



Action Committee on Court Operations in Response to COVID-19

VIRTUAL ACCESS TO HEARINGS: OPTIONS AND IMPLEMENTATION SCENARIOS

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.

OVERVIEW

The COVID-19 pandemic has forced Canadian courts to rapidly shift towards providing virtual hearings along with virtual access to hearings for the public and the media in order to uphold the open court principle despite public health restrictions on in-person attendance.

Building upon the Action Committee's tip sheet on [Virtual Access to Hearings: Privacy, Security and Confidentiality Considerations](#), this tip sheet seeks to highlight practical considerations, options and implementation scenarios to assist courts in effectively adapting frameworks of public access to virtual settings in order to promote, open, fair and safe access to court proceedings ("hearings"). This guidance is non-exhaustive and does not replace applicable law or court rules, notices or practice directions, nor does it presuppose whether a specific hearing or type of matter should be conducted or made accessible virtually. Adaptations may also be required based on the specific context of individual courts and the virtual platforms they use, and on tailored advice from information technology (IT), information security and privacy experts.

For additional guidance on adapting practices to account for operational and technical challenges that may arise in trial courts in particular, see the Tip Sheet on [Virtual Access to Hearings: Challenges and Solutions in Trial Courts](#).

BACKGROUND

Public access to hearings is critical to upholding the transparency and integrity of judicial processes; this in turn helps to protect democracy and the rule of law, and to enhance public confidence in the justice system. For this reason, the open court principle seeks to ensure that, subject to certain legal exceptions, hearings are open to the public and can be reported upon fully and accurately by the media.

Courts must establish frameworks of access for public and media observers that align with this objective. However, as with in-person hearings, open access to virtual hearings does not equate with unrestricted or unregulated access. Courts must also take appropriate measures to ensure the integrity and fairness of court processes and protect the privacy and safety of hearing participants and the confidentiality of sensitive information. While these considerations apply to both in person and virtual access to hearings, measures of access in these two different settings may vary by necessity in order to achieve similar results.



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1. MEASURES OF ACCESS: A COMPARATIVE OVERVIEW

The open court principle must be adhered to for in-person, virtual and hybrid hearings. However, the usual process—by which people anonymously enter a physical courtroom, watch proceedings, and are also seen by others present—must be adapted to the circumstances when access to hearings is provided virtually.

In determining whether providing virtual access to a specific hearing or type of case is appropriate, and in adapting frameworks of public access to virtual settings, it is important to consider the contextual similarities and differences between in person and virtual access to hearings, since the applicable context may give rise to different types of measures.

1.1 In person access

In person access is subject to maximum courtroom occupancy and usually granted on a first come, first served basis, without the need to register beforehand. Some courts have reserved spaces for the media. Courts sometimes use overflow rooms or facilities or live webcasts to accommodate additional observers if space and technology are available, especially for high profile hearings.

Observers are often from the surrounding community or local media. They can both see and hear what is happening in court and can be visually identified by court personnel and others present, but are not required to provide their names or contact information. Their conduct can be easily monitored by court personnel, and observers can be removed from the courtroom if they do not comply with the rules of access or decorum.

1.2 Virtual access

Virtual access to hearings is limited to the maximum participant capacity of the virtual platform in use. This capacity can often be increased at an additional cost, but might also need to be restricted if bandwidth issues impede the ability to effectively proceed. Virtual access can sometimes accommodate a greater number or range of observers than in-person access – for example, those in remote locations, or even from outside the province, territory or country – but it requires more advance planning and ongoing coordination by court personnel.

Virtual observers can be removed from a hearing if they fail to comply with the rules of access or cause undue interference. However, since they are neither seen nor heard by court personnel or other virtual attendees, it is more difficult to monitor observers' conduct and identify the source of any breach. As such, courts have various options to regulate virtual access for observers to ensure a fair, safe and undisrupted hearing. Designated hearing coordinators or monitors may be needed to oversee appropriate access measures.



