

KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 119

Date: 2026 06 30
File No.: QBG-BF-00470-2008
Judicial Centre: Battleford

BETWEEN:

DARRELL PAUL ROBERTSON

PLAINTIFF

- and -

NORTHLAND CHRYSLER INC.

DEFENDANT

Counsel:

Jonathan S. Abrametz
Kevin T. Miller

for the plaintiff
for the defendant

FIAT
June 30, 2026

SINCLAIR J.

[1] This decision addresses the plaintiff's application that four of its putative expert witnesses at an upcoming civil jury trial testify remotely. The defendant argues that the plaintiff has not tendered the evidence necessary to support the request.

[2] For the reasons that follow, I am prepared to allow all four witnesses to testify by videoconference.

ESSENTIAL FACTS

[3] This matter is set for a civil jury trial commencing on Tuesday,

September 8, 2026. The issue at the trial will be quantification of damages, as liability has been admitted.

[4] Five of the plaintiff's expected witnesses are purported experts. Four of those witnesses, who the plaintiff wishes to call by remote means, reside out of Saskatchewan. Those putative experts, their locations, and their professions are:

- a. Dr. Brian Rambaransingh of the City of Edmonton, a medical practitioner with a specialty in physical medicine and rehabilitation;
- b. Dr. S.M. Esmail of the City of Edmonton, an orthopaedic surgeon;
- c. Kelly Rathje of the City of Calgary, a consultant providing litigation reports on damages assessments; and
- d. Sylvia A. Wilson of the City of Edmonton, an occupational therapist.

[5] The reasons given by the plaintiff for calling the witnesses remotely are: (1) cost; and (2) inconvenience to the witnesses and their business practices. The plaintiff estimates costs of \$100,000 for the witnesses' personal attendance in Battleford for two weeks of trial, inclusive of disbursements. The breakdown of those costs is not provided in the affidavit material.

ISSUES

[6] The sole issue is whether it is appropriate to allow the four witnesses to appear remotely for the trial of this matter.

ANALYSIS

[7] Rule 9-20 of *The King's Bench Rules* indicates that the Court may order that the testimony of any witness be taken by telephone or any audio-visual method approved by the Court. The plaintiff proposes that the evidence of the four witnesses

be taken by videoconference.

[8] The predecessors to Rule 9-20, Rules 289 and 284(A) of the former *Queen's Bench Rules*, have been considered in several prior decisions.

[9] In *S.(J.) v Canada (Attorney General)*, 2003 SKQB 31, the Court permitted witnesses to attend by video-conference. In making such decision, the Court noted that a party making an application under former Rule 289 must demonstrate that there is a good reason why the witness cannot be examined in Saskatchewan, that the evidence is material, that the other party will not be unreasonably prejudiced and that the order is in the interests of justice.

[10] In *Campagna v Wong*, 2002 SKQB 97, the Court, in determining whether to allow witnesses to testify by telephone, quoted prior cases in which it was noted that mere inconvenience to witnesses is not a ground, standing alone, to allow evidence to be given by telephone. The Court must consider the advantages and disadvantages of not seeing a witness. Ultimately, the Court permitted one witness to testify by telephone, reasoning that the expense of his personal attendance was disproportionate to the role that his testimony would play in the proceedings. A second witness was required to attend in person because her testimony would be lengthy and documents would need to be shown to her.

[11] In *Onofrichuk v Simpso*, 1997 CanLII 11252, 155 Sask R 54 (QB), the Court noted that live videoconferencing allows the Court, counsel and the witness to engage in simultaneous visual and oral communications. The witness was employed 2,000 kilometers from the judicial centre and would be taken away for several days from a large construction project. The Court permitted the witness to testify remotely by videoconference.

[12] The aforementioned cases are somewhat dated. Since those cases were

decided, courts have adapted to changes of circumstance, most notably the COVID-19 pandemic, and have been more permissive in allowing witnesses to appear remotely. There is though a dearth of recent published case law in Saskatchewan analyzing the considerations that inform whether a witness in a civil proceeding should be permitted to testify by videoconference.

[13] Trials in Saskatchewan are presumptively conducted live, in person. It is within the discretion of a trial judge whether to permit testimony to be given remotely, having due regard to the interests of justice.

[14] In determining whether to exercise a trial judge's discretion to permit remote testimony, consideration can be given to Rule 1-3, which indicates:

1-3(1) The purpose of these rules is to provide a means by which claims can be justly resolved in or by a court process in a timely and cost effective way.

(2) In particular, these rules are intended to be used:

- (a) to identify the real issues in dispute;
- (b) to facilitate the quickest means of resolving a claim at the least expense;
- (c) to encourage the parties to resolve the claim themselves, by agreement, with or without assistance, as early in the process as is practicable;
- (d) to oblige the parties to communicate honestly, openly and in a timely way; and
- (e) to provide an effective, efficient and credible system of remedies and sanctions to enforce these rules and orders and judgments.

