European Conference on Courts and Communication

International Legal Background of the Courts' Relationship with the Press

THE COURTS AND THE MEDIA: QUÉBEC AND CANADIAN PERSPECTIVES

It is a great honour for me to be here today and to have the opportunity to humbly share with you my experience as Chief Judge of the Court of Québec and president of Québec's judicial council.

My presentation is divided into two sections.

I will begin by discussing the legal framework governing the relationship between the courts and the media. These rules are based mainly on the *Canadian Charter of Rights and Freedoms* and common law and have been interpreted by the Supreme Court of Canada in various contexts over the decades. I will illustrate my remarks with a few examples drawn from case law.

In the second part of my presentation, I will address some current issues in Québec and Canada regarding the courts' external communications. I will also provide a few examples of recent measures the Court of Québec has taken to promote better public access to our judicial institution.

BRIEF INTRODUCTION TO CANADA'S JUDICIAL SYSTEM

Before delving into the heart of the matter, I will very briefly describe our judicial system. This quick overview will provide the necessary background for understanding current issues and debates in Québec and Canada.

In Canada, the Supreme Court is the appeal court of last resort. It sits in Ottawa, Ontario, and is composed of a chief justice and eight other judges, all appointed by the federal government. The *Supreme Court Act* requires that at least three judges be chosen from among Québec judges and lawyers. Appeals are generally heard by permission only, but the right of appeal exists in criminal cases where a judge expresses a dissenting opinion. The Supreme Court has jurisdiction in all areas of law, including constitutional, criminal, civil, family, and administrative cases.

In Québec, the Court of Appeal serves as the general appeal court and as such is the highest court in the province. The 19 judges currently serving were appointed by the federal government.

The Superior Court of Québec hears civil cases where the sum at issue is $70,000 (15,169,723 forints) or more and has jurisdiction over family matters such as divorce, support payments, and child custody. It also hears criminal cases with a 12 person jury. The Superior Court currently has 139 serving judges, who were also appointed by the federal government.

The Court of Québec, of which I have served as Chief Judge since October 21, 2009, is composed of 290 judges and 36 presiding justices of the peace, all appointed by the Government of Québec.

The selection process for judges underwent an in-depth review in 2012. The process consists of four steps: a call for nominations, formation of a selection committee, interviews, and submission of a report to the minister of justice. The judges are chosen from among lawyers who have been practicing for at least ten years.

The Court of Québec is currently made up of three divisions: the Civil Division, the Criminal and Penal Division, and the Youth Division.

Civil Division judges have jurisdiction over cases where the sum at issue is less than $70,000. This monetary jurisdiction will soon be raised to $85,000 (or 18,420,378 forints) by the government. Civil Division judges also hear small claims cases in which the parties are not represented by a lawyer and the sum at stake is $7,000 or less. This threshold will also soon be raised to $15,000 (or 3,250,655 forints).

Court of Québec judges hear the vast majority (approximately 98%) of criminal and penal cases in Québec. Presiding justices of the peace handle most applications for judicial authorization such as search warrants.

In the Youth Division, judges preside over trials of adolescents (children under 18) accused of criminal offences and cases concerning children whose safety or development is, or may be, at risk. They also handle all adoption cases.

The Court of Québec is active across the province of Québec in approximately 100 courthouses and points of service. An itinerant court regularly travels to Québec's Far North.

As of September 16, 2014, the Court of Québec has 286 serving judges, including 124 women (43%) and 162 men (57%).

I encourage you to visit the various court websites for a more complete picture of the judicial system in Québec and Canada.

1. A BASIC CHARACTERISTIC OF THE CANADIAN JUDICIAL SYSTEM: OPEN COURTS

a) A hallmark of a democratic society

The concept of open courts is deeply embedded in the common law tradition[1]. In Canada, openness is the rule and secrecy the exception[2].

For decades, all courts have forcefully reaffirmed the fundamental principle of public judicial proceedings, one of the hallmarks of a democratic society.

