

EXPLORING THE COSTS AND BENEFITS OF VIRTUAL FAMILY LAW IN ONTARIO: PERSPECTIVES OF PROFESSIONALS

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This article contributes to the ongoing debate over the future of virtual hearings in the family justice system. Reporting on two Ontario studies involving over 200 family justice professionals, this paper suggests that while there are many benefits to virtual court hearings—including greater access to legal services and cost savings—these benefits must be weighed against the potential costs of virtual hearings, including any negative impact on settlement and unfairness to vulnerable parties. We argue that while virtual court hearings ought to play a significant role in the post-pandemic family justice system, individual judges must retain the discretion to balance concerns about fairness, efficiency, protection of the vulnerable and the promotion of justice in deciding which aspects of a case can proceed virtually and which must be conducted in person.

Cet article contribue au débat actuel sur l'avenir des audiences virtuelles en droit de la famille. Relatant deux études ontariennes menées auprès de plus de 200 professionnels de ce domaine du droit, les auteurs concèdent que les

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audiences à distance offrent maints avantages—notamment l'économie et l'accès facilité aux services juridiques—, mais que ces avantages doivent être soupesés en tenant compte du coût potentiel de la procédure, y compris les conséquences négatives d'un règlement et le risque d'iniquité pour les parties vulnérables. Les auteurs font valoir que même si les audiences virtuelles devraient occuper une place importante dans l'ère postpandémique, les juges en droit de la famille se doivent d'exercer leur pouvoir discrétionnaire pour trouver un juste équilibre entre les enjeux d'équité, d'efficacité, de protection des parties vulnérables et de promotion de la justice au moment de déterminer quelles questions d'un dossier peuvent être traitées à distance et celles nécessitant une procédure en personne.

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1. Introduction

In Ontario, nearly 1,500 family lawyers have signed a petition urging the province's Chief Justice to direct that all family law proceedings be presumptively virtual.⁴ The petition came in response to the Chief Justice's Directive that, beginning April 19, 2022, after the shift to largely virtual hearings during the COVID-19 Pandemic, there was to be a presumptive return to in-person hearings for all family law conferences, long motions

⁴ Russell Alexander, "[Petition to Amend the Requirement for In Person Court Attendances](https://tinyurl.com/msxv5nn7)" (21 April 2022), online: <<https://tinyurl.com/msxv5nn7>> [perma.cc/FJ9X-LMQX].

(an hour or more), and trials.⁵ At the time of the Directive, family law matters had mainly been proceeding virtually since March 2020, when the Pandemic and resulting public health restrictions forced most physical courthouses to close. The drafters of the petition argue that virtual hearings improve access to justice. They claim that virtual hearings are less expensive than in-person hearings, and so family lawyers can serve more clients with fewer billable hours, thereby reducing the number of self-represented⁶ parties in family law matters. They also claim that virtual hearings allow clients in underserved areas to hire family lawyers from other jurisdictions, which may be especially important for Legal Aid clients.⁷

The modernization of court processes was clearly one of the “silver linings” of the Pandemic. Leading up to the Pandemic, there were repeated calls to increase the use of technologies to make the Ontario family justice system more user-friendly, more efficient, and less costly.⁸ When the Pandemic hit, rapid technological change was forced on the justice system: professionals began offering remote services, including client meetings, parenting assessments, mediation, and supervised access; courts introduced remote hearings—first by telephone and then video-conferencing; and electronic documents replaced paper documents, with online platforms for filing materials with the court. Similar changes occurred in other branches of the justice system,⁹ and in family justice systems around the world.¹⁰

⁵ See Superior Court of Justice, “[Guidelines to determine mode of proceeding in Family \(April 19, 2022\)](https://tinyurl.com/2uc93dhw)” (19 April 2022), online: <<https://tinyurl.com/2uc93dhw>> [perma.cc/JL9C-DBDP] [Superior Court of Justice, Guidelines].

⁶ Some commentators use the term “unrepresented litigants” to reflect the fact that many self-represented parties do not choose to self-represent but are instead forced to self-represent due to the cost of legal services. See Pamela Cross, “[Self-represented or unrepresented](https://tinyurl.com/2p9uzff7)” (15 December 2020), online: <<https://tinyurl.com/2p9uzff7>> [perma.cc/L7NA-3VZD].

⁷ See also Zena Olijnyk, “[Technology court be a game-changer in settling family law disputes, innovation forum attendees hear](https://tinyurl.com/48h2asnsc)” (18 April 2023), online: <<https://tinyurl.com/48h2asnsc>> [perma.cc/UF2H-C5K2]. There is a shortage of family lawyers in Ontario willing to accept Legal Aid certificates.

⁸ See e.g. “[Action Committee on Access to Justice in Civil and Family Matters, Access to Civil & Family Justice: A Roadmap for Change](https://tinyurl.com/yw9azxu5)” (October 2013), online (pdf): <<https://tinyurl.com/yw9azxu5>> [perma.cc/8S89-MSBY].

⁹ See e.g. Kate Puddister & Tamara A. Small, “Trial by Zoom? The Response to COVID-19 by Canada’s Courts” (2020) 53:2 Can J of Pol’y Science 373.

¹⁰ Ministry of the Attorney General, News Release, “[Ontario Investing in Digital Justice](https://tinyurl.com/48h2asnsc)” (18 July 2023), online: <<https://tinyurl.com/48h2asnsc>> [perma.cc/XZ7Q-XMCC]; See also Lisa Harker & Mary Ryan, “Remote Hearings in Family Courts in England and Wales During Covid-19: Insights and Lessons” (2020) 60:2 Fam Ct Rev 207.

Previous studies by this research team and others suggest that the modernization of family justice systems has offered many benefits.¹¹ Professionals in Ontario and elsewhere have reported that remote hearings save them time, which in turn reduces costs to clients.¹² Virtual hearings may also increase participation of parties who do not have the resources—transportation, job security, or childcare—to travel to and attend court.¹³ Professionals have also suggested that some parties may be more comfortable with virtual dispute resolution, especially in cases of Intimate Partner Violence (IPV).¹⁴ Finally, professionals have reported that the use of electronic documents is more efficient and thus less costly than filing paper documents, and that management of electronic court files may be more efficient than for paper files, especially if there are many documents.¹⁵

However, there were also downsides to this abrupt modernization. Not all litigants have access to technology,¹⁶ and multiple studies, in Canada and abroad, suggest that many self-represented parties lack the technology and support to meaningfully participate in virtual dispute resolution.¹⁷ In Ontario, for example, the publicly funded program of Legal Aid Ontario for providing summary advice lawyers and/or duty counsel continues to struggle to serve parties remotely. Advocates for IPV victims have also raised concerns that in some cases virtual hearings may make it easier for abusers to intimidate victims “behind the scenes,”¹⁸ and harder for judges

¹¹ Claire Houston, Rachel Birnbaum & Nicholas Bala, “Moving Towards a Post-Pandemic ‘New Normal’: Perspectives of Ontario Family Justice Professionals and Self-Represented Litigants” (2022) 41:1 Can Fam LQ 1; Mary Ryan et al, “[Remote hearings in the family court post pandemic](https://tinyurl.com/3sywewuk)” (July 2021), online: <<https://tinyurl.com/3sywewuk>> [perma.cc/SG4T-M7AW].

