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## Public Access to Online Hearings

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*The open court principle faced a significant challenge when courthouses closed their doors to limit the spread of COVID-19. The shift to online hearings in many jurisdictions generated new avenues for public access but also raised concerns for the privacy and security of individuals, and for the administration of justice. Building on existing principles and a review of the measures adopted by courts in Canada, the United Kingdom, the United States, and Australia during the pandemic, this paper seeks to identify best practices to preserve an appropriate balance between openness and competing interests in the online environment. It concludes that courts should improve the accessibility of their hearing schedules and their procedure for attending online hearings. It also concludes that no compelling reason prevents appellate courts from livestreaming their hearings and archiving video recordings online. By contrast, the more serious concerns for privacy and security inherent in trial hearings justify imposing minimal barriers upon access to limit the anonymity and disinhibition of online participants. At the trial stage, therefore, the public should be able to access online hearings upon providing basic personal information and an undertaking that they will abide by the applicable rules.*

*Le principe de la publicité des débats a été mis à rude épreuve lorsque les palais de justice ont fermé leurs portes pour limiter la propagation de la COVID-19. Le passage aux audiences en ligne qui s'est opéré dans plusieurs juridictions a ouvert de nouvelles voies d'accès pour le public, tout en soulevant des préoccupations pour la vie privée et la sécurité des justiciables et pour l'administration de la justice. S'appuyant sur les principes existants et sur un examen des mesures adoptées par des tribunaux au Canada, au Royaume-Uni, aux États-Unis et en Australie pendant la pandémie, cet article cherche à identifier les meilleures pratiques pour préserver un équilibre approprié entre la publicité et d'autres intérêts concurrents dans l'environnement électronique. Il conclut que les tribunaux devraient rendre plus accessibles leurs horaires d'audiences et leur procédure pour assister aux audiences en ligne. Il conclut également qu'aucune raison convaincante n'empêche les cours d'appel de diffuser leurs audiences en direct et d'archiver les enregistrements vidéo en ligne. En revanche, les enjeux de vie privée et de sécurité inhérents aux audiences de première instance justifient l'imposition de barrières minimales à l'accès pour limiter l'anonymat et la désinhibition des participants en ligne. À ce stade, le public devrait donc pouvoir accéder aux audiences en ligne après avoir fourni des renseignements personnels de base et s'être engagé à respecter les règles applicables.*

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*Introduction*

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*Introduction*

Court hearings are generally open to the public. Anyone may enter a courthouse, look at the hearing list, roam the hallways, sit in almost any courtroom—subject to some exceptions—and watch the parties and their lawyers present their arguments and the judge dispense justice. This broad freedom of access is one of the core aspects of the open court principle, which seeks to guarantee that justice will not only be done, but also “manifestly and undoubtedly *seen* to be done.”<sup>1</sup> In March 2020, however, that principle faced one of its greatest challenges in recent decades. The World Health Organization declared a coronavirus pandemic and governments shut down most public spaces. Courthouses were no exception: most of them also had to close for at least some time, and a while longer for non-urgent cases. Even when hearings resumed, the public often remained excluded due to strict health guidelines.

When it became clear that the pandemic would last months, if not years, justice institutions sought different ways to resume their operations. With their facilities still partly closed, they turned to audio- and videoconferencing technologies to hold remote hearings in which everyone—except sometimes the judge—appeared from their home or office. From the perspective of open justice, that shift created opportunities for renewed access, but it also gave rise to new challenges for the administration of justice and the privacy and security of litigants and witnesses.

In the context of in-person hearings, the tension between open justice and those competing interests is usually resolved by rules that resolutely favour openness. However, these rules are tempered by practical barriers

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1. *R v Sussex Justices ex parte McCarthy*, [1924] 1 KB 256 at 259 [*Sussex Justices*] [emphasis added]; cited more recently in *Cape Intermediate Holdings Ltd v Dring (Asbestos Victims Support Groups Forum UK)*, 2019 UKSC 38 at para 1 [*Cape*].

which indirectly protect those interests by making it more difficult or even impossible, for large segments of the population, to attend hearings. In this paper, I argue that the absence of similar barriers in the online context unsettles this delicate balance and increases the risks for privacy, security, and the administration of justice. I suggest that the current rules, as well as the measures implemented by various courts during the pandemic, are often inadequate to guard against these risks. Considering that online hearings are likely to continue after the pandemic, I identify best practices that courts should implement to harness the greater accessibility of online hearings while mitigating their negative impact on competing interests.

These proposals are threefold. First, courts could easily improve their informational transparency by posting hearing schedules weeks in advance and providing clear and simple instructions for members of the public who wish to attend online hearings. Second, the conditions for accessing those hearings should reflect the different concerns that arise at the trial and appellate levels. There is no compelling reason preventing appellate courts from livestreaming their hearings and providing video recordings to the public, save exceptions. However, the privacy and security concerns arising from the participation of witnesses and parties at trial may justify imposing some conditions on access at that level. These conditions may include a requirement to complete a registration form and undertake to abide by the rules of court, including for instance any prohibition on private recording or broadcasting. Third, courts should strive to harmonize their approach to make it easier for members of the public to navigate the justice system. Individuals may be interested in attending hearings in various courts, but they may be confused by their different approaches, which sometimes even vary among different branches of the same court.

The discussion is organized as follows. Section I reviews the open court principle, its application to in-person hearings, and how practical barriers protect competing interests. Section II describes how the shift to online hearings jeopardizes these interests by removing this “practical obscurity.” It then reviews the public access policies adopted by a range of common law courts during the first year of the pandemic, noting how most of them either unduly limit public access or, to the contrary, fail to account for the protection of privacy, security, and the administration of justice. Section III puts forward best practices that would allow courts to strike a more appropriate balance between these competing interests in the online environment.

### I. *The open court principle and access to in-person hearings*

The first step is to look at how the open court principle has been articulated in the past. Simply put, it provides that courts must do justice in public. This foundational principle, with roots in the French revolution and the English *Magna Carta*,<sup>2</sup> reflects the “fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.”<sup>3</sup> The courts of many jurisdictions have reaffirmed that principle in recent decades, in all types of disputes. In Canada, they have described it as a “hallmark of a democratic society,”<sup>4</sup> “the very soul of justice,”<sup>5</sup> the “security of securities,”<sup>6</sup> and a principle of “crucial importance in a democratic society.”<sup>7</sup> They have said that “the administration of justice thrives on exposure to light—and withers under a cloud of secrecy.”<sup>8</sup> Similarly, in the United Kingdom, the House of Lords has stated that “the inveterate rule is that justice shall be administered in open Court.”<sup>9</sup> In the United States, the Supreme Court has held that governments cannot “summarily clos[e] courtroom doors which ha[ve] long been open to the public.”<sup>10</sup> In Australia, the High Court has confirmed that “it is the essence of the State system of courts that, unless authorized by statute, the place where a State court sits to exercise its jurisdiction will be open to the public.”<sup>11</sup> These statements confirm that open justice has become “one of

2. Cécile Chainais, “Open Justice and the Principle of Public Access to Hearings in the Age of Information Technology: Theoretical Perspectives and Comparative Law” in Burkhard Hess & Ana Koprivica Harvey, eds, *Open Justice: The Role of Courts in a Democratic Society* (Baden, Germany: Nomos, 2019) 59 at 59; Jane Bailey & Jacquelyn Burkell, “Revisiting the Open Court Principle in an Era of Online Publication: Questioning Presumptive Public Access to Parties’ and Witnesses’ Personal Information” (2016) 48:1 Ottawa L Rev 143 at 150, online: <ir.lib.uwo.ca/fimspub/159> [perma.cc/3VMU-LLDZ].

3. *Sussex Justices*, *supra* note 1 at 259.

4. *Vancouver Sun (Re)*, 2004 SCC 43 at para 23 [*Vancouver Sun*]; cited more recently in *AB v Bragg Communications Inc*, 2012 SCC 46 at para 11 [*Bragg*].

5. *Canadian Broadcasting Corp v New Brunswick (Attorney General)*, [1996] 3 SCR 480 at 495, 139 DLR (4th) 385 [*CBC 1996*].

6. *Ibid.*

7. *Canadian Broadcasting Corp v Canada (Attorney General)*, 2011 SCC 2 at para 1 [*CBC 2011*]. See more recently *Sherman Estate v Donovan*, 2021 SCC 25 at paras 1, 30 [*Sherman Estate*].

8. *Toronto Star Newspapers Ltd v Ontario*, 2005 SCC 41 at para 1 [*Toronto Star*].

9. *Scott v Scott*, 1913 UKHL 2 at 445, [1913] AC 417, Earl Loreburn [*Scott*]. See also *Cape*, *supra* note 1 at paras 34, 36 (reiterating that “The requirements of open justice appl[y] to all tribunals...[and are] meant to apply across the board” at para 36); Sir Ernest Ryder, “Securing Open Justice” (Address delivered at the Max Planck Institute Luxembourg for Procedural Law & Saarland University in Luxembourg, 1 February 2018), online (pdf): <www.judiciary.uk/wp-content/uploads/2018/02/ryder-spt-open-justice-luxembourg-feb-2018.pdf> [perma.cc/SH65-SEZY] (the Senior President of Tribunals describing the open justice principle as being “of fundamental importance to democratic government” at para 1).

10. *Richmond Newspapers v Virginia*, 448 US 555 at 576 (1980) [*Richmond Newspapers*].