The Supreme Court of Canada has emphasized on many occasions that the open court principle fosters public confidence in the integrity of the court system and a greater understanding of the administration of justice[3]. It acts as a guarantee that justice is administered in a non-arbitrary manner, according to the rule of law[4].

Openness is also necessary to maintain the independence and impartiality of the courts: "Justice seen to be done is justice more likely to be done"[5]; "the openness of our courts is a principal component of their legitimacy"[6].

b) Freedom of expression and freedom of the press are protected by the *Canadian Charter of Rights and Freedoms*

The open court principle is inextricably linked to freedom of expression and freedom of the press. These two fundamental freedoms are protected by the *Canadian Charter of Rights and Freedoms*, which is enshrined in the Canadian Constitution:

> **2.** Everyone has the following fundamental freedoms: (…)
>
> (*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

These constitutional guarantees aim to permit full debate on public institutions, a vital condition of any democracy[7].

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[1] *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 SCR 480, par. 21.
[2] *Attorney General (Nova Scotia) v. MacIntyre*, [1982] 1 SCR 175, p. 185.
[3] *Ibid*. See also *Vancouver Sun (Re)*, [2004] 2 SCR 332, par. 23 to 25; *Toronto Star Newspapers Ltd. v. Canada*, [2010] 1 SCR. 721, par. 1 and *Canadian Broadcasting Corp. v. Canada (Attorney General)*, [2011] 1 SCR 19, par. 1 and 28.
[4] *CBC v. NB (A.G.)*, *Supra*, note 1, par. 22.
[5] *Named Person v. Vancouver Sun*, [2007] 3 SCR 253, par. 32.
[6] *Vancouver Sun (Re)*, *Supra*, note 3, par. 25.
[7] *CBC v. NB (A.G.)*, *Supra*, note 1, par. 23. See also *CBC v. Canada (A.G.)*, *Supra*, note 3, par. 2, 45 and 98.

The public has a right to be informed[8] and is free to express new ideas, opinions, and criticisms on the functioning of the courts and judicial proceedings[9].

A free and vigorous press, responsible for providing the public with accurate, impartial information on court proceedings, has the right to collect judicial information and disseminate news and other information as freely as possible[10].

The presence of journalists in public areas of courthouses has been authorized historically and still is today. In fact, it reinforces the values protected by the Canadian Charter[11]. It is only through the press that most people know what goes on in the courts[12]. If no journalists were present, the public's understanding of our justice system would depend on the tiny minority who attend trials, which would erode democratic debate, personal fulfillment, and the search for truth[13].

Recognizing the importance of public access to the courts does not create a right to attend court sessions. There may be a lack of space in certain circumstances, and members of the press and the public may be denied access to the courtroom[14]. Accommodations may be made, for example by retransmitting the trial in another room. This is what is being done for the sadly notorious Luka Rocco Magnotta case, which you have probably heard of[15].

That said, no right is absolute, and it is sometimes necessary to restrict freedom of expression and freedom of the press. The Canadian Charter guarantees rights and freedoms "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

So it is up to the state to justify the restriction of a protected right by

1) stating a pressing and substantial objective,

2) demonstrating the existence of a rational link between this objective and violation of the right, and

3) showing that the method selected is the least likely to violate the right and that its benefits outweigh its adverse effects.

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[8] *Vancouver Sun (Re)*, *Supra*, note 3, par. 26.
[9] *CBC v. NB (A.G.)*, *Supra*, note 1, par. 23.
[10] *CBC v. NB (A.G.)*, *Supra*, note 1, par. 23 to 26. See also *Vancouver Sun (Re)*, *Supra*, note 3, par. 26 and *CBC v. Canada (A.G.), Supra*, note 3, par. 28.
[11] CBC v. *Canada (A.G.), Supra*, note 3, par. 45.
[12] *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 SCR 1326.
[13] *CBC v. Canada (A.G.), Supra*, note 3, par. 45.
[14] *CBC v. NB (A.G.)*, *Supra*, note 1, par. 27.
[15] Radio-Canada, "La sélection du jury pour le procès Magnotta avance rondement", September 17, 2014.