¹² *Ibid.*

¹³ See Elizabeth G. Thornburg, “Observing Online Courts: Lessons from the Pandemic” (2021) 54:3 Fam LQ 181 (reporting that family court judges noticed an increase in participation among parents in remote child welfare proceedings at 208).

¹⁴ Houston, Birnbaum & Bala, *supra* note 11.

¹⁵ *Ibid.*

¹⁶ See Andrea Kupfer Schneider et al, “Remote Justice & Domestic Violence: Process Pluralism Lessons from the Pandemic” (2022) 52 Stetson L Rev 231 (describing challenges with e-filing among domestic violence survivors in Wisconsin).

¹⁷ See Advocacy Centre for Tenants Ontario, “[Digital Evictions: The Landlord and Tenant Board’s experiment in online hearings](https://tinyurl.com/84nv4nh8)” (2021), online (pdf): Advocacy Centre for Tenants Ontario <<https://tinyurl.com/84nv4nh8>> [perma.cc/S74F-UDR7]; Mary Ryan et al, *supra* note 11.

¹⁸ Pamela Cross, “[Why it can’t all happen online](https://tinyurl.com/4bf8kwv7)” (2 November 2021), online: <<https://tinyurl.com/4bf8kwv7>> [Cross, “Why it cant all happen online”]; See also Canadian Bar Association, “[No Turning Back: CBA Task Force Report on Justice Issues Arising From COVID-19](https://tinyurl.com/msb4fzph)” (17 February 2021), online: <<https://tinyurl.com/msb4fzph>> [perma.cc/5KYM-TP89]; For an example of a case in which an abuser was secretly present

to identify signs of coercive control.¹⁹ Finally, some Ontario judges have suggested that virtual hearings may impede settlement of cases.²⁰

This article responds to the call for more research about the costs and benefits of virtual versus in-person family proceedings.²¹ It also provides perspective on the related use of electronic documents. While we offer some insight into virtual alternative dispute resolution, this article is litigation focused. We report on two studies: one involving an online survey and follow-up interviews with family justice professionals²² in Ontario, and a later online survey of family lawyers about the challenges and benefits of virtual versus in-person court proceedings. While the findings of this research must be approached cautiously because of the limitations of the methodologies employed, we are able to provide some tentative answers to questions about the benefits and costs of the adoption of new technologies for family justice in Ontario and make some recommendations for further research and policy.

Virtual hearings ought to play a significant role in Ontario's family justice system. There are generally cost savings to represented parties making use of virtual court appearances, and virtual hearings can increase access to lawyers and other professionals, including for Legal Aid clients. The vast majority of lawyers and family justice professionals in our second study believed that clients feel far more safe and secure in virtual court versus in-person hearings. However, these benefits must be balanced against the need to ensure meaningful participation by vulnerable parties and promote settlement. Many professionals reported that settlement may be more difficult when parties and their counsel are not in the court. There are also different considerations that favour in-person proceedings when one or both parties are self-represented, which occurs in a significant portion of family cases in Ontario. As a result, there should *not* be a presumption in favour of virtual hearings at every appearance in every family law case. Judges should continue to determine the mode of proceeding on a case-by-case basis. However, in the absence of concerns

while a victim was testifying from home, see Hannah Knowles, "[A Zoom hearing for her domestic violence case went viral. Now people are blaming her, she says](https://www.washingtonpost.com/news/energy-environment/wp/2021/03/12/a-zoom-hearing-for-her-domestic-violence-case-went-viral-now-people-are-blaming-her-she-says/)" (12 March 2021), online: Washington Post <<https://tinyurl.com/56k4wru6>>.

¹⁹ Cross, "Why it cant all happen online", *supra* note 18.

²⁰ Houston, Birnbaum & Bala, *supra* note 11.

²¹ See Natalie Byrom, Sarah Beardon & Abby Kendrick, "[The impact of COVID-19 measures on the civil justice system 85](https://www.civiljusticecouncil.ca/wp-content/uploads/2020/05/Impact-of-COVID-19-measures-on-the-civil-justice-system-85.pdf)" (May 2020), online (pdf): Civil Justice Council <<https://tinyurl.com/4nezps49>> [perma.cc/F82C-GZ4T]; See also Dominique T. Hussey, "[The Advocates' Society Calls for Action on Delay in the Civil Justice System](https://www.civiljusticecouncil.ca/wp-content/uploads/2023/07/The-Advocates-Society-Calls-for-Action-on-Delay-in-the-Civil-Justice-System.pdf)" (18 July 2023), online: <<https://tinyurl.com/3m4trpdh>> [perma.cc/WRR7-HARA].

²² This group included lawyers, mediators, parenting evaluators, supervised access supervisors, and a judge.

about parties lacking access to technology or settlement challenges, judges should attempt to facilitate virtual hearings as an important means of improving access to justice.

2. Methodology

Our studies used a mixed, parallel methodology: (1) two separate online surveys of family lawyers and other family justice professionals²³; and (2) interviews with a voluntary sub-sample of family lawyers and other family justice providers that were audio-recorded and transcribed verbatim.²⁴ Thematic analysis was used to analyze the qualitative data from each survey.²⁵ Semi-structured interviews with family justice providers complimented the use of survey data to tell a broader story about the direct experiences of the participants.

For the first online survey, 66 family justice professionals were recruited in August and September of 2022 from two organizations of family dispute resolution professionals.²⁶ Of those who participated in the first survey, 15 agreed to a follow-up interview via Zoom; those interviews were conducted between November 2022 and January 2023. Our second online survey was distributed through two professional organizations of lawyers in April and May of 2023.²⁷ In total there were 202 family justice professionals involved in this research (n=66 in the first survey, including 15 who were also interviewed, and n=136 in the second survey).

In each survey, questions focused on: demographics (age, race, gender, years since called to the bar, location, and type of practice); hourly rates and any changes in rates as a result of the pandemic; the impact of remote delivery of family justice services on geographic scope of practice; time spent on individual cases after the shift to virtual practice; costs to clients; and settlement of cases using virtual versus in-person court attendances.

²³ The two surveys yielded much information. This paper focuses on the costs and experiences of the participants only. For a full review of both data sets, contact the primary author at: claire.houston@uwo.ca.

