



# The Advocates' Society La Société des plaideurs

September 22, 2023

VIA EMAIL

Rosemarie Juginovic  
Executive Legal Officer  
Office of the Chief Justice  
Ontario Superior Court of Justice  
Osgoode Hall  
130 Queen Street West  
Toronto, Ontario M5H 2N5

Dear Ms. Juginovic:

**RE: Public Access to Virtual Court Proceedings**

Thank you for your June 12, 2023 letter seeking The Advocates' Society's input on how the Ontario Superior Court of Justice can best implement public access to virtual court proceedings.

The Advocates' Society, established in 1963, is a not-for-profit organization representing approximately 5,500 diverse lawyers and students across the country, including approximately 4,500 in Ontario—unified in their calling as advocates. As the leading national association of litigation counsel in Canada, The Advocates' Society and its members are dedicated to promoting a fair and accessible system of justice, excellence in advocacy, and a strong, independent, and courageous bar. A core part of our mission is to provide policymakers with the views of legal advocates on matters that affect access to justice, the administration of justice, the independence of the bar and the judiciary, the practice of law by advocates, and equity, diversity, inclusion, and reconciliation with Indigenous peoples in the justice system and legal profession.

**I. The Advocates' Society's Report, *The Right to be Heard: The Future of Advocacy in Canada***

As you know, in 2020, The Advocates' Society struck a national Modern Advocacy Task Force to undertake extensive research, stakeholder consultation, analysis and deliberations regarding how court proceedings ought to be heard in Canada after the COVID-19 pandemic. The Modern Advocacy Task Force's Report, *The Right to be Heard: The Future of Advocacy in Canada* (the "Report", available in [English](#) and in [French](#)), was published in June 2021 and contains the product of The Advocates' Society's comprehensive work on this important issue.

A major recurring theme of the stakeholder consultations conducted by the Modern Advocacy Task Force is the ongoing importance of the open court principle to the justice system in Canada, even as the justice system evolves technologically.<sup>1</sup> As the Report observes,

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<sup>1</sup> Report, pp. 65ff.

For justice to be done, it must be seen to be done, both by the parties and the public. This means that we must have an open, transparent and fair court system, which allows for the participation and engagement of those who are involved in and affected by it. The open court principle is fundamental to public confidence in the administration of justice.<sup>2</sup>

Stakeholders consulted by the Modern Advocacy Task Force reported that virtual court hearings present both opportunities and challenges for the open court principle. Virtual proceedings “[create] an opportunity not only for greater public access, but also for the abuse of that access.”<sup>3</sup> On the one hand, many stakeholders shared their belief that virtual hearings accessible via the internet provide convenient and democratic access to the public, free from barriers such as travel and mobility concerns.<sup>4</sup> On the other hand, stakeholders had concerns about the security, privacy, and confidentiality of remote hearings. For example, stakeholders were concerned about the unauthorized capturing and use of recorded video or still images from remote proceedings by justice participants or the public, which is significantly easier online.<sup>5</sup> As the Report relates,

One stakeholder pointed out that the usual barriers to physical attendance in court — taking time off work, traveling, passing security, navigating the courthouse, and subjecting oneself to observation by parties and court staff — limited the public to only those most determined to attend. This created a natural “equilibrium” in which most cases could proceed in relative obscurity. Such a balance could be lost in what amounts to “televised” trials.<sup>6</sup>

We know the Ontario Superior Court of Justice is equally concerned with the maintenance of the open court principle in the era of digital justice, while mitigating any risks it presents. We are grateful for your timely consultation on how this principle must develop as our justice system evolves.

## **II. Implementing Public Access to Virtual Proceedings**

As per our April 3, 2023 submission to the Court regarding the Court’s guidelines to determine the mode of proceedings, The Advocates’ Society submits that where a proceeding would have been open to the public before the pandemic via public access to the courthouse, it ought to be equally open to the public when happening virtually.

The Advocates’ Society recommends that the Court proactively provide the public with links to all virtual proceedings that are not *in camera* or subject to other orders or protocols excluding the public or particular categories of individuals (for example, witnesses) from the courtroom. Just as the public does not need to seek permission to enter a courthouse, members of the public should not have to request links to court proceedings taking place in open court. The Advocates’ Society recommends that the Ontario Superior Court of Justice and Ontario Court of Justice Daily Court Lists website (<https://www.ontariocourtdates.ca>) provide links to virtual proceedings (perhaps under the ‘Room’ or ‘Appearance Type’ categories).

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<sup>2</sup> Report, p. 91.

<sup>3</sup> Report, p. 67.

<sup>4</sup> *Ibid.*

<sup>5</sup> Report, pp. 68ff.

<sup>6</sup> Report, p. 70.

The Advocates' Society acknowledges that there must be safeguards to ensure that judges can control their virtual courtroom as they would a physical courtroom and to avoid disruption of virtual hearings.

One such safeguard is continuing to require virtual attendees in court proceedings to acknowledge and agree to abide by the prohibition in section 136 of the *Courts of Justice Act* against recording a court hearing, before entering the virtual courtroom.<sup>7</sup>

In addition, while generally retaining the public's ability to attend court proceedings anonymously, judges and/or court registrars must be able to inquire as to the identity of spectators in virtual proceedings where appropriate to ensure the enforcement of certain orders, such as orders regarding *in camera* proceedings and witness exclusion.

The Advocates' Society further encourages the Court to take steps to minimize the risk of unwanted intrusions to virtual hearings, commonly known as "Zoom-raiding" or "Zoom-bombing". Our members have experienced these types of disruptions to virtual hearings in Ontario when Zoom coordinates have been posted publicly on an online docket. Spectators should not be able to turn on their cameras or microphones, or share their screens, unless specifically permitted to do so by a moderator. The Court may wish to consider providing the public with links to virtual proceedings that are "view-only" to avoid disruptions to the proceedings. For example, current technology allows virtual hearings to be broadcast via Zoom webinar or YouTube livestream rather than via sharing the link to a Zoom meeting, which minimizes the risk of disruption, and also allows more participants to watch the proceeding if it attracts a substantial public audience.

In addition, we recommend that the Court provide training to its court services and information technology staff so that best practices for virtual hearings are consistently implemented across Ontario; the training could include, for example, best practices for court staff's moderation of attendees' entry to and participation in virtual hearings and technological security techniques to prevent unauthorized entry.

We also suggest that the Court implement a process to ensure that its staff stays up-to-date on all technological developments in virtual hearing software that may be used to enhance the security of virtual court proceedings (e.g., the use of security settings and limitations that may be placed on the countries or regions from which attendees can join virtual meetings).

The Court may also wish to consult the policies, security protocols, and practices in other Canadian jurisdictions. For example, the Court of Appeal for British Columbia publicly broadcasts all of its in-person, remote, and hybrid appeal hearings via Zoom, subject to a list of exceptions, and publishes links to the public broadcasts on its website.<sup>8</sup>

Thank you for the opportunity to make these submissions. We would be pleased to answer any questions you may have.

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<sup>7</sup> We note that the Court of King's Bench of Alberta imposes a similar requirement on individuals attending remote hearings. See Court of King's Bench of Alberta, [Public & Media Access](#).

<sup>8</sup> See Court of Appeal for British Columbia, [Record and Courtroom Access Policy](#) (updated March 2023), Section 2.2 ("Broadcasting of Appeal Hearings by Video").

Yours sincerely,



Dominique T. Hussey  
President

**CC:** Vicki White, Chief Executive Officer, The Advocates' Society

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