11. *Russell v Russell* (1976), 134 CLR 495 at para 11 (HCA) [*Russell*]. See also Marilyn Warren, “Open Justice in the Technological Age” (2014) 40:1 Monash UL Rev 45 at 45, online: <www.

the most pervasive axioms of the administration of justice in common law systems.”<sup>12</sup>

In practice, the open court principle has three main implications.<sup>13</sup> The first one is the ability of members of the public to access courtrooms and “attend [court] proceedings,”<sup>14</sup> also called “real-time transparency.”<sup>15</sup> Concretely, everyone is usually able to roam the hallways of courthouses and sit down in any room to watch hearings, subject, of course, to limits discussed in greater detail below. However, with the increasing importance of documents in judicial proceedings—including exhibits, expert reports, and written submissions—the observation of live hearings is rarely sufficient to truly understand a case. As a result, the second aspect of the open court principle is the presumptive accessibility of court information, including court records as well as hearing schedules, procedures, and decisions, also called “information transparency.”<sup>16</sup> Those two aspects, which allow interested parties to collect information about a case, are completed by a third one which consists of the ability to report on what happens in the courtroom, disseminate information about judicial

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monash.edu/\_data/assets/pdf\_file/0009/139842/warren.pdf> [perma.cc/48CZ-J57K]; *Dickason v Dickason* (1913), 17 CLR 50 (HCA) [*Dickason*] (“one of the normal attributes of a Court is publicity, that is, the admission of the public to attend the proceedings” at 51).

12. JJ Spigelman, “The Principle of Open Justice: A Comparative Perspective” (2006) 29:2 UNSWLJ 147 at 150, online: <www.unswlawjournal.unsw.edu.au/article/the-principle-of-open-justice-a-comparative-perspective/> [perma.cc/U4G5-FF48]. Of course, the principle also extends beyond the frontiers of the common law world, although the situation in other legal traditions exceeds the scope of this article.

13. For an overview of the three features, see e.g. Trevor CW Farrow, *Civil Justice, Privatization, and Democracy* (Toronto: University of Toronto Press, 2014) at 44-45.

14. Bailey & Burkell, *supra* note 2 at 167; Adrian Zuckerman, *On Civil Procedure: Principles of Practice*, 3rd ed (London, UK: Sweet & Maxwell, 2013) at para 3.10; Shauna Hall-Coates, “Following Digital Media into the Courtroom: Publicity and the Open Court Principle in the Information Age” (2015) 24 Dal J Leg Stud 101 at 104, 107, online: <digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1317&context=djls> [perma.cc/XP8W-B796]; Spigelman, *supra* note 12 at 151; Beverley McLachlin, “Courts, Transparency and Public Confidence: To the Better Administration of Justice” (2003) 8:1 Deakin L Rev 1 at 2, online: <www5.austlii.edu.au/au/journals/DeakinLawRw/2003/1.html> [perma.cc/RW5M-QCEQ].

15. Richard Susskind, *Online Courts and the Future of Justice* (Oxford: Oxford University Press, 2019) at 193-200.

16. *Ibid* (noting that at a minimum, the public should have access “to advance notice of hearings; to some kind of record of proceedings; to information about the parties and procedure involved, and the nature of the dispute; and to some details about case management decisions, the substance of the determination itself, and an explanation of the finding” at ch 19); the digitalization of courts holds many promises in that regard, see Ryder, *supra* note 9 at paras 39-40; Sue Prince, “‘Fine Words Butter No Parsnips’: Can the Principle of Open Justice Survive the Introduction of an Online Court?” (2019) 38:1 CJQ 111 at 113. See also Jo Hynes, Nick Gill & Joe Tomlinson, “In Defence of the Hearing? Emerging Geographies of Publicness, Materiality, Access and Communication in Court Hearings” (2020) 14:9 Geography Compass 1 at 4, DOI: <10.1111/gec3.12499>.

proceedings and, ultimately, discuss their form and substance.<sup>17</sup> This third aspect of open justice is inextricably linked with the protection of freedom of expression or free speech.<sup>18</sup>

The open court principle and its concrete implications serve two main objectives, which together reinforce the justice system's legitimacy and authority.<sup>19</sup> The first one is to ensure that courts remain accountable.<sup>20</sup> Open justice, as a "great antiseptic," encourages judges to act professionally knowing that any misstep is susceptible to being denounced in public.<sup>21</sup> In other words, it "keeps the judge...while trying[,] under trial."<sup>22</sup> Beyond the judiciary, it also keeps other actors in the judicial process accountable by encouraging lawyers to avoid any misstep and incentivizing witnesses to remain truthful, knowing that any lie could be disproved in public.<sup>23</sup>

The second main objective of the open court principle is to contribute to civic education. Members of the public cannot learn how courts work and how the laws under which they live are applied unless they see the judicial process in action.<sup>24</sup> This effect on civic education is particularly important in jurisdictions where courts shape public policy, especially (but not only) where they decide issues of constitutional significance.<sup>25</sup> By enabling public debate and criticism about the justice system, this educative effect further reinforces the accountability discussed above;<sup>26</sup> one

17. Hall-Coates, *supra* note 14 at 107; David M Paciocco, "When Open Courts Meet Closed Government" (2005) 29 SCLR 385 at 389, online: <digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1084&context=sclr> [perma.cc/3LTD-HN68].

18. Hall-Coates, *supra* note 14 at 114; *CBC* 1996, *supra* note 5 at 493; *Sherman Estate*, *supra* note 7 at paras 30, 39.

19. Bailey & Burkell, *supra* note 2 at 152; Warren, *supra* note 11 at 46-47; Sujoy Chatterjee, "Balancing Privacy and the Open Court Principle in Family Law: Does De-Identifying Case Law Protect Anonymity?" (2014) 23 Dal J Leg Stud 91 at 94, 98, online: <digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1308&context=djls> [perma.cc/3AY9-7ZJG]. See also *Vancouver Sun*, *supra* note 4 at para 25 (identifying the objectives of openness as public confidence, public understanding and legitimacy); McLachlin, *supra* note 14 at 7.

20. Hynes, Gill & Tomlinson, *supra* note 16 at 4; Kate Puddister & Tamara A Small, "Navigating the Principle of Open Court in the Digital Age: The More Things Change, the More They Stay the Same" (2019) 62:2 Can Public Administration 202 at 206, DOI: <10.1111/capa.12323>.

21. Ryder, *supra* note 9 at para 8. See *Cape*, *supra* note 1 at para 42. See also Bailey & Burkell, *supra* note 2 at 153; *R v Shayler*, 2002 UKHL 11 at para 21 [*Shayler*] (where the phrase "powerful disinfectant" is used).

22. Jeremy Bentham, *The Works of Jeremy Bentham*, ed John Bowring, vol 4 (Edinburgh: William Tait, 1843) at 316. Bentham's writing on open justice is cited in the following decisions: *CBC* 2011, *supra* note 7 at para 28; *AG (Nova Scotia) v MacIntyre*, [1982] 1 SCR 175 at 183, 132 DLR (3d) 385 [*MacIntyre*]; *Scott*, *supra* note 9 at 477 (Lord Shaw); *CBC* 1996, *supra* note 5 at 495.

23. Bailey & Burkell, *supra* note 2 at 153-154; *Edmonton Journal v Alberta (Attorney General)*, [1989] 2 SCR 1326 at 1358, 64 DLR (4th) 577 [*Edmonton Journal*].

24. Hynes, Gill & Tomlinson, *supra* note 16 at 4; Bailey & Burkell, *supra* note 2 at 151; Hall-Coates, *supra* note 14 at 109; *Edmonton Journal*, *supra* note 23 at 1337, 1360-1361.

25. See e.g. Farrow, *supra* note 13 at 47.

26. Hall-Coates, *supra* note 14 at 103; *CBC* 2011, *supra* note 7 at paras 1, 28-29; *CBC* 1996, *supra*

of the purposes of open justice “is to enable the public to understand *and scrutinise* the justice system of which the courts are the administrators.”<sup>27</sup> Lastly, there may be a “therapeutic value in letting the community know that justice has been served,”<sup>28</sup> a catharsis that is only possible if the doors of justice remain open.

The open court principle, while fundamental, is not absolute: competing interests may limit it in some circumstances. A series of exceptions found in statutes<sup>29</sup> or developed by courts on a case-by-case basis seek to strike an appropriate balance between those interests and open justice. As the Supreme Court of Canada suggests, these exceptions set aside the open court principle only when necessary to protect “social values of superordinate importance.”<sup>30</sup> Those values fall into four umbrella categories.<sup>31</sup>

First and most relevant for our purposes is the privacy interest of litigants and other individuals involved in the judicial process.<sup>32</sup> Those who participate in court cases often have no choice but to disclose sensitive personal information through testimony or litigation—in which they are legally bound to tell the truth. Mere embarrassment, humiliation, or a minor loss of privacy do not justify setting aside the open court principle.<sup>33</sup> However, privacy concerns may justify tailoring the publicity of hearings and court records when they amount to “an affront to the affected person’s dignity,” for instance when they “cause a loss of control over fundamental personal information about oneself,” or in other words one’s “biographical core.”<sup>34</sup> A concrete situation in which privacy prevailed over open justice is where a person convicted of sexual assault sought to reopen his case,

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note 5 at 494; *Edmonton Journal*, *supra* note 23 at 1337.

27. *Cape*, *supra* note 1 at para 37 [emphasis added, internal citations omitted]; see also at para 43.

28. Katherine Geldmacher, “Behind Closed Doors: Why the Federal Judiciary’s Decision to Keep Cameras Out of District Courts Was a Mistake” (2017) 30:4 *Geo J Leg Ethics* 753 at 755, citing *Richmond Newspapers*, *supra* note 10 at 556; McLachlin, *supra* note 14 at 6-7.

