

**Speech delivered by Chief Justice Marc Noël at
the Barreau de Montréal's Opening of the Courts**

September 9, 2021

Dear colleagues of the judiciary, members of the bar and distinguished guests.

First of all, I would like to thank you, Mr. Bâtonnier, for this opportunity to address the members of the Barreau de Montréal and the Quebec judiciary on the occasion of the 2021 Opening of the Courts. It is a great honour.

I have a lot to tell you, but little time to do it. I am therefore focusing my comments on a topical issue, perhaps the topical issue: The health crisis: what have we learned and what impact will it have on the judicial system in the long term?

What I have to say is from the perspective of a Court of Appeal whose proceedings are held without the appearance of witnesses. Courts of first instance face different challenges.

We have been submerged in the health crisis since March 2020. We therefore have a full year of judicial experience in dealing with the crisis, i.e.: from the fall of 2020 to the spring of 2021.

I share right away the conclusion that I have drawn from this experience: a Court of Appeal can operate adequately by way of virtual hearings using modern technology, and we have learned a great deal from this experience, but this way of proceeding is not the way of the future.

Faced with the health risks posed by the pandemic, lawyers in Quebec and across the country have made it clear to us that they would rather proceed remotely rather than not at all. This is why we have managed to operate at nearly 85% of our usual rate of operation using the Zoom platform. This remarkable transformation was achieved in a

matter of weeks. I would like to take this opportunity to thank the members of the Bar for the spirit of cooperation they have shown throughout the pandemic. Without you, we would not have been able to maintain our cruising speed.

One of the first challenges we faced when we moved to the virtual mode was ensuring that our hearings remained accessible to the media and the general public. We achieved this by posting our hearing schedule well in advance on our website and providing viewers with a simple user-friendly way to access the hearings. As a result, public participation was much higher than what we are used to seeing for in-person hearings. So, we were successful in maintaining public participation, and above all, we were able to prevent the judicial system from being paralyzed by the pandemic.

Although the experience will no doubt have a long-term impact, I do not believe that the way in which appeals are heard will change radically once the pandemic is over. Faced with the long hearings that

we had to hold via Zoom—3 or 4 hours and sometimes even 5 hours— all those involved experienced excessive fatigue at a level that was barely tolerable. Both judges and lawyers who shared the experience expressed the view that virtual hearings are suitable for simple cases that can be heard quickly, but that it is unrealistic to consider this way of proceeding for the complex cases that are typically heard by courts of appeal. Although virtual hearings have proved their worth and provide a viable alternative when we cannot proceed otherwise, most appeals will again be heard in-person as we return to more normal conditions.

In this regard, the hearing schedule that we published in early August for the fall 2021 session contemplates the possibility of gradually returning to in-person hearings. To this end, all of our courtrooms have been modified to ensure that they meet the most stringent health standards. However, as you know, since that time, the Delta variant has done its work and is again creating a great deal of uncertainty regarding our ability to quickly return to normal.

Our response to this evolving situation is to offer litigants every option; those who want to may appear in person, and those who are still apprehensive may appear remotely. We are therefore considering in-person, hybrid and completely remote sessions, depending on what the parties decide.

Before closing, I would now like to talk to you about an entirely different subject.

On June 1st of this year more than 250 judges, protonotaries, registry officers and staff members gathered virtually to mark the 50th anniversary of the Federal Courts. It was on June 1st 1971 that the Federal Court of Canada held its very first sitting. This landmark anniversary will be celebrated throughout the year. The Federal Courts' 50th anniversary Book, prepared with the assistance of 4 reputed law professors, including Martine Valois from l'Université de Montréal, will be launched on October 1st. Three webinars will follow, each dealing with jurisdiction particular to the Federal Courts; immigration, national

security and intellectual property. The celebrations will culminate in June 2022 with a two-day seminar in Ottawa followed by a gala evening and an international panel comprised of the Chief Justice of Canada, le très honorable Richard Wagner and the heads of the judiciary in Great Britain, France and Australia.

Finally, I cannot conclude my remarks without mentioning that our colleague, Associate Chief Justice Lucie Lamarre, is retiring after 28 years of loyal service at the Tax Court of Canada. I would like to thank Lucie for her close collaboration over the years and her important contribution to the development of the jurisprudence in Canadian tax law.

This concludes my remarks. I thank you for your time.