(3) To achieve the purpose and intention of these rules, the parties shall, jointly and individually during an action:

- (a) identify or make an application to identify the real issues in dispute and facilitate the quickest means of resolving the claim

at the least expense;

(b) periodically evaluate dispute resolution process alternatives to a full trial, with or without assistance from the Court;

(c) refrain from filing applications or taking proceedings that do not further the purpose and intention of these rules; and

(d) when using publicly funded Court resources, use them effectively.

(4) Resolving a claim justly in a timely and cost effective way includes, so far as is practicable, conducting the proceeding in ways that are proportionate to:

(a) the amount involved in the proceeding;

(b) the importance of the issues in dispute; and

(c) the complexity of the proceeding.

[15] Section 714.1 of the *Criminal Code*, RSC 1985, c C-46, sets out a non-exhaustive list of factors for judges to consider in determining whether to permit witness testimony to be given by audio or videoconference in a criminal proceeding. That section states:

714.1 A court may order that a witness in Canada give evidence by audioconference or videoconference, if the court is of the opinion that it would be appropriate having regard to all the circumstances, including

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

(b) the costs that would be incurred if the witness were to appear personally;

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

(d) the suitability of the location from where the witness will give evidence;

(e) the accused's right to a fair and public hearing;

(f) the nature and seriousness of the offence; and

(g) any potential prejudice to the parties caused by the fact that the witness would not be seen by them, if the court were to order the evidence to be given by audioconference.

[16] These considerations from the *Criminal Code*, with minor modifications, are apt in a civil proceeding. As a result, in analyzing the plaintiff's request that witnesses appear by videoconference, I have considered the following factors:

- a. The location and personal circumstances of the witnesses;
- b. The costs that would be incurred if the witnesses appeared personally;
- c. The nature of the witnesses' anticipated evidence;
- d. The suitability of the location from where the witnesses will give evidence;
- e. Any negative impact on the trial, including any prejudice to the other party;
- f. The nature of the claim, including the potential amount at issue; and
- g. Any other relevant circumstances.

[17] I analyze each of those factors below.

The location and personal circumstances of the witnesses

[18] All of the witnesses reside in Alberta. Attending court in Battleford would require the witnesses to either (1) drive for several hours; or (2) fly to Saskatoon, rent a vehicle and drive to Battleford. Given that the timing of witness testimony is sometimes fluid in a civil proceeding, it is likely that the witnesses would need to stay overnight and miss one, or more likely two, full days of work.

[19] These witnesses are all professionals. As noted, two of the witnesses are

medical professionals who will be taken from their medical practices. The other two witnesses are likewise professionals who it can be inferred would be taken from other work that they would be conducting to personally attend court.

[20] The distances and personal circumstances of the witnesses favour granting the application.

The costs that would be incurred if the witnesses appeared personally

[21] As noted, the plaintiff estimates costs of \$100,000 for the personal attendances of the witnesses at the trial. I do not accept that the costs would be nearly so high, given that it would be quite possible to schedule each witness in a manner to minimize the time that they spent in Battleford.

[22] That said, although I do not accept the plaintiff's estimate of costs, I accept that the expenses would not be insignificant. Requiring four professionals to travel and attend court out of province for one or more full days would be expensive. In addition to the amounts that would be billed for the professionals' time, there would be travel and hotel costs. Fees and disbursements would be thousands of dollars.

[23] The substantial costs that would be incurred for the personal attendances of the witnesses favours granting the application.

The nature of the witnesses' anticipated evidence

[24] As noted, the witnesses are all putative experts in different areas. It appears that they will testify about the plaintiff's purported injuries, physical limitations and the financial impact of those injuries. The anticipated evidence in chief is set out in the expert reports that have been filed.

[25] The Action Committee on Modernizing Court Operations, co-chaired by Wagner C.J.C. and the Minister of Justice and Attorney General of Canada, the

Honourable Sean Fraser, published a guidance paper entitled *Virtual Hearings: Operational Considerations – Benefits and Challenges* in which it is noted about expert witnesses at pp. 9-10:

Evidentiary Issues

The impact of the mode of hearing on the tendering of evidence will depend on a number of factors, including whether the case requires witness testimony, documentary evidence, or physical evidence. The type of witness may also influence which mode of appearance may be most appropriate. For example, the testimony of a contentious witness raises different concerns than an expert witness or a police officer testifying on continuity of evidence. And while some of the greatest challenges associated with virtual proceedings may relate to the tendering of evidence, there may also be advantages to using virtual means for some evidentiary matters.

Benefits of Virtual Tendering of Evidence

Ease of Access to Expert Witnesses: Before COVID-19 led to the widespread use of virtual hearings, one area in which remote appearances was most commonly used was the appearance of expert witnesses. As credibility is often not an issue with these witnesses, there are fewer concerns about the inability to see body language, for example, than there are regarding the use of virtual proceedings for other witnesses.

