

**National Self-Represented
Litigants Project**

VIRTUAL JUSTICE

**A complex portrait of
Canadian self-represented
litigant experiences with
virtual hearings**



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Executive Summary

Virtual processes have brought about remarkable change in the justice system. However, the “modernization” of the justice system through the use of new technologies is often taken as a given, without enough consideration paid to the practical experiences of stakeholders. Few studies to-date have undertaken efforts to gather data and feedback from self-represented litigants (SRLs), specifically. This report seeks to correct this imbalance and to contribute to the literature by centering the voices of SRLs. The research described here, undertaken by the National Self-Represented Litigants Project (NSRLP), consisted of two main methodological approaches: surveys and focus groups. In choosing these methodologies, the underlying objectives were to develop a quantifiably measurable sense of SRLs’ engagement with virtual hearings, and to qualitatively explore SRLs’ experiences with these hearings in greater depth. The results of the survey reflect the fact that SRLs’ experiences with virtual hearings are, in fact, quite varied. Approximately 24% of the SRLs surveyed were satisfied with their virtual hearing experience, while approximately 35% of SRLs were dissatisfied, and approximately 15% reported they were neither satisfied nor dissatisfied. In terms of positive experiences, both survey respondents and focus group participants reported that taking part virtually allowed for the removal of certain barriers that tend to disproportionately impact SRLs. Specifically, they indicated that there was less time wasted travelling to and from court, as well as waiting at court to be heard. Additionally, for some SRLs, appearing virtually felt less formal and was thus considered to be less intimidating and stressful than appearing in court in-person. Respondents also noted that the virtual hearing setting entailed a relaxing of the procedural rules and practices, which meant that they felt more confident in presenting the details of their case. Moreover, they were better able to organize their materials and the presentation of their case, all of which led to a more positive experience overall.

However, it is equally important to note some of the factors that underscored SRLs’ negative experiences. These factors are generally reflective of ongoing barriers that SRLs face in attempting to access justice, as well as new barriers raised in the virtual sphere that need to be accounted for in access to justice discourse moving forward. Broadly speaking, there were certain factors that negatively impacted SRLs’ experiences with virtual hearings: these include technical challenges associated with participating virtually, and issues related to SRLs’ interaction with other

participants and with online procedures. Woven throughout this discussion of SRLs' negative experiences is the impact of the digital divide, which serves to disproportionately disadvantage certain SRLs who may already face a host of barriers when attempting to access justice and technology. The researchers conclude that virtual proceedings can add to, compound, or replace existing barriers.

Based on this research, the NSRLP believes there is a need to adopt certain immediate steps to strengthen SRLs' abilities to participate in virtual settings, including more comprehensive informational and technological support for those accessing or participating in virtual hearings. The data gathered in this project also serves to highlight the need to develop inquiries into intersectional equity impacts; perceptions of fairness and access within the context of virtual hearings; timeliness of virtual hearings as a more efficient means of reducing backlogs in court; reform to processes and court conduct post-pandemic; research that is focused on the particular challenges of SRLs in administrative tribunals; and the overall development of a culture of evaluation that includes the voices of justice system users. Pursuing all these lines of inquiry would contribute to a robust and innovative set of insights meant to inform the development of access to justice policy and initiatives.

Virtual hearings, as with all new technologies, have evidenced a great capacity to increase access to justice for many people. This is particularly when they are implemented thoughtfully, and when care is taken to gather and act on input from end users. But the potential for and evidence of very serious barriers experienced by the most vulnerable litigants must be carefully considered by all those with power in the justice system. Virtual hearings are very evidently not a one-size-fits-all panacea to issues of access to justice, and ought to be considered one of a range of potential options and solutions, carefully employed, and thoroughly studied.

Introduction and Background

In the spring of 2020, when Canadian courts regularly began to hear matters virtually as a way to adapt to the challenges of the COVID-19 pandemic, National Self-Represented Litigants Project (NSRLP) staff, along with most legal professionals interested in access to justice, hailed this move as a kind of coronavirus silver lining: at last, the justice system was moving into the 21st century, allowing litigants greater and more flexible access to legal procedures. Certainly, many self-represented litigants (SRLs) expressed interest in the virtual hearing format, as it allowed them to access the court more conveniently, and gave them the ability to partake in proceedings from the comfort of their home. However, in short order we began hearing from SRLs who were less enthused about their actual experiences with virtual hearings.

The trend toward online legal processes has continued, naturally, in the years since the onset of the pandemic. Without a doubt, the use of various technologies, and in this case, the move to virtual hearings in particular, presents many avenues for an increase in practical access to justice, and Canadian courts witnessed this in real time when they were compelled to take proceedings online. As a result, there is no question that virtual processes have brought about remarkable change in the justice system. But, as with any new process or technology, these changes come with challenges and potential downsides.

The “modernization” of the justice system through the use of new technologies is often taken as a given, without enough consideration paid to the practical experiences of stakeholders.¹ If traditional processes are simply reproduced in virtual settings, the old inherent inequities, barriers, and frustrations will not disappear, and may be compounded by additional layers of complication for some users. Therefore, what is needed is a thoughtful approach to modernization. This entails a consideration of virtual processes and online spaces as tools that, when built with user input and used appropriately, can go a long way toward increasing access to justice. But such processes must be deployed within a wider context of structural limitations and systemic barriers, as well as a commitment to building better systems to address those limitations and barriers. A veneer of technology alone will certainly not solve the problems inherent in the justice system.

¹ This is notwithstanding the urgent basis on which the Canadian justice system moved to virtual hearings in the early stages of the pandemic, and the fact that, subsequently, courts have held hearings both in-person and virtually.

While much was written in the legal press in the early days of the pandemic about the advantages virtual hearings bring, little to no mention was made of any challenges. Most particularly, little noticeable, if any, effort was made to canvass litigants (SRLs particularly) themselves about their experiences with virtual proceedings.

Subsequently, academic essays, reports, and studies have come out, dissecting, analyzing, and comparing virtual court processes, and exploring the opinions and experiences of legal professionals with these processes. The literature produced to date presents an interesting and certainly more complex picture of the state of virtual hearings than first-reaction think pieces from the early days of the pandemic: much has been discussed around both the advantages and disadvantages, the successes and pitfalls, of virtual hearings. Still, little has been written about the experiences of litigants themselves. Few studies so far have undertaken efforts to gather data and feedback from self-represented litigants. This report seeks to help correct that oversight.

Literature to-Date: Perspectives of Lawyers and Judges

Drawing on the literature (mainly from Canada, but also from the USA and the UK), we find that several thought-provoking studies in the last several years have considered the experiences of legal professionals (mostly lawyers and judges) when it comes to virtual hearings and legal processes.

Certainly, legal professionals have identified what they see as positive impacts on access to justice with the advent of virtual proceedings, lauding new allowances for remote witnessing and execution of documents, the greater flexibility allowed by virtual hearings, and lifted burdens of travel time and costs where participants do not have to attend court in person;² some have also spoken of a relaxation in procedures in virtual hearings, making court more accessible and less intimidating for SRLs.³

² Law Society of British Columbia Access to Justice Advisory Committee, [Responding to COVID-19 and adjusting regulation to improve access to legal services and justice](#) (2021).

³ Houston, C., Birnbaum, R., Bala, N., & Deveau, K. [Ontario family justice in "lockdown": Early pandemic cases and professional experience](#), *Family court review* (2022).

