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COVID-19 PANDEMIC STRENGTHENS SECURITY COUNCIL'S EFFORTS TO IMPLEMENT PEACE AND SECURITY AND A GLOBAL CEASEFIRE

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On May 4, 2020, H.E. Mr. Sven Jürgenson, Permanent Representative of Estonia to the United Nations Security Council utilized high tech to conduct a dialogue to ensure transparency around the Security Council's ongoing plans to address Peace and Security matters amidst the COVID-19 pandemic.

The dialogue on May 4, 2020 is a testament to how technology can be used to facilitate respect for international law, cyber security, transparency and rules-based world order, the guiding principles highlighted by H.E Jürgenson for Estonia's presidency in the month of May. H.E Jürgenson indicated that cyber security is a very high priority, especially as Estonia's own government has seen cyberattacks in the past.

The dialogue was virtually attended by approximately 90 participants from civil society organizations from various parts of the world. The dialogue was arranged by the World Federation of United Nations Associations (WFUNA) and it was the twenty-sixth installment in a series of monthly dialogues between the President of the UN Security Council and Civil Society organizations. The dialogue highlighted the council's continuous efforts to provide digital solutions for conflict prevention and good governance in for conflict-ridden nations.

> Security Council president, H.E Jürgenson echoed the UN Secretary General's call for an immediate global ceasefire, encouraging member states to reduce military spending and allocate funding to urgent domestic and international human security needs."

He indicated that the Security Council planned to continue their work despite the global standstill created by the Covid-19 pandemic. The council has mobilized peace and security initiatives by planning several virtual events to ensure accountability of Estonia's council governance efforts in May.

H.E Jürgenson indicated that the council intends to renew the mandate of the African union mission in Somalia, the UN assisted mission in Iraq and as well extend sanctions in South Sudan. The Security council has previously supported concrete structural conflict prevention initiatives, early warning, and preventive diplomacy in the Middle East and Africa.

For example, 80% of the female population in Syria is widowed due to violent conflict. Widows have no rights to property, leaving daughters and sons vulnerable to poverty, child marriage and extremist recruitment. H.E Jürgenson highlighted the importance and role of civil society and NGOs directly participating in decision-making to inform the world about the sufferings of women and children in warfare and direct conflict.

The dialogue was a briefing for civil society representatives on Estonia's presidency of the Security Council for the month of May, and it was moderated by WFUNA's Secretary-General, Mr. Bonian Golmohammadi.

During the dialogue, organizations were given the opportunity to pose questions in relation to topics such as Youth, Peace, and Security, as well as COVID-19 related topics on Humanitarian Access, and the call for a Global Ceasefire by the United Nations Secretary General. I had the opportunity to attend the dialogue as a National Board member of the NGO, Canadian Voice of Women for Peace.

The Security Council will have three consecutive European presidencies, specifically the presidency held by Estonia in May, France in June and Germany in July. In order to ensure transparency, H.E Jürgenson proposes monthly overviews of the UNSC's work using video conferencing and live streaming to uphold public accountability.

QUEBEC JUSTICE MAKES 'GIANT STRIDES' WITH ADDITION OF DIGITAL COURT OFFICE, BAR PRESIDENT SAYS

Luis Millán

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With its recent implementation of an online filing system, Quebec is joining the growing ranks of Canadian jurisdictions that are accelerating the technological shift in the justice system in the wake of the COVID-19 pandemic.

The Digital Court Office of Quebec, launched in mid-June, will allow any person to file a pleading with the Quebec Superior Court and the Court of Quebec, a development widely embraced by Quebec's legal community. The new offering also allows for judicial fees to be paid online.

> "The pandemic, a terrible event for so many people, has led to enormous modernization efforts in the Quebec justice system,"

noted Paul-Matthieu Grondin, the bâtonnier of the Barreau du Québec. "We now know in case of a second wave that we can hold virtual and semi-

virtual trials, hold telephone hearings and we now have an e-filing system. We have made giant strides, but those were steps that needed to be taken."

Since the provincial government declared a public health emergency in March, the Ministry of Justice and Quebec courts have introduced a series of measures to modernize the justice system with unprecedented haste. In 2018, the Quebec government earmarked more than $1.4 billion to modernize the justice system, its courthouses and detention centres. But progress was slow, according to legal experts.

"The justice system has moved from the 19th century to the 21st century literally overnight, in a few weeks," remarked Ivan Mokanov, the president of Lexum inc., a Montreal software company that designs and operates online legal information delivery products, most notably the Canadian Legal Information Institute (CanLII). "They pivoted really well because they had to keep operating. All those initiatives, honestly, are crisis management. It is not a digital transformation project. They are different things. You manage a crisis because you got hit by something unexpected, whereas with a digital transformation project you make a conscious move towards something. They are not the same thing."

