COMITÉ DE

DÉONTOLOGIE POLICIÈRE

Policiers | Agents de protection de la faune | Constables spéciaux
Contrôleurs routiers | Enquêteurs de l'UPAC | Enquêteurs du BEI

Directive on the Manner in which Hearings are to be Held

Votre gouvernement

Québec

1. Background

The impact of the COVID-19 pandemic has led the Comité de déontologie policière (Comité) to accelerate the deployment of technology enabling virtual hearings. The easing of public health measures provides an opportunity to plan and implement a permanent directive setting out the Comité's guidelines on how hearings are conducted in order to ensure justice through human contact.

While holding virtual hearings significantly increases efficiency at several stages of the adjudicative process, following the example of other tribunals, the Comité acknowledges the importance of human interaction and in-person hearings for substantive issues.

Thus, as of October 11, 2022:

- The Comité will prioritize and convene in-person hearings for the following cases:

  -Files on the merits;

- The Comité will prioritize and convene virtual hearings for the following cases:

  -Preliminary exceptions;

  -Citations under section 230 of the Police Act[1] (Act);

  -Cases where the cited police officer refuses to be heard under section 221 of the Act;

  -Files on the merits/penalty;

  -Penalties.

Following the convening of a hearing, parties may, however, send a motivated application to the Comité to change the manner in which the hearing is to be held.

Except in exceptional circumstances, in-person hearings are held in the rooms provided for this purpose at the Comité's premises in Montréal and, for the other regions, in a room available at the nearest courthouse.

[1] CQLR, c. P-13.1

2. Objectives

The purpose of these guidelines is to establish and clarify the criteria used by the Comité to decide applications to change the manner in which a hearing is to be held.

These guidelines promote harmonized, consistent, and efficient processing of applications to change the manner in which a hearing is to be held at the request of a party.

3. Legal Framework

These guidelines are based on a series of legislative and regulatory provisions, including sections 1 and 19 of the Rules of evidence, procedure and practice of the Comité de déontologie policière[2] and sections 220 and 221 of the Police Act:

1. This Regulation applies to any citation referred to in section 195 of the Police Act (chapter P-13.1).

   Its purpose is to ensure the simple, flexible and expeditious processing of citations and related proceedings, in keeping with the principles of natural justice and the equality of parties.

19. The hearings of the ethics committee are held in Québec, Montréal or any other place determined by the ethics committee.

    The ethics committee may hold hearings by way of a conference call, videoconference or any other appropriate means of communication.

220. Upon receipt of the declaration, the chairman shall fix the date and place of the sitting. The clerk shall notify the parties by registered mail not less than 30 days before the date scheduled for the sitting.

221. The ethics committee must allow the cited police officer to be heard and to present a full and complete defence.

    If the police officer, although he was duly notified, does not present himself at the appointed time and has not given a valid excuse for his absence, or if he refuses to be heard, the ethics committee may hear the case despite his absence and render a decision.

4. Scope

These guidelines apply to any application to change the manner in which a hearing is to be held.

[2] CQLR, c. P-13.1, r. 2.1

5. Processing the Application

5.1 Principle

If a party files such an application, it is up to the administrative judge seized of the file to determine the manner in which the hearing is to be held and, if necessary, to determine the conditions of use.

In the event that the case is not yet assigned to an administrative judge, the application to change the manner in which the hearing is to be held may be evaluated by the Chair.

5.2 Form

A party who wishes to change the manner in which a hearing is to be held must submit a written application.

The party must send the application to the office of the Tribunal by e-mail and notify the other parties. An application may be submitted on consent of the parties.

No decision granting a change in the manner in which the hearing is to be held is made solely by the consent of the parties.

5.3 Time Frame

A party must submit its application to the Comité as soon as it becomes aware of the facts that it believes warrant such an application, but no later than 45 days before the scheduled hearing date, except in exceptional unforeseeable circumstances.

5.4 Content

The application must contain the following information:

1. The citation number;
2. Contact information for the party filing the application;
3. The hearing date;
4. The desired type of hearing;
5. The reasons justifying the application;
6. The consent or opposition of the other parties, if known.

5.5 Analytical Criteria for a Party's Application to Change the Manner in which a Hearing is to be Held

The application will be assessed in the light of the following criteria:

-The nature and importance of a testimony or the testimonies;

-The nature of the dispute and the Comité's ability to optimally weigh the evidence;

-The impossibility or excessive constraint on a party or a witness to be physically present at the hearing;

-The distance to the nearest courthouse;

-The affected community's expectations;

-The anticipated duration of the hearing;

-The parties' disadvantages regarding the use of technology;

-The availability of adequate technology for the parties;

-The consent or opposition of the other parties;

-The balance of convenience where the parties have a divergent position as to the manner in which the hearing is to be held;

-The orderly conduct of the hearing;

-The ability of counsel to fully assume their role;

-The necessary decorum to ensure the serenity of hearings;

-The presence of an unrepresented party;

-The existence of health constraints;

These criteria are neither exhaustive, restrictive, nor cumulative.

6. Decision

The decision to grant or reject an application to change the manner in which a hearing is to be held is part of an administrative judge's powers. The administrative judge who grants an application may impose any conditions and render any order deemed suitable to safeguard the parties' rights.

When a fully in-person hearing does not appear appropriate in a case on the merits, a hybrid hearing will be preferred to allow certain participants to appear physically in the hearing room and others to participate virtually. The presiding judge of the hybrid hearing and the assisting clerk perform their duties while being physically in the hearing room.

If circumstances so require, the Comité may, on its own initiative, at any time, change the manner in which a hearing is to be held. The Comité must inform the parties as soon as possible of any change.

These decisions are guided by the objective of ensuring the quality of hearings and service to the public.

7. Technical Support

Holding a virtual or hybrid hearing requires participants to have, at a minimum:

- An Internet connection;
- A computer (laptop or desktop) - tablets and cellphones may also be used;
- A microphone;
- Speakers;
- A camera (webcam).

During all virtual or hybrid hearings, the parties must ensure that they have timely access to technical support when a technical problem arises. It is the parties' responsibility to ensure that their witnesses have the necessary technical equipment to participate in the hearing.

8. Public Nature of Hearings and of Recordings

Following the open court principle, anyone may attend a hearing, regardless of the manner in which the hearing is held. Members of the public, including journalists, may attend, subject to certain exceptions.

To attend a hearing, a request must be made by email to the following address: comite.deontologie@msp.gouv.qc.ca.

The Comité publishes its hearing schedule on its website.

The Comité has issued a participant's guide for holding remote hearings (in French only). This guide is available on the Comité's website. Please review it before your hearing.

(https://comite.deontologie.gouv.qc.ca/fileadmin/comite/audience/Guide_du_participant_audience_a_distance.pdf)

Québec