²⁴ While all the interviews were recorded and transcribed verbatim; one interview failed to record, the interviewer compiled notes immediately following the interview. The interview subjects included 5 lawyers, 5 mediators, 2 lawyer-mediators, 1 judge, 1 assessor, and 1 supervised access professional.

²⁵ Virginia Braun & Victoria Clarke, "Using thematic analysis in psychology" (2006) 3:2 *Qualitative Research in Psychology* 77.

²⁶ The AFCC-O and the Family Dispute Resolution Institute of Ontario (FDRIO).

²⁷ Lawyers were recruited through a number of legal organizations, including the AFCC-O, the Federation of Law Associations (FOLA), the Ontario Bar Association (OBA), the Ontario Family Lawyers Facebook group, and Russell Alexander Collaborative Family Law. Both studies went through university research ethics approval.

To better understand changes in practice and costs as circumstances evolved over the course of the Pandemic, the second survey of family lawyers asked questions about changes over three distinct one-year periods: the early “lockdown period” from March 2020–April 2021; the Pandemic “limited access” to courthouses period from April 2021–March 2022; and the Pandemic “opening up” period from April 2022–March 2023.

3. Results

A) Description of Samples: Demographics

Women were overrepresented in both participant samples, with men making up less than 20% of participants. Several individuals identified as gender fluid, and one professional identified as nonbinary.

Almost all of the participants described themselves as white. The remaining participants self-identified as Black, Middle Eastern, South Asian, South-East Asian, and from various European countries. Four professionals self-identified as Indigenous. While the participant samples were less racially diverse than Ontario’s population, they are generally reflective of the pool of experienced family justice professionals in this province.

The majority of the total sample were family lawyers (n=180). Other professionals who participated in the first survey and interviews included various mental health professionals and service providers (e.g. parenting evaluators, social workers, mediators, supervised access providers). More than half the lawyers were sole practitioners, while most of the remainder worked in a small firm (fewer than 5 lawyers). A few of the lawyers worked at a mid-size firm (5–20 lawyers) or a large firm (more than 20 lawyers). In the second survey there were quite a few Legal Aid staff lawyers who responded (30 out of 136 respondents). The lawyers were fairly evenly spread across Ontario, with the majority practicing in Toronto.

Many of the participants had significant family law experience. Nearly one-third of the participants had more than 20 years of experience, followed by one-third who had between 10–20 years of experience.

Participants charged a range of fees for their professional services. In the first study that included non-lawyers, approximately two-thirds of mediators reported earning less than \$200 per hour.²⁸ Nearly two-thirds

²⁸ In our first survey, we did not subcategorize mediators into lawyer-mediators and non-lawyer-mediators. Lawyer-mediators would likely charge an hourly fee for

of the lawyers in private practice charged between \$200–400 per hour (65%). Approximately 8% of lawyers charged less than \$200 per hour. In the second survey, only 3% of lawyers in private practice charged less than \$200 per hour. Half of the lawyers charged between \$300–500 per hour, which reflects the level of experience of this participant sample.

In the first survey, slightly more than three-quarters of the professionals reported that they did not adjust their hourly fees during the first two years of the Pandemic; the remaining one-quarter of professionals indicated that they did adjust their fees. A number of professionals explained that they *decreased* their fees during the Pandemic to make it more affordable for people to access services, especially where their incomes had been impacted by the Pandemic. A few professionals increased their fees during the Pandemic. One lawyer explained that this increase was necessary to cover increased expenses: “I find that I am providing more pro bono assistance since the Pandemic and have noted a significant increase in unpaid fees ... Since the Pandemic, outstanding fees are high enough to impact on the financial viability of my practice.” In the second survey of family lawyers, a majority of lawyers in private practice reported increasing their fees over the course of the three years of the Pandemic.

There were 15 survey participants who agreed to be interviewed in the first study. These participants included 5 lawyers, 5 mediators, 2 lawyer-mediators, 1 judge, 1 assessor, and 1 supervised access professional. The interview participants had an average of 19.6 years of experience in the family justice field, ranging from 4.5 years to 39 years. Almost half of the interviewees had more than 16 years of family law experience.

B) Changes to Geographic Scope of Practice

Family justice professionals generally reported that the use of virtual technology allowed them to significantly expand the geographic scope of their practice. In the first survey, a majority of family lawyers reported widening the area in which they provided services. There were 33 lawyers who provided information about the effect of virtual technology on the geographic scope of practice; 75% of them reported expanding the geographic scope of their practice to represent clients outside their jurisdiction. Approximately half of the mediators also reported conducting mediations with clients from outside their jurisdiction (n=6/11). One of the two parenting evaluators indicated that they took on cases outside their jurisdiction. In the second survey, 83% of the family lawyers reported that the adoption of virtual technologies, including for client meetings and

mediation consistent with their hourly fee for other legal services, which would often be more than \$200 per hour.

court appearances, allowed them to expand the geographic scope of their practices.

In interviews, lawyers indicated that remote delivery of services increased the availability and quality of services they could provide. In particular lawyers in larger, southern centres described providing services to clients in smaller and northern communities. One lawyer who works for a clinic providing services to victims of IPV explained: “Now, because women can access our clinic online, we greatly increased my ability to advise women, like super far North, who didn’t have access to somebody who practices family law through [their local] clinic.” Another lawyer who specializes in high-conflict separations explained that remote delivery of services allowed clients in “small centres” to be able to benefit from his expertise “without having to be worried about ... the additional costs of travelling.” A lawyer from the Office of the Children’s Lawyer (OCL) explained that the Office could “provide better service” because “it was now possible to assign more specifically appropriate (i.e., cultural, linguistic, etc.) OCL counsel to a case outside the geographic area.” Remote practice also increased access to experts. One lawyer, describing a 5-week Zoom trial in which several experts from the United States testified remotely, explained that it “would have been a shame to have to fly them out,” given the associated costs to the client. This lawyer believed that experts are more likely to testify if the testimony can be given remotely since it obviates the need for travel.

Remote mediation and virtual supervised access also increased accessibility. As one mediator explained: “You were able to see people in communities that you wouldn’t otherwise have been able to see with the introduction of virtual mediation.” A supervised access professional described facilitating contact between parents and children that may not have otherwise occurred: “We have a dad who Zooms from India. We have one from Croatia. We have one from Australia. So, during COVID, they were able to have more contact with their kids than they would have [prior to COVID].”

However, a few lawyers expressed concerns about expanding their geographical scope of practice. These lawyers noted that different courts had different rules for virtual hearings during the Pandemic, and that these rules were constantly changing. One lawyer explained how this deterred her from representing clients outside her jurisdiction: “The two courts do things so differently. So, to try and figure out what they are doing now, it just seems too much with all the information coming in about ‘now we’re doing it this way, now we’re doing it that way. It was just enough to keep track of one.” Another worried about judges in other jurisdictions requesting her to appear in court in person, explaining that

such appearances would be too costly for her clients: “I am doing a case pro bono at the moment, for a victim of some very serious domestic violence, and they wanted me to appear in person... my client [is unable] to afford that.” Two lawyers described colleagues being pressed for personal health information in response to requests to appear in court remotely versus in person. One described a situation in which a judge “probed [a lawyer] to the extent that she ended up in tears.”

