The Practice of Notaries in Times of Coronavirus

As is the case for many industries, notaries are confronted with many challenges due to the crisis related to COVID-19 virus which is affecting the entire province.

While notaries are considered an essential service according to the list established by the Quebec government, the ministerial order 2020-010 dated March 27, 2020 allows them, during the state of emergency, to sign a notarized deed remotely. Below is a brief overview of the guidelines put in place by the Chambre des notaires du Québec, as well as some of the issues to consider with regards to the implementation of this new measure, which remains temporary for now.

Following the ministerial order, the Chambre established some guidelines which were adopted by its Board of Directors on March 30, 2020. These guidelines are available on its website (in French only).

In its guidelines, the Chambre details each of the steps leading to the signature of a deed remotely. Among the prerequisites are the following:

- The parties, witnesses and notary must have access to a computer with a microphone and camera, allowing them to see and hear each other;
- The parties and witnesses must have a personal email address (not shared);
- Since the interview for the reading and signature of the deed will take place by videoconference, the notary must acquire the specific videoconference solution indicated by the Chambre in its guidelines.

It goes without saying that the notary who chooses to proceed with the signature of a deed remotely must certainly be more rigorous in his work. Certain of

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his professional obligations relate to the following:

- **Verification of the identity:** The notary must have good knowledge of the risks related to technology such as the use of fake ID and identity theft. He may consult the Risk Advisories for the Legal Profession published by the Federation of Law Societies of Canada. Validation of additional pieces of identification is recommended, especially if the notary is dealing with a new client.

- **Capacity and consent:** The verification of a client’s capacity must be done through videoconference, as is the case for the verification of his identity. If the client is signing a will, for instance, the notary must be even more vigilant regarding the risks of undue influence. To ensure his client is signing the deed without any constraint, the notary may ask him to move his camera across the room to establish that he is alone. In any case, if the notary has any doubt regarding undue influence, he must refrain from finalizing the deed.

- **Confidentiality:** The notary and his client must take all necessary measures to ensure confidentiality of their exchanges. During the videoconference session, the notary will ask his client if there is anyone else present. Once again, the client may move his camera across the room in order to confirm he is alone.

Finally and probably most importantly in the actual context of the pandemic, the notary must make sure to properly document his file with regards to the information provided by the parties and witnesses.

The ministerial order 2020-010 does not oblige notaries to proceed remotely, but allows it. It is an additional tool available for notaries if they are confronted to an urgent situation and a meeting in person is impossible. To avoid any allegation of misconduct and to properly guide their clients, notaries must master the various steps leading to the signature of a deed remotely. If they choose to make use of the procedure implemented by the Chambre, they must ensure that all parties to the transaction fully understand the process. They may expect one or a few videoconference sessions prior to the signature of the deed, especially if the parties are less familiar with technology.

Since the procedure put in place is recent, it requires some adaptation and notaries must delicately assess the opportunity of making use of it depending on the nature of their file and the clients’ proficiency with technology, all the more since, until further notice, it will only be authorized during a limited period of time. We recommend that professionals exercise caution.

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