Interestingly, these professionals have also been quick to identify negative elements of virtual processes, and how they can affect litigants. Lawyers have identified a number of pain points for litigants with the move to virtual processes, including more complicated witnessing and execution of documents, impeded access to support providers such as Native Court Workers, mental health workers and other third-party service providers, and struggles with professionalism and etiquette for all participants.⁴ Additionally, legal professionals have found the success of remote justice processes to be highly contextual. In some settings decisions to proceed with virtual hearings are being made on a case-by-case basis.⁵

In the family law context, lawyers identified increased barriers for certain individuals, most particularly for high conflict families, victims of intimate partner violence, self-represented litigants, and families involved with child welfare.⁶ Regarding SRLs particularly, professionals have noted that in the virtual context they are unable to access supports present in physical courthouses, such as duty counsel and Family Law Information Centres; some professionals have described witnessing SRLs not receiving key information (such as virtual meeting details).⁷

Literature to-Date: Perspectives of SRLs

While there has in general been a lack of user perspectives, particularly from self-represented parties, in the literature, there have recently been some laudable efforts to gather the experiences of litigants around virtual court processes.⁸ One multi-method study on the use of virtual resources in British Columbia's legal system highlights the digital divide by reporting that while technology use is high overall across the province, access is not equal. Many litigants from low and very low-income households reported facing barriers while using virtual legal processes and resources, such as inequitable access, unaffordable costs, low comfort and skill

⁴ Law Society of British Columbia Access to Justice Advisory Committee, [Responding to COVID-19 and adjusting regulation to improve access to legal services and justice](#) (2021); The Canadian Bar Association, [Who's Getting Left Behind? The Impact of the Ongoing Digital Transformation of the Court System on Access to Justice in British Columbia](#) (2021).

⁵ Richardson, C., McDonald, L., Boychuk, R. et al., [Examining the Virtual Facilitation of Legal Processes in Saskatchewan: An Exploratory Inquiry](#), Dean's Forum on Access to Justice and Dispute Resolution (2022).

⁶ Houston, C., Birnbaum, R., Bala, N., & Deveau, K. [Ontario family justice in "lockdown": Early pandemic cases and professional experience](#), *Family court review* (2022).

⁷ Ibid.

⁸ Quintanilla, V., Hugenberg, K., Hutchings, R. & Yel, N., [Accessing Justice with Zoom: Experiences and Outcomes in Online Civil Courts](#), Equity Accelerator, Maurer School of Law (2023).

levels, and trust and privacy concerns.⁹ In Nova Scotia, another research project, seeking to understand historically marginalized individuals' experiences with virtual hearings, found that the elimination of travel costs, a reduction in time commitment, less stress and anxiety around taking part in court hearings, increased safety, and greater accessibility for those with disabilities were all positive elements reported by litigants. However, there were various barriers identified as well, including a lack of access to technology, weak technical literacy, decreased efficiency, perceived lack of accountability, comprehension challenges, translation issues, privacy concerns, lack of support, lack of human interaction, and identity issues (such as misgendering, or lack of understanding of cultural identity).¹⁰

From a national perspective, the Immigration and Refugee Board (IRB) of Canada in 2022 released a report on the perception of access to justice experienced by litigants at virtual hearings held via Microsoft Teams. 86.40% of persons appearing before the IRB overall experienced what the authors refer to as “a general sense of access to justice.” Although they find a strong correlation between virtual hearings and positive experiences, the researchers note the limitations of a small data set (42 respondents), and recommend further study to understand the impact of virtual hearings and any unintended consequences, and the ongoing collection of user experiences.¹¹

Literature to-Date: Analyses of Programs and Recommendations for Further Study

Recent literature on virtual hearings also engages a review and analysis of existing programs and processes, case law, and practice directives. Some authors have discussed the potential for virtual processes to help create safe spaces for vulnerable litigants and provide innovative alternatives that increase practical access to justice.¹² Others, while lauding the potential for increased access to justice, raise concerns around issues such as privacy, decorum, impact on

⁹ Murray, K., [Achieving Digital Equity in Access to Justice](#), Legal Aid BC (2021).

¹⁰ All Courts Virtual Court Committee, [Exploring the Impact of Virtual Court Proceedings on Historically Marginalized Individuals and Communities in Nova Scotia: What We Heard](#), Nova Scotia Courts (2022).

¹¹ Vermeys, N. & Callipel, V., [Report on the sense of access to justice associated with virtual hearings held before the IRB using MS Teams](#), Immigration and Refugee Board of Canada (2022).

¹² Roberston, L., "[The Disruption of COVID-19: How a Virtual World Creates Opportunity for Improvement in the Criminal Justice System's Treatment of Complainants of Sexual Violence](#)," Directed Research Project: Law in a Post-Pandemic World, Schulich Law Scholars (2021); Gras, O., "[Online Courts: Bridging the Gap Between Access and Justice](#)," *Journal of Law and Jurisprudence* (2021).

marginalized groups, the digital divide, and reduced transparency.¹³ Still others recommend specific types of virtual programs/initiatives, new legislation, or best practices around issues such as determining which cases are suitable for virtual hearings,¹⁴ or implementing online dispute resolution (ODR) processes such as British Columbia's Civil Resolution Tribunal (CRT).¹⁵ The latter example is particularly significant for its emphasis on user feedback and litigant-centred design, through inception, current maintenance, and improvement.¹⁶ The success of the CRT serves to challenge the tendency to simply move traditional justice processes online without taking the opportunity to consider how certain proceedings may be done differently in order to ensure that old barriers are not reinforced, and new ones are not introduced.

While much of the literature around virtual hearings has consisted of either studies gathering the feedback of justice professionals, or theoretical analysis of existing procedures, it has not tended to focus on the perspectives of users (with the above-noted exceptions). Most especially the experiences of SRLs have not been sought or included, although authors have emphasized and recommended that user perspectives ought to be gathered in further research and in the future implementation of virtual processes. The Canadian Bar Association specifically recommends that courts and tribunals consult SRLs on the impact virtual processes have made on their experience in the justice system, especially in regard to their needs, concerns, safety, and security,¹⁷ and calls out the need for data collection from specific groups, including SRLs, in order to effectively allocate resources, and to consider potential solutions to the problem of groups of litigants being "left

¹³ Jagersky, K., "[Where Are We Now? Accessing the Current Ontario Family Justice System](#)," Master of Laws Research Papers Repository, Western Law (2021); Philp, G., "[Listening and Responding to the Future of Virtual Court: A Report on the future of virtual courts in Canada](#)," Nova Scotia Court of Appeal Cowan Internship Program (2022).

¹³ Puddister, K. & Small, T., "[Trial by Zoom? The Response to COVID-19 by Canada's Courts](#)," *Canadian Journal of Political Science* (2020).

¹³ Susskind, R., [Online Courts and the Future of Justice](#), Oxford University Press (2019).

¹⁴ Piccinin C. & Sklar, S., [Forced to Adapt: Innovations and best practices regarding access to justice in Canadian courts and abroad during COVID-19](#), Winkler Institute for Dispute Resolution (2022).

¹⁵ Rule, C., "[Online Dispute Resolution and the Future of Justice](#)," *Annual Review of Law and Social Science* (2020); Martinez, J., "[Designing Online Dispute Resolution](#)," *Journal of Dispute Resolution* (2020).

¹⁶ Salter, S. & Thompson, D., "[Public-Centred Civil Justice Redesign: A Case Study of the British Columbia Civil Resolution Tribunal](#)," *McGill Journal of Dispute Resolution* (2017).

¹⁷ Canadian Bar Association, [No Turning Back: CBA Task Force Report on Justice Issues Arising from COVID-19](#) (2021).

behind” by new virtual processes.¹⁸ Many authors have called for system reform which considers the best ways to involve and support self-represented litigants.¹⁹ It is on this basis and with regard to the existing state of research on virtual hearings that the NSRLP undertook the its work in this area.

¹⁸ Canadian Bar Association, [Who’s Getting Left Behind? The Impact of the Ongoing Digital Transformation of the Court System on Access to Justice in British Columbia](#) (2021).

¹⁹ Houston, C., Birnbaum, R., Bala, N., & Deveau, K., [Ontario family justice in "lockdown": Early pandemic cases and professional experience](#), *Family court review* (2022); Quintanilla, V., Hugenberg, K., Hutchings, R. & Yel, N., [Accessing Justice with Zoom: Experiences and Outcomes in Online Civil Courts](#) Equity Accelerator, Maurer School of Law (2023); Richardson, C., McDonald, L., Boychuk, R., et al, [Examining the Virtual Facilitation of Legal Processes in Saskatchewan: An Exploratory Inquiry](#), Dean’s Forum on Access to Justice and Dispute Resolution (2022).