C) How Remote Service Delivery Impacted Time

Most professionals reported that the shift to virtual technologies, especially for court appearances, reduced time spent resolving files, though some professionals reported an increase in the average time spent on cases. Family lawyers generally reported greater time savings than other family justice professionals.

In the first survey, almost two-thirds of the lawyers surveyed provided a response on how remote delivery of family justice services impacted the amount of time they spent on a family file (n=30/44), and two-thirds of these respondents reported spending less time on cases due to the use of remote services (n=20/30). Lawyers reported that scheduled, virtual hearings saved time by eliminating travel time and time spent waiting at court for a matter to be heard (“The time became concise for dealing with the matter as opposed to wasting time for travel and hanging out in the courthouse”). According to one lawyer, time that had previously been spent travelling and waiting at court could now be used for “substantive work on a file.” Time saved through virtual hearings was especially important for Legal Aid clients who are given limited hours of representation. One lawyer explained how prior to the Pandemic, “I was... using up a lot of my Legal Aid hours in wait time ... Now, with very few exceptions, if you’re scheduled at 3 o’clock, you’re on at 3 o’clock.” Lawyers also reported saving time using electronic software to commission and sign documents, and by electronically filing documents. One lawyer described using CaseLines²⁹ during a trial to allow the parties, the judge, and the witnesses to quickly access documents: “We have it all sitting there on CaseLines, so even the conduct of the proceeding is ... fast.”

The remaining one-third of lawyers surveyed reported spending more time on cases due to remote delivery of services (n=10/30). This extra

²⁹ CaseLines was the platform used during the Pandemic in the Ontario Superior Court and Family Court for electronic filing and access to documents. It is gradually being phased out and replaced with a more sophisticated platform. See [Law Society of Ontario, “Frequently Asked Questions About Caselines”](#) (last modified 19 January 2024), online: <<https://tinyurl.com/yas82vzp>>.

time was attributed in part to use of electronic documents. One lawyer reported that, “the shift to online filing and the use of CaseLines has dramatically increased the frustration level and administrative time in all files.” According to another: “I am spending more time on each file doing administrative work. I probably spend less time doing billable work. The administrative [work] relates to me figuring out all the technology because I’m a sole practitioner.” Lawyers also reported cases taking longer to settle. For example, one lawyer commented: “Much less time spent travelling, but more time spent litigating when in-person appearances would have resulted in a settlement.” Another lawyer said not having “face-to-face” interactions made “everything [take] longer, [and be] more complicated and confusing.” This participant described remote service delivery as “the worst thing that has happened to [family law] since I began practice.”

Mediators were more likely to say that virtual mediation *increased* the amount of time spent on mediations. Most mediators surveyed commented on time spent on mediations (n=9/11). Nearly half of these mediators reported that virtual mediation had *no change* on the amount of time per mediation (n=4/9), while the same number reported that virtual mediation *increased* the amount of time per mediation (n=4/9). Only one mediator reported that virtual mediation *decreased* time per mediation. During interviews, one mediator explained the decrease in time spent on mediations on the fact that many of her clients were families with young children, who were “very focused on the fact that they had other stresses and priorities.” These families had “motivation to get to the issues and get through the process” quickly. Mediators who reported an increase in time per mediation described clients feeling more comfortable with the process, and more willing to engage in sessions longer (“They seem more comfortable in their own home and not watching the clock as much in sessions”); needing more time to develop a rapport with clients online; and technology issues. One mediator who conducts onsite, court mediations explained that mediations “took much longer due to technology [failures].”

The two parenting evaluators surveyed both indicated that virtual interviews saved time by eliminating travel. However, during the interviews, one evaluator reported that younger children often require more virtual interviews than in-person interviews, increasing the amount of time spent with the child, as younger children are harder to engage virtually than older children.

In the second survey, more than half the lawyers expressed satisfaction with the online court filing system in their region, and about a quarter expressed dissatisfaction. There was somewhat less satisfaction with the CaseLines system of accessing court documents, with more than a third

of lawyers reporting that it was working well, and about an equal number reporting concerns.

D) Cost Savings

Lawyers and parenting evaluators overwhelmingly reported that remote delivery of family justice services reduced costs for clients, while approximately half of mediators reported cost savings. In the first survey of the 28 lawyers who reported on the effect of technology on costs ($n=28/44$), 26 said that remote services reduced costs for clients. Both evaluators also reported cost savings ($n=2/2$). Only 7 of the 11 mediators responded to this question, and 4 of these mediators reported that remote services decreased the cost of mediation for clients.

In our second survey, we asked about cost savings to clients from virtual court appearances, and most lawyers in private practice reported savings to their clients. About a third reported savings to clients of up to \$2,500 per file; more than 40% reported average savings to a client of \$2,500 to \$5,000; and about a third reported savings of more than \$5,000 per file. About 5% of private practice lawyers reported no savings or an increased cost from use of virtual court.

Virtual family justice services saved clients money in different ways. In interviews, participants described cost savings for clients who were no longer required to appear in person for court, mediations, meetings, and interviews. As one participant explained, remote services “reduced costs for clients in terms of gas, transportation, made services more accessible, and was easier for clients who must arrange childcare or work.” Lawyers also described how scheduled, virtual court appearances reduced legal fees. First, lawyers no longer charged clients for waiting at the courthouse to be heard. One lawyer explained that before the Pandemic, clients “were spending \$400 an hour on [me] standing there for six hours before I get into a courtroom. That is prohibitively expensive.” Now, the lawyer continued, “I’m an hour in and out, so that court date might cost them \$400 as opposed to \$3,600 or more.” Reducing the amount of time lawyers spend waiting at court was especially important for clients on Legal Aid certificates. One lawyer explained that for clients on a typical 12-hour certificate, “the [court] appearance might [take] an hour now,” whereas prior to the Pandemic the lawyer would be “standing in the hallway for six hours and using six hours of certificate time.” Second, lawyers described how they were able to work on other client files in their office while waiting for a matter to be heard: “If you wait now, you’re at your desk and you work on something else.”

Lawyers also described how the use of electronic documents reduced lawyers' fees. Describing more efficient court proceedings, one lawyer said: "Nothing is misplaced and everything's digital. Proceedings themselves move along quickly. It's a lot faster to find what the CaseLines reference is than having people looking around the tables and the judge's desk and the Registrar's desk for exhibit 14."

