary proceedings. This allows Members to speak in the House and committees without inhibition, to refer to any matter, and to express an opinion as they see fit. This also provides Members with immunity from civil or criminal proceedings based on what they say in proceedings of the House and committees.

While it is generally understood that this privilege will extend to Members participating virtually, Members should be aware there is some concern that this right may not extend to a Member participating virtually from outside of New Brunswick. Just as the House or a committee does not have jurisdiction to hold a valid in-person sitting or meeting outside of New Brunswick, neither would a virtual sitting or meeting be properly constituted if the Members were physically located outside New Brunswick. Consideration should therefore be given to requiring that all Members who participate virtually must do so from within New Brunswick.

Members also have the right to go about their parliamentary business unobstructed. This freedom from obstruction, interference or intimidation is well defined and has always been upheld by Speakers. However, given the relative unknowns surrounding virtual sittings, and the possibility that a Member may be unable to participate, or “obstructed”, due to technical difficulties or internet

service, Members should be aware there may be some uncertainty surrounding how this privilege may be applied in these circumstances.

Unanimous Consent

During a typical sitting day, there are often moments when the unanimous consent of the House is required to stray from normal procedure. If some Members are participating virtually, consideration should be given to whether the procedure to request unanimous consent needs to be modified to provide sufficient time to allow those Members the opportunity to withhold consent.

Tabling of Documents

Guidelines should be developed to specify how documents may be tabled by Members participating virtually. Options include using the chat function in the platform, using a designated email address, or having Members who are participating in-person table the document on the virtual Member's behalf.

Committees of the House

Consideration should be given to formalizing a procedure for when and under what circumstances committees of the House may undertake a virtual meeting. While committees have now met virtually on a number of occasions, it has been authorized by the unanimous consent of the Members participating in-person. The House should provide some guidance on this issue or at least authorize committees to conduct their business in a virtual format when required. For the same reasons discussed under Parliamentary Privilege, consideration should be given to requiring that Members participating virtually in committee proceedings do so from within New Brunswick.