

POLICY ON CHANGE OF MODE OF HEARING AT A PARTY'S REQUEST

1. Context

The effects of the COVID-19 pandemic led the Tribunal administratif du travail (the Tribunal) to accelerate its deployment of technology and hold virtual hearings in its four divisions to ensure continuity of activities. The easing of public health measures now makes in-person hearings possible on a more regular basis.

As of May 30, 2022, the Tribunal will favour in-person hearings in its four divisions in all cases. Virtual hearings will nevertheless be convened in cases dealing with the following matters:

- the imputation of costs;
- internal review: section 49 of the *Act to establish the Administrative Labour Tribunal*¹ (AEALT);
- urgent hearings of applications for safeguard orders;
- hearings on essential services (strike notices and measures of redress), depending on the case.

Hybrid (semi-virtual) hearings will be authorized in exceptional circumstances only. Parties may request a change in the mode of hearing after they have been summoned.

2. Purpose

The purpose of this policy is to define the criteria the Tribunal will use to process applications to change the mode of hearing, that is, in person, virtual or hybrid (semi-virtual).

The criteria support a harmonized, coherent and efficient processing of applications to change the mode of hearing at a party's request.

3. Legal framework

This policy is based on a set of legislative and regulatory provisions, specifically sections 1, 2 and 29 of the *Rules of evidence and procedure of the Administrative Labour Tribunal* and sections 29, 35 and 39 of the AEALT. These provisions read as follows:²

➤ *Rules of evidence and procedure of the Administrative Labour Tribunal*

1. These rules apply to all the matters brought before the Tribunal.

Their purpose is to ensure the simple, flexible and prompt processing of applications, particularly with the cooperation of the parties and their representatives and the use of available technological means by the parties

¹ CQLR, c. T-15.1.

² CQLR, c. T-15.1, r. 1.1.

and the Tribunal, in accordance with the rules of natural justice and the equality of parties.

2. At any stage, the proceedings and the presentation of evidence must be proportionate to the nature and complexity of the matter.

29. The Tribunal may make an audio recording of the hearing. It may also receive testimonies and arguments by videoconference, telephone conference or any other means the Tribunal deems appropriate.

An authorization by the Tribunal is necessary for any other audio recording.

➤ *Act to establish the Administrative Labour Tribunal*

29. Every matter is heard by a Tribunal member, except matters pertaining to certification granted under section 28 of the Labour Code (chapter C-27).

If the president considers it appropriate, the president may assign a matter to a panel of three members.

35. Before rendering its decision, the Tribunal must allow the parties to be heard by any means provided for in its rules of evidence and procedure. However, with the parties' consent, the Tribunal may proceed on the record if it considers it appropriate.

39. A party who wishes to have witnesses heard and to produce documents must proceed in the manner prescribed by the rules of evidence and procedure.

4. Scope

This policy applies to all applications to change the mode of hearing presented by a party with respect to matters that concern any of the Tribunal's administrative divisions and its regional offices.

5. Processing of applications

5.1 Principle

The administrative judge to whom a matter is referred will decide whether it is appropriate to use technological means and, if so, to determine the conditions specific to their use.

If the record is not yet assigned to an administrative judge, the application to change the mode of hearing will be evaluated by the coordinating administrative judge.

The administrative judge to whom a matter is referred may amend this decision at any time, on his or her own initiative or at a party's request.

5.2 Form

A party who wishes to change the mode of hearing must submit his or her request in writing.

The party must submit the application to the registry or regional office where the hearing will take place and notify the other parties.

5.3 Time limit

The party must submit an application to the Tribunal upon becoming aware of facts that he or she believes justifies it.

5.4 Content

The application must contain the following information:

1. the TAT record number(s) concerned;
2. the family name and given name of the party making the application, along with his or her mailing address, email address, telephone number and fax number;
3. the date of the hearing;
4. the requested mode of hearing;
5. the grounds justifying the application;
6. the consent or objection of the other parties to the dispute.

5.5 Criteria to evaluate a party's application to change the mode of hearing

The application will be evaluated according to the following criteria:

- whether or not testimony will be given;
- the nature of the testimony and its significance to the dispute;
- the nature of the dispute and the Tribunal's ability to optimally assess the testimony and documentary evidence;
- the impossibility or hardship represented by in-person attendance of the hearing for a party or witness;
- the anticipated duration of the hearing;
- the inconveniences for the parties of using the planned technological means;
- the availability to the parties of appropriate technology;
- the consent or objection of the other parties;
- the sound management of the hearing.

These criteria are not exhaustive, restrictive or cumulative.

6. Decision

The decision to allow or dismiss an application to change the mode of hearing falls under the administrative judges' case management power. An administrative judge who allows such an application may also impose any condition or make any order he or she considers appropriate to safeguard the rights of the parties.