With Quebec courts inching their way towards resuming their judicial activities, fears that remote proceedings will give way to the archaic and traditional way of conducting legal affairs are unfounded, said Grondin, a view shared by others in the Quebec legal community. Technology can make justice more accessible, more affordable and safer, assert lawyers who advocate for digitization. What's likely to happen is that there will be a mix between long-established practices co-mingling with the use of technology, predicted Grondin. Trials by jury will continue to be a staple. But it is likely that telephone proceedings over preliminary motions as well as semi-virtual proceedings in some matters with the judge hearing the case from the courthouse and lawyers pleading their case remotely will become part of the legal landscape, said Grondin.

"Obviously it is the courts' decision to decide how will they handle these matters," said Grondin. "We are having discussions, and they are good discussions that are

being held, but I believe that semi-virtual proceedings are here to stay."

There is little doubt that the Digital Court Office of Quebec will too become entrenched, according to legal observers. "When you need an expert in your office to file proceedings, there's a problem," pointed out Xavier Beauchamp-Tremblay, the president of CanLII. E-filing saves time, is efficient and is cost-effective, added law professor Catherine Piché, who specializes in civil proof and procedures, comparative law and private international law.

> "E-filing will allow to process documents faster, better manage case files, have less loss because of poorly placed documents, and reduce printing and postal costs, "

explained Piché, a vice-dean at the faculty of law at the Université of Montréal who recently completely a mandate for the Quebec Ministry of Justice that examined how jurisdictions around the world have adapted technology to their justice systems. "It also leads to more transparency. It will lead lawyers to practise differently, and it opens the door for better legal research, something that is a big problem here in Quebec and Canada. We are in a new era. The time when lawyers are lugging around huge briefcases with mounds of paper is over."

Besides, added Piché, this is not new ground. The Saskatchewan Court of Appeal switched to electronic filing and electronic case management in 2012 while B.C.'s Court Services Online has allowed litigants to file and access their court documents online since 2005. Elsewhere around the world, electronic filing is in practice in places as diverse as Finland, Italy, Great Britain and the United States. "We are not reinventing the wheel but catching up to what other jurisdictions have been doing for a while," noted Piché.

E-filing however in Quebec is not mandatory, not yet at least. That is not an ideal situation, said Beauchamp-Tremblay. That means that for an indeterminate period of time there could be two parties who file and manage files differently. "No matter what system you have, when you have two tracks for the same train, it can be confusing," said Beauchamp-Tremblay. There is no reason, he added, for lawyers not to learn and use e-filing, a position shared by the bâtonnier. It is only a matter of time when it becomes obligatory for all lawyers to file electronically, added Grondin. That is why the Quebec legal society will shortly offer training e-filing sessions to lawyers. "For me, it should not be an option to use it or not," said Grondin. "Not using it is not an option. If you

don't know how to use it, you have to learn how."

In the meantime, there are kinks that need to be sorted out. For one, an archiving system, one that takes into account electronic and paper filing, has yet to be worked out, said Grondin. The Digital Office of Quebec also does not accept all kinds of filing or evidence, noted Piché. It cannot be used for a pleading or any other document with the Quebec Court of Appeal. Nor it can be used for a statement of offence in penal matters, an application for judicial authorization, an application for authorization to institute a class action, an application for the solemnization of a marriage or a civil union or records of a notary.

Beauchamp-Tremblay believes that the Quebec government should consider implementing a system where users of the new system simply have to fill out forms. That too, he believes, will lead to curbing costs and time for lawyers and law firms alike and make it easier for the public to gain access to justice.

Keeping a close eye on these developments are bailiffs, who possibly stand the most to lose. Process serving and delivery of notice are extremely important procedures that ensure the legitimacy of the communication process between the parties and the courts, said Piché. "The legitimacy of the process is fundamental," explained Piché. "But once technology can demonstrate it is trustworthy and can provide guarantees over the integrity of the process, then one can envision process serving that is completely technological. At that moment, we will no longer need bailiffs."

While concerned, the head of the bailiffs' professional corporation does not believe it will lead to their demise.

"There is a risk that there will be an economic impact if lawyers or law firms decide to do it themselves (the Digital Office of Quebec)," said François Taillefer, president of Chambre des huissiers de justice du Québec. "Whether we agree or not, we're in 2020 and it is the technological era for all professions, including bailiffs. We are going to have to adapt and take measures to deal with the new realities."