As you may have guessed, the courts are responsible for this delicate task of balancing basic rights, and it is not uncommon for the debate to end up in the Supreme Court of Canada.

c) Two examples of this balancing act

Here are two examples of issues that have arisen in Québec and that the Supreme Court has addressed.

c.1) Photographing, filming, and conducting interviews outside courtrooms

A media group contested the constitutionality of certain rules and orders that limit photographing, filming, and conducting interviews to predetermined areas of Québec courthouses[16].

Briefly, sound or visual recordings of individuals in our courthouses have been prohibited since 2005, except in designated areas, which are indicated by pictograms.

It is also prohibited to harass or pursue people inside or at entrances to the courthouses, particularly with cameras and microphones. Everyone must comply with these rules, under penalty of action up to expulsion.

The locations of pictograms are determined, after consultation with the judiciary and public security officials, based on a number of criteria, including access to courtrooms, public and media access to judicial information, and order, serenity, and decorum in places where justice is administered. No line of sight to courtroom interiors is authorized.

In its 2011 ruling, the Supreme Court pointed out that as news gathering is an activity protected by freedom of the press, restrictions on photographing, filming, and conducting interviews contravene the Charter.

The Court concluded, however, that the limits imposed on freedom of expression are reasonable and justified in our free and democratic society, noting that:

- some accused persons or family or friends of accused persons had to be escorted by special constables because they were unable to enter or exit courtrooms;

- photographers and camera operators climbed onto furniture to take photographs or to film;

[16] *CBC v. Canada (A.G.)*, *Supra*, note 3.

- these activities accentuated the anxiety and stress witnesses felt when compelled to testify in court, which in the long run undermined the search for the truth;

- the impugned measures are a way to assure courthouse users that they will not be taken by surprise or harassed by journalists and that they will be interviewed, photographed or filmed only with their full consent;

- lawyers can hold discussions with their witnesses and with counsel for the opposing party in hallways adjacent to courtrooms without being disturbed;

- Another salutary effect of the impugned measures relates to the privacy of participants: when litigants participate in the justice system, they do not waive their right to privacy[17].

This practice of identifying areas for photographing, filming, and conducting interviews still exists in Québec although some changes have been made to the designated areas in response to requests from journalists. These procedures are generally respected and help prevent inacceptable behaviour, especially in high-profile cases.

c.2) Broadcasting of audio recordings of court proceedings

Another debate that arose in Québec concerned the broadcasting of official audio recordings of court proceedings (testimony, examinations, judgements, etc.).

In Québec, audio recording of court proceedings by the media is allowed, unless prohibited by the judge. Broadcasting such recordings is not permitted, however. Moreover, the *Regulation of the Court of Québec* stipulates that recording is prohibited in the Youth Division.

In a case that went all the way to the Supreme Court, the media contested the ban on broadcasting the audio recordings.

The Supreme Court ruled that such broadcasting is protected by the freedom of expression. However, here again, it considers that its restriction is reasonable and justified in our society given that:

- although the broadcasting of official audio recordings would add value to media reports and make them more interesting, the prohibition against broadcasting these recordings doesn't adversely affect the ability of journalists to describe, analyse or comment rigorously on what takes place in the courts;

[17] *CBC v. Canada (A.G.)*, *Supra*, note 3, par. 67, 68, 72, 81, 89, and 90.

- the recordings are, first and foremost, a means of keeping a record of such proceedings, and journalists should not use them in a way that would distort that objective[18].

The media is still allowed to record court proceedings as well as judges' rulings from the bench in order to facilitate journalists' work and increase the accuracy of their reports. However, the prohibition on broadcasting such recordings still stands and is generally complied with.

d) Discretionary powers of judges in courtrooms

Although open court proceedings are of vital importance in our society, the courts have the necessary discretionary powers to modulate or limit them under certain specific circumstances. Again, it is not a question of giving one right precedence over another, but of striking a balance between protecting the rights and interests of each party.