29. See e.g. *Criminal Code*, RSC 1985, c C-46, s 486 (allowing Canadian judges to close criminal hearings to the public).

30. *MacIntyre*, *supra* note 22 at 186-187; *CBC 1996*, *supra* note 5 at 503.

31. See e.g. *Cape*, *supra* note 1 at para 46. For a more detailed list, see *Dagenais v Canadian Broadcasting Corp.*, [1994] 3 SCR 835 at 882-883, 120 DLR (4th) 12 [*Dagenais*], but note that the list is not exhaustive: *Sherman Estate*, *supra* note 7 at para 42.

32. *Chainais*, *supra* note 2 at 62-63; Puddister & Small, *supra* note 20 at 207; *CBC 1996*, *supra* note 5 at 503.

33. *CBC 1996*, *supra* note 5 at 504; *MacIntyre*, *supra* note 22 at 185; *Sherman Estate*, *supra* note 7 at paras 2, 31.

34. *Sherman Estate*, *supra* note 7 at paras 7, 33, 71, 75. Even Jeremy Bentham cautioned centuries ago against the risks of publicity for privacy, noting that restrictions on the publicity of hearings could be justified among other things to protect “individuals and families from unnecessary vexation by disclosure of facts prejudicial to their honour”: Jeremy Bentham, *The Works of Jeremy Bentham*, ed John Bowring, vol 46 (Edinburgh: William Tait, 1843) at 360.



relying in part on information incriminating a third party; that third party successfully obtained a publication ban on his identity in order to protect his privacy.<sup>35</sup> Courts have also been willing to curtail open justice in the name of privacy to avoid disclosing someone's "sexual orientation, HIV status..., a history of substance abuse and criminality" or any information that would threaten their physical safety.<sup>36</sup>

Several other values can limit the open court principle. The second one is the protection of vulnerable people, including litigants in family and youth courts who may be particularly stigmatized by public proceedings, and victims of sexual assault who may suffer harm as a result of public and media attention.<sup>37</sup> For example, in *Bragg*, a teenager was seeking to obtain the identity of those who had cyberbullied her, in order to sue them for defamation.<sup>38</sup> The Supreme Court of Canada, allowing her to remain anonymous, noted that her privacy interests in the case were "tied both to her age and to the nature of the victimization she [sought] protection from."<sup>39</sup> It concluded that a partial curtailment of the open court principle was necessary to protect her, as a vulnerable person, from "objectively discernable harm."<sup>40</sup>

Thirdly, the open court principle may be limited where it would defeat the purpose of the case, for instance where trade secrets are involved and their disclosure would constitute a denial of justice, or in cases involving issues of national security. In *Sierra Club*, for instance, an environmental organization was seeking judicial review of the federal government's decision to provide funding to a Crown corporation for the construction and sale to China of two nuclear reactors.<sup>41</sup> The corporation sought to prevent the public disclosure of confidential documents containing technical information about the project's environmental assessment. Noting that the corporation would refuse to disclose the information sought absent a confidentiality order, because doing so would breach its contractual obligations, the Supreme Court of Canada concluded that without that

35. *R v Henry*, 2009 BCCA 86 at paras 11, 17.

36. *Sherman Estate*, *supra* note 7 at para 55 (citing *R v Paterson* (1998), 166 WAC 200 at paras 76, 78, 87-88, 122 CCC (3d) 254 (BCCA); *AB v Canada (Citizenship and Immigration)*, 2017 FC 629 at para 9; *R v Pickton*, 2010 BCSC 1198 at paras 11, 20). For a discussion of physical safety, see *Sherman Estate* (*ibid* at para 72).

37. Hynes, Gill & Tomlinson, *supra* note 16 at 3; Joseph Jaconelli, *Open Justice: A Critique of the Public Trial* (Oxford: Oxford University Press, 2002) at 160. See also *CBC 1996*, *supra* note 5 at 504.

38. *Bragg*, *supra* note 4 at paras 1-3.

39. *Ibid* at para 14.

40. *Ibid* at paras 15, 17.

41. *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at paras 3-9.

restriction on the open court principle, the purpose of the litigation would be defeated as the parties would be prevented from making their case.<sup>42</sup>

Lastly, judges may limit the openness of hearings based on the more general principle of the “administration of justice,”<sup>43</sup> for example when a hearing would degenerate into a “show trial”<sup>44</sup> or where open justice would discourage litigants from bringing claims or push them towards private dispute resolution mechanisms.<sup>45</sup> This consideration was discussed in *Bragg*, where the Supreme Court of Canada noted that “absent a grant of anonymity, a bullied child may not pursue responsive legal action” and therefore that limits on the open court principle were necessary to encourage disclosure and protect the administration of justice.<sup>46</sup>

From this discussion, we see that the analytical framework governing open justice aims to strike an appropriate balance between that important principle and other competing interests of social importance. Whether those interests justify limiting open justice in any given case is a contextual analysis. In Canada, the Supreme Court has developed a general test to analyze any proposed restrictions, which provides that they should only be granted when:

- (1) court openness poses a serious risk to an important public interest;
- (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
- (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>47</sup>

While the same test was not specifically adopted in the United Kingdom, the Supreme Court does refer to similar considerations when it decides on restrictions to open justice.<sup>48</sup> Concretely, those statements act as bulwarks against restrictions that would be broader than required. Judges may not necessarily close the hearing to the public, but they may adopt less restrictive measures including for instance a publication ban prohibiting

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42. *Ibid* at paras 49-51.

43. *CBC* 2011, *supra* note 7 at para 2; McLachlin, *supra* note 14 at 11.

44. Jaconelli, *supra* note 37 at 1.

45. Chainais, *supra* note 2 at 65; Karen Eltis, *Courts, Litigants, and the Digital Age: Law, Ethics, and Practice*, 2nd ed (Toronto: Irwin Law, 2016) at 67 [Eltis, *Courts*].

46. *Bragg*, *supra* note 4 at paras 23-24.

47. *Sherman Estate*, *supra* note 7 at para 38. See also *R v Mentuck*, 2001 SCC 76 at para 32 [*Mentuck*]; *Toronto Star*, *supra* note 8 (where the Court clarified that “the *Dagenais/Mentuck* test applies to all discretionary court orders that limit freedom of expression and freedom of the press in relation to legal proceedings” at para 7; see also at para 28).

48. *Cape*, *supra* note 1 at para 39.

anyone attending the hearing from disseminating information, or the redaction of documents entered into the record. In *Bragg*, for instance, the Court protected the teenager's anonymity but declined to order a publication ban, because the interests at play did not justify preventing the publication of "non-identifying content."<sup>49</sup>

Beyond those express limits, the practical barriers associated with in-person hearings also narrow the scope of the open court principle. Considering that hearings usually take place during work hours, most people cannot attend them unless their interest in the case is greater than their potential loss of revenue for missing a day of work. As Cory J wrote in *Edmonton Journal*, "[n]either working couples nor mothers or fathers house-bound with young children, would find it possible to attend court."<sup>50</sup> Physical barriers may also limit the ability of some individuals to attend hearings, for instance if doing so would entail significant transportation and accommodation costs.<sup>51</sup> Those practical limits often mean that public galleries in courtrooms remain almost empty, except for the few members of the public who have a direct interest in the case.<sup>52</sup>

Some may object that those practical limits make the open court principle little more than a facade. They may argue that it is not important to preserve the right of members of the public to attend hearings, given that only few people actually do so. They may also not bother with making courtrooms accessible, given that "[o]pening up the physical space of courts is of little use to the public if citizens cannot for reasons of time and resources attend the court proceedings."<sup>53</sup> However, those arguments are a call to action more than a reason to jettison the open court principle. Open justice remains important even if, in some cases, public attendance is low or nonexistent. As an author notes, even a gallery "littered with empty seats, emerges... as an important symbol of potential, if not always actual, public scrutiny,"<sup>54</sup> which contributes at the very least to reminding judicial actors of their accountability to the public.

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49. *Bragg*, *supra* note 4 at para 30.

50. *Edmonton Journal*, *supra* note 23 at 1340.

51. Similar barriers traditionally restricted access to court records, see Bailey & Burkell, *supra* note 2 at 169.

52. McLachlin, *supra* note 14 at 2. In practice, the media take on the role of reporting on cases of public interest: see Farrow, *supra* note 13 at 45. See also Puddister & Small, *supra* note 20 at 206, 209; Dana Adams, "Access Denied? Inconsistent Jurisprudence on the Open Court Principle and Media Access to Exhibits in Canadian Criminal Cases" (2011) 49:1 *Alta L Rev* 177 at 178, 180, DOI: <10.29173/alr130>; *CBC* 2011, *supra* note 7 at para 45; *Vancouver Sun*, *supra* note 4 at para 26; *CBC* 1996, *supra* note 5 at 496; *Edmonton Journal*, *supra* note 23 at 1346.

53. Puddister & Small, *supra* note 20 at 206 (note however that Puddister & Small do not ultimately adopt that position, arguing instead for greater public access to hearings, see at 219-220).

54. Emma Rowden, "Distributed Courts and Legitimacy: What Do We Lose When We Lose the

This “practical obscurity”<sup>55</sup> nonetheless has important consequences, both positive and negative, for the open court principle. On the positive side, it greatly reduces the risks for the interests of parties, witnesses, and others involved in the judicial process. In most cases, while proceedings are theoretically open to all, almost no one will attend them due to the above-mentioned barriers. The minimal dissemination of information in those cases limits the impact of open justice on the participants’ privacy and security, and on the administration of justice.<sup>56</sup> When a case generates public interest, these risks are more significant but, because of the same barriers, information is likely to be disseminated by journalists who, in accordance with their professional standards, generally strive to provide balanced information that will not harm those involved.<sup>57</sup> In short, practical obscurity indirectly protects interests that could otherwise compete with open justice, by limiting, as a matter of fact, the number of people who access information about judicial proceedings.