In both studies, there were a small number of participants who reported no change or an increase in costs to clients because of remote services. Some participants explained that cost savings in some areas were offset by cost increases in other areas. One lawyer, for example, observed: "Increased costs of litigation but no travel time or waiting in court." Another lawyer agreed that remote hearings provided cost savings but that "lengthy time periods between court appearances," caused by case backlogs, "balanced out" those savings because parties continued to have disagreements—and thus required the assistance of their counsel—in the interim. One participant noted that some litigants experienced cost savings, while other litigants experienced greater costs: "It has been mixed. For some clients, remote delivery has reduced costs and made justice more easily accessible. For other clients who struggle with using technology or don't have access to technology, costs have increased as they have to seek assistance to navigate their way through an increasingly complicated system, rather than just walking into the courthouse and getting the help and direction they need."

E) Number of Clients Served

The professionals in this research project had varied experiences with whether remote delivery of services impacted the number of clients they served. In the first survey, 30 lawyers reported on the effect of technology on the number of clients they serve; 16 of the 30 indicated that they were able to *increase* the number of clients they served due to remote service delivery. Some of these lawyers reported a significant increase in clients due to remote services. For example, one lawyer spoke of serving "one-third more clients now because of virtual service provision," while another reported increasing their caseload from 90 clients in 2022 to 110 clients in 2023. Nine mediators responded to this question (n=9/11), and slightly more than half (n=5/9) reported that virtual mediation increased the number of mediations conducted. One evaluator reported conducting more assessments because of remote service delivery; the other reported no change in the number of parenting evaluations conducted. In the second survey, about half the lawyers reported that remote delivery of service significantly increased the number of clients they were able to serve (68/138: 49%).

In interviews, lawyers attributed the increase in the number of clients served to expanded geographical scope of practice (“I could serve clients throughout Ontario”), increased demand for lawyer services (“It’s very, very busy”), and increased efficiency. One lawyer reported that remote delivery of services had “increased my ability to serve more clients in a more efficient and cost-effective manner. I do not want to go back to the old days.” Another spoke of how scheduled, virtual hearings allowed him to serve more clients by “accelerat[ing] the file.” Another commented: “I can book you in much more easily as one of my clients. I’m not stuck in court all day, whereas, if I had a court date I wasn’t booking anything on that day. So, I feel like I get through my clients faster which, for me, means they’re done faster, which means I have a quicker turnover rate.”

A couple of the lawyers noted the costs of a more efficient practice. One reported that while they were seeing “more clients in a day,” they were “not necessarily [providing] better service.” Another offered a similar assessment: “More clients, less quality.” This lawyer explained that “not meeting clients resulted in a lower quality of the relationship between solicitor and client.” Remote meetings also prevented the lawyer from “being able to really engage people or get a gut feeling of credibility.”

Mediators who reported serving more clients attributed this increase to expanded geographical scope of practice (“The amount of work increased because I could reach more people, more efficiently”), and increased demand for mediation services. For example, one lawyer-mediator noted that the initial physical closure of courthouses and subsequent backlog of cases in the family courts encouraged more people to turn to mediation: “I would definitely say there was an increase in mediation cases when people had no access to anything else.”

The one judge who was interviewed for the study reported different effects of remote service delivery for child protection matters versus domestic matters.³⁰ This judge reported that child protection matters were difficult to resolve virtually: “Child protection was extremely hard as many parents do not have the resources to attend virtually.” On the other hand, this judge was able to manage domestic cases more efficiently: “I find that I am able to do a lot more and I pile more into my court.” The judge explained the role of new technology in promoting this efficiency: “I find I can schedule more matters as we use the breakout rooms to continue with other matters.” However, the judge added, “I don’t think that that’s

³⁰ Domestic matters are those decided under the *Divorce Act*, RSC 1985, c 3, (4th Supp) or Ontario’s *Family Law Act*, RSO 1990, c F3, as well as parenting matters decided under Ontario’s *Children’s Law Reform Act*, RSO 1990, c C 12.

the norm,” explaining that they were more comfortable with technology than some of their colleagues.

F) Settlement of Cases

The professionals in this research had very mixed experiences with the impact of remote delivery of family justice services on settlement of cases. In the first survey, 29 lawyers reported on their perception of the effect of remote technologies on settlement; nearly half (n=13/29) indicated that remote services *negatively* impacted settlement (n=13). One quarter of the lawyers reported that remote services *positively* impacted settlement (n=8), while the other half reported no impact (n=8). Of the 9 mediators who responded to this question, 7 reported no impact on settlement, while 2 perceived that remote services negatively impacted settlement. In the second survey, lawyers were asked about whether the use of virtual attendance affects the settlement of their cases in the judicially supervised conferencing process. About a third (30%) reported that virtual court made settlement more likely, and an equal portion (31%) reported that it made settlement less likely, with close to 40% reporting no effect from virtual proceedings.

In interviews, lawyers reported that remote services, and especially virtual hearings, limited opportunities for settlement discussions. Several lawyers mentioned the loss of “hallway justice,” where lawyers engage in settlement discussions on one or more matters before court appearances. One lawyer explained that “a lot of settlement discussions take place in the halls of the courthouse while lawyers are waiting for their matter to be called. We often discuss other cases and are able to move them along toward settlement through these discussions.” Another lawyer felt this loss was particularly significant in child protection cases, saying that these matters now “drag on and on and on.” This lawyer, who represents children, reported that “just hav[ing] everyone in the court building means there’s a lot of work that can be done.” A few participants perceived that lawyers had become less settlement-focused with the greater use of technology. One lawyer reported that, “lawyers opposite would attend a matter [once] and then never respond again.” Another lawyer said that “with lawyers busier than ever, the focus becomes only what’s needed for each court appearance, with efforts turning elsewhere for the time in-between court appearances.”

Some lawyers also perceived that judges were less effective in facilitating settlement remotely than in person. One lawyer reported the impact of remote services on settlement as a “nightmare,” saying, “nothing settled.” That lawyer felt that judicial authority was compromised by virtual hearings: “Being physically in front of a judge is huge—clients and

opposing parties present in court have a greater sense of deference and appreciate the magnitude of the situation while on Zoom there is none of that ... anyone who tells you differently is fooling themselves.” Others felt that remote appearances reduced the amount of time and energy of judges. One lawyer suggested that “the tight schedules of judges mean that conferences may not be as productive as when in-person,” while another said, “I’m not convinced that a lot of judges put their backs into it over Zoom, as far as trying to settle matters.”

Finally, some respondents reported that remote services negatively impacted parties’ ability or willingness to settle. According to one lawyer, “self [represented litigants] opposite would just disappear” from the hearing. Another lawyer agreed that remote services allow parties to easily disengage but added that party orientation also played a role in limiting settlement: “The positions of the parties have become more extreme and if a party doesn’t like how a conference is going, it is easy for them to just end the call.” This concern was echoed by a supervised access professional who reported: “We found the arguing and fighting and inability to agree is way worse since Covid. It is taking twice as long to get services up and running.”

