



Judges Association of New Zealand
TE HUNGA KAIWHAKAWĀ O AOTEAROA

Questions

NB. These answers relate ONLY to civil proceedings NOT for example Environment Court or Family court proceedings which have their own virtual proceeding protocols.

- 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.**

No.

- 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?**

Not as a process and not a fully integrated remote participation environment. The most evolved the remote participation got to in the civil jurisdiction was:

- Some civil Judges directing that civil hearings be on MS Teams with no person other than the court-taker in the courtroom and no digital file (i.e. The Judges retained a hard-copy file in chambers where the RP originated)
- Other judges arranged RP from a dedicated room in a court regional office– again with a hard copy file – to utilise Virtual Meeting Rooms to hear matters from other satellite courts within that region

- 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 only improvements, in isolated instances, was a relaxation of otherwise compulsory use of the governments Virtual Meeting Room system in preference for the wider use of MS Teams. Document management processes require counsel bundle exhibits into a ‘Trial Folder’. Pre-Covid in appeal cases the appellate courts had an existing process for filing Electronic versions of these ‘bundles’ other courts did not have the same ability. However most streaming platforms allow the sharing of screens (both VMR and MS Teams platforms) so electronically held/uploaded exhibits can easily be verified and shared real time. MS Teams offers ‘break-out rooms’ which enhance this experience

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?

Counsel and participants experienced ‘virtual-hearings’ across all jurisdictions during the pandemic. Generally, they now embrace remote participation hearings and often enquire and request remote participation by any available means. So, there is a high consumer demand and expectation. A return to higher alert levels and associated restrictions on freedom of movement will mandate virtual hearings. However, governments response is too ‘politicised’ and ‘clunky’. Our future development depends upon the Ministry of Justice understanding and support for virtual trials. If the context is pandemic safety, access to justice and continuity each ‘court hearing’ should be resourced with the ability to turn fully virtual at a moment’s notice. As with many developments taking place in the New Zealand justice space pivoting on consumer demand and pandemic ‘need’ Judge lead initiatives seems the best approach especially in the technological space. The use of digital document systems and the adaptation of security enhanced MS Team’s-like platforms, in the full application with private break-out rooms, and a move away from formulaic advocacy and judging are the future.

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

No quality research. New Zealand has a long-standing Case-flow project called Te Au Reka. This will no doubt be the most bold and largest innovation project ever seen in the justice business unit. However, generally the process design elements and project goals rest on file velocity driven fiscal theory alone that is less reflective of any other better means to the same end, such as virtual trials.

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

People were primarily precluded from using digital technology by the systems failure to mandate similar AV platforms across the justice sector. That could have been overcome if the Ministry of Justice supported an application ‘patch’ such as the ‘agnostic’ *pexip* application that could have been easily tailored to allow true interoperability. The UK has done so and now any Court provided RP platform can be joined to any other type of RP platform. Anecdotally most if not all court participants seeking virtual hearings advised their own ability to join (connectivity) a platform or a way through family/friends that they could appear in that way. In person appearances were permitted under COVID safety protocols.