On the other hand, these practical barriers have a regressive impact because they limit attendance based on financial resources. Cory J’s reference to “working couples” and “mothers or fathers house-bound with young children” points to the fact that those who face significant constraints on their time and money are more likely to be prevented from attending in-person hearings.<sup>58</sup> By contrast, someone who can afford to take time off work, or even commission someone else to attend judicial proceedings in their stead, is more likely to have access to in-person

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Courthouse?” (2018) 14:2 L, Culture & Humanities 263 at 279, DOI: <10.1177/1743872115612966>.

55. The term “practical obscurity” is borrowed from previous works, see e.g. Bailey & Burkell, *supra* note 2 at 148; Karen Eltis, “The Judicial System in the Digital Age: Revisiting the Relationship between Privacy and Accessibility in the Cyber Context” (2010) 56:2 McGill LJ 289 at 303, DOI: <10.7202/1002368ar> [Eltis, “Judicial System”].

56. The extent of dissemination and the difference in that respect between in-person and online situations recently made their way into the test for determining whether a limit on open justice is warranted, the Supreme Court of Canada noting that “the seriousness of the risk [to competing interests] may be affected by the extent to which information would be disseminated without an exception to the open court principle” and that “courts should be sensitive to the information technology context, which has increased the ease with which information can be communicated and cross-referenced”: *Sherman Estate*, *supra* note 7 at para 80.

57. Puddister & Small, *supra* note 20 at 209-210 (referring to the “editorial oversight” that is lost when journalists tweet from the courtroom instead of publishing traditional news). See also Hall-Coates, *supra* note 14 at 121; Adams, *supra* note 52 (noting that the open court principle operates “on the assumption that the media will engage in fair and accurate reporting” at 189). In some cases, however, observers have criticized legal journalists for their “ignorance or recklessness in publishing or broadcasting news” resulting in a “distort[on] [of] the truth”: Canadian Judicial Council, *The Canadian Justice System and the Media* (Ottawa: Canadian Judicial Council, 2007) at 2, online: <publications.gc.ca/collections/collection\_2008/scc-csc/JU14-19-2007E.pdf> [perma.cc/LVP8-N3EW].

58. *Edmonton Journal*, *supra* note 23 at 1340.

hearings despite existing barriers. In other words, the practical limits on access to in-person hearings may help protect important interests beyond open justice, but there is little logic in achieving this goal through barriers that rely on arbitrary factors such as time and financial resources.

From this discussion emerges a picture that is perhaps more nuanced than what the case law initially suggests. While the open court principle is particularly strong and can only be limited when and to the extent necessary to preserve social values of superordinate importance, practical limits on the accessibility of physical courtrooms have tempered its force in practice. We can hypothesize that courts have perhaps felt confident in consistently reiterating the principle in the broadest terms possible, precisely because they knew that a “practical obscurity” mitigated the risks and abuse that could result from unrestricted access to judicial proceedings and court records.

## II. *The transition to online hearings and its impact on open justice*

### 1. *Online hearings and the loss of practical obscurity*

The “practical obscurity” which counterbalances the open court principle is, however, slowly vanishing. Even before the COVID-19 pandemic, courts had begun to experiment with the dematerialization of some aspects of their hearings.<sup>59</sup> For instance, it had become fairly simple and frequent to hear witnesses by videoconference when transportation was too costly or risky, for example in the case of incarcerated persons. Some courts had also already decided to livestream their hearings and publish video recordings on their websites. The Supreme Court of Canada, for instance, decided to do so more than a decade ago, in 2009, although other Canadian courts only infrequently provided livestreams or recordings of their hearings.<sup>60</sup>

The COVID-19 pandemic spurred that evolution. As the virus spread around the world, many courts were forced to close their facilities and

59. Hynes, Gill & Tomlinson, *supra* note 16 at 3.

60. In Ontario, for example, the Court of Appeal livestreamed its hearing in the *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 544, aff’d 2021 SCC 11. At the time, the livestream was described as “a rare opportunity” and an “exception” which was “the first time in more than a decade cameras” were allowed in the Court of Appeal: “Ontario’s top court allowing rare live stream of legal fight against carbon tax,” *CBC* (15 April 2019), online: <[www.cbc.ca/news/canada/toronto/ont-carbon-tax-livestream-1.5098061](http://www.cbc.ca/news/canada/toronto/ont-carbon-tax-livestream-1.5098061)> [perma.cc/Y8NP-KKXE]. Alberta took the same decision in a related case, with the media noting that it was “the second time cameras have been allowed inside a courtroom in the province”: Caley Gibson, “Cameras livestream Alberta Court of Appeal hearing on federal carbon tax,” *Global News* (2 December 2019), online: <[globalnews.ca/news/6245832/cameras-livestream-alberta-court-appeal-hearing-federal-carbon-tax/](http://globalnews.ca/news/6245832/cameras-livestream-alberta-court-appeal-hearing-federal-carbon-tax/)> [perma.cc/YL3Y-7QPT]. To my knowledge, the situation was similar in all provinces before the pandemic.

suspend their activities.<sup>61</sup> But when it became clear that the pandemic would last months or even years, they sought ways to hear cases without assembling in the same physical space. Using audio- or videoconferencing technologies such as Microsoft Teams, Zoom, Webex, or others, they began holding online hearings in which most, if not all participants, were attending from their office or home. This technological shift is not limited to the pandemic. Many courts have signalled that they plan to continue holding at least some hearings online or in a hybrid format, although the exact parameters remain to be determined.<sup>62</sup>

The pandemic and those technological changes have had a major impact on open justice. With the closure of physical courtrooms, the public and the media were excluded from the venues in which they had been able, until then, to watch judicial proceedings. On the other hand, the advent of online hearings reinforced the open court principle by making new modes of access available and removing many of the barriers that prevented people from attending hearings in person.<sup>63</sup> For example, if an online hearing is freely accessible, people may watch it during their breaks at work or even in the background while working. If hearings are recorded, they may take time in the evenings or on the weekends to watch cases of interest that they could not watch live due to their schedule. The possibilities are almost limitless.

This renewed potential for open justice transforms the nature of the public in the context of online hearings. In quantitative terms, the potential audience of online hearings is much broader as it includes “an indeterminate public...without borders, capable of attending a ‘digital’ trial, made available online, at any time of the day or night.”<sup>64</sup> The number of people who may gain access to the information shared in judicial proceedings is thus significantly higher. In qualitative terms, the online environment changes the public by affording them a degree of anonymity that is not available in person. While in-person attendees usually do not have to identify themselves unless the presiding judge asks them to do so, they remain visible and thus potentially identifiable by the parties or other attendees. By contrast, online attendees, depending on the technology

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61. In some jurisdictions, authors were observing even before the pandemic that courts were closing in large numbers and dispute resolution moving more and more online: see e.g. Hynes, Gill & Tomlinson, *supra* note 16 at 2 (discussing specifically the Magistrates’ Courts in the United Kingdom).

62. See e.g. Joe McIntyre, Anna Olijnyk & Kieran Pender, “Civil Courts and COVID-19: Challenges and Opportunities in Australia” (2020) 45:3 *Alt LJ* 195, DOI: <10.1177/1037969X20956787> (the pandemic “has affected a cultural shift in the profession, such that virtual hearings are likely to continue as a standard feature of legal practice in the post-COVID context” at 196).

63. *Ibid* at 197-199.

64. Chainais, *supra* note 2 at 62.

used, can remain faceless black boxes on a screen, identified only by a pseudonym that may be invented. This increased degree of anonymity can reduce the inhibition that they would normally feel when interacting with other persons in a physical environment, and this disinhibition may in turn increase the risk of abuse.<sup>65</sup>

These different features of the online public, which stem from the disappearance of “practical obscurity” in the online context, undermine in many ways the de facto protection of privacy and security that exists in person.<sup>66</sup> For example, members of the public can now watch part of a hearing and report on it on social media, potentially distorting the facts or the legal issues and creating multiple conflicting narratives.<sup>67</sup> Even when no distortion occurs, social media allow individuals to “inexpensively transmit information” at a very fast pace “and potentially reach large audiences in a way that would have been near impossible in the pre-internet era,” which may result in the disclosure of potentially sensitive personal information about witnesses and litigants to a much broader public.<sup>68</sup> In turn, this greater availability of personal information about litigants and witnesses, including their identity, increases the risk that they will receive threats in sensitive cases. In the wake of 9/11, for example, an accused was harassed and threatened online after the United States District Court for the Eastern District of Virginia decided to broadcast its proceedings.<sup>69</sup> Similar risks may arise in a wide range of cases.

Beyond these new risks for the privacy and security of individuals involved in the judicial process, online hearings also create new challenges for the administration of justice. When attendees remain anonymous and the technology is not carefully chosen to control what they can do, they may disrupt the proceedings through verbal or written comments, with complete impunity. In a recent bail hearing that attracted considerable attention due to its political dimension, for instance, an Ontario judge and the prosecutor faced dozens of derogatory comments from members of the public who disagreed with the arrest.<sup>70</sup> The same judge also became aware

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65. Bailey & Burkell, *supra* note 2 (“online participants can be both anonymous and invisible... result[ing] in an ‘online disinhibition effect,’ which leads to increased interpersonal aggression” at 170). See also Eltis, “Judicial System,” *supra* note 55 at 295-296.