For example, the *Criminal Code of Canada* expressly stipulates that proceedings be conducted in open court. However, the judge may order the exclusion of all or any members of the public from the courtroom for part or all of the proceedings if he or she considers that such an order is in the interest of public morals, the maintenance of order, or the proper administration of justice. The fact that a situation may be shocking or embarrassing is not sufficient to justify closing the courtroom to the public[19].

The situation is different in the case of family matters and youth protection, where *in-camera* proceedings are the rule, although journalists may have access under certain conditions.

The courts also have to respond on a daily basis to requests for publication bans. Such orders can be issued only if they are necessary to prevent a serious risk to the proper administration of justice in the absence of other reasonable means of doing so. The court must ensure that the order's beneficial effects outweigh its adverse effects on freedom of expression, the right of the accused to an open and fair trial, and the efficient administration of justice[20].

The presumption that court proceedings should be open and that reporting on them should be uncensored is so strong and highly valued in our society that the judge must have convincing grounds for issuing a ban[21].

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[18] *Id.*, par. 84, 92, and 93.
[19] *CBC v. N.B. (A.G.)*, *Supra*, note 1, par. 41.
[20] *R. v. Mentuck*, [2001] 3 SCR 442, par. 32.
[21] *Id.*, par. 39.

It is generally up to the party who submits the request to justify displacement of the general rule of open proceedings[22].

The courts also have the power to supervise and protect their court records[23]. Media access to documents filed in evidence at a trial is a corollary of the open nature of the proceedings. However, the judge has sole responsibility for managing the court over which he or she presides and must decide how these documents are to be used to ensure the fairness of the trial, the serenity of the proceedings, and the proper administration of justice[24].

2. A FEW ISSUES IN QUÉBEC AND CANADA

I have covered some of the basic legal principles governing the relationship between the courts and the media.

I would now like to discuss several technological issues that are the subject of ongoing reflection by the courts.

a) Presence of cameras in courtrooms

The Supreme Court of Canada has permitted television coverage of all its hearings since the mid-1990s. The courtroom is fitted with fixed cameras that automatically focus on the speaker — whether counsel or a judge — without any disruption. CPAC broadcasts most of the Court's hearings in their entirety. Most of the hearings are now webcast live on the Court's website.

The Chief Justice of Canada made the following comments on this practice, while expressing reservations on its use in the lower courts:

> "The Supreme Court's experience with television and webcasting has been positive. Live webcasting, in particular, has opened the Court to many citizens across the country. However, this does not mean that other courts ought necessarily to follow our lead. Many of the concerns surrounding the broadcasting of court hearings do not apply to the Supreme Court. We hear no witnesses. With our fixed cameras, there is no possibility of disrupting the decorum of the Court, nor, given the nature of debate before the Court, any real risk of sensationalisation or trivializing the hearings. From our perspective, which is quite different from that of a trial court, I believe that the broadcasting of our hearings has contributed to public confidence in the Supreme Court of Canada[25]".

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[22] *Vancouver Sun (Re)*, *Supra*, note 3, par. 31.
[23] *A.G. (N.S.) v. MacIntyre*, *Supra*, note 2, p. 189.
[24] *Canadian Broadcasting Corp. v. The Queen*, [2011] 1 SCR 65, par. 12.
[25] Excerpts of a speech by the Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada, "The Relationship Between the Courts and the Media", January 31, 2012: http://www.scc-csc.gc.ca/court-cour/judges-juges/spe-dis/bm-2012-01-31-eng.aspx.

In Canada, the courts generally do not allow their proceedings to be broadcast. However, a few pilot projects have been launched recently.