Participants who described positive impacts had different views on how remote services impacted the willingness of parties to engage in settlement discussions and judicial efforts at settlement. Lawyers and mediators perceived virtual mediations and hearings as “less stressful” for clients (“It lessens anxiety by at least 25%”), which left them “more prone to reaching settlements.” Participants also noted how virtual hearings allowed judges to better facilitate settlement: “We have had strong input from judges in remote conferences.”

Some professionals, in particular mediators, noted the positive impact of new technologies on settlement. For example, mediators described how virtual “breakout rooms” allowed them to more easily conduct “shuttle mediation,” which involves moving parties in and out of the mediation room: “In-person kind of wastes a lot of time travelling between rooms and you need the extra space as well [and] then you have to coordinate people’s arrival and departure times.” One mediator reported that virtual shuttle mediation “makes the more high-conflict cases easier to settle.” Mediators also described using breakout rooms to better manage client emotions that might otherwise hinder settlement: “If someone is going off on a tangent, or their language [is] being very negative, I can just mute them and put them in a Zoom breakout room and just have a conversation with them. That is easier to do than in-person.”

Lawyers also described the positive impact of virtual breakout rooms (“The online breakaway rooms allow for frequent, quick consultations just with the client”), as well as electronic documents: “easier to draft documents/minutes of settlement at my office typed than by handwriting in person.” The one judge participant, who reported “more settlement” with remote services, perceived that matters could be resolved more quickly once settlement was achieved: “I’ll say, okay, you’ve got a resolution, put you in a breakout room, one of you type it up right now, and then we’ll verbally sign it on the record when we go through it with the parties ... They have the documents, all there, so they can cut and paste from their briefs right into another document and do consents or minutes of settlement. So, I find in this regard, we’re getting things done faster.”

G) Client and Lawyer Needs and Preferences

This research revealed that for many lawyers and clients, virtual attendances at meetings and court are preferable to in-person attendances, and in some contexts virtual court attendances may be very important for the protection of vulnerable litigants. In our second survey, lawyers were asked if they prefer virtual meetings over in-person meetings with clients. Of those who responded, 60% agreed or strongly agreed that they prefer virtual client meetings, 21% were neutral, and 19% reported they preferred in-person meetings. When asked about their perceptions of their clients’ preferences for virtual versus in-person meetings, 66% reported that most of their clients strongly preferred virtual meetings, 16% were neutral, and 18% reported that most clients preferred in-person meetings.

In that survey, family lawyers were also asked about preferences for virtual family court attendances. Over 60% of family lawyers reported that they generally preferred virtual family court proceedings, 24% indicated that they preferred going to court in person, and 15% were neutral. When asked about their perceptions of their clients’ preferences, 70% reported that their clients generally preferred virtual court attendances, 10% indicated that their clients generally preferred in-person appearances, and 20% were neutral.

In the second survey, we also asked lawyers to write in comments on two different issues: the impact of virtual court on IPV and clients with disabilities; and general comments on the impact of virtual court on their practices and the family justice process.

In response to the request for comments on clients in IPV cases or with disabilities, some representative statements from family lawyers include:

Cases involving intimate partner/family violence benefit from virtual court attendance—impact of seeing abuser on screen less triggering; provides less opportunity for micro-aggression & aggression; clients report feeling “safer” on-screen; impoverished clients appreciate not having to spend precious funds on bus tickets to the courthouse; easier to manage childcare responsibilities when proceedings are virtual.

Our rural clients are disadvantaged by the technological requirements of virtual court appearances ...

... [for] people with physical disabilities, [virtual court] allows them to stay in the comfort of their familiar/safe surroundings during a very stressful event (court appearance). Also, for those who have financial difficulties and live in a non-urban area (as most of my clients do) the ability to appear virtually addresses childcare issues and does not necessitate an entire day off from work, or finding a way to pay for a taxi if they do not have a car. As long as the courts and lawyers have proper training and resources to assist everyone with virtual appearances, this truly expands access to justice for lower income and vulnerable people. If MAG [Ministry of the Attorney General] would give the courts and duty counsel more resources to support this technology/virtual court, it would transform access to justice issues in family law, which currently is at a crisis situation.

The fact that the parties do not need to travel to the same location and run the risk of facing each other, reduces client anxiety tremendously. This enables them to participate more fully and intelligently.

There were also insightful comments from family lawyers about how virtual services impact their practices and professional lives:

Virtual services have significantly reduced the waiting time on the court date. Matters usually proceed on time and there is a sense that the judge is focusing on that particular case. The biggest challenge with virtual court is the availability of the court documents. Rarely are the documents available on CaseLines. CaseLines is a challenge for lawyers, and is definitely a challenge for self-reps.

Virtual options have allowed for greater balance in work and family responsibilities. Virtual appearances make these responsibilities more manageable. Virtual appearances have made it more manageable for clients to attend while still balancing work and childcare responsibilities. This is particularly significant in child protection matters. Where matters are in person, clients are often expected to take time off work to attend. This is not practical for many people.

H) Return to In-Person Services and Court Proceedings

When this research began in August 2022, physical access to courthouses was restricted due to public health concerns, but by the time the last surveys were completed in May 2023, all public health restrictions were ending. By then, Ontario's family courts had returned to presumptively in-person hearings for case and settlement conferences, long motions, and trials. These presumptions remain in effect, with some slight variations among different regions.³¹ Typically, parties wishing to proceed virtually seek permission from the judge at the first appearance or make the request in writing to the court.³² Parties or their counsel will often provide reasons for wanting to proceed virtually. The decision on mode of proceeding is entirely in the discretion of the judge receiving the request, and reasons are usually not provided.

Family justice professionals responding to the first survey were asked how the ending of public health restrictions and return to in-person services had impacted their practice. Most of the mediators reported no change (n=9/11). Virtual mediation continued, largely due to client preference ("Most clients like the virtual because it saves travel time and costs") but also because of mediator preference ("My preference is for virtual mediations"). The two parenting evaluators reported doing fewer virtual assessments after the lifting of public health restrictions, but both saw an ongoing role for virtual services, especially for holding disclosure meetings with parties and interviewing parents.

A majority of the family lawyers who responded to this question in the first survey reported negative impacts on their practice (n=19/29) from the reopening of courts and the return to more in-person attendances. A number referenced increased costs to clients associated with travel time ("Private clients [now] have to pay more for travel time") and time spent at court. One lawyer reported that the re-opening "definitely [meant] that more costs for legal fees and disbursements [are] passed on to the client." A few lawyers were frustrated with the shift back to in-person hearings: one described the move as "coercive and unnecessary," while another expressed, "I cannot see why we should go back to what I call stupidity. I just feel that remote services are much more efficient for participation, time, and money management."