Methodology and Data Analysis

The NSRLP undertook this research initiative as part of a broader set of objectives that have as a starting point the centering of self-represented litigants' voices. Prior to commencing research activities, it undertook a review of existing literature, including academic research as well as governmental and court-generated reports discussing the shift to virtual hearings (see above). Our initial review highlighted the fact that much of the academic and policy-based discussion had not included SRLs' perspectives; this was reinforced following a deeper dive into the post-pandemic literature on virtual proceedings. Understanding SRLs' experience is consistent with the NSRLP's stance that enhancing access to justice for Canadians requires engagement with the actual individuals attempting to access justice. In this vein, SRLs' experiences, views, and challenges ought to inform the direction and development of policy initiatives aiming to improve meaningful access to the Canadian legal system, including specific access to justice initiatives, as well as more broad-based system reform. In this context, our research project focused particularly on SRLs' experiences accessing virtual hearings since the beginning of the global pandemic. We believe that the recent and fast-paced nationwide shift to virtual hearings provides an opportunity to do more than simply layer virtual meeting software over existing legal system processes; it provides the opportunity to explore how virtual proceedings may fit within a more comprehensive access to justice topography that facilitates better participation by the significant number of SRLs in the Canadian legal system.

The research undertaken consisted of two main methodological approaches: surveys and focus groups. In choosing these methodologies, the underlying objectives were to develop a quantifiably measurable sense of SRLs' engagement with virtual hearings, and to qualitatively explore SRLs' experiences with these hearings in greater depth. The survey combined questions seeking quantitative snapshot information with follow-up questions that allowed for a more nuanced and contextual understanding of SRLs' experiences with virtual hearings in their own words. Survey questions were developed with input from researchers working in the context of virtual proceedings, as well as SRLs who had participated in both in-person and virtual proceedings. The survey included demographic questions, such as the nature of the respondent's legal issue and forums in which they participated, as well as both quantitative and qualitative questions around their experiences with virtual proceedings. (The full set of survey questions can be found

at Appendix A). The survey tool was designed and hosted using SurveyMonkey; participation in the survey was optional, and it was distributed nationally. The aim was to reach as wide a population as possible. To ensure that the survey was accessible to a broad and diverse range of SRLs with experience in a variety of Canadian courts and tribunal settings, we developed a comprehensive list of contact points, including courts (representing both geographical and jurisdictional diversity across Canada), access to justice organizations and initiatives, legal clinics, law libraries, and non-legal entities that regularly engage with SRLs. In these communications we provided sample copy for use on social media and websites, as well as a set of posters and graphics that could be used online or printed and posted in physical locations. (A comprehensive list of the organizations contacted by the NSRLP regarding its virtual hearing survey is available upon request.)

Additionally, we advertised the survey through our email newsletter, on our social media accounts (Facebook, X – formerly Twitter, Instagram, and LinkedIn), and via the social media accounts of the collaborators and industry connections who generously agreed to share it in this way. Recognizing that part of this research project would likely engage issues of the digital divide, impacting who is able and who is not able to access technology and the internet, we also worked to ensure that paper copies of the survey were available for circulation in appropriate contexts. Finally, the survey was made available in both French and English to ensure that it was accessible in all regions of Canada. This work resulted in the completion of 204 surveys (196 in English and 8 in French).

The data collected in the surveys was analyzed quantitatively using R and Python programming languages. The raw survey data was first processed and cleaned to ensure that all the information can be read and understood by the computer – essentially translating it into the computer’s own language. This initial step involved correcting spelling mistakes, encoding binary variables (“Yes” to 1 and “No” to 0, for example), and making note of any irrelevant observations and outliers that can impact the computer’s interpretation of the data. The cleaned dataset (n = 188) was used to conduct an exploratory data analysis (EDA) in R, which is the process of understanding the data, distributions, and group characteristics before making any assumptions about the underlying patterns. The analysis leveraged statistical graphics and data visualisation methods in R to summarise the main variables and draw correlations between and at the intersection of different groups.

While the EDA is quantitative in nature, a more comprehensive investigation into the long-answer and textual responses of respondents was conducted in Python to yield a qualitative analysis. The justification for this was to complement the quantitative results from the EDA with the nuanced findings that are more prone to exist in qualitative responses. These findings were extracted using natural language processing techniques, such as sentiment analysis and topic modelling. The data pre-processing phase included removing noise, punctuations and stop words, lemmatisation, and tokenisation. This step removed any tokens that are irrelevant for the computer to processes, thereby making it simpler and more efficient to identify meaning behind the responses. The result of the qualitative analysis was then used to highlight dependencies between demographic groups and inform correlations between variables that could impact self-represented litigants' experiences in virtual hearings. The descriptive statistics and summary table for the demographic raw survey results can be found at Appendix B.

Additionally, all of the written answers in the survey were reviewed by the NSRLP team. In this review, key themes and findings were identified and direct quotes of SRLs pertaining to their observations and experiences were highlighted.

We also undertook three focus groups with SRLs (between 3-5 participants per focus group), and one focus group with frontline legal workers (4 participants) who regularly observed SRLs in virtual proceedings in the course of their work. The SRLs who participated in the focus groups were recruited through the survey (which included a question about whether the respondent consented to being contacted for this purpose) as well as through our existing database of SRLs who voluntarily register with the NSRLP. The SRL focus group participants hailed from different jurisdictions across Canada, including Ontario, Nova Scotia, Newfoundland, and Alberta. The frontline legal worker focus group participants consisted of three legal aid lawyers (from Newfoundland and Ontario), and a tribunal adjudicator. While we had not intended to conduct a focus group with legal workers (given the objective of the research project), a decision was made to include frontline workers after several professionals contacted us expressing a wish to speak on what they were witnessing in the context of their work.

The focus groups were carried out virtually over Zoom in the summer and early fall of 2023, and were each approximately 60 minutes in duration. All the participants in the SRL focus groups participated in semi-structured discussions that were

designed to elicit a deeper and more nuanced understanding of their personal experiences with virtual hearings. Having secured the consent of participants, the focus group sessions were recorded, and extensive notes were taken during each discussion. These notes were then reviewed by both the NSRLP's Executive Director and Project Manager for key themes and findings. The recordings were available to support and clarify the extensive notes. All information has been anonymized and is kept secure by the NSRLP.

Limitations to this Research

The NSRLP recognizes that there are some limitations inherent in this research plan. While there were immense efforts undertaken to circulate the survey as broadly as possible, we acknowledge that the sample size is smaller than we had hoped. There is no definitive answer as to why this was the case, however, there are several factors that might affect SRLs' participation. First, we surmise that many individuals may face 'virtual fatigue' as a consequence of many aspects of life moving online during the pandemic. Moreover, attempting to solicit survey participation through the summer months proved more difficult than at other times of the year. As a result, we extended access to the survey through early fall 2023 (the survey having been originally launched in April 2023, with the intention to close it in late summer).

We also surmise that it is inherently difficult to reach the very individuals who may particularly struggle with regular access to technology and internet services. We further note that the nature of representing yourself is a time-consuming and often stressful and alienating experience, which may not leave much time or energy for other extraneous activities, and that engaging with a survey on self-representation may be the last thing that many SRLs would choose to do in the midst of or following their SRL experience.

Finally, we did face hurdles in establishing contact with courts and clinics across the country. For instance, it was necessary for NSRLP team members to follow up with many organizations several times via email and phone in attempts to persuade them to distribute the survey, and in many cases the NSRLP was not able to connect with or persuade individuals, courts, and organizations, despite repeated attempts via multiple avenues to do so. The consequence of this was that certain court administration services were more accessible than others, and more open to posting notifications of the survey within their jurisdictions, online and in person at

courthouses. In this context, we gratefully recognize the efforts undertaken by courts in Saskatchewan, Nova Scotia, and Prince Edward Island, who made efforts to circulate and promote the survey to court participants.