FORCING UBER DRIVER INTO INTERNATIONAL ARBITRATION UNFAIR: SCC

Terry Davidson

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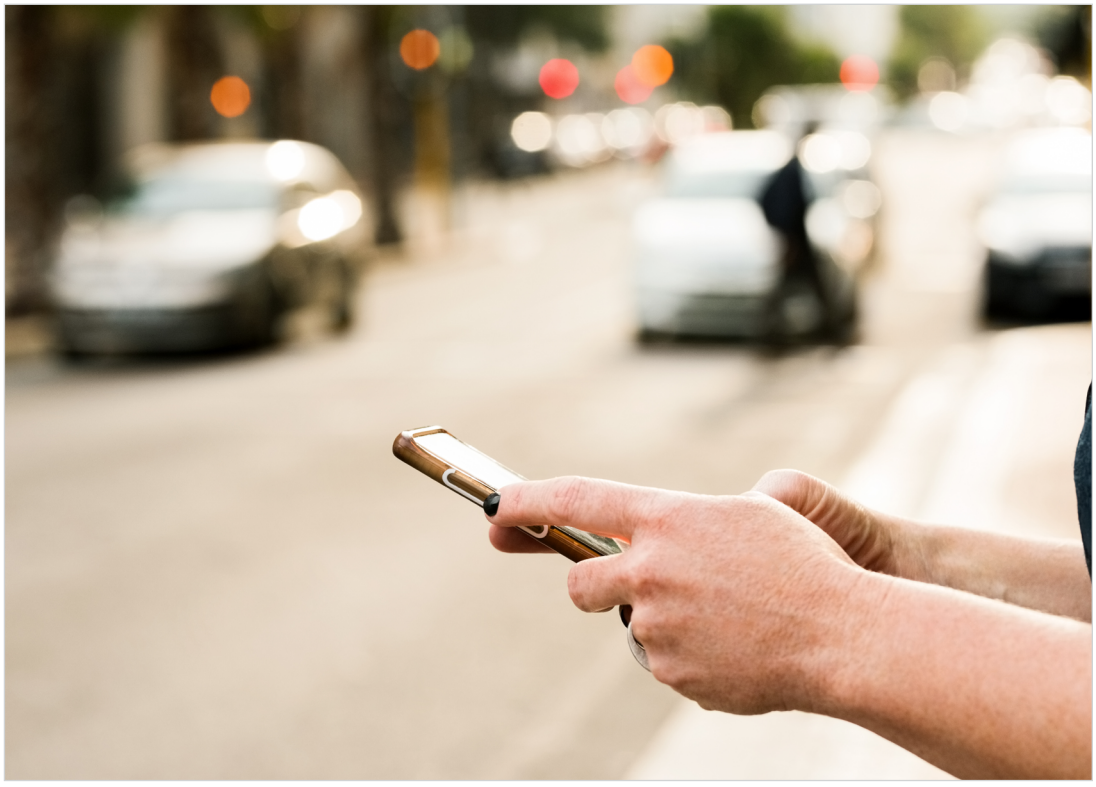
> Workers' rights mean nothing "if there is no mechanism to enforce those rights, "

says a lawyer following the Supreme Court deciding an Uber driver cannot be forced by the company to take his dispute with it to costly arbitration in another country because the hiring contract's clause requiring this is unfair and, thus, invalid.

In what is being hailed as a victory for those working in the gig economy, the June 26 Supreme Court of Canada (SCC) decision in *Uber Technologies Inc. v. Heller* 2020 SCC 16 means Ontario-based UberEats driver David Heller will not have to honour the company's "unconscionable" contractual demand that he take his fight for worker's rights to an arbitrator in the Netherlands.



Heller's hiring contract — a long, standard agreement prospective drivers either accept or reject — stipulated that any legal problem a worker had with the company had to be resolved through mediation and arbitration via the International Chamber of Commerce (ICC), not a court.

But according to the Supreme Court decision, the contract did not make it clear this would cost Heller a $14,500 filing fee (not including legal fees, travel costs and lost wages). The court noted this would have been immensely problematic for Heller, who made between $20,800 and $31,200 per year as a driver.

This ruling is part of a bigger picture: it clears the way for a class action launched by Heller in 2017 in which he seeks an Ontario court to declare him an employee of the company and thus subject to benefits and protections — minimum wage and vacation pay, for example — as laid out in the Ontario's *Employment Standards Act* (ESA).

Uber had requested a stay in the class proceeding in favour of arbitration in the Netherlands. Heller argued that the contract's arbitration clause requiring this was unconscionable and, thus, invalid.