For example, in Manitoba (one of Canada's ten provinces), a pilot project on the use of cameras in courtrooms was launched in April 2014[26]. This joint initiative by the Court of Appeal, the Court of Queen's Bench, and the Provincial Court of Manitoba involves only proceedings where no witnesses are heard.

To date, the media has broadcast a judge reading a decision to acquit someone of murder, an appeal of a murder conviction, and observations of lawyers on the appropriate sentence for convictions involving drugs and weapons.

Cases in specific courtrooms are broadcast, unless one of the parties convinces the court to prohibit or limit broadcasting. For cases held in these predetermined rooms, the media does not need to ask the court for permission to broadcast.

For the moment, the recordings are available on local media websites. Efforts are underway to post them on the Manitoba courts website and perhaps set up archives.

The Supreme Court of Nova Scotia is also considering a project on streaming trials live[27].

In 2011, the Chief Justice of the Supreme Court of British Columbia allowed video recording of the closing arguments of a case concerning the validity of the *Criminal Code*'s prohibition on polygamy. The recordings were streamed to the Internet with a ten-minute delay[28].

Québec's only experience with in-court broadcasting involved the Court of Appeal in 2000, where relatives of two biker gang members contested their conviction for murder. Only the legal arguments were broadcast, with no witness testimony, and interest appeared to be limited[29].

Ten years ago, a survey of judges and certain members of the legal community by the Court of Québec revealed that most judges did not approve of the

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[26] A description of the pilot project and guidelines on this subject are available online at http://www.manitobacourts.mb.ca/information-for-media/.

[27] CBC and the Canadian Press, "Nova Scotia judge impressed with live-tweeting from inside courts", July 28, 2014.

[28] CBC News, "Polygamy hearing arguments", http://www.cbc.ca/news/canada/british-columbia/polygamy-hearing-arguments-1.1012435, March 29, 2011.

[29] Droit-Inc, "Procès diffusé en direct : le Québec n'est pas rendu là," March 4, 2014; online at http://www.droit-inc.ca/article12175-Proces-diffuse-en-direct-le-Quebec-n-est-pas-rendu-la. See also, *Journal du Barreau*, "Une première expérience avait lieu à Québec, le 15 mars dernier – les caméras en Cour d'appel," Volume 32, Number 8, May 1, 2000; online at http://www.barreau.qc.ca/pdf/journal/vol32/no8/cameras.html.

presence of cameras in their courtrooms[30]. Would the results be the same today? Are we ready to consider occasionally broadcasting proceedings, for educational purposes for example?

It's hard to say, especially as our collective experience in broadcasting trials is relatively limited. However, we are following Manitoba's ambitious initiative with great interest.

b) Use of technology in courtrooms

Meanwhile, exponential growth in the use of social media and mobile devices as a source and means of communicating information is of particular interest. The use of these miniature yet powerful tools in courtrooms has been the subject of serious reflection in Québec and, I'm sure, across North America.

A survey of 800 members of the legal community in the United States recently published by the Conference of Court Public Information Officers clearly showed a change in attitude on the part of judges and judicial officers regarding the use of mobile devices and social media during judicial proceedings[31].

For example, last year 59% of the people surveyed thought that journalists should not be permitted to send tweets, text messages, or emails from courtrooms. In 2014, that figure dropped to 13%.

In Canada, there is no standard rule regarding the use of social media in court. Practices vary from one province to another.

Nevertheless, several courts have chosen to allow only lawyers and accredited journalists to send tweets and text messages from courtrooms (Provincial Court and Supreme Court of British Columbia[32], Saskatchewan courts, and Superior Court of Ontario).

Other courts are more permissive and allow the general public to tweet or send text messages discreetly, on the condition that they do not interfere with the recording system (Court of Appeal of British Columbia[33] and Manitoba courts). However, the judge has the power at all times to issue appropriate orders.

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[30] The Honourable Guy Gagnon, Chief Justice of the Court of Québec at the time, "Les juges et les médias", Château Frontenac, August 19, 2008; available on the Court of Québec website, http://www.tribunaux.qc.ca/c-quebec/CommuniquesDocumentation/fs_communiques.html.

