



2023 QUESTIONNAIRE OF THE 1ST STUDY COMMISSION IAJ-UIM

“THE EFFECTS OF REMOTE WORK ON THE JUDICIAL WORKPLACE

AND THE ADMINISTRATION OF JUSTICE”

RESPONSE OF JUDGES ASSOCIATION OF NEW ZEALAND

1) Remote work of judges in your country

a. Were judges permitted to work remotely in your country prior to and/or during the COVID-19 pandemic? If yes, please give examples (for example, studying cases at home; discussing cases with colleagues via videoconference applications or the telephone instead of personal meetings; holding hearings online via videoconferencing applications; etc.). Was technical equipment made available to the judges to enable them to work remotely?

b. What is the status of remote work by judges in your country now? Do many judges still work remotely in your country, and to what extent? (For example, all or just a certain percentage of judges? Only in certain fields of law or for certain types of cases? Only in lower courts or higher courts? etc.)

Answer:

Prior to early 2020 and the start of the pandemic remote working (i.e., outside a court as in ‘at home’) by judges in New Zealand was uncommon. Some judicial officers in some jurisdictions may have undertaken some hearings, including telephone hearings, most were conducted from courtrooms or judge’s chambers. Most jurisdictions were still paper-based and therefore case preparation and box work were invariably undertaken from court.

In a broader historical context business as usual in the Courts operated a *kanohi ki te kanohi* or face to face in-person model as the default or presumptive model.

Remote proceedings were however legislatively mandated in very limited circumstances by the Courts (Remote Participation) Act 2010. Before the Act was passed in 2010, AVL was only permitted for a limited range of criminal matters, primarily witness appearances, leave applications to the Court of Appeal and Supreme Court, and to facilitate the attendance of remand prisoners during appeals. This was a product of the judicial interpretation of s 25(e) of the New Zealand Bill of Rights Act 1990, which requires defendants or witnesses to be “brought before a court” or to be “present in court”. In *Connelly v R*, the Court of Appeal interpreted the word “present” as requiring physical attendance in the courtroom.³

The Courts (Remote Participation) Act 2010 was enabled greater use of AVL in New Zealand courts.⁴ The Explanatory Note explicitly references the decision in *Connelly v R* and signals Parliament's intention to incorporate AVL into the courts' everyday operation:

This legislation is one of the first steps to be taken in the reform of criminal procedure. The Bill will ensure that as AVL facilities are installed in courts, they can be used to their full potential. Future legislative and operational reforms will modernise and simplify criminal procedure to improve timeframes and promote efficiency in the courts.

The Courts (Remote Participation) Act 2010 ("the Act") was designed to enable greater use of AVL in all New Zealand courts by allowing the following "participants" to appear via AVL in certain circumstances:

a party, the defendant, counsel, a witness, a member of the jury, a judicial officer who is presiding over the proceeding, a Registrar who is presiding over the proceeding, or any other person directly involved in the proceeding whom the judicial officer or Registrar considers appropriate.

The Act provides various criteria that must be met before a participant appears via AVL. Most, if not all, types of proceedings can be conducted using AVL to varying degrees. The legal criteria permitting the use of AVL differs depending on the particular circumstances.

That said as early as 2018 the Chief District Court Judge issued two protocols pertaining to the use of audio-visual link (AVL) in the District Court:

- The Architectural and Courtroom Transition Protocol outlines minimum standards of AVL booth architecture, as well as expectations around the procedure for transitioning the defendant from Corrections or Police custody to the distributed custody of the court when entering the booth.
- The Technological Failure Protocol recognises the reality that AVL technology at times fails, and that defendants require information on what to do in such circumstances given that they may be unfamiliar with the process of appearing in proceedings remotely.
- The Judicial Protocol: Audio Visual Links Procedure for Prisoner Appearances in Courts was also reissued in May 2018.

All three protocols were designed to reflect best practice requirements to meet the needs of defendants who appear in the District Court remotely from Corrections (Prison) and Police custody. These were modified to reflect post COVID learning, and more particularly remote proceedings conducted away from courts.