Regarding survey responses, we recognize that the sample size limits the ability to make representative findings about all SRLs' experiences. Additionally, the large variations in answers across a multitude of different court and tribunal processes further limits representational value. This is also true of the data collected from the focus groups, which again was meant to reflect SRLs' personal experiences in virtual hearings as expressed in their own words, as well as the observations of frontline legal workers. However, the broad reach of the survey and the depth of answers garnered through both the survey and the focus groups does allow for the interpretation of rich and interesting qualitative as well as quantitative data reflecting SRLs' direct experiences. Moreover, we believe that the data collected in this research project can help inform thinking about policy and best practices on virtual hearings moving forward, encourage deeper conversations about the role of technology and virtual proceedings in facilitating access to justice, and inspire areas of further inquiry.

Results

Demographics of SRLs Participating in Virtual Hearings

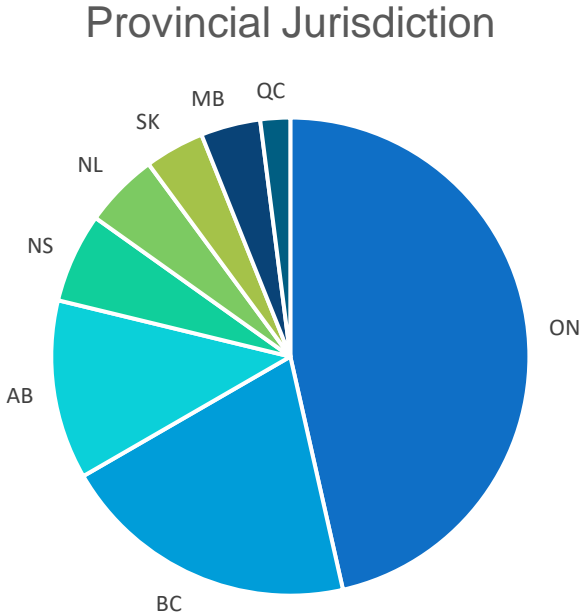
In accordance with the NSRLP’s objective to be as broad and diverse as possible in terms of the SRL population surveyed, several demographic questions were included in the survey. It is our belief that this type of data contributes to a growing understanding of who SRLs are, where they are attempting to access justice, and in what capacity. (Full demographic data is included at Appendix B to this report.)

The survey garnered responses from individuals in every province and territory except Nunavut. The largest percentage of responses was from Ontario (46%), followed by British Columbia (20%), and then Alberta (12%). The remaining responses ranged between 0.5%-6% amongst the other provinces and territories.

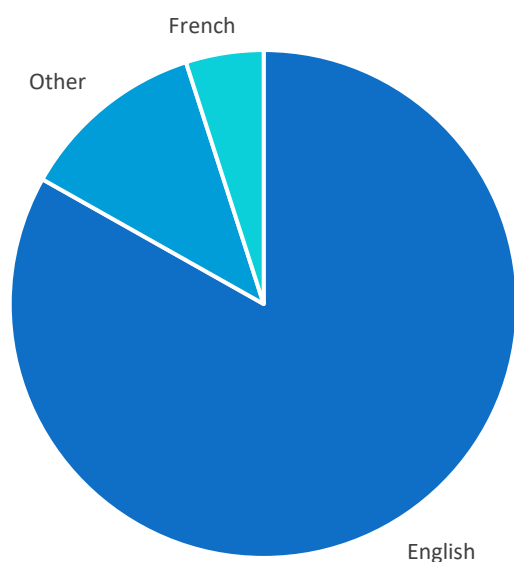
In terms of age, 63% of SRL respondents reported being 50 or older, with the next largest age group (19%) being 40-49.

Slightly more respondents identified as female (53%) than male (41%), while approximately 3% of individuals identified as non-binary, or preferred to self-describe.

74% of respondents identified as Caucasian, while small numbers of respondents identified as other ethnicities, such as Asian or East Asian, First Nations, South Asian, and Middle Eastern or Arabic. Regarding this data, the NSRLP recognizes that the absence of diverse representation among the survey participants reflects the continuing challenge of understanding and addressing access to justice barriers that disproportionately impact individuals from visible minorities and marginalized communities.



First Language

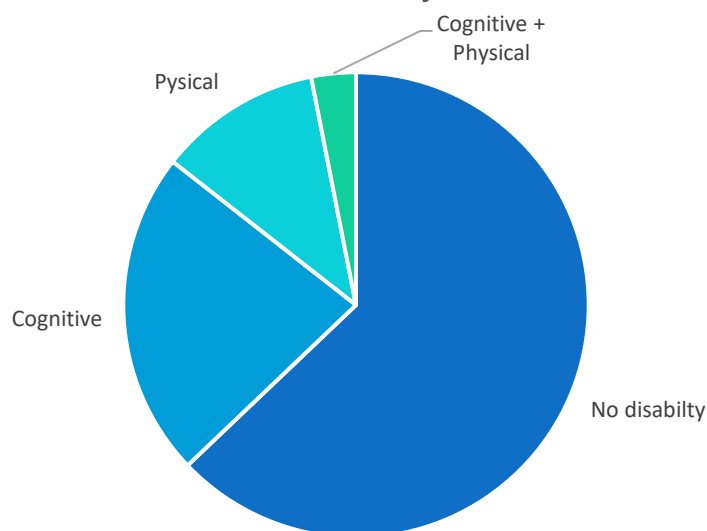


Similarly, the overwhelmingly identified first language of the participants was English (roughly 84%), with French identified as first language by a small minority (5%). However, there were a minority (12%) of other identified first languages including but not limited to Greek, Spanish, Cantonese, Urdu, Polish, Pilipino, and German. Again, we believe that this speaks to the urgent need to better reach individuals and communities whose first language is not English.

Consistent with other research data collected by the NSRLP, (see SRL Intake Reports²⁰), most survey participants indicated that their highest levels of education were either community college (26%) or university (53%, including 7% of total respondents who reported having a graduate degree).

While a majority of the individuals surveyed did not identify as being a person with a disability (61%), approximately 38% of survey participants did identify as having some form of disability (physical, cognitive, and/or mental). This is a significant percentage, and one that we believe gives rise to challenging questions about accessibility and accommodation within different adjudicative settings and in the virtual context.

Disability



²⁰ All NSRLP research reports may be found at <https://representingyourselfcanada.com/nsrlp-research/>

59% of respondents declared an income of \$49,000 or less, with next highest percentage of individuals reporting an income of between \$50,000-74,000 (21%). Those with an income of \$75,000 or more constituted 20% of the survey participants.²¹



The majority of respondents indicated that they lived with others as opposed to alone (71%) and had access to a secure and stable internet connection (87%).

Regarding legal issues and forum of hearing, the participants' responses were consistent with other research undertaken by the NSRLP (see SRL Intake Reports²²). The largest single legal matter category was family law (24%), however respondents also identified a host of other legal matters including criminal, housing and real estate, wills and estates, personal injury, human rights and discrimination, social benefits and disability benefits, as well as legal fee assessments, among others. Respondents indicated that they had participated in virtual hearings in a variety of different forums, however superior-level courts were most highly represented (34%). Participants indicated that they appeared in virtual hearings in provincial courts (16%) and administrative tribunals (19%) in similar numbers. The

²¹ We note that income ranges in Canada differ from region to region; however, the Canadian Income Survey (Statistics Canada) indicates that the median after-tax income in Canada in 2022 was \$70,500. See <https://www150.statcan.gc.ca/n1/daily-quotidien/240426/dq240426a-eng.htm>

²² All NSRLP research reports may be found at <https://representingyourselfcanada.com/nsrlp-research/>

participants' engagement in these forums included a variety of different types of proceedings, including motions and applications (24%), case conferences (11%), and administrative hearings (13%). (Interestingly, 9% of respondents indicated they were "unsure" what type of proceeding they had taken part in – a significant percentage that speaks to the general confusion SRLs often experience navigating the justice system.)