³¹ For example, trial management conferences are presumptively in-person in the Toronto region and presumptively virtual in the Central West region.

³² In Toronto, parties complete a virtual hearing form, which asks for the reasons for the request. See Superior Court of Justice, "[Notice to the Profession and Parties—Toronto Region](https://www.scsj.ca/notice-to-the-profession-and-parties-toronto-region)" (4 September 2023), online: <<https://tinyurl.com/2sf2c7t7>> [perma.cc/J6ZM-KTME].

Lawyers were also concerned that the return to in-person hearings limited their ability to serve clients outside their jurisdiction. One lawyer explained that “the reopening caused unnecessary costs in some of my cases because... I had to travel to the jurisdiction where the matter was taking place. So, the client had to pay mileage and had to pay for a whole day appearance instead of 1 hour.” Another said they now “do not take cases that are not nearby the court that is close to the office to avoid travel time.” Lawyers also noted that judges have refused to allow lawyers in other jurisdictions to appear virtually: “I’ve had cases with... lawyers and they’ve been refused the ability to attend a virtual case conference. So then, all of a sudden, they have to factor in the travel and it’s not worth it.”

A few lawyers indicated that the return to in-person hearings was limiting litigants’ ability to find lawyers to represent them: “Many clients were calling and saying, ‘I can’t get a lawyer in [one city]’... so they would call [another city] and then [lawyers] weren’t willing to drive out there.” This was especially true for clients on Legal Aid certificates: “[Legal Aid] clients have [a] harder time finding counsel.” One lawyer, who works at a legal clinic representing survivors of IPV reported: “People are coming back repeatedly to summary [advice] clinic because they can’t find a lawyer and they have a certificate ... if it was virtual, they could hire somebody from [out of town], but they can’t now because some jurisdictions are stingy with approval [for virtual hearings].” Another lawyer reported that the high cost of travel impeded their ability to represent Legal Aid clients in other jurisdictions: “When the gas prices went up and I was forced to drive out ... for a case conference in [one city], it was costing me like \$90 to fill up, and I’m not even making that amount of money on a Legal Aid case.” Expressing frustration with the return to in-person court and the low reimbursement rate for Legal Aid clients, one lawyer remarked: “I’m not going to put myself in debt to do my job. That makes no sense. I’m not a charity.”

In the first survey, a minority of lawyers reported either no impact ($n=7/29$) or a positive impact ($n=3/29$) on their practice with the physical reopening of the courts. Those who indicated a positive impact cited “improved ... quality of service” and cost savings. For one lawyer, cost savings was connected to increased likelihood of settlement: “It is saving clients money because their matters will now settle or if not, we’ll address it moving forward at court.” A couple of lawyers spoke about the negative impact of remote services on self-represented litigants, and how the return to in-person services could help this group. In particular lawyers noted that self-represented litigants had limited support from Legal Aid duty counsel for virtual hearings: “When we moved to virtual, at first [duty counsel was] virtually inaccessible. There was no help and now it’s still

not running smoothly.” With the reopening of the courthouses, in-person duty counsel could resume.

The second survey was undertaken in the spring of 2023, after the Chief Justice released his Directive about presumptive rules for most types of attendances being in person rather than virtual.³³ Family lawyers were asked their opinions about what the presumptive rules should be, recognizing that judges would always have discretion to make directions for individual cases and attendances. When asked whether they would support a presumption of in-person appearances for settlement conferences if both parties agree, 54% of respondents reported that they support or strongly support a presumption, 15% were neutral, and 31% reported that they would oppose or strongly oppose such a presumption. When asked if they favour a presumption of virtual appearances in a contested appearance if both parties agree, 65% of the family lawyers indicated that they would support or strongly support such a presumption, 16% were neutral, and 19% opposed or strongly opposed this presumption. Finally, when asked if they favour a presumption of in-person attendances if one or both parties are self-represented, 42% of lawyers responded that they would support or strongly support this presumption, 21% were neutral, and 37% were opposed or strongly opposed to this presumption.

4. Limitations

As in all empirical studies, there are limitations to this research. The total number of Ontario family lawyers involved was large but may not have been representative of all family lawyers across the province: the respondents were overwhelmingly experienced, white, and female. While we attempted to survey a broad group of family justice professionals, there is always the prospect that individuals who respond to surveys have stronger views and may not be representative of those who did not participate. Survey research of lawyers, including that undertaken by the Law Society of Ontario, almost always has a low response rate, and raises similar concerns.³⁴ Future research needs to attempt to engage a more diverse sample of the Ontario family bar; however, one of the challenges is that less experienced and more racially diverse lawyers are less likely to be

³³ Superior Court of Justice, Guidelines, *supra* note 5.

³⁴ See e.g. Murray Klippenstein, “[A Critical Review of the Law Society’s Challenges Report: Representations to the Law Society EIA Committee and Benchers](#)” (8 January 2020) at Exhibit 9, online (pdf): <<https://klippensteins.ca/wp-content/uploads/2023/04/Klippenstein-Motion-Record-Volume-2.pdf>> [perma.cc/]. Citing this source is not intended as an endorsement of the views of the author, but he makes a very valid point about the low response rate and potentially non-representative nature of the samples used in Law Society research of its membership.

members of the professional organizations that circulated the link to these surveys, and may have less time to respond.

Another limitation of this research is the small number of non-lawyer participants. Most of the participants were lawyers; other family justice professionals were not well represented. As a result, this research provides only limited insight into the views of mediators, parenting evaluators, judges and other non-lawyers navigating virtual family justice in Ontario.³⁵

This research focused on family lawyers and family justice providers. While it was a relatively robust sample, the views of professionals are not the only ones to be considered. Learning about the views and experiences of litigants, especially those who are vulnerable, marginalized, self-represented, or from diverse cultural and linguistic backgrounds is also very important. Governments and researchers must do more to reach these important stakeholders.

Finally, there may well be survey fatigue. That is, many of the organizations that generously sent our surveys to their memberships have seen an increase in surveys about these issues since the pandemic and this too can affect response rates.

5. Discussion

The results of this research confirm that virtual family justice services offer many benefits for family lawyers and other family justice professionals, as well as many of their clients. First, virtual services generally provide cost savings. All professional groups reported that most clients saved money by avoiding travel to attend interviews, mediation, and court. Lawyers overwhelmingly reported that virtual hearings save clients money by limiting lawyers' travel time and time spent waiting at court to be heard. Clients on limited-hour Legal Aid certificates also benefit from these efficiencies: reducing lawyer travel time and time spent waiting for hearings means lawyers can spend more hours performing legal work on a file.