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2. ADAPTING VIRTUAL ACCESS: CONSIDERATIONS AND OPTIONS

Virtual access measures for public and media observers may vary according to the extent and potential impacts of any [privacy, security or confidentiality considerations](#) arising from different types of proceedings or specific cases, and the capacities and limitations of the technology available. As discussed below, variable parameters might include:

- Posting open links to hearings, or providing shared or personalized links through advance registration or distribution lists
- Enabling observers to join in automatically or screening and admitting them individually
- Allowing observers to join anonymously or requiring them to identify themselves by name
- Allowing observers to see video or limiting access to phone or audio only

Consider the following in selecting appropriate measures of access:

- Routine procedural or docket matters usually involve limited risks.
- Substantive hearings – especially those with witness evidence – may involve higher risks, particularly if they include vulnerable, marginalized or at-risk participants such as youth, victims of abuse, or undercover police officers; publication bans; confidential information; or a component of domestic or international organized crime.
- Circumstances that could enable an observer to capture and disseminate the image or personal information of a hearing participant also create potential risks. In some circumstances where the identity of a justice participant must be protected, observer access by audio only can also create potential risks.
- Public observers whose conduct is regulated only by the courts' rules of access and decorum pose a greater inherent risk than legal professionals, justice stakeholders, and accredited/recognized media observers who are also governed by professional rules of ethics.
- Advance registration or required identification may raise privacy issues since basic personal information – such as their name and phone number or email address – is being collected from observers. As such, consider whether privacy policies are needed to govern the collection, use, protection and retention of this information. If so, these policies should be clearly communicated to observers either on the courts' website or through hearing registration confirmations.

Based on these considerations, if virtual access is deemed feasible and appropriate, courts should assess the following options for implementing measures of virtual access for public and media observers in different scenarios of hearings.

2.1 Open links versus registration-based access with shared or personalized links

Some virtual platforms may only allow for shared links – open or by invitation – while others may allow for personalized links that authenticate identity or even require password-based access. Open links provide easy access to hearings with minimal administrative burdens, but also come with a higher risk of unauthorized intrusion. Invitation or registration based links – whether



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shared or personalized – can better prevent safety breaches but require advance coordination by a designated court employee and might be difficult to implement for hearings set on short notice.

Implementation options

Some courts have opted to provide unrestricted virtual access to public hearings by posting open links or phone-in information on the court's website or in electronic hearing lists, while others have been requiring media and public observers to register in advance by phone or email in order to receive a shared or personalized hearing link or phone-in details.

A tailored approach is also possible, depending on the type of hearing or participant and their associated risk factors. For example, legal professionals and accredited/recognized media observers could receive a shared link through pre-vetted distribution lists while public observers may be required to register in advance, or routine docket proceedings may be accessed through an open link to a courtroom while trial proceedings may require advance registration.

Risk mitigation strategies

When using open links, intrusion risks can be mitigated by screening admittance and disabling interactive features for observers, as described in section 2.2. When providing shared or personalized links, whether through advance registration or distribution lists, participants and observers may be asked to acknowledge or undertake not to share the link with, or otherwise grant access to others.

2.2 Automatic versus pre-screened admittance

Depending on the platform, virtual permissions may be customized to allow all or certain persons to join a hearing automatically, or to require all or certain persons to wait in a virtual lobby or waiting room until they are admitted individually by a designated host or organizer. Pre-screening requires more coordination than automatic admittance but can better prevent against unauthorized intrusions, especially if the [platform does not allow for separate links with different roles or permission levels for participants and observers](#) or if open links are used.

Implementation options

Pre-screening can be used to verify identity, ensure all essential participants are present before a hearing begins, and disable interactive features for observers – such as microphones, cameras, screen sharing, chat and meeting reactions (emoji) – upon login. Automatic admittance could be considered for pre-vetted hearing participants, such as judges, court personnel, counsel of record and interpreters.

