



Action Committee on Court Operations in Response to COVID-19

VIRTUAL ACCESS TO HEARINGS: CHALLENGES AND SOLUTIONS IN TRIAL COURTS

A Statement from the Action Committee

Our Committee exists to support Canada's courts as they work to protect the health and safety of all court users in the COVID-19 context while upholding the fundamental values of our justice system. These mutually sustaining commitments guide all of our efforts.

This tip sheet, developed in collaboration with the Canadian Council of Chief Judges, seeks to complement the Action Committee's Tip Sheets on [Virtual Access to Hearings: Privacy, Security and Confidentiality Considerations](#) and [Virtual Access to Hearings: Options and Implementation Scenarios](#). It sets out some useful considerations and practices to support Canada's trial courts in providing virtual access to proceedings in a way that preserves the open court principle as well as public confidence in the administration of justice. In particular, this tip sheet

- Highlights some common challenges trial courts have faced in having to adapt public access to virtual hearings
- Outlines adapted practices to help these courts regulate virtual access effectively in a high-volume, fast-paced environment
- Includes an annex with sample cautions and notices to clarify rules of virtual access

The guidance provided in this tip sheet does not presume whether it is appropriate to proceed virtually in any particular proceeding, nor does it seek to address common barriers of access to, or use of technology, such as impacts on remote communities or marginalized individuals, bandwidth issues, or technical shortcomings related to the recording or interpretation of proceedings. For an analysis of the impact of technology in these specific settings, see the Action Committee's publications on [Restoring Court Operations in Indigenous, Northern, Remote and Indigenous Communities](#), [Examining the Disproportionate Impact of the COVID-19 Pandemic on Access to Justice for Marginalized Individuals](#), and [The Impact of the COVID-19 Pandemic on Interpretation and Translation Needs of Court Users](#).

In addition, the guidance provided in this tip sheet does not replace or ensure compliance with applicable law or court rules, notices or practice directions, and in no way interferes with the discretion of a presiding judicial officer to resolve access-related issues that might arise in a specific proceeding. Finally, some of the outlined practices may exceed what is required by the open court principle.

COMMON CHALLENGES IN ADAPTING PUBLIC ACCESS TO VIRTUAL HEARINGS

Canadian courts have always had to balance the need to ensure public and media access to proceedings while protecting the rights and interests of those involved, and ensuring the proper administration of justice. But the COVID-19 pandemic changed the landscape considerably for trial courts by creating an urgent need to adapt conventional access measures to new virtual



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settings. New challenges arose in ensuring that hearings could proceed safely and effectively for all involved, especially in front-end processes that require immediate action.

While Provincial and Territorial Courts were often most affected, Superior Courts also had to overcome similar challenges, including how to virtually

- Coordinate a high volume of hearings involving a large number of litigants and witnesses on a daily basis
- Protect the privacy and safety of hearing participants—particularly vulnerable or marginalized individuals—when virtual access for public and media observers does not offer the same level of oversight by court personnel as in-person attendance
- Make up for technological limitations that make it difficult to identify, or regulate access permissions, for observers
- Provide access to participants and observers for hearings that occur on short notice, while identifying and implementing any protection measures required
- Safeguard against members of the public interrupting or disrupting proceedings when their conduct cannot be observed
- Deter members of the public from recording and posting, publishing or disseminating recordings of proceedings contrary to rules, policies or laws, especially for extraterritorial observers whose actions may exceed the court's jurisdiction
- Ensure witnesses do not access virtual hearings prior to giving their testimony, so as not to taint their evidence, and
- Address the impact of publication bans

PRACTICES AND TIPS FOR ADAPTING VIRTUAL ACCESS TO HEARINGS

Based on their operational, staffing, and technological capacity, trial courts may wish to consider the following practices and tips to promote open yet safe access to virtual hearings, when proceeding virtually is deemed both feasible and appropriate.

1. Adapting to the use of shared links instead of personalized links

While personalized links to virtual hearings provide the highest level of protection against privacy or security breaches, in some proceedings it is not feasible to provide such links. For example, in bail hearings and remand courts which occur regularly and on short notice, shared links may be the only option to ensure all participants and observers can attend. In other cases, where security risks are deemed minimal—such as routine procedural appearances by counsel that do not involve substantive evidence or witnesses—shared links might also be appropriate.