Second, using technology to allow virtual attendance improves access to many services. Virtual technologies allow individuals to access more professionals offering more specialized services. This is especially

³⁵ Previous research by this team into the experiences of judges during the Pandemic was described in Houston, Birnbaum & Bala, *supra* note 11. One member of this team conducted independent research into the views of mediators and also found a need for more diversity in the sample. See Rachel Birnbaum, "Private-based Mediation in Family Disputes: Mediator and Client Experiences in Ontario" (2023) 42:2 Can Fam LQ 131.

important in underserved areas. Professionals reported that virtual family justice services allowed individuals to better access professionals with cultural and linguistic competencies, retain lawyers with expertise in IPV or high conflict separation, and find lawyers willing to accept Legal Aid certificates. As family courts resumed in-person hearings, some lawyers reported that they stopped representing clients in other areas of the province.

However, this research also confirms that there are sometimes hidden costs to virtual family justice services. In the first survey, nearly half of the lawyers reported that virtual hearings negatively impact settlement; in the second survey, a significant portion of the lawyers reported similar concerns, though a majority felt that settlement was not affected or was improved by virtual appearances. Settlement may be negatively impacted by limited settlement discussions due to counsel no longer interacting at the courthouse, limited buy-in from parties attending court remotely, or reduced settlement-oriented influence of judges when presiding virtually. To the extent that cases are less likely to settle because the parties are not in the physical presence of a judge and each other, costs to case resolution may actually increase if there are not in-person attendances, even if there are reduced travel and wait times with virtual hearings. There are also emotional costs to parties from continuing litigation. Further research on the impact of virtual hearings on settlement is necessary.

The impact of virtual family law services on client satisfaction should also be further explored. Other research has suggested that some parties may feel less “heard” in virtual proceedings, which can have an impact on whether a party feels the proceeding was fair, especially those without lawyers.³⁶ Some of the lawyers in this study commented that virtual service delivery results in poorer quality of service for clients. If true, this could impact parties’ sense of satisfaction with the family justice process.

While virtual hearings may reduce the overall cost of legal representation and case resolution, hiring a family lawyer remains too expensive for many, and Legal Aid eligibility thresholds remain very low. This research did not directly address critical questions related to the effect of virtual family justice services on litigants without lawyers. However, previous research by this team revealed that self-represented litigants in Ontario’s family courts were especially negatively impacted by

³⁶ See Mary Ryan, Lisa Harker & Sarah Rothera, “[Remote Hearings in the Family Justice System: Reflections and Experiences](https://tinyurl.com/y2npykyn)” (September 2020), online (pdf): <<https://tinyurl.com/y2npykyn>> [perma.cc/F759-A2B8].

the shift to virtual family justice during the pandemic, including difficulty in consulting with duty counsel and court staff.³⁷

This research highlights differences in perspectives and interests among family justice professionals in Ontario when it comes to virtual hearings. For many lawyers, the shift to virtual service provision and court appearances has allowed an increase in income and better work-life balance. Lawyers with administrative support were able to replace travel time and time spent waiting at court with more productive use of their time. Some lawyers, however, did not experience the same benefits from virtual court appearances. For example, lawyers without administrative support were also able to reduce travel and wait time, but these hours were often replaced with time spent navigating the new online system, time that could not be billed to clients. Still other lawyers were disadvantaged by the move to virtual hearings. According to one of these lawyers: “Virtual court tends to benefit a group of elite, older, mostly white lawyers. Younger, junior, and [racialized] lawyers have been robbed of the opportunity to network at court, observe proceedings and learn, pick up clients, etc.” These different interests and perspectives are important to consider when evaluating proposals for reform.

Some of the costs of virtual hearings may be offset by changes in practice while others require public investment. Virtual hearings require lawyers to be more settlement focused. To replicate “hallway justice,” lawyers should create more opportunities for informal settlement discussions. Judges should consider requiring that such discussions take place before any hearing. To strengthen judicial influence, the gravity of virtual hearings should replicate those of in-person hearings. For example, parties should be encouraged to participate from a private, quiet space, dress appropriately, and abstain from activities that would not be permitted in a courtroom, such as eating or texting.³⁸

It is encouraging that the Ontario government has announced increased funding to support the transition to a digital justice system, though it remains to be seen how and when this funding will be spent. Courts should be equipped to allow hybrid attendances, with some individuals present, but others appearing virtually, especially if they are a significant distance from the court. To address concerns about lack of access to technology among more vulnerable litigants, the government

³⁷ Houston, Birnbaum & Bala, *supra* note 11.

³⁸ See Ontario Bar Association, “[Best Practices for Remote Hearings](#)” (28 May 2021), online: <<https://tinyurl.com/4abm4vyh>> [perma.cc/QZK8-D25C]; and Superior Court of Justice, “[Virtual Courtroom Etiquette Rules](#)” online: <<https://tinyurl.com/442m4kaw>> [perma.cc/L5J8-BKMJ].

should invest in “technology hubs”—private, dedicated spaces in libraries or other public buildings where individuals can file electronic documents and participate in virtual hearings. Self-represented litigants also need better supports, including dedicated personnel who can assist with e-filing and electronic document service. Self-represented litigants also need a better platform to connect and share documents with duty counsel, and duty counsel must be able to attend hearings to assist self-represented litigants who are appearing virtually.

6. Conclusion

Greater use of technology has an important role to play in improving access to justice and reducing costs in Ontario’s family justice system. Reducing travel costs, lowering legal costs, and allowing parties to connect with professionals in other jurisdictions can help parties resolve their matters efficiently and effectively. However, use of virtual services also has the potential to reduce access to justice for some by creating barriers to participation and impeding settlement. These costs must be weighed against the benefits of virtual services in individual cases.

Given the variation in access to services and resources, rules should be flexible and able to accommodate differences between regions as well as between cases. Rather than adopting a presumption that all hearings are to be virtual (or in person), courts need flexible approaches that allow consideration of relevant circumstances. If both parties are represented and consent to virtual appearances, there should be a presumption that they need not attend in person, provided the court does not believe that settlement would be more likely in person or that assessments of the reliability of evidence would be affected.³⁹ The courts need to be realistic about expecting out-of-town counsel, especially those on Legal Aid certificates or representing the OCL, to attend in person. In cases where there are family violence concerns or vulnerable parties, the safety and psychological well-being of vulnerable litigants may favour use of virtual appearances. In cases where there are self-represented parties, a different balancing may be needed. Ultimately judges must retain the discretion to determine how to balance concerns about fairness, efficiency, and the promotion of justice in deciding which aspects of a case are to be in person and which can be virtual.

³⁹ There have been reports of fabricated evidence since the introduction of new technologies in the family justice system. See e.g. *Lenihan v Shankar*, 2021 ONSC 330; See also *Zant v Zant*, 2022 BCSC 2023.