Risk mitigation strategy

If the platform allows persons to join in before the host or organizer as a default setting, disabling this feature can help to mitigate the risk of unauthorized intrusion.



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2.3 Anonymous versus identification-based access

Virtual platforms usually display the identification information of each person logged into a hearing, but may allow either the organizer or attendees to modify this information when joining a hearing or once admitted. When participants and observers join in by phone, their phone number is usually displayed, often without further identification.

Implementation options

Courts should consider implementing protocols to both confirm and protect the identity of hearing participants and observers as needed.

As a procedural requirement, hearing participants are usually asked to identify themselves on the record, by full name and role (e.g. John Smith, defence counsel or Jane Deere, prosecution witness). Hearing participants whose identity should be protected for privacy or safety reasons – for example, an accused youth or a complainant whose identity is subject to a publication ban – may be asked to log in virtually using their initials or a pre-attributed alias.

Courts might opt for public and media observers to either self-identify or log in anonymously, for example by changing their participant name to “public”, “audience” or “media”, depending on the circumstances.

Risk mitigation strategy

Anonymous logins can make it more difficult to enforce the rules of access and prevent unauthorized intrusions, but additional controls – such as assigning an attendee role with limited permissions or disabling all interactive features for observers, namely microphones, cameras, screen sharing, chat and meeting reactions (emoji) – can help to mitigate risks.

Identification-based logins (i.e. sign-in by name) also have limitations since credentials are not automatically verified. As such, for higher risk hearings, further steps to confirm the identity of observers may be in order, such as password-protected links, request for and verification against government identification, undertakings not to share individual links or access information or even visual identification of attendees by court personnel.

2.4 Video versus audio access

Many courts across Canada are currently using a combination of teleconferencing platforms with audio capacity only and virtual platforms with videoconferencing capacity. Video platforms may enable the host or organizer to enable or disable participants’ and observers’ cameras as needed. Video platforms also allow persons to join in by phone, with audio capacity only.

Implementation options

Procedural matters such as docket court and case management hearings are often conducted by phone, while substantive hearings such as trials are usually facilitated by video. Having an established protocol to identify phone-ins in advance of a hearing can help to screen access as



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needed. Calling upon phone participants to identify themselves during a hearing when others are already logged on should be avoided if possible since this may compromise the safety or privacy of participants whose identity should be protected.

If using video, participants who should not be seen by observers for privacy or safety reasons – as ordered by the court – may require their camera to be disabled. Witnesses who should not be required to see an accused may require customized permissions.

Risk mitigation strategy

Phone access for observers can reduce the risk of unauthorized intrusion or video recording or broadcasting of proceedings, particularly if the virtual platform does not lend itself well to customizing access permissions for participants and observers. However, these considerations should be balanced against observers' interest in seeing how proceedings unfold, especially if witness evidence is called.

Whether access is provided by audio or video, clearly outlining the rules of access – and the consequences of breaching these rules – before, at the start and at the resumption of a hearing can help to promote compliance.

3. IMPLEMENTATION SCENARIOS

There are a number of potentially viable options to achieving open access to virtual hearings while protecting the integrity of court processes and the privacy and safety of hearing participants. This section illustrates some options to help courts implement virtual access for hearing participants and observers in specific scenarios, namely routine docket matters, high profile hearings, and hearings involving a publication ban or a person whose identity must be protected. For adapted considerations and practices related to trial courts that deal with fast-paced, high volume operations and hearings scheduled on short notice, such as bail hearings, see the Tip Sheet on [Virtual Access to Hearings: Challenges and Solutions in Trial Courts](#).

3.1 Routine docket matters

Routine docket matters are typically considered low risk and usually generate limited interest from public or media observers, since they are procedural in nature, they are attended mainly by legal professionals and they do not involve substantive evidence or decision-making. However, given the sheer volume of cases addressed, access measures may need to account for high numbers of participants and possible bandwidth limitations. Special accommodations may also be required for self-represented litigants or accused persons who are compelled to appear.