When using shared links, to better protect hearings and their participants, consider to whether to

- Require members of the public wishing to attend a virtual hearing to include their first and last name and contact information in their request



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- Provide links or access information to the public by phone or email rather than by listing links publicly on a website
- When providing links or access information to parties, counsel, or the public, specify that the links or access information are confidential. See sample cautions in the Annex
- Advise parties, counsel, and participants that they must use a screen name that accurately identifies them. This assists in knowing who is attending and in managing those waiting in the “lobby” of a virtual hearing. In cases where a person’s identity should be protected, see section 3 on screening issues
- Have the court clerk either advise the Court if anyone who is not a participant is attending virtually, or ask if any members of the public are attending

Courts should avoid using static links whenever practicable, meaning a permanent link that could be used repeatedly for different proceedings, since their use is difficult to regulate and monitor.

2. Making up for the lack of separate permissions for participants and observers

Some virtual platforms do not allow for links with different permissions for hearing participants and public observers. In those circumstances, consider whether public observers should only be given audio access to limit their ability to interrupt a proceeding, unless

- There is a judicial direction or order allowing for videoconference access, or
- The virtual platform allows the court clerk to mute individual attendees so that they are then unable to unmute themselves. This may assist where a limited number of observers are attending. MS Teams, for example, offers this feature allowing a court clerk, as a presenter, to “disable mic” and “disable video”

Courts could also consider issuing a warning at the start of a hearing stating that any person who disrupts proceedings may be removed from the virtual platform.

3. Screening issues from the start

In some hearings scheduled on short notice, such as bail hearings that might occur within 24 hours of an arrest, it may not be possible to identify in advance any privacy, security, or confidentiality concerns that might arise during the hearing. In those instances, courts should seek to identify these issues and notify observers from the start of proceedings to prevent any breaches. The following practices might assist:

- Asking counsel at the beginning of a proceeding to request a publication ban, non-disclosure order, sealing order or in camera order as needed so it is clear to attendees from the outset if there is such a ban or order in effect
- Prohibiting the public from joining late or including, as a condition to receive a link or access information, that individuals agree to certain rules about publication bans or any other similar orders in place. See the Annex for sample rules of access



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- If the onus is placed on the public and media to inquire about the existence of any ban, provide information on how to do so (e.g. how to contact the registry or a designated email address for inquiries)
- Asking counsel at the beginning of a proceeding if there needs to be any special consideration of how to address complainants and witnesses (i.e. whether to use their names or some other form of address such as “the accused”, “the complainant”)
- Determining at the beginning of a proceeding what information, if any, should not be stated when members of the public are listening in, such as the address of a surety or any information related to informer privilege

4. Preventing unauthorized recording, posting or broadcasting

To deter recording, posting or broadcasting of proceedings, courts should clearly notify virtual attendees of the rules in advance and at the start of a hearing—namely of any prohibitions on audio or video recording, or taking of still photographs, unless authorized by the court. See the Annex for sample statements, and consider whether to

- Include a disclaimer in registration confirmations or other documents that provide access to a hearing that, by attending a virtual proceeding, the individual acknowledges and agrees to abide by the court’s rules of access. Provide hyperlinks to any applicable policies, notices or practice directions
- Have attendees acknowledge acceptance of the rules of access of by clicking a link when logging in to the virtual platform or state that by logging in, they are accepting the rules of access
- Repeat the rules of access at the beginning of every hearing where practicable, or intermittently at reasonable times—such as at the beginning of the morning and afternoon sittings—where there are a large number of short hearings, for example in bail or remand courts

Enforcement considerations

In the event a proceeding is recorded and posted on social media, Provincial and Territorial Courts do not have inherent jurisdiction to order that the footage be removed from these platforms if the contempt is not witnessed by the Court. However, proceedings for contempt of court can be initiated in the Provincial or Territorial Court if that court witnesses the contempt; if not, contempt proceedings may need to be initiated in a Superior Court. Courts should be aware that evidentiary issues can include difficulties in proving who posted material.

