

September 27, 2023

Rosemarie Juginovic
Executive Legal Office
Office of the Chief Justice
Ontario Superior Court of Justice
Osgoode Hall
Toronto, Ontario M5H 2N5

Via Email: rosemarie.juginovic@ontario.ca

Dear Ms. Juginovic,

RE: CALL FOR INPUT REGARDING PUBLIC ACCESS TO VIRTUAL COURT PROCEEDINGS

I am writing to you on behalf of the Toronto Lawyers' Association ("TLA"). The TLA represents the interests of more than 3,700 members who practice law in all disciplines across the Greater Toronto Area. Our membership, and our Board of Directors, represents the full diversity of our profession in Ontario. Included among our members are many lawyers who practice regularly before the Superior Court of Justice (SCJ).

In your letter of June 12, 2023, you advised that the Office of the Chief Justice is seeking input on the following question:

*Should the **public** be provided unlimited access to attend any court matter that is heard virtually by publishing Zoom link information on the SCJ's website or should Zoom links continue to be made available only upon request by email to the Court? Or how should the public be provided access to attend a virtual hearing?*

The TLA's Perspective

The open court principle is a foundational element of our justice system. It is "one of the hallmarks of a democratic society" and distinguishes democracies from their authoritarian counterparts.¹ It fosters "public confidence in the integrity of the court system and understanding of the administration of justice."²

¹ *CBC v New Brunswick (A.G.)*, [1996 CanLII 184 \(SCC\)](#), [1996] 3 SCR 480, per [La Forest J](#)

² *Ibid*

At the same time, s. 136 of the *Courts of Justice Act* prohibits the audio and video recording of court proceedings by members of the public without prior judicial authorization. Violations of this section are punishable by a fine of up to \$25,000.00 or a term of up to six months imprisonment (or both).

The TLA believes that Canada's open court principle favours readily available public access to SCJ proceedings by Zoom, and that this access should continue to be facilitated by the Court. The TLA further believes that continuing to require members of the public to request the Zoom link information for a given proceeding provides the Court with some, albeit limited, means to deter and investigate violations of s. 136 of the *Courts of Justice Act*. While this process is not foolproof, it does preserve a record of individuals who have requested access to a proceeding that may be useful to investigators. Limited as it may be, this record would be lost if the Zoom links were posted on the SCJ website without the requirement of a prior email request.

The TLA encourages the Court to explore the use of both audio and video watermark technology that is currently available on Zoom videoconferencing systems.³ In the event of a violation of s. 136 of the *Courts of Justice Act*, this technology could potentially be used to identify the source of improperly recorded and disseminated proceedings. By adding watermarks that insert identifying information into a participant's video and audio feed, investigators may be better positioned to identify the source of unauthorized video and audio recordings. Indeed, this technology may - depending on the identifying information that can be stored in a watermark - obviate the requirement that individuals request Zoom links from the court by email and make unlimited access by publishing Zoom link information on the SCJ website more feasible.

Until the extent of the current videoconferencing technology's ability to identify the source of unauthorized recordings has been fully assessed by the Court, the TLA is of the view that the current protocol requiring a prior email request strikes a reasonable balance between the open court principle and the strictures of s. 136 of the *Courts of Justice Act* and should be preserved.

Further, the TLA believes that where appropriate, it is in the interests of justice that counsel receive a list of those individuals that have been permitted to remotely observe a given proceeding. This would enable counsel to alert the Court to potential violations of witness exclusion orders or any other potential interference arising out of a member of the public's remote attendance.

³ Information regarding this technology can be found here: <https://support.zoom.us/hc/en-us/articles/209605273-Adding-an-image-watermark> and <https://support.zoom.us/hc/en-us/articles/360021839031-Adding-audio-watermark>

Finally, in order to facilitate public access to virtual court proceedings, the TLA suggests that information regarding how to request access to virtual court proceedings ought to be prominently displayed on the Court's website. The TLA also proposes that clear instructions on how to request videoconference links to court proceedings should be displayed on the Daily Court Lists webpage.

Thank you for considering these comments. Our Executive Committee would be pleased to discuss these comments at your convenience, should you find additional consultation beneficial.

Yours very truly,

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke extending to the right.

Aitan Lerner
President
Toronto Lawyers' Association