

## COURT OF QUÉBEC GUIDELINES FOR SEMI-VIRTUAL HEARINGS

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The pandemic has affected judicial activities in a number of ways. One way is the quick pivot to virtual or semi-virtual hearings for certain types of cases.

This health crisis has enabled courts to give litigants and lawyers the option to remotely attend hearings or settlement conferences presided over by a judge. During the pandemic, this way of adapting judicial practice has allowed authorities to provide sound and efficient administration of justice while respecting public health guidelines.

This new technology, however, is not intended to fundamentally change the way justice is delivered, nor is it intended to replace hearings held in courthouses. It is a tool to better meet the needs of litigants and lawyers, without changing the way judges carry out their responsibilities.

For the reasons detailed below, the Chief Judge has directed that judges who preside over Court of Québec hearings or settlement conferences and any clerks who assist them must be physically present at the courthouse.

The second part of this document covers elements to consider when determining whether or not it is appropriate to use technological means to hold a hearing.

### 1. The Chief Judge's directive on semi-virtual hearings

- **Courthouses: physical places where “justice is served”**

In our democratic society, courthouses are the centre of judicial activities where judges exercise their functions by receiving litigants who come to exercise their rights. The public and the media also have access to the proceedings that take place in courthouses.

This principle forms the basis of the Court of Québec's position that technology may be used to hold semi-virtual hearings, i.e., where the judge and clerk are physically present at the courthouse. This option exists for the benefit of parties, lawyers, witnesses, and third parties who take part in remote hearings.

There are also other practical considerations that justify the Court's position.

- **Maintaining the rules of decorum**

Having the judge and clerk physically present at the courthouse helps maintain the rules of decorum, which some people might otherwise be tempted to relax since they may mistakenly associate the hearing with the kind of video meetings people commonly have in interpersonal relationships. Having the judge in the courtroom reminds litigants that the term “semi-virtual” applies to the courtroom and not the judicial hearing, which is real. The *Regulation of the Court of Québec* applies (CQLR, c. C-25.01, r. 9).

- **Access to technical support**

The quality of service provided to litigants must also be considered. The experience of a remote hearing should not depend, for example, on the quality of the bandwidth judges use outside the courthouse. They must have access to timely support if a technology issue arises. This support can be easily and effectively obtained if the judge and clerk are at the courthouse.

- **The volume of the Court’s judicial activities**

Similarly, the volume of court activity justifies having the judge and clerk present in the courthouse. Over the course of the day, the coordinator may adjust the responsibilities assigned to each judge to adequately use resources and meet the needs of litigants. The current format of court files (paper rather than digital) is another reason to have judges and clerks present in courthouses.

- **Judges’ safety**

The Court’s concern for the personal safety of judges is the final consideration. By having judges present in the courthouse, there is no risk that a third party might gain access to personal information about a judge from any indication as to their surroundings.

## **2. Criteria to consider when holding a semi-virtual hearing so as not to compromise its quality**

The Court of Québec has already discussed its general guidelines on how to hold hearings<sup>1</sup> according to its jurisdiction because, regardless of the will of the parties, certain types of cases do not lend themselves to technological constraints. These guidelines may differ according to regional rules of operation<sup>2</sup>.

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<sup>1</sup> In the physical presence of the parties or in a semi-virtual room.

<sup>2</sup> These guidelines are available on the Court’s website:

<https://courduquebec.ca/centre-de-documentation/covid-19>

That said, it is always up to the judge presiding over the hearing to determine whether it is appropriate to use technological means and, if so, how to use them and what conditions apply. The goal is to ensure the quality of the hearing and the services provided to the litigants as well as to comply with any legislative provisions on the use of technology<sup>3</sup>.

It is also useful to establish a non-exhaustive list of assessment criteria for judges to consider when deciding whether or not to use technological means to hold the hearing. This will also help litigants identify the specific elements of the case to submit for the judge to assess<sup>4</sup>:

- a) Maintaining the integrity and credibility of the courts and the judicial system, and public confidence in these institutions;
- b) The public nature of the proceedings or, in certain matters, the preservation of their confidentiality;
- c) The capacity of the courthouse's available physical facilities;
- d) The decorum required to ensure that the hearing runs smoothly;
- e) The importance of testimony in relation to the issues;
- f) The ability of the court to evaluate the evidence, both testimonial and documentary;
- g) The ability of lawyers to fully perform their duties;
- h) The ability of participants to communicate effectively with one another;
- i) The impossibility or difficulty of a party, witness, or lawyer to travel for any serious reason
- j) The balance of convenience for parties that disagree on the use of the proposed technology.

November 30, 2020

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<sup>3</sup> See in particular the *Code of Civil Procedure*, CQLR, C-25.01, the *Criminal Code*, R.S.C. (1985), c. C-46, the *Code of Penal Procedure*, CQLR, c. C-25.1 and the *Act to establish a legal framework for information technology*, CQLR, c. C-1.1, and the regulations derived from them.

<sup>4</sup> The exercise of proposing assessment criteria is based in part on principles set out in an Ontario guideline: Rules of Civil Procedure, R.R.O. 1990, regulation 194, s. 1.08.