Extraterritorial considerations

As well, enforcement can become an issue if the person who posted the material is extraterritorial (either out of province or out of country). Therefore, courts may consider whether to require individuals from another jurisdiction or country to make an application to the presiding judicial officer for virtual access on a case-by-case basis. The judicial officer can then determine if audio only access would be appropriate and could require an undertaking to adhere to the court’s rules and policies on recording and broadcasting of proceedings.



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5. Identifying witnesses and regulating their access

Unless adequate measures are taken, witnesses may access a bail hearing or other proceeding and hear others' testimony before they testify. In a virtual hearing, it is much more difficult to observe who is attending, and a visual scan may not be possible if attendees are joining by telephone or audioconference, or by videoconference with the camera turned off (so as not to disrupt proceedings). This concern may be further complicated at the bail stage since there may not yet be a witness exclusion order.

To prevent witnesses from inappropriately accessing a hearing in which they will later have to testify, courts should consider whether to

- At the beginning of a proceeding, ask if any attendees are potential witnesses
- Restrict people from joining the hearing after it has begun, or include as a condition of access that individuals acknowledge they are not a potential witness
- Invite counsel to inquire whether a witness had listened into any virtual proceedings related to the matter, especially in trials. Consider including this practice tip in a virtual hearing guide or policy

6. Promoting media access despite technological limitations

By reporting to the public on proceedings, the media helps to disseminate information widely and enhance public confidence in the court system. As such, if there are limits on the number of people who can attend proceedings virtually, similar to in person attendance, it is important to ensure that there are spots available for accredited/recognized media.

Making access to audio recordings of court proceedings available to accredited/recognized media after a hearing can also help to uphold the open court principle. Consider developing a policy and requiring an undertaking that the recording be used solely for the purpose of taking or verifying notes and not otherwise distributed, broadcast or transmitted. For example, see British Columbia's [Notice to Accredited Media re Access to Provincial Court Proceedings during COVID-19](#) and [Undertaking of Accredited Media](#). See also Ontario's [Request Form/Undertaking to the Court for Access to Digital Court Recordings](#) that applies to both its Superior and Provincial Courts and extends to stakeholders beyond the media, including litigants and members of the public.

7. Disabling the chat function

Courtrooms are formal settings, whether in-person or virtual: decorum and respectful behaviour are essential to upholding the rule of law and enhancing confidence in the administration of justice. But decorum can be undermined if participants or observers can comment on a proceeding by "chatting" during a hearing. In addition, such written comments are generally not saved on the record.

If a platform contains a chat function, consider whether to disable this function to avoid disruptive comments and ensure all information is on the record, especially for trials or high profile hearings. If the chat function is disabled, consider whether to advise of that in a policy, a practice direction or a virtual hearing guide for participants and observers.



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8. Informing the public of rules of access to proceedings

To inform the public of the rules for accessing a proceeding, consider whether to

- Develop a standard notice for telephone or videoconference access to outline any rules of access at the start of a hearing. See the Annex for sample notices
- Set out the rules of access in a policy, notice or practice direction
- For videoconferences, if feasible
 - Create a virtual entry page displaying the rules of access; include a statement that, by accessing the hearing, the person agrees to abide by these rules
 - Display the rules of access in a banner scrolling along the bottom of the screen
 - Include a “tile” in the gallery view that sets out all the rules of access and remains on screen throughout the hearing
- The presiding judicial officer may also require a verbal undertaking on the record with respect to any of the above

9. Promoting public compliance with publication bans

If a publication ban is in effect, the rules of access to a hearing will include abiding by the terms of this ban. But while recognized/accredited media are usually familiar with publication bans and know how to inquire about them, members of the public may be less familiar with these bans, including the types of cases or circumstances in which they might apply; how to find out whether a specific case is affected; and what the consequences are for breaching a ban. As such, in order to promote compliance with publication bans, it is important for members of the public to be informed of these aspects in one way or another, to reduce the risk of a breach.