[31] All the findings of this survey are available online at http://ccpio.org/wp-content/uploads/2014/08/CCPIO-New-Media-survey-report_2014.pdf.

[32] "Policy on Use of Electronic Devices in Courtrooms", September 17, 2012, online at **http://www.courts.gov.bc.ca/Court_of_Appeal/media/PDF/Policy%20on%20Use%20of%20Electronic%20Devices%20in%20Courtrooms%20-%20FINAL.pdf**.

[33] *Ibid*.

The Court of Appeal of Québec, the Superior Court of Québec, and the Court of Québec have harmonized their practices and agreed on guidelines, which have been in effect since May 2013.

Essentially:

- The presiding judge may issue any order necessary to ensure the maintenance of decorum, the serenity and proper conduct of a hearing.

- Witnesses and members of the public must always turn off their electronic devices within a courtroom and keep them turned off.

- Providing the decorum, serenity and proper conduct of a hearing and the courtroom's digital recording system are unaffected, an attorney, a party to the proceeding and a recognized journalist may:

  -have an electronic device turned on that is in the vibration or silent mode, without responding to push notifications or alerts;

  -use an electronic device for the purposes of a court file, such as to draft or consult notes, an agenda, doctrinal sources, legislation or jurisprudence.

It is prohibited at all times:

- to use or be in possession of any device that may interfere with the decorum or proper conduct of a hearing, to interfere in any manner with the digital recording system of a courtroom or otherwise to obstruct the course of justice;

- to place or answer a telephone call;

- to send or communicate text messages, observations, information, notes, photographs or audio or visual recordings from within a courtroom to outside a courtroom.

Reactions to these guidelines have been mixed. Not surprisingly, media representatives would like to be able to send tweets directly from the courtroom, whereas the guidelines specify that they can do so only from outside the courtroom.

However, we are continuing to think about this issue and it is possible that these guidelines will change in light of the experience of other jurisdictions.

c) Use of a trained jurist as resource person for the media: an example from the Supreme Court of Canada

Today's technology provides unprecedented opportunities for obtaining and sharing information, but it cannot replace a trained jurist acting as an intermediary between the courts and the media.

At the Supreme Court of Canada, a senior lawyer assists journalists by providing briefings on every judgment released by the Court. These briefings are off the record, for information only and not for attribution. The lawyer acts as a source of information — not a spokesperson for the Court — and explains the factual and legal background of the case and guides the press through the reasons for judgment. The lawyer does not place a "spin" on the judgments. The goal is simply to ensure accuracy by guiding the media through the Court's judgment in as objective a fashion as possible[34].

To help journalists get their stories out in a timely way, the Supreme Court of Canada has expanded this process to provide lock-ups, where reporters are briefed in advance of the release of a decision.

No resource person of this type has yet been designated at the Court of Québec or any other Québec court. When a journalist wishes to do an in-depth report on a case, obtain statistics, or interview a judge, it is generally my executive assistant, a lawyer, who contacts them.

These requests are not all that common, but I have the feeling that if we hired a designated resource person such as the Supreme Court has, we would receive many more requests. In fact, we are currently thinking of creating such a position for the Court of Appeal, the Superior Court, and the Court of Québec.

d) Judges' freedom of expression and duty of discretion

Québec judges are subject to a Code of Ethics made up of ten rules[35], including one on the duty of discretion, which restricts their freedom of expression.

The duty of discretion requires that judges avoid expressing themselves publically on topics that could be the subject of one of their cases. This includes political or social issues, controversial tropics, and pending cases. The duty of discretion is in addition to the deliberative secrecy imposed on judges with respect to cases they are handling and on which they have not yet made a ruling. Judges may not compromise their independence or that of their institution

[34]The Chief Justice of Canada made these comments during a speech on "The Relationship Between the Courts and the Media", *Supra*, note 25.