Consider the following access options for hearing participants and observers for routine docket matters that are scheduled in advance. For matters involving a publication ban, see section 3.3.



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Starting option: Open links and screening of participants and observers

- Provide an open link for all participants and observers to specific courtrooms that hear only docket or procedural matters, by way of hearing lists posted on the courts' website
- Screen access to ensure essential participants are in attendance and are given priority access – this may include lawyers, accused persons and self-represented litigants
 - Assign a hearing coordinator (e.g. clerk, registrar) to each virtual courtroom to screen and monitor access
 - Instruct participants and observers to log or call in at least 15 minutes before the start time to facilitate timely access and avoid any technical difficulties
 - Create a naming protocol to clearly identify and distinguish essential participants from public observers (e.g. ask lawyers to self-identify as “John Smith, counsel”, self-represented litigants to self-identify as “Jane Deere, defendant” and observers to log in anonymously as “audience”)
 - Ask essential participants joining by phone to notify the designated coordinator in advance of the phone number they will be using, so they can be easily screened in
 - Disable video, microphone, chat and meeting reaction features for observers
- Create a designated time slot for self-represented litigants to log in, to facilitate their screening and participation

Options for added security

If the cases to be addressed involve higher privacy, security or confidentiality considerations, for example the scheduling of family matters involving children, consider implementing added layers of security. For example:

- Send shared hearing links to pre-vetted subscriber lists such as local legal/bar associations, prosecutors, detention officers and accredited/recognized media, while requiring other participants and observers to pre-register to receive an access link
 - Include an acknowledgment notice or require an undertaking from participants and observers not to share links externally
 - If exceptions are made to allow counsel to share links with their clients or witnesses who are required to attend, include a similar caution to prevent the sharing of links
- Provide phone access only (i.e. call-in information) for public observers to limit bandwidth issues and prevent video footage of hearing participants from being recorded or broadcast
 - Ensure call-ins can be muted to prevent unauthorized disruptions
- Instruct counsel and self-represented litigants on how to refer neutrally to hearing participants or other persons whose identity should be protected (see section 3.3 on publication bans for more information)



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3.2 High profile hearings

High profile hearings can attract significant interest from media and public observers. This includes certain criminal trials and sentencing hearings, matters of national interest, constitutional challenges to the law or, in the context of a state of emergency such as a pandemic, challenges to emergency measures enacted by public authorities.

Virtual technology can sometimes allow courts to accommodate a much higher number of observers in such hearings compared with in-person access, including people from other jurisdictions. For example, during the pandemic, the [Federal Court](#) saw approximately 1,000 observers, including journalists from across the country, tune into Zoom to view an injunction proceeding related to a gun-control case.

However, the higher the number and geographical scope of observers, the more difficult it becomes to conduct proper screening, prevent unauthorized disruptions, and identify and take action against any person who breaches the rules of access. Luckily, high profile hearings are usually scheduled sufficiently in advance to enable court personnel to coordinate and regulate access as needed to reduce risks. Many Canadian courts have opted to use a combination of different technological platforms or tools to suit their specific needs in such circumstances.

For high profile hearings, depending on available resources and the level of demand from public and media observers, consider implementing one or more of the following options.

Option A: Overflow facilities

Subject to space, technology and personnel being available, and public health orders permitting, courts can designate overflow facilities to enable observers to view proceedings being broadcast live and onscreen. Overflow facilities may consist of a separate room within a court facility, or an adapted space in other facilities. Since court personnel can observe persons present, they can easily monitor conduct and intervene to prevent any breaches of the rules, such as the unauthorized recording of proceedings. An example:

- A hybrid approach: During the pandemic, the Ontario Superior Court of Justice in Toronto set up screening rooms in a convention centre for public observers to safely view a multiple-murder trial related to a downtown van attack. Meanwhile, victims' families as well as media observers were given virtual access to the trial via Zoom.