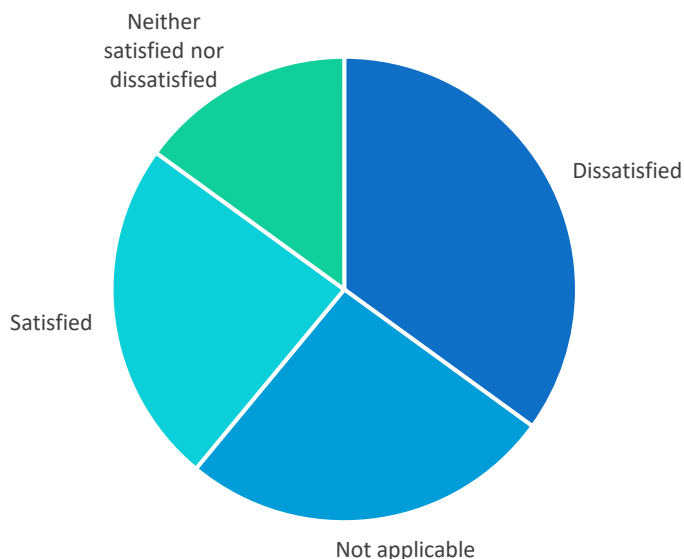
SRLs' Experiences with Virtual Hearings

The survey aimed to understand SRLs' experiences with virtual hearings, whether those experiences were positive or negative. Based on responses to questions in the NSRLP's ongoing SRL Intake Survey,²³ and given some of the challenges faced by SRLs attending in-person hearings, we anticipated that many SRLs would view virtual hearings as a better means by which to participate in proceedings as non-lawyers. At the same time, we had begun to hear anecdotally from some SRLs about barriers and frustrations they were experiencing after the uptick in virtual proceedings since the start of the pandemic. However, it remained to be seen how SRLs actually experienced virtual hearings, as captured in a methodical and systematic way. The results of the survey reflect the fact that SRLs' experiences are in fact quite varied. It is worth noting that half of the survey participants (50%) had also participated in in-person hearings; we feel that this fact is helpful in understanding that SRLs might compare and contrast their experience in virtual hearings with their in-person experiences. In so doing, it would be possible to contextualize virtual hearings (with the goal of improving access to justice), and how virtual hearings might be further strengthened. Overall, as noted, the results in this regard were mixed. Approximately 24% of the SRLs surveyed were satisfied with their virtual hearing experience, while 35% were dissatisfied, and 15% said they were neither satisfied nor dissatisfied. Expressions of satisfaction or dissatisfaction varied across different demographics, forums, and types of legal matters, meaning that satisfaction or dissatisfaction with a virtual hearing was not tied to a particular group of individuals or legal contexts.

²³ Found at <https://www.surveymonkey.com/r/2016Intake>

We acknowledge that a participant's response to whether they felt satisfied with their experience in the virtual hearing was potentially influenced by the outcome achieved in the hearing, as well as by their experience leading up to the actual hearing. It is worth noting, however, that when asked to elaborate on why they were satisfied or dissatisfied with their virtual hearing in general, most SRLs spoke of the practicalities of the proceeding itself, rather than the outcomes of their matters. This would seem to suggest that these respondents were able, at least to some degree, to separate the details and outcome of their legal dispute from the experience of the virtual proceeding itself. The more detailed questions in the survey also attempted to isolate and identify some of the factors that influenced the characterization of the SRLs' experience as either satisfying or dissatisfying. More particularly, the survey attempted to identify what challenges the respondents faced when participating virtually, and how these challenges were addressed (or not) in the course of the hearing. Taken together, this data provides some insight into the broader question of if and in what context virtual hearings might contribute to access to justice for SRLs, and how virtual hearings might be organized and operationalized to capitalize on positive aspects while not replicating existing barriers or creating new ones. The sections below, in turn, examine the positive and negative elements of SRLs' experiences with virtual hearings.

Satisfaction with Virtual Hearing



SRLs' Positive Sentiments About Virtual Hearings

As noted, SRLs' positive experiences with virtual hearings were not strongly connected to any particular demographic, forum, or legal matter – however, there were certain trends reflected in the participants' responses. In the survey, there was a correlation between SRLs' satisfaction with the virtual hearing and their

access to wifi, as well as previous engagement with the online platform used during their hearing. However, as will be discussed below in greater detail, it is also important to note that a number of SRLs did not have adequate technological resources, and this greatly impacted their ability to participate in virtual proceedings.

Within the survey's demographical information, it is possible to highlight certain trends and patterns respecting those who expressed satisfaction with their virtual hearing experience. While the point is not to suggest a cause-and-effect relationship between certain demographical traits and an individual's positive evaluation of their experience, it is worth noting that those with university or college level education were more likely to express satisfaction, as were those individuals with the highest income levels.

Equally important, and, in many ways, closely correlated to the demographics of those who noted satisfaction with virtual proceedings, is the identification of the underlying factors and themes that appeared to contribute to the SRLs' satisfaction. Again, it is important to distinguish between satisfaction driven by a positive outcome for the litigant, and satisfaction associated with the format and functioning of the hearing in which they participated. In certain respects, our data is consistent with other research reflecting a link between expressions of satisfaction and removal of certain barriers.²⁴

In the context of this research, both survey respondents and focus group participants reported that taking part virtually allowed for the removal of specific barriers that tend to disproportionately impact SRLs. Specifically, they indicated that there was less time wasted travelling to and from court, as well as waiting at court to be heard.

“The court staff have the ability to let in only those that need to be in court room which allows for more privacy in a hearing and since you are waiting online, you can continue working until needed. This is better than sitting around waiting in the

²⁴ Kunkel, T., Ray, B., Bryant, K., et al., [Virtual Services in Judicially Led Diversion Programs: Participant Findings](#), Rulo Strategies: Arlington, Virginia (2022); Quintanilla, V., Hugenberg, K., Hutchings, R. & Yel, N., [Accessing Justice with Zoom: Experiences and Outcomes in Online Civil Courts](#) Equity Accelerator, Maurer School of Law (2023); Vermeys, N. & Callipel, V., [Report on the sense of access to justice associated with virtual hearings held before the IRB using MS Teams](#), Immigration and Refugee Board of Canada (2022).

court lobby as that is not conducive to working or taking calls. [...] [w]hen we had one online, it was scheduled for an hour and lasted for an hour. Much more respectful of my time. I was harassed by opposing counsel throughout the proceedings, so not having to face her in person was a huge relief.”

The time-saving/time-management aspect of virtual hearings is not restricted to SRLs; presumably lawyers and represented parties are likely to benefit from this as well. However, there were some added considerations for SRLs. For the individual representing themselves, participating virtually could potentially mean less time off work, or less need to make childcare arrangements, and this was seen as positive both in terms of time and financial cost. One SRL noted, “[c]onsiderable cost-savings over travelling to another province.” Travelling to and from court within a province could be significant as well, as was evidenced by the SRL who noted that participating virtually saved them, “driving two hours to Oshawa court, and two hours home.”

“[i]t was so much less stressful than having to get extended time off, [d]rive there, park, and face everything you are [facing] in a foreign environment. I could hear everything and it was much less intimidating.”

This last quotation highlights another consideration that is unique to SRLs: that for some of the respondents, appearing virtually felt less formal and was thus considered to be less intimidating and stressful than appearing in court in-person. In the survey as well as the focus groups some SRLs noted that the virtual hearing setting entailed a relaxing of the procedural rules and practices, which meant that they felt more confident in presenting the details of their case, and were able to see and hear everyone participating in the hearing more closely. Interestingly, one member of a focus group specifically indicated that she felt that everyone conducted themselves in a more civil and polite fashion online, in part, she believed, because everyone could see themselves. While this observation may seem trivial, it is important to remember that parties’ perceptions of fairness are often linked to an assessment of how they were treated during the proceeding. To the extent that, for some SRLs, virtual hearings left them feeling that they had been

treated in a more equal and respectful fashion, it is worth exploring how such participation might be further inculcated. However, it is important to note that not all SRLs felt this way; the criticisms expressed in this regard will be discussed below in more detail.