[35]See André Ouimet, Secretary of Conseil de la magistrature du Québec, "L'indépendance du juge comme devoir déontologique au Québec", *Les cahiers de la justice*, École nationale de la magistrature, 2012, p. 75 and following pages.

through their actions or speech. As judges express themselves only through their judgments, they cannot comment on their cases[36].

Judges in your jurisdictions probably experience the same dilemma as those in Québec:

On the one hand, public expectations of judges have changed. We must keep in contact with the society in which we work in order to understand its values and tensions. We no longer live in an ivory tower in quiet isolation[37]. As citizens, we peruse the newspapers and browse the Internet every day, reading articles about excessive delays or sentences that are too lenient. We are only human, and therefore not immune to the sometimes vitriolic criticism that can disturb our serenity[38].

On the other hand, judges must preserve their independence and their real and apparent impartiality. They must remain aware that public comments on their part may be interpreted as evidence of prejudice or affect how the public perceives their past or future judgments[39].

Judges must walk this thin line with great caution. The Court of Appeal of Québec has drawn up a partial list of communications activities that judges can engage in without compromising the integrity of the judiciary[40]:

- Taking part in continuing professional development programs for legal professionals and judges and in activities aimed at improving public understanding of the law and legal proceedings;
- Defending the independence of the judiciary;
- Making observations, in an appropriate forum, on certain ill-defined points of law or insufficiencies of the law, while refraining from giving an opinion on the validity of a bill and from giving the impression of participating in the activities of lobby groups;
- Denouncing, in an appropriate forum, gaps in the administration of justice when they are directly related to the proper functioning of the court and to the execution of its orders;
- Participating in civic, charitable, or religious activities, provided that their goals are not the economic or political profit of their members and that they do not risk impeding the performance or dignity of the judicial function.

[36] The Honourable Guy Gagnon, *Supra*, note 30.
[37] Speech by the Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada, "The Role of Judges in Modern Society", May 5, 2001.
[38] The Honourable Guy Gagnon, *Supra*, note 30.
[39] Speech by the Right Honourable Beverley McLachlin, *Supra*, note 37.
[40] *Ruffo (Re)*, 2005 QCCA 1197, par. 60–61.

However, the following types of public speech and behaviour seem to be irreconcilable with the appearance of independence and neutrality that must characterize the judiciary at all times:

- A judge commenting on his or her own decisions, except when the judge attempts to share opinions with the public regarding his or her role, without discussing the merits of the decision;
- Refusing to accept an ethical sanction, except to exercise the right to legally contest it;
- Being a member of associations whose activities risk hindering the performance or dignity of judicial functions;
- Engaging in public fundraising;
- Being a member of a political organization;
- Participating in a public debate on controversial subjects, except those that directly concern the functioning of the courts, judicial independence, or fundamental elements of the administration of justice;
- Signing petitions that aim to influence a political decision;
- Making vexatious remarks regarding the behaviour of persons appearing before the court.

The Court of Appeal of Québec concludes that in matters of freedom of expression, it is all a question of degree, and judges must exercise great restraint under all circumstances[41].

These recommendations are useful for guiding our daily activities, but the responsibility for determining and adopting behaviour that reflects the requirements inherent to the duty of discretion lies first and foremost with judges, who are appointed based on our trust in them[42].

An advisory group on ethical issues made up of three experienced judges was recently created at the Court of Québec to help judges deal with these recurring issues.

A communications advisory group of judges with experience in this area was set up a few years ago. This committee drafted guidelines to help judges handle various media situations[43].

e) Communications at the Court of Québec

For a number of years, the Court of Québec has been studying ways to be more approachable, open, and transparent while respecting judges' ethical obligations.

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[41] *Id.*, par. 62.
[42] *Ruffo v. Conseil de la magistrature*, [1995] 4 SCR 267, par. 106.
[43] The Honourable Guy Gagnon, *Supra*, note 30.

