

Second Study Commission
Civil Law and Procedure
65th Annual Reunion of the IAJ – Tel Aviv, Israel
Questionnaire 2022

**VIRTUAL TRIALS IN CIVIL PROCEEDINGS – CARIBBEAN COUNTRIES UNDER
Caribbean Association of Judicial Officers (CAJO)**

The Second Study Commission will focus on how our jurisdictions used, and will use, virtual trials and hearings before, during and after the Pandemic. We have limited the questionnaire to six questions, and we expect to receive short and concise answers. The questions are as follows:

1. **Did your jurisdiction offer complete or partial virtual civil trials or hearings before the Pandemic? If yes, please describe what was offered and how often the offer was exercised.**

Prior to the pandemic, the laws of many of the territories permitted witnesses to testify via skype or video link in civil trials and criminal trials. This was on application and regulated by the Evidence Act. These applications were used in exceptional circumstances.

2. **Did your jurisdiction offer civil virtual trials or hearings during the Pandemic? If yes, was there a change in how, what and when it was offered? Were protocols published? Also, if yes, when were the virtual trials/hearings offered and what was the uptake?**

Yes, virtual trials or hearings were offered during the pandemic in civil trials and hearings at all levels of courts – Magistrates’ Courts, High Court, and Appellate Courts.

Practice Directions (PDs) were issued by the Heads of the Judiciary to facilitate such trials and hearings.

The PDs permitted: (1) hearings to be conducted utilizing any electronic medium; (2) all hearings to be so conducted unless a judicial officer ordered otherwise in the interests of justice and fairness, taking into consideration the resources of the litigants, especially accessibility to the internet and online platforms; and (3) hearings to be blended, that is, a combination of in-person and online to facilitate litigants and counsel.

3. **Presuming that civil virtual trials were offered, was there any improvements made in the technology/software that the government provided? How were documents and exhibits managed?**

The Judiciary was able to utilize funds from the Court’s budgetary allocation and from funding agencies to retrofit courts with screens and internet access to accommodate virtual hearings. Licences for online video conferencing platforms were also purchased from the budgeted funds. Mobile internet devices were procured which permitted internet connectivity for judicial officers and staff so that hearings and trials could be facilitated whether from a court building or elsewhere.

In some territories the production of documents and exhibits has proven to be a challenge because the filing and case management system of courts is still paper based. In others practice directions allowed for electronic filing by email or under the electronic document management systems. Under that system documents are filed electronically, and where hard copies are filed all documents that are filed are scanned into the court's data base. Therefore there is accessibility by this means. Lawyers and courts have also utilized the share screen feature to display documents. In some cases, the litigants and counsel have had to appear in-person because of the size and nature of the documents which made it difficult to display virtually.

4. **What does the future hold in your jurisdiction with respect to the continuation of virtual trials? What are the issues and or benefits that have arisen?**

There is consensus among justice sector stakeholders that virtual hearings are here to stay. It has been expressed that they should continue to be utilized for case management and appeals. The extent to which they will be utilized for trials is still being debated in some territories, while in others there has been active use of hybrid sittings.

5. **Has or is research being done in your jurisdiction to help ameliorate some of the concerns that have arisen with virtual trials?**

No research has been done. However, it is anticipated that an evaluation will be conducted of what have been best practices and challenges over the last two years in order to determine the way forward. Some senior lawyers have called for a full return to in-person attendance at court, especially for all trials. While the younger lawyers have gravitated to the virtual hearings and are not keen to return to in person hearings. In many territories finance, efficiency and expediency may dictate the continued use of virtual platforms for hearings. Such discussion have been on-going throughout the pandemic period as the judiciary sought to ensure access to justice while not compromising the integrity of the administration of the court system.

6. **How did the digitally excluded people in your jurisdictions have access to justice and specifically to virtual trials during the Pandemic?**

As noted above, judicial officers are mandated to ensure that fairness prevails for all litigants in the hearings. Even where virtual hearings have been held, accommodation have been made at the court or at remote locations for digitally excluded persons. As such there is flexibility to select the most appropriate method or mode of hearings so as to accommodate all litigants including digitally excluded persons. As such in-person hearings continue to be conducted but were expected to be and still are to a large extent the exception rather than the norm. In this regard, especially in the first month to three months many cases were adjourned. However, also during this period, before many zoom licences were acquired, and before the populace became familiar with this platform, where possible whatsapp video calls were utilized for simple hearings since many persons were comfortable with and had access to this. Whatsapp was not utilized for trials. The Teams platform was also used.