

Media Access to BC's Courts During COVID-19

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Civil Resolution Tribunal

- While BC courts are generally closed for in-person hearings until further notice, the Civil Resolution Tribunal (“CRT”) remains open. The CRT has jurisdiction over most:
 - [Small claims](#) disputes \$5,000 and under
 - [Strata property](#) disputes of any amount
 - [Motor vehicle accident and injury](#) claims of up to \$50,000
 - [Societies and cooperative association](#) disputes of any amount.

The CRT is Canada’s first online tribunal. The CRT office isn’t open to the public. The CRT is an administrative tribunal, not a court. But like a court, the CRT is part of the public justice system, its tribunal members are independent and neutral, and it is required to apply the law and make enforceable decisions.

- As a result, the CRT is open and operating normally during the COVID-19 pandemic. The [Ministerial Order](#) under the *Emergency Program Act*, Section 2 suspends limitation periods and other mandatory deadlines for starting a legal proceeding in court. The CRT has stated that **this does not apply to the CRT. Limitation periods and other mandatory time periods continue to apply to CRT proceedings.** However, under the order the CRT *may* waive, suspend or extend a mandatory time period relating to the exercise of the CRT’s statutory power of decision, including the limitation period and the 28-day deadline to file a notice of objection to a CRT small claims decision. Media may access the names of parties in a CRT decision, as well as a general description of the dispute and its status. Members of the public may also request copies of submissions and evidence provided during the decision process (complete policy and process here: <https://civilresolutionbc.ca/wp-content/uploads/2019/02/Access-to-Info-in-CRT-Case-Records-20190220.pdf>).

Provincial Court of BC

The Provincial Court of British Columbia is only hearing urgent matters. It is attempting to maintain the open courts principle and public scrutiny. The Covid Media access policy may be found here:

<https://www.provincialcourt.bc.ca/downloads/public%20and%20media%20access%20policies/NM%2001%20Accredited%20Media%20Access%20to%20Provincial%20Court%20Proceedings%20during%20COVID-19.pdf>

To help contain the spread of COVID-19, matters are being heard at one of 6 Hub Court locations, unless otherwise ordered by the Regional Administrative Judge or their designate. Media are being asked to watch the hearing lists, (<https://www2.gov.bc.ca/gov/content/justice/courthouse-services/daily-court-lists>) and, if they wish to observe, contact the applicable court registry for more information about how they can participate (e.g. by attending in person or by dialing into a teleconference).

Participation by members of the accredited media in court proceedings remotely by telephone, is subject to the following conditions:

- Cellphones must be on mute during the proceedings; if using a landline, accredited media must be in a quiet room, so as not to disrupt the proceedings;
- As per the Joint Courts Policy on Use of Electronic Devices in Courtrooms, accredited media may record the proceedings for verifying their notes only; and
- If accredited media do not call in at the set time or if the call is lost, the Court will not disrupt the proceedings to connect them.

Electronic Access to Recordings of Proceedings - Access to audio of court proceedings by DARS CD or at listening stations at court registries are temporarily unavailable as court registries are not providing in-person registry services during the suspension of the Court's regular operations. However, media can complete the Undertaking of Accredited Media

<https://www.provincialcourt.bc.ca/downloads/public%20and%20media%20access%20policies/NM%2001%20Accredited%20Media%20Access%20to%20Provincial%20Court%20Proceedings%20during%20COVID-19.pdf#page=2>

to obtain electronic access to the audio recording of a proceeding.

BC Supreme Court

- The Supreme Court issued Notice to Media No. 17 on May 7, 2020.
https://www.bccourts.ca/supreme_court/documents/COVID-19_Notify_No.17_Notify_to_Media_Regarding_Access_to_Court_Proceedings_May_7_2020.pdf
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- That notice provided that at the 7 hub locations, unless otherwise ordered by the court, members of the media may attend in person at hearings taking place at those hub locations. The members of the media are required to observe and must adhere to the social distancing guidelines established by COVID-19 Notice No. 1 (https://www.bccourts.ca/supreme_court/documents/COVID-19_Notify_No.17_Notify_to_Media_Regarding_Access_to_Court_Proceedings_May_7_2020.pdf#page=1). Those include the standard guidelines we are seeing in every facet of our current life, not to attend if you have any flu-like symptoms, to maintain social distancing, handwashing and other COVID-19 protocols.
- With respect to those matters that are proceeding by way of telephone, the media have been directed to contact the Supreme Court's communications officer to arrange participation via telephone. The contact to use is: The Honourable Bruce Cohen, Superior Courts Communications Officer, at SCJCommunicationsOfficer@bccourts.ca.
- That participation could be limited by the technology in place as it may limit the number of callers that can be connected through a single dial-in number.
- The existing policy on media use of a electronic devices remains in place for telephone participation .
https://www.bccourts.ca/supreme_court/media/PDF/Policy%20on%20Use%20of%20Electronic%20Devices%20in%20Courtrooms%20-%20FINAL.pdf