66. Bailey & Burkell, *supra* note 2 (noting with respect to court records that “[p]resumptive openness in an era of online publication could have devastating consequences for privacy, without substantially contributing to the fundamental underlying objective of the open court principle” at 148); Chainais, *supra* note 2 (since “technology allows an unlimited virtual audience to be reached [it] is indeed acting as an echo chamber” at 63); McLachlin, *supra* note 14 at 3-6.

67. Puddister & Small, *supra* note 20 at 210; Hall-Coates, *supra* note 14 at 131-135.

68. Puddister & Small, *supra* note 20 at 210.

69. Eltis, *Courts*, *supra* note 45 at 66 (referring to *United States v Moussaoui*).

70. Aedan Helmer, “It’s not meant to be a circus’: Convoy bail hearings testing virtual court

that members of the public were livestreaming the hearing, but due to their anonymity, could not easily prevent it or charge them for contempt of court. This example points to another risk of online hearings, namely the potential mass dissemination of information “mined” from them, which may affect both the integrity of the judicial process and the behaviour of parties and witnesses who may fear that what they say will be published online.<sup>71</sup>

This tension between the opportunities created by online hearings and their potential costs raises questions regarding when, how and under what conditions courts should allow the public to access online hearings. There has been a wide range of responses. This diversity of approaches warrants further study to explore: (1) whether and how courts have preserved the open court principle in the context of online hearings; and (2) whether and how they have tried to maintain some limits with a view to protecting competing interests including privacy, security, and the administration of justice.

To answer these questions, I have examined the policies and directives of a number of courts dealing with public access to their online hearings. The objective of this review is to explore the range of solutions implemented thus far, to see whether there are any discernible trends, and to assess those solutions critically in light of the principles set out above in order to identify best practices. The following subsections present the methodology of that review (2) and a summary of the results (3). Table 1, at the end of this paper, provides further details on each court’s approach and should be consulted by readers who prefer a more granular view.<sup>72</sup>

## 2. Methodology

This review covers a sample of courts in selected common law jurisdictions, i.e. Canada, the United Kingdom, the United States, and Australia. Other jurisdictions could have been reviewed as well, but this survey is not meant to be exhaustive, considering that its purpose is to illustrate a range of possible approaches to public access to online hearings and not to draw quantitative conclusions on their prevalence. The focus is on common law

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capabilities and courtroom decorum” *Ottawa Citizen* (7 March 2022), online: <[ottawacitizen.com/news/its-not-meant-to-be-a-circus-convoy-bail-hearings-testing-virtual-court-capabilities-and-courtroom-decorum](http://ottawacitizen.com/news/its-not-meant-to-be-a-circus-convoy-bail-hearings-testing-virtual-court-capabilities-and-courtroom-decorum)> [perma.cc/D5RQ-2FM6].

71. Amy Salyzyn, “‘Trial by Zoom’: What Virtual Hearings Might Mean for Open Courts, Participant Privacy and the Integrity of Court Proceedings” *Slaw* (17 April 2020), online: <[www.slaw.ca/2020/04/17/trial-by-zoom-what-virtual-hearings-might-mean-for-open-courts-participant-privacy-and-the-integrity-of-court-proceedings/](http://www.slaw.ca/2020/04/17/trial-by-zoom-what-virtual-hearings-might-mean-for-open-courts-participant-privacy-and-the-integrity-of-court-proceedings/)> [perma.cc/G3NW-V3JY].

72. The data and links to data sources are available online at: [perma.cc/UF2R-LELD].



jurisdictions to align with the principles discussed in the first part of this paper.

At the outset, a few notes are in order to define the scope of the inquiry. First, it is limited to the main courts in each jurisdiction, including the apex court, most appellate courts, as well as courts of general jurisdiction, but excluding most inferior and specialized courts and tribunals. In Canada for example, the review focuses on courts at the federal level and in the ten provinces and, within those jurisdictions, on superior courts (including courts of appeal) and provincial courts of general jurisdiction. It does not extend to the three Canadian territories nor to specialized courts and administrative tribunals.

Second, the review focuses on measures dealing with the public's access to online hearings. It excludes measures specifically aimed at providing access to the accredited media. It also excludes measures governing in-person access to hearings, which continues to be possible in some jurisdictions for hearings held entirely in person or in a hybrid format, i.e. with some participants attending in person and others remotely.

Third, the review reflects the information available on the websites of the relevant courts and governments. Other means of accessing online hearings may be available to the public but not publicized online. For example, even when there is no formal procedure for access, someone may successfully call the court's registrar and obtain a link to a hearing. The review excludes such informal mechanisms and focuses on what is available to the public via online channels only.

Fourth, and relatedly, the review covers not only access itself, but also peripheral issues of importance reflecting both real-time transparency and information transparency.<sup>73</sup> It deals more specifically with three aspects: (1) the availability of information about hearings themselves (i.e. case lists or court dockets); (2) the availability of information about the procedure for access; and (3) the procedure itself and the extent to which it maintains access. This three-pronged inquiry mirrors the reality that in order to access online hearings, the public must not only have the right to attend but must also be provided with the information necessary to exercise that right. Without such information, the public's access to online hearings is little more than a facade.

Fifth, the pandemic and the measures adopted in response to it evolve quickly, as do the procedures for accessing online hearings. The review on which this paper is based was conducted in March and April 2021 and the

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73. See *supra* notes 15-16 and accompanying text.

data is accurate as of then, but it may have changed in the interim.<sup>74</sup> Despite the uncertainty, this review remains relevant, because it reflects a point in time when the pandemic was still ongoing, but courts had benefited from a full year to adjust their practices. Now, let me turn to the results of the review.

### 3. *Results*

The first observation is that all but three<sup>75</sup> of the courts reviewed are currently holding at least some of their hearings online, although the extent of that phenomenon varies from one jurisdiction to another. Two general trends emerge. First, it seems that courts located in less populated or more rural jurisdictions tend to hold fewer online hearings than courts located in populated jurisdictions with more urban areas. In Canada, for instance, most provinces use online hearings extensively, except in some smaller provinces such as New Brunswick, where in-person hearings remain more frequent. Similarly, in the United States, while California uses online hearings extensively, Nebraska does not use them at all. And in Australia, while Victorian courts appear to work remotely in most cases, the courts of Western Australia do not. The data alone cannot explain that trend, but some hypotheses might include the availability of technology and internet access in rural communities, or simply the fact that those jurisdictions are less affected by the pandemic and can safely continue to hold in-person hearings instead of online hearings.

The second trend that emerges is that appellate courts tend to use online hearings more frequently than trial courts. This phenomenon can be observed in the four countries studied, except in Australia, where the Federal court (a trial court) holds only online hearings, while the High Court (the apex appellate court) holds them only in exceptional circumstances. Again, we can only hypothesize on the reasons for that trend, but it may reflect the fact that appellate courts usually do not hear witnesses, in contrast to trial courts, which simplifies the logistics of online hearings. In fact, some trial courts, for example the British Columbia Supreme Court and the Alberta and Saskatchewan Courts of Queen's Bench, specifically indicate that they do not hold online hearings in cases involving testimonies. However,

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74. Permalinks to all sources are on file with the author and available online at: [perma.cc/UF2R-LELD]. While some examples are given below, most sources are not hyperlinked in this article directly for reasons of brevity.

75. The exceptions being the three Nebraskan courts reviewed, i.e. the Supreme Court of Nebraska, the Nebraska Court of Appeals and the Nebraska District Court. The Australian Federal Court and the District Court of Western Australia appear to hold online hearings only exceptionally.

others like the Manitoba Court of Queen’s Bench hear all cases remotely, including those involving witnesses.

In the online context, one important piece of information that members of the public must obtain in order to connect to online hearings is the schedule of hearings. In the physical environment, members of the public would usually peruse schedules posted on billboards in the courthouse or at the clerk’s office. With very few exceptions—namely the trial courts of Alberta, Saskatchewan and Prince Edward Island, and the Provincial Court of Manitoba—all courts reviewed as part of this study now post their case lists online. However, they vary greatly in how early they do so. Some courts post a daily case list only a few hours in advance, while others post their case lists a day or two in advance, or as soon as a case is scheduled, which may be weeks or months in advance. Again, a distinction emerges between appellate and trial courts, the former usually publishing their case lists much earlier than the latter.<sup>76</sup> This may simply reflect their caseload, which is generally lighter at the appellate level and thus may be easier to publish frequently and in advance. Aside from this trend, the variation between some jurisdictions may point to different policy decisions: for example, while Canada’s federal courts—at both the trial and appellate levels—publish hearing dates online months in advance, Ontario’s trial hearing lists are usually published online only a day in advance.

Once members of the public know which cases are heard by the court, they must be informed of the procedure for joining online hearings. Unfortunately, most courts do not provide clear and accessible information to the public on their website, burying their instructions in notices or policies that are often prepared for and tailored to the legal profession.<sup>77</sup> Some courts provide no information at all, leaving members of the public with the only option of calling clerk’s offices or registries to know whether they may attend a specific hearing. The most accessible examples are those where courts describe their procedure in a specific section of their website expressly designed for the public and/or on the court lists themselves.<sup>78</sup>

76. For instance, apex courts in all jurisdictions publish their case schedules at least a few weeks in advance, while many trial courts publish their case lists daily (British Columbia Supreme Court and Provincial Court, Ontario Superior Court of Justice and Court of Justice, High Court of England and Wales, District Court for the Central District of California, Australia Federal Court, and the Courts of Victoria and Western Australia).