A motion judge stayed Heller's lawsuit, deciding that the *International Commercial Arbitration Act* applied here because Uber's contract with Heller was "international" and "commercial." Therefore, the arbitrator in the Netherlands must decide if Uber's arbitration clause was unfair.

But Ontario's Appeal Court sided with Heller in declaring the clause void because it was unconscionable.

Uber then took its fight to Canada's highest court — and lost.

In an 8-1 decision, the top court found the company's arbitration requirement to be so unfair it was invalid. Heller, they stated, would find no remedy without paying most of his yearly income to reach the arbitration stage. As a result, his issue may never have been resolved.

Writing for the majority, Justices Rosalie Silberman Abella and Malcolm Rowe found that Uber's arbitration clause made it "impossible for one party to arbitrate."

> A "classic case of unconscionability," they called it.

"The fees impose a brick wall between Mr. Heller and the resolution of any of the claims he has levelled against Uber," wrote Justices Abella and Rowe. "An arbitrator cannot decide the merits of Mr. Heller's contention without those — possibly unconscionable — fees first being paid. Ultimately, this would mean that the question of whether Mr. Heller is an employee may never be decided. The way to cut this Gordian Knot is for the court to decide the question of unconscionability."

The court noted two requirements in deciding unconscionability: inequality of bargaining powers and unfairness.

Both were present here, the majority found.

"There was clearly inequality of bargaining power between Uber and Mr. Heller," they found, noting Heller "was powerless to negotiate any of [the contract's] terms."

The only option "was to accept it or reject it."

"There was a significant gulf in sophistication between Mr. Heller, a food deliveryman in Toronto, and Uber, a large multinational corporation. The arbitration agreement, moreover, contains no information about the costs of mediation and arbitration in the Netherlands. A person in Mr. Heller's position could not be expected to appreciate the financial and legal implications of agreeing to arbitrate under ICC Rules or under Dutch law."

And even if Heller was the "rare fellow" who would have read the whole contract before agreeing to it, "he would have had no reason to suspect that behind an innocuous reference to mandatory mediation 'under the [ICC] Mediation Rules' that could be followed by 'arbitration under the Rules of Arbitration of the [ICC]'", there would be a $14,500 "hurdle" to clear.

(Justice Suzanne Côté, the lone dissenting judge, felt the courts should respect the agreement into which the parties entered; she would have allowed Uber's appeal and entered a conditional stay of proceedings.)

Lior Samfiru, one of Heller's lawyers, said the ruling is significant to Canadian workers because it "reaffirms that it is impossible for a company to deprive employees of the ability to enforce their legal rights."

> "Legal rights, legal entitlements have no meaning whatsoever if there's no mechanism to enforce those rights, "

said Samfiru, a partner with Samfiru Tumarkin LLP. "The reality is, a negative decision, or a decision in favour of Uber in this case, would have meant that any company — any employer — could have had a provision in their agreements with their employees saying that if you ever have a problem with us, you have to go to some [other] jurisdiction to deal with that problem. Since no one would actually be able to do that, that would mean a company could do whatever it wanted, without any repercussions. … So, what this … does is it preserves rights and it reaffirms the notion that there is this inequality of bargaining power between companies and its workers. And because of that inequality of power, we're not going to hold the workers to unconscionable bargains."

Samfiru saw this as needed justice for those in the gig economy.

"It's a recognition that, especially in that industry, when you have very sophisticated companies on one end, with a lot of resources and a lot of legal … resources, and [on the other] hand, individuals who are trying to decipher documents on their phones — standard form documents, documents that they couldn't negotiate — that is not something that you can hold them to. And I think across the gig economy, the same reality is faced by people working for various companies."

A member of Toronto's Parkdale Community Legal Services (PCLS), an intervener in the case, said the decision "strengthens protections for workers who may be taken advantage of by the companies that hire them."

"To show that an agreement was unconscionable and therefore invalid, a worker will no longer be required to prove that their employer knowingly took advantage of the worker's vulnerable status. This is an important victory for workers," said PCLS staff lawyer John No in a press release.

Canadian Labour Congress president Hassan Yussuff said it "underscores the message that a worker is a worker."

"There is an imbalance of power in organizations like Uber, with precarious workers fighting for better job conditions against a behemoth enterprise hiding behind complex international legal loopholes. Given this ruling, provincial governments have a responsibility to examine the misclassification of employees and protect all gig economy workers."

Uber's lead counsel, Torys lawyer Linda Plumpton, did not return a request for comment.

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