



РЯ AVOCAT

Court Access in the time of the Plague

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Current as of May 28th 2020, 20h26m23s

- At whatever time you are reading this presentation, its content is already outdated.

Order 2020-4251 – March 15th

Extinctive prescription and terms for forfeiture in civil matters are suspended until the expiry of the period of the declaration of public health emergency provided for in order in council 177-2020 dated 13 March 2020.

Similarly, procedural periods in civil matters are suspended during the same period, with the exception of cases deemed urgent by the courts.

How urgent is “urgent”, really?

- Many “urgent matters” still proceed in person.
- The list of “urgent” matters is comprehensive: injunctions, safeguard orders, custodial disputes, alimony.
- “Any other matter deemed urgent by the Chief Justice”.
- Even when a matter qualifies as urgent under the guidelines, Judges take a critical approach and will ask attorneys to justify why the matter could not wait.

How urgent is “urgent”, really?

[8] The Court endorses this two-step analysis. Indeed, in deciding whether to adjourn or proceed to a trial, the Court must balance the need to support efforts to limit the spread of the outbreak in the general population with the need to preserve the rights of the parties involved. Moreover, the situation that we are facing is unique and creates practical challenges that evolve on a daily basis. Thus, the decision to adjourn a trial cannot be limited to legal considerations. Public health considerations, the need to preserve the health of those involved in the trial process and practical considerations are also relevant to the decision.

Source: [R. v. Abdul Latif, 2020 QCCQ 1656](#)

In camera hearings

On March 15, 2020, the Minister of Justice issued a press release confirming that hearings in court or before administrative tribunals would be held in camera. The legal basis for this measure is unclear:

From Monday, all hearings scheduled at a court, administrative tribunal or public administration body will take place behind closed doors, in other words with no public admission to the room concerned.

Only people whose presence is essential to hearings will have access to courthouses and the premises made available to courts and administrative tribunals—accused persons, parties to civil or administrative proceedings, witnesses, and other people whose presence is deemed necessary by the authority hearing the case. People who need to use a specific service, for example to deposit an urgent proceeding, will also be admitted.

Source: [Press release](#)

136 Virtual courtrooms

Les salles d'audience virtuelles sont accessibles par l'entremise de la plateforme WebRTC. Deux types d'audiences peuvent s'y tenir :

- Les audiences en salle virtuelle : Toutes les parties prenantes (juge, parties, avocats, personnes intéressées, **journalistes**) participent ou assistent à l'audience en étant à l'extérieur du palais de justice.
- Les audiences en salle semi-virtuelle : Le juge et le greffier-audiencier peuvent être présents physiquement en salle d'audience, alors que les parties, les avocats, les personnes intéressées, **les journalistes** et le public doivent se connecter à distance, à l'aide de la plateforme WebRTC. Certaines de ces personnes pourraient également être présentes physiquement à la demande du juge.

Source: Note aux partenaires du 4 mai 2020

Any recording forbidden

- L'enregistrement audio, vidéo et la prise de photos par capture d'écran sont strictement interdits.

Source: Guide d'utilisation Portail WebRTC

VS.

Les règles visant un journaliste reconnu

Un journaliste reconnu peut, en s'assurant de respecter le décorum et les ordonnances en vigueur sans nuire au bon ordre, déroulement de l'audience ni au système d'enregistrement numérique :

- ❖ procéder à l'enregistrement sonore d'une audience devant les tribunaux (Cour supérieure, Cour du Québec et cours municipales).

Source: [Lignes directrices concernant l'utilisation des technologies en salle d'audience](#)

Grand reopening on June 1st

- 60% of the Court personnel back by August.
- Non-urgent matters to be heard on a priority basis.
- “Hybrid” system: virtual and in person according to the case.
- Electronic docket and court filing system to be implemented.

Court of Appeal

- Docket is online weeks in advance
- Since May 1st, motions before a single judge are heard in virtual courtrooms
- On 25th, hearings before a full bench were resumed in virtual courtrooms.
- Journalists must contact the court personnel for audio-only access before the hearing.

Source: [Court of Appeal](#)

Superior Court and Court of Quebec

- Practices are implemented per district, of which there are 36 (!).
- When journalists ask for access for a specific case, collaboration is usually excellent.
- Nevertheless, journalists cannot attend hearing if they are not made aware that they are taking place.

Superior Court and Court of Quebec

As of May 25th, the online roll now defines virtual and semi-virtual hearings:

Rolls labelled “SV” refer to hearings held in virtual courtrooms. Other hearings can be held in semi-virtual courtrooms, meaning that only people authorized by the court are present in the physical courtroom.

To attend a virtual or semi-virtual hearing, please email your request to informations@justice.gouv.qc.ca. (...)

For closed hearings, if you are a journalist, please mention it in your request and include your professional contact information. If you are a lawyer or a student-at-law, you must attach a scanned copy of the card confirming your status to your request.

Source: <http://roles.tribunaux.qc.ca/>

Issues with virtual hearings

- Obtaining exhibits or other documentation during the hearing is not possible or difficult in a timely manner.
- Journalists must remain silent and cannot intervene, causing problems when a publication ban is issued or new documents are used during the hearing.

Court of Quebec

- As of the 1st of June, the Court of Quebec will extend the scope of services.
- “Priority cases” will now be heard along with urgent cases.
- Hearings will take place in a “semi-virtual” setting, with the judge and clerks in the Courthouse.
- Neither the main plan nor the 8 regional subplans refer to participation from the public or journalists.
- Nevertheless, the semi-virtual mode will allow for journalists to attend the hearing in the Courthouse, as usual.

Source: [Court of Quebec](#)

Administrative tribunals

- Each of the 86 (!!!!) administrative tribunals in Québec has its own rules.
- Some are fully transparent. Others... well...
- Some of the more organized have resumed hearings in virtual mode. Most still hear only urgent matters.
- Access by journalists remains untested.

Some journalists were...

- prevented from entering the Courthouse;
- prevented from accessing Court Record;
- denied timely access because of lack of personnel;
- denied the possibility to intervene when a publication ban was issued, even for clarifications;
- deprived of access to attorneys and parties.

Unknowns

- As far as we know, no publication ban or sealing order was contested in Quebec since the beginning of the pandemic.

Predictions

- Virtual courtrooms are here to stay. Lobbying for extended access for journalists is a must.
- Electronic filing system will facilitate obtention of proceedings and exhibits.