Corresponding to the belief that virtual hearings were less intimidating was the reporting that virtual hearings allowed respondents to physically organize their materials in ways that further reduced the stress associated with presenting in open court.

“I found that a virtual hearing reduces the tension that accompanies an in-person hearing. I have readily available access to my files which is comforting and confidence building. I prefer virtual hearings to in-person hearings.”

“[v]irtual hearings allow me to have all the submissions in front of me for note-taking or review without interruption.”

“I was able to remain calm and keep my notes organized because I was able to set them out the night before. Overall, it was a better experience than being in person.”

This sentiment was further echoed by a participant in one of the focus groups, who indicated that in participating from home she was able to have all of her materials and information organized in front of her and make use of two computer screens in a manner that would likely not be possible in court. Overall, this contributed to a less stressful experience, and one that encouraged better participation by SRLs. It is also worth noting that accessing resources and technology at home served to address a barrier that SRLs often experience in courthouses: namely, that unlike the lawyers in those same courthouses, they do not have consistent access to printers, computers, and hardcopy legal research resources.

A further positive consideration for certain SRLs involved safety and health/emotional concerns. Essentially, some SRLs involved in family law matters felt physically safer participating in a hearing online rather than one in-person where they would be in the same courtroom as ex-partners. While, overall, this represented a small proportion of respondents within the survey (and did not take account of safety concerns associated with one's digital identity), it does bear consideration in terms of developing criteria to assist in assessing what matters may be better served by having the parties appear virtually, with appropriate supports and resources.

Finally, in terms of health and emotional well-being, one SRL indicated that they were, "far too ill at the time of the arbitration to attend in person and not being there in person made it easier to effectively [communicate] without becoming too emotional and taking things personally." For SRLs who must act as both affected party and advocate, maintaining control over the emotional aspects on their own case can be a significant undertaking.

SRLs' Negative Sentiments About Virtual Hearings

While some SRLs expressed satisfaction with virtual hearings, there were a notable number of who expressed dissatisfaction.

As with the positive experiences, it is important to identify some of the factors that underscored SRLs' negative experiences. These factors are generally reflective of ongoing barriers that SRLs face in attempting to access justice. However, the virtual context also raises new barriers that need to be accounted for in access to justice discourse moving forward. Based on the data collected, we have identified certain themes that animated SRLs' negative experiences; these are reflected in both the quantitative and qualitative responses that participants provided in the survey, as well as during the focus group discussions. Broadly speaking, the factors that negatively impacted SRLs' experiences with virtual hearings can be separated into two main categories: technical challenges associated with participating virtually and the impact of the digital divide; and issues related to SRLs' interaction with other participants and with online procedures.

Accessing Technology in Advance of and During the Hearing

SRLs and the Digital Divide

One issue that comes out repeatedly in the literature is the concern that the increase in virtual processes has disproportionately benefited lawyers (and therefore represented litigants), while in certain cases making it more difficult for SRLs to navigate the system.²⁵

Statistics Canada has reported that in 2019 approximately 84% of Canadian homes had computers;²⁶ while this is a large majority of the population, it leaves a very significant minority without computers, and those without computers or sufficiently updated computers are going to struggle to participate in virtual hearings. In these cases, the individual must attempt to secure the necessary hardware, or forgo participating virtually, neither of which are acceptable responses.²⁷ Additionally, the same Statistics Canada report indicated that while 93% of Canadians surveyed reported that they are able to access the internet, at least 600,000 of these individuals said that they were doing so through mobile phone plans, as opposed to home internet. Accessing a virtual hearing via a mobile phone (or mobile phone plan) raises serious questions about the ability of that individual to participate on par with other parties. The impact of this phenomenon is more problematic in circumstances where an SRL may be the only party participating via mobile phone or with limited access. This dynamic reinforces existing power inequalities and serves to reinforce notions of SRLs as ‘outsiders,’ particularly where the virtual option is the default and/or the only available option. (See further discussion of telephone participation below.)

²⁵ A 2021 US report from the Pew Charitable Trusts reviewing the justice system’s response to the pandemic addresses the reality that most technological adaptations in the system largely benefit lawyers and the way they work (and therefore represented litigants), in some cases making processes more complicated for litigants without the benefit of a lawyer. In particular, this report goes on to describe rapid action toward virtual hearings in the early days of the pandemic being poorly communicated to the public and causing confusion for SRLs, and notes that while since early 2020 many efforts have been made by courts to provide support and information around these processes, these efforts have been inconsistent. See The Pew Charitable Trusts, [How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations](#) (2021).

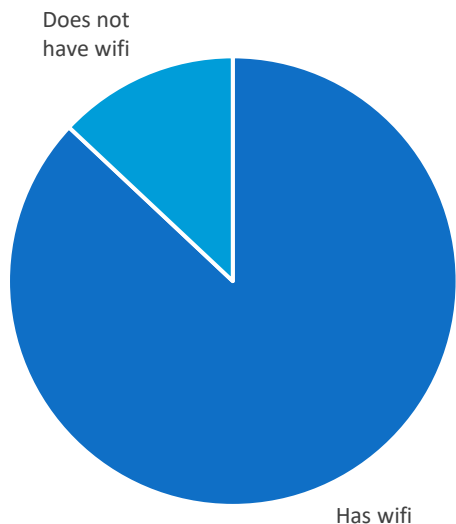
²⁶ Statistics Canada, [Communications Monitoring Report](#) (2021).

²⁷ In terms of evaluating barriers, further research could explore the preferences of those living remotely in terms of whether they would prefer to have access to the technology that would adequately support their virtual participation, or would prefer to access in-person hearings that require travel.

In the context of these statistics on access to internet and technology, a recent study on digital equity in access to justice found that, while internet use is broadly very high, there are significant divides in use across income and age groups, with lower income residents and older people using the internet significantly less.²⁸ The same report also found that access to high-quality internet is strongly linked to income: 30% of lower income households describe access barriers (such as inability to afford internet services, lack of internet access in the home, lack of devices, unreliable internet, and lack of safe/private places to use the internet), while only 11% of higher income households report such barriers.²⁹ Thus, in terms of consistent access to technology and internet services, there is a lack of access and/or constrained access, whereby litigants from low income (and often marginalized or vulnerable) communities do not have the same level of access as higher income litigants.³⁰ They may not own a range of devices (including computers, tablets, printers, and scanners), and may not be able to afford wifi, or high quality wifi. The result being that certain individuals' options and ability to participate in virtual legal processes effectively is significantly constrained. In light of this, it is worth noting that some SRLs who expressed satisfaction with virtual hearings in the survey and focus groups grounded this characterization in their ability to make use of multiple forms of technology during the hearing. Exacerbating the issue of lack of access is the reality that a large proportion of lower income individuals also struggle with digital skill and trust, compared with higher income individuals.³¹

In the context of concerns about equal access to technology and high-speed internet, we sought to understand the specific challenges associated with SRLs' access to and deployment of technology. 87% of the SRLs surveyed indicated that they have access to a secure and stable internet connection, meaning 13% of those surveyed did not have adequate internet access. This is significant, given that those individuals

Access to Wifi



²⁸ Murray, K., [Achieving Digital Equity in Access to Justice](#), Legal Aid BC (2021), p 5.

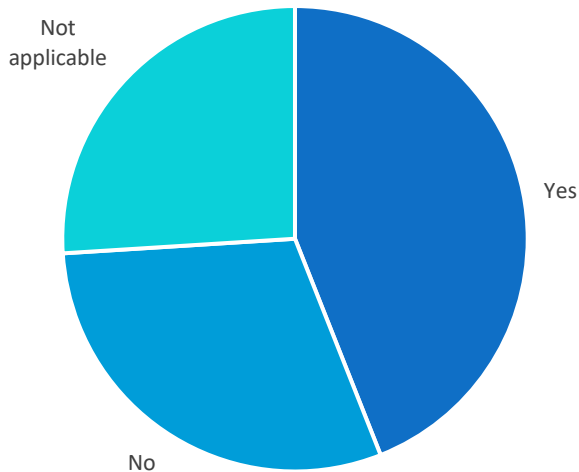
²⁹ Ibid.