BC Court of Appeal

- The BC Court of Appeal seems to be doing a very good job at improving the access to proceedings for media and the public. Starting May 4th in BC, the Court of Appeal heard appeals, including non-urgent appeals by video conference using the Zoom platform. All chambers applications were also heard, by way of teleconference. Access is set out in the April 29, 2020 notice found here:
https://www.bccourts.ca/Court_of_Appeal/documents/Updated_Notice_to_Public_Acces_to_Court_Proceedings_14May2020.pdf
- To ensure that media has access to the proceedings, weekly hearing lists and chambers lists are posted on the court's website. Initially if one wanted access to a proceeding, a written request was required. As of May 14, to observe any matter proceeding by way of video conference, there is a public link on the weekly hearing list. This allows members of the public or media to join the video conference as an observer from their own device. The only drawback is that the links are often not posted until the morning of the video conference. Having said that, I have tried the system and it seems to work quite well. This covers all appeal hearings.
- All chambers applications and Registrar's appointments, including those that are not urgent, are being heard by teleconference or in writing, unless otherwise directed. With respect to a matter proceeding by teleconferences, a request must be submitted to the Court of Appeal no later than noon the day before the hearing. The court is currently unable to process late requests and the number of callers may be limited.
- In any matter where the media wish to make submissions, including cases where a publication ban is opposed or challenged, the court will arrange participation.
- Any requests for access to court audio recordings (post-hearing) by accredited media should be made by completing the usual access to audio request form and attaching a remote access to DARS undertaking to the automatically generated email before submitting the request. Requests will be processed by Court Services Branch personnel in the usual manner. If access is granted the requestor will receive an email confirmation and a link to a digital FTP site to remotely access the requested audio recording.

United States of America v. Meng

- Shout out to Dan Coles at Owen, Bird who has been representing the media in this case for his assistance in preparing for this presentation.
- this is the ongoing extradition proceeding of Ms. Meng, a Huawei executive who was arrested in Canada at the request of the United States and is now opposing her extradition to the USA. A case management conference (“CMC”) was held and the judge, The Honourable Associate Chief Justice Holmes, permitted accredited media to obtain dial in access to the CMC by registering an advance to the court’s communications officer. It would appear that at least a dozen journalists called in and participated in the call by keeping their call on mute.
- This case is of interest because the court crafted a process whereby the media could attend and have input on access to the proceedings. At the CMC the court made the orders regarding prompt access to the decision for media and access to transcripts. Further ACJ Holmes directed that counsel prepare this summary of the outcomes of the CMC to be made available through the Court Registry to members of the public and the media.

Access to the judgment

Procedure for Release of the Double Criminality Judgment:

- The Court will provide approximately three days' notice to the parties and accredited media of the date set for the release of the Double Criminality Judgment (the "Judgment").
- At 9 a.m. on the date set for the release of the Judgment, the Court will provide the Judgment to counsel for the parties by email.
- At 10 a.m. on the date set for the release of the Judgment, accredited media will be allowed to attend at the courthouse for a media lock-up, where they may read a paper copy of the Judgment before the public release. Attendance will be limited in accordance with public health advisories. Details regarding the lock-up procedure will be provided closer to the release date. The media will not be permitted to share the Judgment or report on its contents until 11 a.m. (see below).
- At 10 a.m. on the date set for the release of the Judgment, counsel for the parties will be permitted to share the Judgment with their respective clients. The Judgment is otherwise not to be distributed, with the exception that it may be shared with the US Department of Justice (Office of International Affairs) and the Canadian Border Services Agency.
- At 11 a.m. on the date set for the release of the Judgment, the Judgment will be posted for the public on the Court's website and there will be a Court appearance addressing issues arising from the Judgment. The appearance will be scheduled as an in-person hearing with Ms. Meng and a limited number of counsel for the parties appearing in-person in open court. If, after receiving the Judgment, counsel for the parties agree that an in-person hearing is not required, counsel for the parties will contact the Court Registry and request that the appearance occur by telephone.