77. See e.g. “Notice to the Profession, the Public and the Media Regarding Access to the Court Proceedings During the COVID-19 Pandemic” (19 February 2021), online (pdf): *The Courts of Prince Edward Island* <[www.courts.pe.ca/sites/www.courts.pe.ca/files/Notice%20re%20COVID%20Feb%202021.pdf](http://www.courts.pe.ca/sites/www.courts.pe.ca/files/Notice%20re%20COVID%20Feb%202021.pdf)> [perma.cc/5VGH-3T5B].

78. See e.g. Cour d’appel du Québec, “Salles d’audience virtuelles” (last visited 9 March 2021), online: <[courdappelduquebec.ca/salles-daudience-virtuelles/](http://courdappelduquebec.ca/salles-daudience-virtuelles/)> [perma.cc/GC6Q-3W4M].

The only discernible trend is that many appellate courts, especially apex courts,<sup>79</sup> provide clearer information than trial courts, although some of the latter have made significant efforts to make their procedures clearer and more accessible to the public.<sup>80</sup>

With respect to the possibility of access itself, very few courts limit access to online hearings for members of the public.<sup>81</sup> However, the procedure varies greatly from one court to another and between appellate and trial courts. There are essentially three models ranging from the most to the least open. First, some courts broadcast the video or audio feed of their hearings on their websites, which allows any person, anywhere, to watch them without any formality, registration, or prior request.<sup>82</sup> Second, some courts make their hearings freely accessible on their websites as well, but they require attendees to complete a registration form either in advance or upon access.<sup>83</sup> The simplest form is the standard one that any participant to Microsoft Teams or Zoom meetings must fill out with their name, but other forms require attendees to provide some personal information, such as their email address. They sometimes also ask attendees to undertake not to record or broadcast the proceedings. Third, some courts go a step further and require people who want to attend a hearing to email either the general address of the court or a specific address created for that purpose, and to provide some basic information before the court sends them the hearing link.<sup>84</sup> In some cases, courts reserve their discretion to deny those requests, without however specifying the criteria on which their decisions are based.<sup>85</sup>

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79. The Canadian Supreme Court, United Kingdom Supreme Court, and United States Supreme Court are exemplary in that regard.

80. Notably, the Ontario Court of Justice, the High Court of England and Wales, the District Court for the Central District of California, the District Court for the District of Nebraska, and the California Superior Court for San Francisco provide readily available information for the public on their websites.

81. The rare exceptions seem to be the District Court for the District of Nebraska, the High Court of Australia, and the courts of Western Australia.

82. Supreme Court of Canada, United Kingdom Supreme Court, England and Wales Court of Appeal, United States Court of Appeal for the 9th District, California Supreme Court, California Court of Appeal for the 1st District, Nebraska Supreme Court and Nebraska Court of Appeals.

83. Alberta Court of Appeal, Quebec's Superior Court and Court of Québec, and California Superior Court for San Francisco.

84. Canada's Federal Court of Appeal and Federal Court, British Columbia's Supreme Court and Provincial Court, Saskatchewan Court of Appeal, Manitoba Court of Queen's Bench, Ontario's Court of Appeal, Superior Court of Justice and Court of Justice, Quebec's Court of Appeal, Nova Scotia's Court of Appeal, Newfoundland & Labrador's Court of Appeal and Supreme Court, England & Wales's Court of Appeal and High Court, United States District Court for the District of Nebraska, Australia's Federal Court, and Victoria's Supreme Court and County Court.

85. For a criticism of that discretion, see Michelle Hamlyn, "A health check on open justice in the age of COVID-19: The case for the ongoing relevance of court reporters" *The Bulletin, Law Society of South Australia* 42:5 (June 2020) at 8, online: <[issuu.com/lawsocietysa/docs/lbsb\\_june\\_2020\\_digital](http://issuu.com/lawsocietysa/docs/lbsb_june_2020_digital)>

While there is no particular trend between jurisdictions, most trial courts seem to prefer the most restrictive option, i.e. the obligation for members of the public to request access in advance by email. In contrast, many appellate courts adopt the more flexible options, whether webcasts or freely accessible links to their online hearings that the public can access upon completing simple forms. As discussed in greater detail below, this enhanced accessibility may simply reflect the fact that those hearings raise fewer privacy and security concerns than trial hearings.

Courts use a wide variety of technologies to hold online hearings, including Microsoft Teams, Zoom, WebEx and, less frequently, Skype, GoTo Meeting, or WebRTC. Most courts who hold hearings by videoconference allow members of the public to watch the video feed and, therefore, to enjoy the same experience as participants in the hearing.<sup>86</sup> However, in a few cases, while the parties and lawyers participate by videoconference, the public is deliberately restricted to an audio feed which is either broadcast online or available by phone.<sup>87</sup> This restriction seems to be more popular in some United States jurisdictions, where a public and doctrinal debate has occurred in past decades over the benefits and potential risks of cameras in the courtroom.<sup>88</sup>

Lastly, a significant barrier to access remains the fact that hearings are held during work hours, even if they take place online. To lift that barrier, some courts have decided to record the video or audio feed of their

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h> [perma.cc/PX32-ZWHV].

86. In a few cases, courts hear parties and their lawyers only by phone and, therefore, can only make an audio feed accessible to the public. This is most notably the case of the United States Supreme Court. Some authors have criticized that solution, noting that “oral argument by phone is often a challenging endeavor—counsel cannot observe facial expressions of the judges to gauge reactions or to pause for a question”: Pierre H Bergeron, “COVID-19, Zoom, and Appellate Oral Argument: Is the Future Virtual?” (2021) 21:1 J App Pr & Pro 193 at 200-201, online: <journals.librarypublishing.arizona.edu/appellate/article/id/2213/> [perma.cc/C3X9-7SM2].

87. British Columbia’s Supreme Court, Ontario’s Court of Justice, Quebec’s Court of Appeal, Newfoundland & Labrador’s Court of Appeal and Supreme Court, United States Court of Appeal for the 8th District.

88. See e.g. Geldmacher, *supra* note 28 (criticizing the decision of the US Committee on Court Administration and Case Management not to recommend allowing cameras in federal district courts, and noting at 764 that “[a]lmost all states allow some level of camera access to state judicial proceedings”); Jonathan R Bruno, “The Weakness of the Case for Cameras in the United States Supreme Court” (2014) 48:2 Creighton L Rev 167, DOI: <10504/136497> (arguing “that the case for cameras in the Court is uncertain at best, and that Congress should defer to the Court’s judgment” at 169); Edward L Carter, “Supreme Court Oral Argument Video: A Review of Media Effects Research and Suggestions for Study” [2012]:6 BYUL Rev 1719, online: <digitalcommons.law.byu.edu/lawreview/vol2012/iss6/2/> [perma.cc/33HK-UUQS] (noting that “existing research suggests televising oral argument would provide some clear benefits as well as some detriments for the Court” but that “media effects research lends support for a conclusion that the positives outweigh the negatives” at 2012). Rule 53 of the Federal Rules of Criminal Procedure prohibits the taking or broadcasting of photographs and videos of criminal hearings in federal courts.

hearings and to make it freely accessible on their websites, even prior to the pandemic.<sup>89</sup> Those courts, mostly the apex courts of each country or state, generally prefer the video format, although the United States Supreme Court and Court of Appeals for the 8th District limit themselves to audio recordings. Some courts do not provide recordings of their hearings as a rule but may do so exceptionally in cases that generate an unusual amount of public and media attention.<sup>90</sup> Otherwise, recording or broadcasting by the media or members of the public is generally prohibited, but in some cases audio recordings may be obtained through the registry for a fee. It is worth noting that online hearings can be recorded with greater ease than in-person hearings, which require additional cameras and video equipment.

### III. *The way forward: Suggestions for future reform*

In the first part of this article, I emphasized the importance of maintaining an appropriate balance between the open court principle and competing interests such as the privacy and security of parties and witnesses, and the administration of justice. I noted how traditional rules conceived for in-person hearings were very broad but relied on practical barriers to achieve a delicate balance between openness and other interests. Because the online environment lifts these barriers and unsettles this balance, we must think of alternative ways to protect competing interests in that different context. The survey presented in the second part of this article shows that courts have implemented a range of solutions in that regard. I now turn to a critical assessment of these solutions in light of the principles described previously.

The first conclusion is that most courts can and should do better in terms of information transparency. First, they should make their case schedules (or court lists) available at least a few days and ideally a few weeks in advance, to give members of the public sufficient time to plan their attendance. In some cases, court lists are published only on the day of the hearing, which may prevent people interested in a particular case from attending because they cannot take a day off on such short notice, or because they may not consult the website on that particular day. Parties and their lawyers usually know at least a few days in advance that they are scheduled to appear before the court, and there is no compelling reason why that same information should not be made available to the general

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89. Supreme Court of Canada, United Kingdom Supreme Court, England & Wales Court of Appeal, United States Supreme Court, Court of Appeal for the 9th District, Court of Appeal for the 8th District, California Supreme Court, Nebraska Supreme Court and Court of Appeals, and Australia's High Court.