In the few minutes I have left, I'll give you just a few examples of concrete measures the Court has taken over the years to increase its visibility and participate in the collective effort to inform the public:

Annual reports

For the past ten years, the Court of Québec has published an annual report on its activities throughout the province. This document is produced on a voluntary basis as no law obliges us to report on our operations.

The report is posted on our website in French and English. A few hundred copies are also distributed to Court of Québec judges and our partners: members of other courts, government ministers, professors, lawyers associations, and so on.

Three-year visions

Successive teams of judges at the Court of Québec have published three-year or five-year visions, based on consultations with judges. These visions express a number of shared values and set out the goals of certain major initiatives. The next three-year vision will be produced in 2015.

Our website

Apart from our annual reports and three-year visions, the Court of Québec's bilingual website includes a news section covering judges' appointments, the signing of protocols with various bars, small claims initiatives, and so on.

We are lucky enough to have a webmaster at the Office of the Chief Justice, which means that the Court of Québec website is updated and added to regularly.

Twitter accounts

The webmaster is also in charge of providing content for the Court of Québec's Twitter accounts. The Office of the Chief Justice has been weighing the advantages and disadvantages of opening a Twitter account for a long time. We have asked only a few people to post news on the account, and draft tweets are circulated regularly to ensure they are relevant and of high quality.

Are we read? The number of our subscribers, including lawyers, professors, and other members of the legal community, has been steadily increasing, which is a good sign! We seem to be following a trend because according to the survey I referred to earlier, 43% of respondents in the United States believe that the

courts should use social media to reach the public, an increase of 10% over last year[44].

Wikipedia

A few weeks ago we launched a well-researched Wikipedia page, with content based on a number of sources. It is available only in French for the moment, but will soon be translated into English.

Interviews

In 2013, the Court of Québec celebrated the 25th anniversary of its current structure. To mark this event and further publicize our activities, I granted several interviews in my role as chief justice to publications mainly intended for the legal community.

From time to time, other judges give interviews on specific topics concerning their region, for example increases or decreases in the time to hear certain cases.

Collaboration/discussions with bars and young bars

The current three-year vision of the Court of Québec reflects the vitality of the court, grounded in dialogue and collaboration with its partners in the legal community.

Judges' participation in training activities, presence in the universities, and collaboration with various bars, the International Association of Women Judges, and École nationale de la magistrature in France are strongly encouraged.

3. CONCLUSION

I have given you only a brief overview of relations between the courts and the media in Québec and Canada. I would be delighted to go into more depth on any of these topics today or tomorrow, or through the magic of technology after I return to Québec!

In Québec and Canada, as undoubtedly is the case in each of your jurisdictions, relations between the courts and the media challenge a number of principles, rights, and freedoms, which are at times difficult to reconcile: open court proceedings; freedom of expression; freedom of the press; the right to security, integrity, dignity, and privacy; the right to a fair trial before an independent and impartial court; the protection of vulnerable persons; the sound administration of justice; the serenity of court proceedings; judges' duty of discretion; and more.

[44] *Supra*, note 31.

Given that no right is absolute, reasonable compromises must be accepted in a democratic society[45].

The roles of the courts and the media are fundamental and complementary. Therefore, it is important that we reflect together on current and future challenges, especially those related to the omnipresence of social media and the notoriously slow adoption of new technology by the courts. Creating opportunities for sharing and discussion between the courts and the media and adopting an attitude of respect and openness will enable us to come to a better mutual understanding.

I am looking forward to taking part in the discussions at this extraordinary forum and to sharing our experience and best practices, because I have the impression that despite the nearly 6,700 kilometres that separate me from Montreal today, our challenges are very similar.

The Honourable Élizabeth Corte, Chief Judge of the Court of Québec
M^{e} Annie-Claude Bergeron, Executive Assistant to Chief Judge

October 16, 2014

[45] *CBC. v. Canada (A.G.)*, *Supra*, note 3, par. 98.