



VIRTUAL HEARINGS: AREAS FOR FURTHER STUDY

A Statement from the Action Committee

Our Committee exists to support Canada's courts as they work to protect the health and safety of all court users in the COVID-19 context while upholding the fundamental values of our justice system. These mutually sustaining commitments guide all of our efforts.

AREAS FOR FURTHER STUDY

Over the past two years, courts across Canada, and around the world, have held virtual hearings in a wide range of circumstances. As the Action Committee has highlighted in its publications outlining [Orienting Principles](#) and [Operational Considerations](#) for virtual hearings, consensus is beginning to emerge about many of the questions that a court must ask itself when determining the mode of proceeding. To that end, various features of virtual or in-person hearings are now recognized as either a benefit or a challenge for access to justice. However, there are still areas that remain relatively unexplored, or for which no consensus has yet emerged. To that end, the Action Committee has identified the following subjects on which further study may be warranted, as Canadian courts continue to determine the role that virtual hearings will play in their future operations.

1. Evidentiary issues in virtual proceedings

Further study may be warranted into the challenges and benefits associated with managing evidence of all kinds in virtual hearings, including:

- Physical evidence, such as documents, photographs, and exhibits
- Testimonial evidence, including the ability of the court to assess reliability and credibility; the ability or willingness of individuals to testify; and the differential impacts of the mode of hearing on different types of testimony (e.g. lay witnesses versus expert witnesses, narrative versus material testimony)

2. Oral advocacy in the virtual context

There are diverging views on whether counsel can effectively advocate for their clients in the virtual context. It would be useful to collect further data to develop an evidence-based picture of how, and the extent to which, effective oral advocacy can be conducted on a virtual platform, particularly in the context of hybrid hearings, in which one party may be appearing in person while the other is remote.

3. The outcome of virtual versus in-person proceedings

While some studies are beginning to emerge in countries that have used virtual hearings for longer than Canada, such as the United Kingdom, further study could be conducted on the comparative outcomes and impacts of virtual, hybrid and in-person hearings for various types of matters and proceedings. This could include, for example:



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- Monitoring comparative settlement rates and associated timelines for virtual or in-person judicial dispute resolution (JDR) in different types of matters – anecdotally, some jurisdictions have reported similar or increased settlement rates in virtual settings while others noted decreased rates compared with in-person JDR
- Monitoring comparative case progression timelines and disposition rates overall and at various stages of judicial proceedings
- Monitoring comparative outcomes of trials and other substantive hearings

4. Effects of virtual hearings on specific groups of hearing participants

Anecdotal information to date reveals that the relative attractiveness and efficacy of in-person versus virtual hearings for groups such as self-represented litigants, victims of crime, accused persons, and families and children, can vary greatly. In addition, Indigenous persons, newcomers from different cultural backgrounds, or those from a range of different lived experiences may experience virtually courts differently. Further monitoring of the effects of virtual hearings on these different groups, as well as on the effectiveness of mitigation measures put in place to address some of the challenges that may arise in the virtual context, is warranted.

5. Effects on rural and remote communities

Further research on the effects of centralization of court hearings and services would help to reveal whether the increased use of remote technologies to deliver justice has had a net positive or negative effect on rural and remote communities.

6. The future of the open courts principle

Once courts return to full in-person capacity, they will have to decide what level of virtual access to hearings should remain available to the public, particularly in trial courts. This may include considering whether virtual access should be restrained either as a matter of policy or on judicial order in situations where it may have negative impacts, for example on vulnerable witnesses or on the court's ability to enforce rules of access.

7. Privacy, security and confidentiality considerations

Questions remain as to how to best protect privacy, security, and confidentiality in virtual hearings or when providing virtual access to hearings to the public. Further study into this area would assist courts in knowing how to weigh these concerns when COVID-related public health and safety concerns are no longer a factor in the calculation.

8. Effects of virtual hearings on participants with interpretation needs

Further monitoring of the comparative outcomes of cases in which interpretation is used either in person or remotely would assist in understanding a number of factors, including:

- The impact of available technology on the quality of interpretation



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- Whether available technology enables simultaneous and/or consecutive interpretation, and the impact of the mode of interpretation on the participants and the process
- The relative impact on interpretation of seeing the speaker in person versus onscreen

9. Effects of virtual hearings on police and correctional services

While there is promise in the use of virtual hearings for in-custody individuals, ensuring that remote technology can be used to a manner that respects the privacy, confidentiality, and due process rights of these litigants may require the adoption of new protocols, procedures, and staff competencies in police and correctional institutions.

10. Effects of virtual hearings on the roles of responsibilities of justice sector professionals

The adoption of virtual hearings may require new skills and responsibilities for those who work in the courts, as well as related professions such as police, correctional staff, victims services, and legal professionals. More study may be warranted into the effects of these changing roles and responsibilities across the justice sector, as well as related matters of staff recruitment and retention.