90. British Columbia Court of Appeal, Ontario's Court of Appeal, Nova Scotia's Court of Appeal.

public. Second, the procedure for attending online hearings is sometimes unavailable, or only available in notices that are buried in webpages destined to lawyers. Courts should explain clearly and in plain language the steps that members of the public should take if they want to attend online hearings.<sup>91</sup>

Those potential improvements to open justice come at very little cost. Creating a simple webpage that summarizes the procedure for attending online hearings in a way that is specifically targeted at members of the public is fairly simple and raises no concern for privacy, security, or the administration of justice. Publishing case lists in advance may require a greater level of investment and may encroach on the parties' privacy interests by telling the world in advance that they will be involved in a hearing on a specific date. However, those concerns remain minimal, as the only personal information that is generally provided on case lists is the name of the parties and, sometimes, the nature of the case. This infringement of privacy is quite limited and seems to strike an appropriate balance, especially when compared to the concerns authors have raised regarding the online availability of court records which generally contain more sensitive information such as social security numbers, dates of birth, tax records, etc.<sup>92</sup>

The second question that arises from our review is to determine the justifiable restraints on access to online hearings, and the practical limits that should be imposed on members of the public in that context. While the breadth of the open court principle might suggest that hearings should be as open as possible—for instance by broadcasting all hearings online and providing access to video recordings—that approach might raise concerns for the privacy and security of parties and witnesses. Online hearings are qualitatively different from in-person hearings, as members of the public do not face the same practical barriers limiting their access and, importantly, benefit from an unprecedented level of anonymity. As previously noted, online access does not require them to be in the public light in the same way, which might disinhibit them and encourage voyeurism and other

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91. See e.g. “Welcome to the Supreme Court of Canada” (last modified 28 February 2022), online: *Supreme Court of Canada* <[www.scc-csc.ca/home-accueil/index-eng.aspx](http://www.scc-csc.ca/home-accueil/index-eng.aspx)> [perma.cc/Y75G-CCDH]; Cour d’appel du Québec, *supra* note 78.

92. See Bailey & Burkell, *supra* note 2 at 167 (suggesting a reversal of the presumption in favour of access in the context of online records). It is interesting to note that the UK Supreme Court has addressed those concerns by reversing the usual presumption of access and requiring non-parties who want to access court records to “show a good reason why this will advance the open justice principle, that there are no countervailing principles...and that granting the request will not be impracticable or disproportionate”: *Cape*, *supra* note 1 at para 47.

undesirable behaviour.<sup>93</sup> While the privacy of litigants and witnesses was traditionally protected by practical barriers, no similar constraint exists in the online environment. There is a good argument, therefore, for operating a process of “translation” by which new measures are put in place to replicate, in the online context, the balance that existed in person between the open court principle and the competing privacy interests of litigants.<sup>94</sup>

Those measures should take into account the differences between appellate and trial litigation. Serious privacy and security concerns arise at the trial level, where witnesses and litigants are bound to truthfully share many details of their personal lives, sometimes in relation to traumatic events. Permitting unrestricted, anonymous access to online broadcasts or recordings of those hearings may expose individuals to greater harm than necessary to uphold the open court principle, and it may in fact be counterproductive by deterring people from participating in judicial proceedings.<sup>95</sup> At the trial level, therefore, measures should be implemented to mimic some of the practical constraints that exist in the physical environment. For instance, the requirement to fill a simple form asking for basic personal information (name, email address, and phone) may be sufficient to deter malfeasance by defeating the anonymity that generally attaches to the online environment. That form may also provide a good opportunity for courts to inform attendees of the applicable rules of procedure, for instance the fact that they may not interrupt the proceedings or record or broadcast them.<sup>96</sup> Together with the personal information of participants, that undertaking may make it easier for judges or court personnel to enforce the rules of procedure and decorum and protect the administration of justice. The requirement to call or email the court registry and provide similar information in order to obtain the link to a hearing may achieve the same objectives, but it can only work properly if sufficient human resources are available to deal with requests from the public in a timely manner. From a resource perspective, that solution may not be as effective as an automated process relying on a publicly available online form.<sup>97</sup>

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93. Bailey & Burkell, *supra* note 2 at 175-176; Hall-Coates, *supra* note 14 at 132.

94. Eltis, “Judicial System,” *supra* note 55 at 302; Bailey & Burkell, *supra* note 2 at 167, 182 (arguing, similarly, for maintaining “the same degree of *friction* in accessing” court records online, at 167).

95. Hynes, Gill & Tomlinson, *supra* note 16 at 6; Eltis, “Judicial System,” *supra* note 55 at 315-316.

96. The undertaking not to interrupt proceedings is not necessary when the technology used by the court allows the registration of public participants in a “webinar” format where they can see the proceedings without having the option to participate.

97. The Action Committee on Court Operations in Response to COVID-19 encourages trial courts to consider “whether to provide links or access information to the public by phone or email rather



Appeals take place in a very different context. In contrast to trials, they generally do not involve the presentation of new evidence, and even less frequently the hearing of witnesses. Furthermore, they usually focus on questions of law or mixed questions of fact and law and therefore do not address in detail the evidence presented at trial. For that reason, parties and witnesses rarely participate in appellate proceedings, even when they are present. As a result, appellate hearings are less likely to present significant privacy and security risks for those involved and there seems to be no compelling reason to impose limits on their public accessibility in order to maintain an appropriate balance between openness and competing interests.

To the contrary, the experience of many appellate courts shows that online broadcasts are perfectly appropriate in that context, ideally in a video format.<sup>98</sup> There is also no serious impediment to recording those broadcasts and archiving them online, allowing members of the public to watch them regardless of their own schedule.<sup>99</sup> It is true that the Supreme Court of Canada held in *CBC* (2011) that cameras could be restricted in Quebec courtrooms because of their disruptive potential for judicial proceedings and especially witness testimonies.<sup>100</sup> However, the circumstances were much different: it emerged in a context where journalists were very assertive—almost aggressive—and therefore truly disrupted hearings. The use of fixed cameras controlled by the court does not pose the same risks.

Lastly, regardless of the solutions ultimately adopted, there is value in striving for consistency. Members of the public may want to attend hearings in a number of different courts, and they may be confused if the procedures vary widely from one to the other, or even from one district to another within the same court. Judicial organizations such as the Canadian

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than by listing links publicly on a website,” without however considering the impact of this proposal on court resources and open justice: “Virtual Access to Hearings: Challenges and Solutions in Trial Courts” (last modified 12 October 2021), online: *Office of the Commissioner for Federal Judicial Affairs Canada* <[fja-cmf.gc.ca/COVID-19/Virtual-Access-Trial-Courts-Acces-virtual-tribunaux-eng.html](https://fja-cmf.gc.ca/COVID-19/Virtual-Access-Trial-Courts-Acces-virtual-tribunaux-eng.html)> [perma.cc/CG98-L7JU].

98. See Carter, *supra* note 86 (noting that video “may be able to create a more complete view of public events than print and other media” at 1737); see also at 1746. See also *CBC* 2011, *supra* note 7 (concluding that “the message conveyed by broadcasting the official audio recordings of hearings is not the same as one conveyed using another method of expression” such as video, at para 52); Bergeron, *supra* note 86 at 218.

99. However, recordings cannot replace livestreams, because they do not address “the right for the public to observe the hearing unfold in public, nor does it provide the same rigour in terms of scrutiny of the participants in a hearing”: Thomas de la Mare, “Coronavirus and Public Civil Hearings” (2020) 25:2 *Judicial Rev* 118 at 129, DOI: <10.1080/10854681.2020.1805868>.

100. *CBC* 2011, *supra* note 7 at paras 67-68, 73-74, 83.

Judicial Council may have an important role to play in that regard, by developing best practices and providing simple solutions to their members. However, the harmonization of procedures across courts and jurisdictions should not affect the presiding judge's ability to change the format of the hearing or impose limits in a particular case based on the concerns evoked in the first part of this paper, including the participants' privacy, their security, the risks for trade secrets or national security, or more broadly the administration of justice. Conversely, the judge and parties may agree to have a particular trial broadcast to the public given its nature and importance, for instance in cases raising questions of constitutional significance. The discretion of judges in that regard should be maintained in order to account for the specific nature and context of each case.

### *Conclusion*

Courts around the world quickly adapted their practices to the new reality caused by the coronavirus pandemic. Many hearings are now conducted online, with the parties and sometimes even the judge appearing remotely from their home or office. That format poses a challenge to the open court principle because it does not allow members of the public to enter a courtroom and watch the proceedings unfold. At the same time, it opens new opportunities for public access by allowing members of the public to watch hearings in the comfort of their home. Those opportunities may, however, come at a cost. Concerns for the privacy and security of litigants and witnesses, which justified some limits to the open court principle in exceptional cases, may become more serious in the online environment, where the audience is considerably broader and benefits from a disinhibiting anonymity that is unparalleled in the physical world. As a result, the delicate balance that had been achieved in the context of in-person hearings between openness and competing interests is unsettled, and it becomes necessary to consider new measures that would be able to maintain that balance in the online environment.

In 2020–2021, courts developed various solutions to achieve that goal, but their practices often fall short on three fronts. First, most courts lack information transparency with respect to their court lists and the procedures that members of the public must follow in order to access online hearings. Second, courts sometimes impose unwarranted limits on public participation, for example when they do not allow members of the public to attend online hearings or when they ask them to file requests by email in advance and reserve the right to refuse attendance at their discretion. Third, there is a wide discrepancy between the procedures of

different courts and districts, which may be unnecessarily confusing for members of the public.

Going forward, courts should address those issues and strive to achieve some degree of consistency in their practices. They should make information about hearings more accessible on their websites and prepare clear and simple information directed specifically at members of the public. They should also implement solutions that achieve a better balance between the open court principle and privacy and competing interests, having due regard to the specificities of appellate and trial hearings, respectively. In appellate matters, there is no compelling reason not to allow free and unrestricted access to video broadcasts and recordings of online hearings. In trial matters, however, the active participation of parties and witnesses, and the heightened privacy and security concerns that come with that participation, justify imposing minimal barriers on access. Generally, these barriers should take the form of a registration process in which attendees must provide some basic personal information and an undertaking that they will abide by the rules of the court. These simple measures are likely to increase the sense of responsibility of attendees and thus better protect the administration of justice.