If access to a hearing will be granted virtually to members of the public, there are different tools available to courts to promote information on the existence of, and consequences of non-compliance with, publication bans. These tools may include all or some of the following:

- Hearing or docket lists
- Pre-vetted distribution lists
- Registration confirmations for specific hearings
- Written notices posted on the virtual platform (e.g. in the virtual lobby or entry page, as a banner scrolling at the bottom of the screen or as a “tile” in the gallery view)
- Verbal notices read at the start and resumption of a hearing, or of a court sitting involving a high volume of short hearings—see sample notices in the Annex
- An undertaking from public and media observers, especially for higher risk hearings – for further guidance on risks associated to hearings, see the Tip Sheet on [Virtual Access to Hearings: Options and Implementation Scenarios](#)



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- A policy or practice direction about publication bans – for example, see the Provincial Court of British Columbia’s policy on [Bans on Publication](#) and the Supreme Court of British Columbia’s [Publication Ban Information](#)
- Contact information for court registries so that the public can obtain information from the relevant locality on whether a publication ban has been ordered in a particular case

Regardless of the tool or combination of tools used, the following information should be communicated clearly in all relevant cases:

- Indicate that a publication ban is in effect for a specific case, or if using a blanket statement for several cases, include information on how to confirm the existence of a publication ban for any particular case (e.g. consulting hearing lists, or contacting a phone number or email address within the registry)
- Include a caution on the consequences of breaching a publication ban

If deemed appropriate, courts could add a caution that members of the media and the public bear the responsibility of ensuring they respect the terms of any ban in effect, and that by accessing a hearing, they acknowledge this responsibility.



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ANNEX – SAMPLE CAUTIONS AND NOTICES TO CLARIFY RULES OF VIRTUAL ACCESS

Counsel caution – Confidentiality of static links	<p>Example 1: Counsel are expressly prohibited from sharing the link or access information with anyone other than their client and participants such as witnesses in the hearing, unless they have the permission of the Court to do so. Counsel must caution their client and hearing participants to only use the link for the purpose of access to the particular hearing.</p> <p>Example 2: Do not share your link or login information. If you would like anyone else to attend the hearing from their own device (co-counsel, articling student, clients, etc.), make sure to inform the registry as they will require a separate link. They will be permitted to join as participants, but may be muted and/or have their camera turned off as appropriate. This is important as your link will not let multiple people join.</p>
Public caution – Confidentiality of static links	<p>Example: The information to access a proceeding is to be used only for the purpose of access to the requested hearing and callers are expressly prohibited from sharing the link or accessing information unless they have the permission of the Court to do so.</p>
Notice – Disabled chat function	<p>All private chat functions within the video conferencing software are disabled.</p>
Notice – Rules of virtual access	<p>Example 1: This announcement is to remind members of the public or media who are attending these court proceedings by audio or video conference that by attending the proceeding you agree to the following:</p> <ul style="list-style-type: none">• you must remain silent and keep your microphone muted at all times;• you are not permitted to audio- or video-record any portion of the court’s proceedings;• you are not permitted to take photographs, screenshots or publish, broadcast, reproduce, transmit or disseminate the court proceedings in whole or in part;• a publication ban is [<i>or may be</i>] in effect which makes it a criminal offence to publish or broadcast information of a court proceeding, which includes sharing that information on social media; for more information, [<i>indicate who to contact/what source to consult, e.g. designated phone or email address, policy, website or hearing list</i>]; and,• you must not interfere in the proceedings. Should you do so, you may be removed from the hearing. <p>By attending these court proceedings remotely, you also acknowledge that you understand and agree to abide by the Court’s rules and any publication ban in effect.</p> <p>Example 2: Due to the current Public Health Emergency related to the COVID-19 virus, the Court has allowed greater flexibility for individuals to appear by telephone or video. The prohibition against recording all or any part of the proceedings has not been relaxed. Any person attending this proceeding by phone or other telecommunication is ordered not to record any part of it.</p>