[26] Similar considerations were articulated in *R v Martell*, 2023 SKKB 31, where Robertson J. noted:

[64] In *Denham* [2010 ABPC 82] at para 29, Rosborough P.C.J. commented that technical evidence and expert evidence will be more readily received by video than evidence of an eyewitness to a crime:

[29] Where the “nature of the witness’ anticipated evidence” is technical or incidental to the issues being litigated, it would appear that courts are more amenable to authorizing the use of video evidence. It is also my view that expert opinion evidence should more readily be received by video than the evidence of an eyewitness to a crime, for instance. I accept counsel’s submission that directed cross-examination of the witness may be necessary based upon certain assumptions which are disputed. Nevertheless, I am of the view for the reasons relating to

credibility assessments which follow, that cross-examination of this expert witness will not be compromised by her virtual (as opposed to in-person) attendance.

[27] The defendant indicates that the factual underpinnings or assumptions underlying the expert opinions will be put at issue. This can be done by a witness appearing by videoconference just as well as a witness appearing in person. Whether assumptions or factual assertions are at issue, this will not change the basic nature of the testimony. The experts are being proffered to provide opinion evidence. I do not anticipate that credibility will be a significant issue.

[28] The nature of the witnesses' anticipated evidence thus favours granting the application.

The suitability of the location from where the witnesses will give evidence

[29] The plaintiff proposes that the witnesses: (1) testify from professional locations equipped with reliable video and audio equipment; (2) be alone in the room while testifying. The witnesses would be given an electronic exhibit binder, accessible to both counsel, the trial judge and the jury. Any documents put to the witness can be shared with the witness and observed in the courtroom.

[30] The plaintiff's plan addresses many of the concerns that the Court may have about remote testimony, particularly about the witness not being assisted by others while testifying. The defendant did not raise concerns with respect to the proposed mechanics of the witnesses' testimony.

[31] I am satisfied that the plan for the witnesses' testimony is suitable, particularly given that the witnesses are professional, expert witnesses.

Any negative impact on the trial, including any prejudice to the other party

[32] In considering whether to permit testimony by videoconference, I have

considered reasons why the Court maintains the default position of requiring witnesses to appear in person. There are tangible benefits to having witnesses appear in person as opposed to on video. Some of the challenges with witnesses appearing remotely include: (1) possible technology disruptions which can delay a trial; (2) greater challenges in putting exhibits to a witness; (3) the ability of the witness to see all parts of the courtroom; and (4) the inability of the Court to control the environment in which the witness is testifying, including ensuring that the witness is not referring to extraneous documents and is alone while they are testifying.

[33] An intangible drawback to witnesses appearing remotely is the potential reduced solemnity of the proceedings. Individuals testifying from outside of a courtroom, from a home or place of work for instance, may not appreciate the importance and seriousness of the legal proceeding.

[34] In this case, given the nature of the proposed testimony, I do not find that the challenges to remote testimony will have any material negative impact on the trial. While technology disruptions are certainly possible, the Court regularly employs videoconferencing without issue: *R v Burns*, 2020 SKQB 228 at para 19.

[35] It is fair to note that a number of documents may need to be shown to the witnesses. This can be accommodated through the use of electronic exhibit books, as proposed by the plaintiff. I take comfort that both sides are represented by experienced counsel who should be able to navigate questioning a witness by videoconference.

[36] In short, I do not find that there is any prejudice to the defendant or any impact on the fairness of the trial if the witnesses appear remotely.

The nature of the claim, including the potential amount at issue

[37] The claim is a negligence claim in which the plaintiff claims, *inter alia*, general damages, loss of income and special damages. The amounts at issue are

reasonably significant. Also of note, the matter is set to be heard by jury.

[38] Despite the potential amount at issue, the nature of this claim does not, in my view, impact whether these witnesses should be allowed to testify remotely. This may be a different matter if the plaintiff himself sought to testify remotely or this involved a significant fact-based witness. Given that these witnesses will all provide opinion evidence, I do not find that the nature of the claim would make the remote testimony of these witnesses unsuitable.

Any other relevant circumstances

[39] Other circumstances may impact whether remote testimony is appropriate. Without limiting the relevant considerations, the suitability of remote testimony could be impacted by: (1) witness vulnerabilities; (2) the need for simultaneous language interpretation.

[40] In this case, there are no additional circumstances that bear on whether testimony by videoconference is appropriate.

CONCLUSION

[41] I find that the interests of justice, having regard to the Foundational Rules of court, justify having these four witnesses appear remotely. The terms of the order shall be as follows:

- a. Dr. Brian Rambaransingh, Dr. S.M. Esmail, Kelly Rathje and Sylvia A. Wilson may attend the trial of this action and give their evidence, on examination-in-chief and cross-examination by video conference;
- b. Counsel shall confer and provide the Local Registrar, in advance of trial, with the dates and times within the trial sittings on which each of the said witnesses is to attend;

- c. Each witness shall testify from a designated professional location with reliable high-speed internet, an HD camera, microphone and screen; shall be alone in the room while testifying except for any technical support; and shall confirm on the record that no other person is present and that no document is available to the witness other than what is identified to the Court;
- d. Counsel shall provide the witness, the Court and opposing counsel with an electronic exhibit binder in advance of testimony, so that exhibits may be displayed simultaneously on-screen during examination-in-chief and cross-examination; and
- e. The manner of receiving evidence shall remain subject to my discretion throughout the trial.

[42] No costs were sought by the plaintiff on this application and none are awarded.

J.
S.M. SINCLAIR