³⁰ Murray, K., [Achieving Digital Equity in Access to Justice](#), Legal Aid BC (2021), p 7.

³¹ Murray, K., [Achieving Digital Equity in Access to Justice](#), Legal Aid BC (2021), p 11.

may be expected or required to participate in virtual hearings, without sufficient internet access.³²

Used Platform Previously

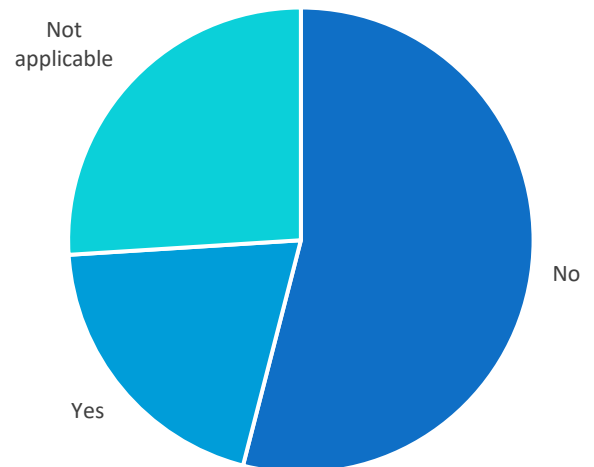


The majority of SRL respondents indicated that they had used Zoom for their virtual hearing (37%), with the second largest group using Microsoft Teams (16%); Webex rounded out the third most common platform (9%). In terms of familiarity with these platforms, again a slim majority of SRLs (44%) indicated that they were previously familiar with the platform used, while 30% reported that they were not. These results raise concerns about the number of litigants who are expected to navigate unfamiliar platforms in order to participate in virtual hearings.

When asked whether they had any difficulties accessing the hardware or software needed to participate in the virtual proceeding the majority of respondents indicated that they did not (54%). However, 20% of survey participants did face difficulties accessing the appropriate hardware and/or software, and when asked to elaborate on the nature of their difficulties, certain themes emerged.

Namely, SRLs indicated that they either did not have appropriate hardware (an appropriate device) or that their outdated hardware could not adequately support the platform being used. Regarding the availability of appropriate hardware, one SRL

Trouble Accessing Tech



³² The NSRLP notes that Tribunals Ontario has adopted a digital-first approach that applies to 13 different tribunals in Ontario.

stated, “no laptop available for me in a remote location. Justice should not be determined by your computer skills.” Survey participants also indicated that they faced challenges accessing the internet, and that this impacted their ability to participate in the hearing. One SRL stated, “I have poor internet connection in my rural home.” Very broadly, SRLs’ responses speak to a continuing digital divide that disproportionately impacts individuals in remote and rural areas, those living in or near poverty, and those lacking appropriate technological literacy skills and experiences.

The consequence is that, while virtual hearings may address specific barriers experienced by certain SRLs, the requirement that the individual facilitate their own technology in order to participate in a hearing potentially creates new barriers. Moreover, to a certain degree, this compounds the barriers experienced by individuals facing intersecting socio-economic conditions (i.e. those living in poverty and/or rural locations; those with lower education levels; those with disabilities). While the argument is made that litigants living remotely would in the past have been obligated to attend in-person hearings (and this too represents a barrier), the argument fails to account for the fact that this barrier is to some degree addressable, whereas access to fast and consistent internet (supplied by large corporate providers) in their location is not within the individual’s control.

Additionally, obligating litigants to obtain appropriate and up-to-date devices in order to participate in an adjudicative proceeding may serve to further burden already disadvantaged SRLs. The objective in offering virtual hearings as an improvement in access to justice cannot include the argument that certain individuals already faced barriers, and it is therefore acceptable to replace existing barriers with new ones (or even compound existing barriers). The need to address new and potentially intersecting barriers raised in the context of virtual proceedings becomes more urgent when we assume that virtual hearings are meant to provide opportunities to increase access to justice, and are being integrated in justice systems across the country under that presumption.

[The Impact of and Response to Technical Issues](#)

Despite a large proportion of virtual hearings reportedly proceeding without technical difficulties, there were a sizeable number of survey participants who indicated that they had experienced such problems. While logging in to the virtual

hearing, the majority of SRLs reported that they did not experience access difficulties (51%). However, among those who did have trouble, 10% reported that the difficulty was caused by a weak internet connection throughout, while 12% experienced difficulty joining the hearing.

Some respondents elaborated on the specific nature of their technical difficulty, and among this group, several subthemes were noted, a variety of technology-related issues that included being left in the waiting room by court administrators, being denied access to the proceeding until the court could work out its own technical issues, and being denied access to assistive devices needed to address disabilities. In one example, an SRL who identified as having a disability expressed anxiousness in waiting for a hearing to start, in part because they received the zoom link 5 minutes before the hearing was to commence and had no understanding of how their disability would be handled from a technological standpoint. It is important to highlight that the issue of disability was a recurring theme among SRLs' responses, and one which we believe requires further and more detailed investigation, both in terms of understanding how certain individuals with disabilities are negatively impacted by virtual hearings, as well as the nature of the accommodations needed to support SRLs' participation.

Technical Support

A proportion of respondents reported lack of technical support from the court or tribunal when they experienced difficulties either logging on to or participating in a hearing. Out of those who experienced difficulty while logging on (23% of total respondents), a significant number (24%) did not receive assistance in resolving the issue. Similarly, when technical problems arose *during* the hearing (24% of total respondents) only 4% indicated that someone assisted them, while 27% reported no assistance. The nature of these challenges included issues with the internet, audio/visual quality on the platform (essentially not being able to see and hear everyone, or not being heard or seen themselves), and problems associated with displaying or sharing documents. One particular issue that appeared to impact both judges and parties in Ontario was the use of CaseLines. CaseLines is a cloud-based document sharing e-hearing platform for use in both remote and in-person hearings, procured by the Ontario Ministry of the Attorney General from ThomsonReuters in 2020. CaseLines has been described as a “virtual hearing

binder” for parties and the Court.³³ In the course of their responses, several SRLs reported that the opposing party, the opposing party’s lawyer, and/or the judge had significant difficulty accessing documents and pleadings via CaseLines, and that this decreased both the efficacy and fair administration of the hearing.

The data suggests that, while the majority of hearings proceed uninterrupted, when technical problems arise, courts struggle to address them in a timely manner or at all.

An additional and related concern is that in virtual hearings SRLs report feeling that they are unable to make use of McKenzie Friends (support persons) when those same individuals could often be included in in-person hearings. A McKenzie Friend, while not allowed to represent an SRL or take part directly in a hearing, can assist the SRL by organizing documents, taking notes, and providing emotional support, while an observer may play a more limited and passive role. During in-person hearings, courtrooms are generally open to the public, and many judges allow McKenzie Friends when requested by SRLs. However, in virtual hearings, there is a more direct control exerted by court administrators over who can access and participate in the hearing, and apparently less leeway in allowing support persons. In one specific example, an individual reported that, “lawyers for opposing party objected to me being present as a friend of the SRL. They finally agreed. They were allowed to confer with each other, while the SRL and I were not allowed to do this.” In another example, an SRL wrote that, “[the] court clerk did not recognize the term Mackenzie Friend and said to me you’re just an ‘observer,’ while I had been asked as a friend of the SRL to be there as support.”

Moreover, SRLs indicated that many of the forms of informal assistance that might be accessible to them in courthouse settings were not available in a virtual proceeding, thus further impacting their ability to represent themselves. This may extend from access to hearings in advance of their own to observe and become more comfortable with court proceedings, to accessing services that are situated in the physical courthouse, such as duty counsel.

“I like virtual hearings since they are less anxiety provoking than in person hearings, more convenient and less

³³ See “Caselines: A Practical Overview,” Lenczner Slaght (August 13, 2020). Available online at: <https://www.litigate.com/caselines-a-practical-overview/pdf>

transportation and parking costs. However, virtual appearances don't allow for the opportunity to speak with duty counsel immediately prior to the commencement of court on that day.”