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	<p>Failure to comply with this order will result in the person(s) responsible being required to attend court and show cause why they should not be held in contempt of court.</p> <p>Example 3: Where a member of the public views a hearing by video conference, the following rules will apply:</p> <ul style="list-style-type: none">• A link will be sent to the person's email address to permit access to the hearing;• This link is to be only used by the email recipient of the link and is not to be forwarded to any other person;• This link is to be used only for the hearing for which it is provided;• So as to minimize disruption to the hearing, the recipient of the link should engage the link at least 15 minutes prior to the start of the hearing. [Optional: late sign-in may prevent access to the hearing.] As well, after the hearing has commenced, if the user disconnects from the link, they should not re-engage the link as it is disruptive to the hearing;• At the outset of the hearing, the presiding judge or clerk may confirm the identity of the person who is viewing the hearing as well as the rules and any order applicable to such viewing;• During the hearing, the person's microphone must be muted;• The presiding judge may direct whether the person's video camera must be on or off;• There must not be any disruption to the hearing caused by the person's access to the hearing;• The video conference hearing must not be recorded in any manner including on the platform used for the video conference or on a separate recording device of any kind; and• The video conference hearing must not be rebroadcast, published, or otherwise disseminated in any manner. <p>Where a member of the public attends a hearing by telephone conference, the following rules will apply:</p> <ul style="list-style-type: none">• In the event that the clerk provides a person with call-in particulars, these call-in particulars are to be used only for the specific hearing for which they are provided. In no situation can the call-in particulars be again used for another hearing without making a new email request to attend;• At the outset of the hearing, the presiding judge or clerk may confirm the identity of the person who is listening to the hearing as well as the rules and any order applicable to such attendance;• During the hearing, the person's microphone must be muted and the person's phone not put on "hold" (so as to avoid any "hold" sounds);• There must not be any disruption to the hearing caused by the person's access to the hearing;• The hearing must not be recorded in any manner including on the telephone being used for the telephone conference or on a separate recording device of any kind; and• The hearing must not be rebroadcast, published, or otherwise disseminated in any manner.
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As noted, this protocol applies to a member of the public who is not a party or a witness. As with any judicial proceeding, where a matter is proceeding remotely, witnesses must abide by any order excluding witnesses from a hearing. It is understood that the presiding judge has discretion with respect to the hearing process. This may include a decision by the presiding judge to remove any person from the video or telephone conference.

Example 4: Attendance and conditions of attendance remain subject to any judicial direction or order.

- Public health requirements may limit the number of people who can enter and the conditions of attendance at courthouses.
- Remote access to court proceedings will presumptively be available by audio without judicial authorization. In some cases, videoconference access will be available.
- Some proceedings are closed to the public by legislation or court order.
- The proceedings are [*or may be*] subject to one or more publication bans. Breaching of a publication ban can result in a criminal charge. It is the responsibility of members of the public and media representatives who attend court proceedings to inform themselves of the existence of any publication bans and to ensure compliance with them. To confirm the existence of a publication ban, [*indicate who to contact/what source to consult, e.g. designated phone or email address, website or hearing list*];
- It is an offence under [*state the relevant provision of the law*], and may constitute contempt of court, to record, photograph, publish or broadcast a court proceeding in any way, unless prior judicial authorization has been granted. Audio recording of proceedings is permitted by counsel, licensed paralegals, court staff, accredited/recognized members of the media, and litigants provided it is done solely for note-taking purposes and the presiding judicial officer has been advised before the recording commences. Audio recording of proceedings is also permitted by members of the public provided it is done solely for note-taking purposes and the express permission of the presiding judicial officer is first obtained. These audio recordings cannot be transmitted. The Court's [*state the protocol, policy, or other document governing the use of electronic communication devices*] remains in effect.
- Please be prepared to join the remote court hearing at least 15 minutes before the scheduled appearance time in order to allow yourself time to address any technical problems and to minimize disruption. [Optional: late sign-in may result in your not being able to access the hearing.]

To minimize disruptions and to improve connection speed if you are joining a hearing by a smartphone, computer, or other electronic device, close unnecessary apps and windows on your device, especially video streaming. Turn off other devices in your vicinity and turn off notifications and alarms on the device you are using for the remote hearing. Unless directed by a judicial officer, please remain silent (keep your microphone on mute) and hidden (with your camera turned off) during the proceedings.