This paper has focused on online hearings, but some of the best practices discussed above can also extend beyond that environment. The practice of some apex courts of broadcasting and sharing recordings of their in-person hearings could easily be extended to appellate courts. While archiving those recordings may require some additional infrastructure, the solutions offered by YouTube, for instance, provide an easy and cost-effective way to host videos, as the example of some courts in the United Kingdom and United States shows. Let us hope that courts will consider those options seriously and will continue to improve the ways in which they uphold the open court principle in new environments.

Table 1 – Public Accessibility of Online Hearings in Selected Courts

Country	Jurisdiction	Court	Level*	Online Hearings*	Case Lists	Procedure Available* <sup>‡</sup>	Access Allowed* <sup>‡</sup>	Prior Request	Mode of Access	Technology Used	Recording Available
Canada	Federal	Supreme Court	Appeal	All	Online, months in advance	Yes, website	Yes	No	Video	Livestream	Yes
		Federal Court of Appeal	Appeal	Most	Online, months in advance	Yes, notice	Yes	Yes, email to court	Video	N/A	No
		Federal Court	Trial	Most	Online, months in advance	Yes, website	Yes	Yes, email to court	Video	Zoom webinar	No
		Court of Appeal	Appeal	All	Online, weekly	Yes, website	Yes	No	Video	Zoom webinar	Exceptionally
	British Columbia	Supreme Court	Trial	Some	Online, daily	Yes, notice	Yes, limit on callers	Yes, email to court	Audio	Telephone	No
		Provincial Court	Trial	Some	Online, daily	Yes, policy	Yes, limit on callers	Yes, email to court	Video	Teams	No
		Court of Appeal	Appeal	All	Online, weekly	Yes, notice	Yes	Yes, registration form upon accessing	Video	Webex	No
	Alberta	Court of Queen's Bench	Trial	Most	No, registry	No	Possibly	Possibly	N/A	Webex	No
		Provincial Court	Trial	Some	No, registry	No	Possibly	Possibly	N/A	Webex	No
	Saskatchewan	Court of Appeal	Appeal	All	Online, monthly	Yes, notice	Case by case	Yes, email to court	Video	Webex	No
		Court of Queen's Bench	Trial	Some	No, registry	No	Possibly	Possibly	N/A	Telephone	No
		Provincial Court	Trial	Some	No, registry	No	Possibly	Possibly	N/A	Telephone	No

Country	Jurisdiction	Court	Level*	Online Hearings <sup>†</sup>	Case Lists	Procedure Available*	Access Allowed <sup>‡</sup>	Prior Request	Mode of Access	Technology Used	Recording Available	
Canada	Manitoba	Court of Appeal	Appeal	All	Online, months in advance	No	Possibly	Possibly	N/A	GoTo Meeting	No	
		Queen's Bench	Trial	Some	Online, months in advance	Yes, notice	Yes	Yes, email to court	Video	Teams	No	
		Provincial Court	Trial	Some	No, registry	No	Possibly	Possibly	N/A	Teams	No	
	Ontario	Court of Appeal	Appeal	All	Online, weekly	Yes, website	Yes	Yes	Yes, email to court	Video	Zoom	Exceptionally
		Superior Court of Justice	Trial	All	Online, a day in advance	Yes, notice	Yes	Yes	Yes, email to court	Video	Zoom	No
		Ontario Court of Justice	Trial	Most	Online, a day in advance (partial)	Yes, website	Yes	Yes	Yes, email to court	Audio	Zoom/WebRTC	No
		Court of Appeal	Appeal	All	Online, months in advance	Yes, website	Yes	Yes	Yes, email to court	Audio	Teams	No
		Superior Court	Trial	Most	Online, weeks in advance	Yes, notice	Yes	Yes	Unclear (none, or online form)	Video	Teams	No
	Quebec	Court of Quebec	Trial	Some	Online, weeks in advance	Yes, website	Yes	Yes	Yes, online form	Video	Teams	No
		Court of Appeal	Appeal	Some	Online, weeks in advance	No	Possibly	Possibly	Possibly	N/A	N/A	No
	New Brunswick	Queen's Bench	Trial	Some	Online, weeks in advance	No	Possibly	Possibly	Possibly	N/A	N/A	No
		Provincial Court	Trial	Some	Online, weeks in advance	No	Possibly	Possibly	Possibly	N/A	N/A	No

Country	Jurisdiction	Court	Level*	Online Hearings <sup>†</sup>	Case Lists	Procedure Available <sup>‡</sup>	Access Allowed <sup>§</sup>	Prior Request	Mode of Access	Technology Used	Recording Available	
Canada	Nova Scotia	Court of Appeal	Appeal	Most	Online, weeks in advance	Yes	Yes	Yes, email to court (except webcasts)	Video	Skype/Teams (except webcast)	Exceptionally	
		Supreme Court	Trial	Some	Online, weekly	No	Possibly	Possibly	Audio/Video	Skype	No	
		Provincial Court	Trial	Some	No, registry	No	Possibly	Possibly	Audio/Video	Skype	No	
		Court of Appeal	Appeal	All	Online, weeks in advance	Yes, notice	Yes, limit on callers	Yes, email to court	Video	N/A	No	
	Prince Edward Island	Supreme Court	Trial	Most	No, registry	No	Possibly	Possibly	N/A	N/A	No	
		Provincial Court	Trial	Most	No, registry	No	Possibly	Possibly	N/A	N/A	No	
	Newfoundland & Labrador	Court of Appeal	Appeal	Most	Online, weeks in advance	Yes, notice	Yes	Yes	Yes, email to court	Audio	Telephone	No
		Supreme Court	Trial	Most	Online, weeks in advance	Yes, notice	Yes	Yes	Yes, email to court	Audio	Telephone	No
		Provincial Court	Trial	All	Online, weeks in advance	No	No	Possibly	Possibly	N/A	N/A	No
		Supreme Court	Appeal	All	Online, weeks in advance	Yes, website	Yes	Yes	No	Video	Livestream	Yes
United Kingdom	England & Wales	Court of Appeal	Appeal	Most	Online, daily	Yes, website	Yes	Yes, email to court (except webcasts)	Video	Livestream or Teams or BI Meet Me	Yes, some cases	
		High Court	Trial	Most	Online, daily	Yes, court list	Yes	Yes, email to court	N/A	Teams	No	
	Federal	Supreme Court	Appeal	All	Online, weeks in advance	Yes, website	Yes	No	Audio	Audio / Telephone	Yes, audio only	

Country	Jurisdiction	Court	Level*	Online Hearings <sup>†</sup>	Case Lists	Procedure Available <sup>‡</sup>	Access Allowed <sup>§</sup>	Prior Request	Mode of Access	Technology Used	Recording Available	
United States		Court of Appeal for the 9th circuit	Appeal	All	Online, weeks in advance	Yes, website	Yes	No	Video	Livestream	Yes	
		District Court for the Central District of California	Trial	Most	Online, a day in advance	Yes, notice	Yes	No	Video	Zoom	No	
	Federal	Court of Appeal for the 8th circuit	Appeal	All	Online, weeks in advance	Yes, website	Yes	Yes	No	Audio	Telephone	Yes, audio only
		District Court for the District of Nebraska	Trial	Most	Online, weeks in advance	Yes, court list	Yes	Yes	Yes, email to court	Audio	Telephone	No
	California	Supreme Court	Appeal	All	Online, weeks in advance	Yes, website and notice	Yes	Yes	No	Video	Livestream	Yes
		Courts of Appeals (1st district)	Appeal	All	Online, weeks in advance	Yes, website	Yes	Yes	No	Video	Livestream	No
		Superior Court (San Francisco)	Trial	Some	Online, weeks in advance	Yes, website	Yes	Yes	Some registration forms	Audio/Video	Livestream or Zoom or phone	No
		Supreme Court	Appeal	None	Online, weeks in advance	Yes, website	Yes	Yes	No	Video	Livestream	Yes
	Nebraska	Court of Appeals	Appeal	None	Online, weeks in advance	Yes, website	Yes	Yes	No	Video	Livestream	Yes
		District Court	Trial	None	Online, weeks in advance	No	No	No	N/A	N/A	N/A	No

Country	Jurisdiction	Court	Level*	Online Hearings†	Case Lists	Procedure Available‡	Access Allowed§	Prior Request	Mode of Access	Technology Used	Recording Available
Australia	Federal	High Court	Appeal	Exceptional	Online, weeks in advance	No	No	N/A	N/A	N/A	Yes
		Federal Court	Trial	All	Online, daily	Yes, court list and notice	Yes	Yes, email to court	Video	Teams	No
	Victoria	Supreme Court	Appeal / Trial	Most	Online, daily	Yes, website	Yes	Yes, email to court	Video	Webex, Skype, or Zoom	No
		County Court	Trial	Most	Online, daily	Yes, website	Yes	Yes, email or registration	Video	Zoom	No
	Western Australia	Supreme Court	Appeal	Some	Online, daily	No	No	N/A	N/A	N/A	No
		District Court	Trial	Exceptional	Online, daily	No	No	N/A	N/A	N/A	No



Notes

- \* Some “trial” courts may hear appeals in limited cases (for example appeals from inferior courts or tribunals).
- † Those indicated “All” may allow in-person hearings where necessary.
- ‡ “Website” means that the procedure is available on an accessible webpage. “Notice” means that the procedure is only available in court notices or practice notes usually destined to the profession (and less accessible).
- § Those indicated “Yes” without restriction do not specify caller restrictions on their website, but they may still have technical limitations.