



## VIRTUAL HEARINGS: ORIENTING PRINCIPLES

### 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.*

### ISSUE AND CONTEXT

In March 2020, courts across Canada, and the world, suspended all but the most urgent matters in response to the novel coronavirus pandemic. To continue operations, Canadian courts soon started to conduct virtual hearings through teleconference and videoconferencing platforms. Since then, courts have responded to the different waves of the pandemic by varying the mode of hearing between in-person, virtual, and hybrid (where some participants are physically present in the same location, such as a courtroom, and one or more participants attends through telephone or videoconferencing platforms).

More broadly, the public health crisis has forced the courts into unprecedented change, creating momentum to modernize our justice system. In the short to medium term, virtual hearings will continue to play a part in addressing court backlog and delays arising from the pandemic, but there is also growing consensus that virtual hearings should continue post-pandemic as a complement to in-person hearings, in order to improve access to justice and court efficiencies.

This document outlines orienting principles to assist courts and justice stakeholders as they consider the future use of virtual hearings. While telephone proceedings may be used for some matters, these principles are written from the perspective of virtual hearings by videoconference. These principles complement the Action Committee's [Operational Considerations on Virtual Hearings](#). To inform these publications, the Action Committee consulted with appeal, superior, and provincial/territorial courts across the country. A literature review of Canadian and international sources either setting the parameters for, or examining the effectiveness of, virtual hearings also informed these documents.

### ORIENTING PRINCIPLES

Virtual hearings have been crucial to enabling Canada's courts to provide their core services during the last two years of upheaval and uncertainty. While the increased use of this mode of proceeding has proven beneficial to some and burdensome to others, the challenge now facing courts is to harness this opportunity in a manner that promotes access to justice and fundamental rights while reducing the pandemic's continuing strain on the justice system. To that end, judicial leaders may wish to adopt the following orienting principles in establishing policies or practices relating to mode of hearing for different types of matters and participants.

#### 1. The justice system exists to serve the people

- In determining the mode of hearing, access to justice, fundamental rights, procedural fairness and integrity of the court process should be overarching considerations that prevail over procedural efficiencies in case of conflicting impacts. This is particularly the



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case in substantive hearings in which individuals' rights are being adjudicated, or public interest considerations are at play.

### 2. There is no one-size-fits-all solution

- Virtual proceedings will have different impacts depending on level of court, type of matter and proceeding, type of technology used, and individual needs and circumstances of hearing participants. What is seen as a benefit in some cases may militate against the use of virtual hearings in others. There is no universally appropriate mode of hearing.
- Specific individuals or sub-populations may have different needs. For example, whether a litigant is in custody, [self-represented](#), Indigenous, from a racialized or [marginalized](#) community, a minor, an individual who lives with a disability or mental health issue, or speaks a [minority language](#) may all be relevant in determining the appropriate mode of proceeding. These same identity factors may weigh more strongly towards either virtual or in-person hearings for different individuals.
- For justice to be seen to be done, it must be felt in the community. In [Indigenous communities](#) in particular, there is longstanding recognition of the importance of bringing justice to the communities, in order to ensure meaningful access to justice and proper consideration of the community's unique circumstances. To that end, while adopting technological solutions may make justice more accessible for some from rural, remote, or otherwise under-served communities, there is also a risk that over-centralization could further separate the justice system from the communities it serves.

### 3. Technology is a tool, rather than an end in itself

- Replicating inefficient processes using technology will not resolve underlying problems – a process should only be transferred to a virtual setting if it has been confirmed to effectively serve a valid purpose. As the transition to virtual hearings in response to the pandemic was necessarily hasty, it is wise to revisit processes that were adopted in the early days of the pandemic before deciding what will be kept in the long term.
- In determining the right balance between virtual and in-person hearings, consider the impact that technology might have on building and maintaining relationships between stakeholders and with litigants. The importance of these relationships, relative to other factors, will vary depending on both the nature of the matter in question and the particular needs of litigants. For example, there may be a greater need for self-represented litigants or witnesses who are living with mental health challenges to have a personal relationship with the court or other stakeholders.
- Courts and justice system partners may wish to consider the effects of increased reliance on technology on supporting marginalized persons. To ensure that it increases access without creating new barriers, technology should complement but not replace in person supports.



## 4. Effectively adopting virtual hearings involves doing things differently

- In deciding what mode of hearing to use, consideration should be given to a people-centred approach that includes seeking out and considering the experiences and perspectives of different groups of people who interact with the court system, with a focus on end users (e.g. litigants, witnesses, public). In doing so, it is imperative to remember that different people experience the justice system differently, and to gather input from individuals with a range of lived experiences.
- Changes should take place within a structured change leadership and management approach. Best practices include involving stakeholders in the process, consulting broadly and regularly, rolling changes out incrementally, and being willing to adjust as lessons continue to emerge and technology and people's perspectives continue to evolve. Further guidance on this approach can be found in the Action Committee's [Orienting Principles on Leading and Managing Change in the Courts](#).
- Adopting technology may require a shift in roles and responsibilities for judges, court staff, and other justice system stakeholders. To this end, it may be necessary to assess whether support roles that have been filled by family or community organizations would be better met by dedicated staff in the court or other justice system institutions.

## RESOURCES

The below is a non-exhaustive list of guidance produced by Canadian courts, as well as reports by legal professional organizations, on the topic of virtual hearings.

### Related Publications by the Action Committee

[Virtual Hearings: Areas for Further Study](#)

[Virtual Hearings: Operations Considerations – Benefits and Challenges](#)

[Virtual Hearings: Checklist of Considerations to Determine the Mode of Hearing](#)

### Guidance from Canadian Courts

Supreme Court of British Columbia, [COVID-19: Manner of Attendance for Civil and Family Proceedings](#)

Supreme Court of British Columbia, COVID-19: [Method of Attendance for Criminal Proceedings](#)

Ontario Superior Court of Justice, [Guidelines: Mode of Proceedings – Criminal, Civil, Family, Small Claims](#)

Ontario Superior Court of Justice, [Virtual Courtroom Etiquette](#)

*For a more fulsome list of resources and reference guides on virtual hearings, see the Action Committee's repository of [Tools and Resources for Court Users and Personnel](#)*



## Action Committee on Court Operations in Response to COVID-19

### Reports from the Legal System

The Canadian Bar Association, ["No Turning Back: CBA Task Force Report on Justice Issues Arising from COVID-19"](#)

The Canadian Bar Association, British Columbia Branch, ["Who's Getting left Behind? The Impact of the Ongoing Digital Transformation of the Court System on Access to Justice in British Columbia"](#)

Canadian Bar Association, Nova Scotia Branch, ["Exploring the Impacts of Virtual Court on Marginalized Individuals"](#)

Law Society of British Columbia, ["Responding to COVID-19 and adjusting regulation to improve access to legal services and justice"](#)

Alberta Law Foundation, ["Remote Legal Services to Low-Income Albertans: Challenges and Best Practices"](#)

The Advocates Society, ["The Right to be Heard: The Future of Advocacy in Canada"](#)

Nova Scotia Court of Appeal, Cowan Internship Project, ["Listening and Responding to the Future of Virtual Court: A Report on the future of virtual courts in Canada"](#)