Option B: Live webcast

Technology permitting, courts can opt to livestream a hearing online. However, this approach makes it next to impossible to regulate and enforce rules of access to hearings, such as prohibitions on recording and broadcasting proceedings. For this reason, this option may be most appropriate for appeal level courts who hear mainly legal submissions from counsel rather than witness testimony or other factual evidence. An example:



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- Throughout the pandemic, the Supreme Court of Canada has been livestreaming all of its hearings on the Court's website.

Option C: Personalized, virtual access links with different permissions for participants and observers, or pre-screening to disable interactive features for virtual observers

If the technology is available, courts can opt for a platform that can provide different permission levels for participants and observers through advance registration and personalized links, to reduce the need for individual screening and customizing of permissions on the day of the hearing. For example:

- The Zoom webinar feature allows only authorized participants to be seen and heard. However, since this function does not allow for private breakout rooms, consider additional measures as needed to enable counsel to consult with their client or a panel of judges to deliberate during the hearing. This could involve standing down the hearing and using a different platform or restricted meeting link to conduct confidential discussions.
- The WebEx platform includes a function to separate the gallery (observers) from participants.

If such technology is not available, courts should ensure that any interactive features for observers can be disabled to prevent unauthorized disruptions. This includes video, chat, screen sharing, and meeting reactions (emoji).

- The MS Teams platform enables the meeting organizer to have all or certain participants wait in the virtual lobby until admitted, and to disable their interactive features once they have been admitted.

If other options are unavailable or unsuitable to protect the privacy and safety of hearing participants or to prevent unauthorized disruptions, consider providing phone-in access only for observers, and ensure they can be muted by court staff.

3.3 Hearings involving a publication ban or other measures to protect someone's identity

Many types of hearings that are open to the public involve a publication ban or similar measures to protect the identity of a hearing participant or another person related to the case. These measures might be governed by law, practice directions or court order. For example, an accused youth in a criminal case, or spouses and children in a family case, are usually referred to only by their initials in hearing lists and written decisions. Certain victims and witnesses may also require protection. In some instances, the need to protect someone's identity may extend beyond their name and address and include other descriptors that, alone or combined with other information, could lead to identification of the person.

Protecting a person's identity requires advance planning and clear instructions to court staff, counsel and self-represented parties to ensure information is not disclosed inadvertently during



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a hearing that is open to the public. Enforcing such protections can be further complicated by the virtual setting. As such, if granting virtual access for members of the public and the media to a hearing in which a person's identity must be protected, consider the following practices as needed to prevent inadvertent or intentional breaches of privacy or personal safety:

- Establish a screening protocol to ensure any privacy or safety issues are identified in advance so that appropriate protection measures can be implemented
- In hearing lists, use only initials to identify the parties – for added security, make hearing lists available by request made to the registry rather than posting them on a website
- Provide links or access information to observers by phone or email, through registration, rather than by listing links or access information publicly on a website – indicate clearly that a publication ban applies, and what it covers
- Require an undertaking from each observer to respect the publication ban, to not disclose the identity of any participants or persons related to the case, and to not share the link or access information with any other person
- Reiterate the existence of a publication ban at the start and resumption of a hearing and the legal consequences of breaching this ban
 - If video access is provided, mention the publication ban in a virtual entry page, in a scrolling banner at the bottom of the screen, or as tile in the gallery view, or
 - Provide audio access only to prevent images of participants from being recorded and broadcasted (e.g. posted on social media) – allow accredited/recognized media to see video, subject to an undertaking not to record or broadcast any images of hearing participants
 - If audio access is also considered a risk, take additional steps to positively identify each observer, and verify with counsel whether they have any concerns
- Instruct court staff, counsel and self-represented parties on how to refer to a person whose identity must be protected during a hearing or in written submissions that will be made public, for example by using initials or roles (e.g. “the mother”, “the complainant” or “my client”)
- Require an undertaking from self-represented parties to respect the rules surrounding publication bans and how to refer to persons whose identity must be protected during a hearing
- Remove persons from the virtual platform for all or part of a hearing as required or justified by law or court order