The COVID-19 pandemic resulted in the increased use of remote hearings across all jurisdictions. Judges, court staff and professionals became more familiar with the technology but for such hearings to be procedurally and substantially fair there was early recognition of the challenges many parties face when using the technology. Additional steps were required to ensure that parties are seen, heard, understood and that they are enabled to meaningfully participate in the hearing.

The new [guidelines\(external link\)](#) assist District and Family Court judicial officers to identify and mitigate some of the challenges that arise when conducting remote hearings.

The guidelines cover:

- signalling judicial independence and setting up the physical arrangements for remote hearings (this includes considerations for defendants participating remotely from a room in the prison or Police station, with no real demarcation to indicate that they are going into a formal court hearing).

- how to conduct introductions.
- recording of proceedings.
- additional considerations if a party is appearing by audio link only; and
- barriers to participation in remote hearings, and the particular impact of neurodisabilities on participation.

In emergencies and pandemic related lock downs the Courts operated a remote participation model using available IT platforms, e.g., AVL, VMR, MS Teams etc. The current operating model relies on both in-person attendance of judges and registrars and remote participation of counsel and other stakeholders. In some courts defendants in custody also appear in person because of a lack of IT infrastructure to enable their appearance from police stations.

2) Effect on judicial work

a. Did remote work change judicial work in general for better or worse – or both – in your country? Please give examples.

b. Does the remote work of judges have an impact on the judicial workplace in your country? Negative, positive or both? Please give examples.

c. From your point of view, what future effects of remote work on the judicial workplace – negative, positive or both – can be expected?

Answer:

It is difficult to distinguish between the impact of remote working by judges from the impact of remote hearings, and the change in practice and technology necessitated by the pandemic.

Ensuring that the Judiciary, staff, and stakeholders gain and retain “match fitness” by using relevant IT platforms during business as usual to ensure a seamless transition when a remote participation operating model is necessary in an emergency/pandemic lockdown environment. This requires Heads of Bench identification of the types of hearings that may (in the future) be appropriate for this purpose.

A future point to be addressed for lockdown/emergency scenarios relates to whether the criminal jurisdiction operating model can be made capable of full remote participation whereby all participants except the registrar connect to the hearing remotely in a fully electronic virtual courtroom.

3) Effects on the administration of justice

a. What are the pros and cons of remote work on the administration of justice?

b. Does remote work have a positive or negative impact on the administration of justice in general in your country? Please give examples that include, but are not limited to, the quality of the administration of justice.

c. Are you aware of the public’s perceptions of remote work by judges? Please give examples of positive or negative perceptions.

d. What are the positive and/or negative effects of holding remote hearings/conferences?

Answer:

a. The pros during the pandemic consisted of the ability to continue dealing with cases which otherwise could not be dealt with. Since the pandemic ended, while that necessity no longer exists and historically, New Zealand has felt it is better that cases are dealt with non-remotely our short history of allowing all participants in a hearing, including the Judge, to operate remotely is likely to be maintained and enhanced as in 'emergencies' it is recognized that remote hearings are beneficial.

b. The impact on the administration of justice has been positive as cases that would otherwise go unheard during an emergency are resolved. However, maintaining frequency during the BAU comes at a cost of administrative and judicial resources. The Court needs to build resilience by having the ability to adjust its settings along a continuum which starts with kano ki te kano (face to face) at one end through to reliance on AVL at the other.

One of the biggest challenges for the Court is that it currently operates a paper-based filing system. Whilst there is some capacity to operate courts using AVL technology, on a nation-wide basis, it has not been possible to switch to a fully remote AVL operating model because the court lacks the requisite infrastructure, staff training and judicial education.

c. The public will expect judges to be working and the 'mode' of operation in emergencies is less important. During BAU we expect greater use of technology will shape public expectation along with ease of access to courts and efficacy.

4) Remote work and judicial independence

Do you see any positive or negative effects of remote work on judicial independence? If yes, please give examples.

Answer:

No.

5) Limits on remote work for judges

a. Does your country place any limits on the remote work of judges (for example, limits on remote hearings in criminal cases)? If yes, please give examples.

b. Are there any proposals to change rules or statutes in your country either to permit more, or to limit, remote work by judges?

c. Should there be any changes of rules or statutes in your country either to permit more, or to limit, remote work for judges?

Answer:

5) a. and b. See above.

5) c. No.