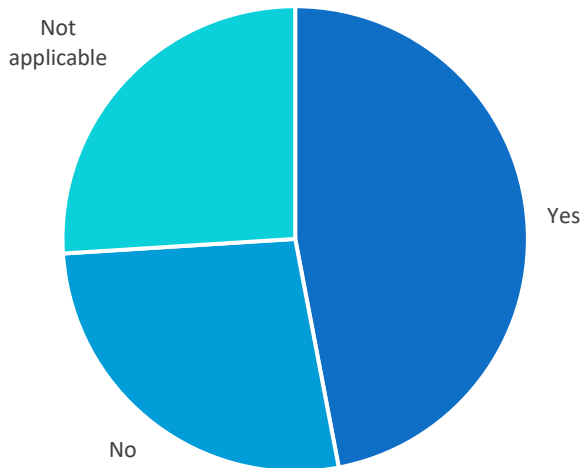
Thus, while participating from home may be less anxiety-inducing and more relaxed in some ways for some SRLs, it may also be more isolating in other ways. This is particularly challenging when we consider that SRLs are often struggling to catch up in terms of understanding the procedure and practice of law in adjudicative settings in the first place.

Finally, failing to provide access to assistance and support (technical or otherwise) may result in interrupted or adjourned proceedings, and serve to further undermine the participants' perceptions of fairness in the proceedings. This is particularly an issue where, as a result of a technical problem, an SRL is unable to access the hearing, while the other parties are. As will be discussed in the recommendation section of this report, we take these results to show that all virtual adjudicative contexts require some degree of technical support, as well as built-in access to those sources of support, information, and advice typically available to SRLs at in-person courtroom settings.

Other Participants in the Hearing

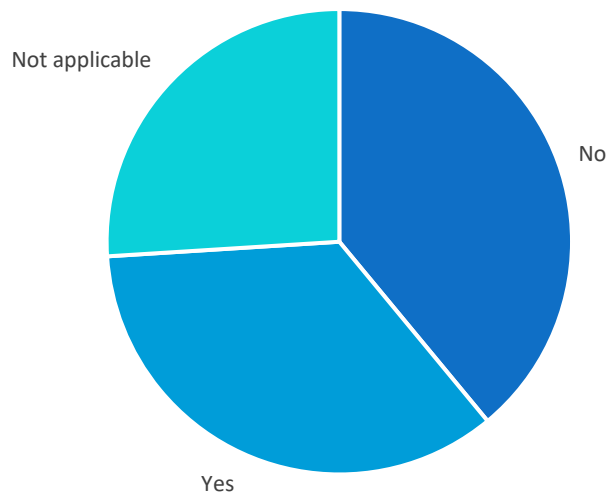
In order to understand SRLs' experiences during their virtual hearings, certain survey and focus group questions focused on the number and identity of the hearing participants: whether the SRL knew who everyone participating in the hearing was, whether they were able to hear and see all participants, and if they could not, what impact this had on their experience. Our aim was to gain insight into how respondents' clarity on who was participating in the hearing and in what manner would impact their overall experience. The assumption underscoring these questions was that not knowing everyone's identity, or what roles they were fulfilling, would undermine SRLs' confidence in the process. Survey respondents indicated that the number of participants in their hearing was relatively evenly split between 1-4 participants (36%) and 5-9 participants (34%), and most indicated that they knew who the other participants were in the hearing (47%). However, many respondents (27%) did not have this information; additionally, a significant proportion of individuals indicated that they were not able to hear or see all participants (39%).

Knew Who Everyone Was



"I had no idea who was present and what all their [roles] were or what the protocols [are] here."

Could Hear and See Everyone



"The presiding judge did not introduce everyone. I did not know who was online, who was participating and at what moment. It made it very difficult to follow."

"It was unclear in the mediation, [identification of type of claim/parties in survey answer deleted], who was who and why they were there, why so many people. Not clear who the lawyers were and who [identifying terms deleted] were and who may have been listening to the proceeding and not identified."

Several themes around how this confusion impacted the SRLs' experiences emerged from the focus group discussions and written survey answers. Specifically, SRLs made a number of negative observations on their perception of and interaction with other virtual hearing participants:

- concerns about who (other than those participants visible onscreen) might be watching or listening to the proceeding (for instance when they saw unnamed participants with video off);
- not being able to see the judge, all of the opposing party's lawyers, or an opposing witness;
- concerns about witnesses receiving assistance off-screen;
- not being able to see the documents shared by opposing counsel;
- not being able to hear other participants due to feedback, poor audio, or participants talking over each other;
- poor virtual etiquette.

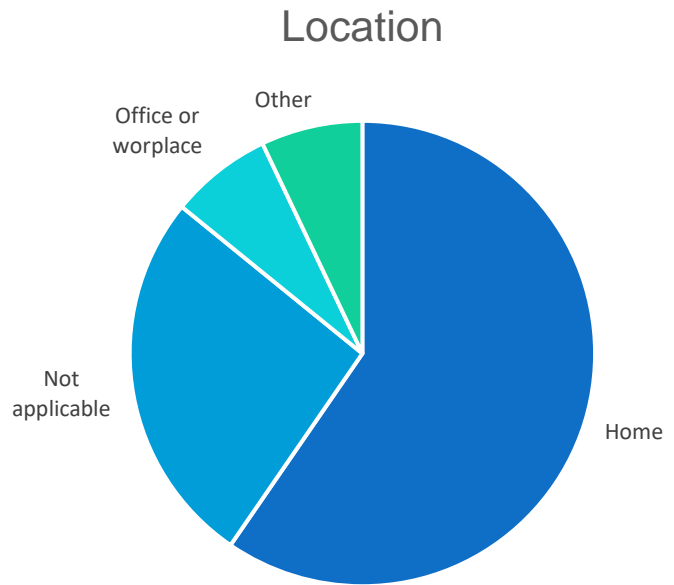
Among those concerned about who might be listening off-camera, one SRL noted that the experience was, “disconcerting as I have no idea who is listening. At least in face-to-face Court I can see the 30 people.” Another respondent, concerned about the judge’s participation (or lack thereof) noted that, “[t]here was a panel of three judges, but only one came on camera. I was not sure if any of the panel of judges followed [my] evidence in CaseLines or even listened to what I had to say.”

Location During the Hearing

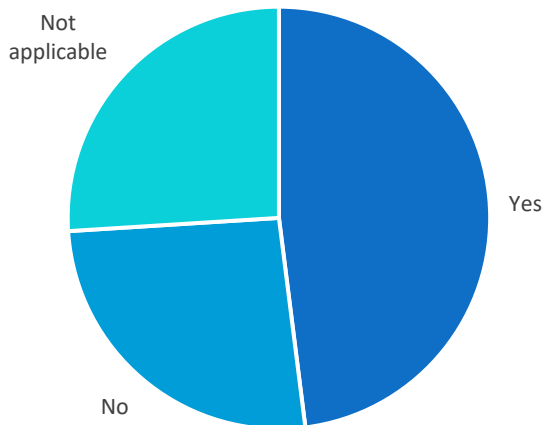
As physical courthouses closed across the country in the early days of the pandemic and SRLs began to participate in hearings virtually, the issue of from where SRLs would access online hearings became relevant. As opposed to lawyers and judges who generally have various safe and secure professional locations from which to conduct and participate in virtual hearings, we were interested in knowing how SRLs were impacted in this regard. We thought it important to understand whether SRLs had appropriate spaces from which they could effectively participate and feel safe doing so. And while in-person courthouses and proceedings are generally open to the public, we wanted to examine privacy as an issue in the sense of SRLs being able to speak freely about their legal matter from the space in which they participated. A further question was whether SRLs felt comfortable about their data privacy when logging on to hearings using their personal details, on a personal computer, as the situation could pose a potential privacy risk to individuals who

wish to safeguard their digital information. Approximately 59% of survey responders indicated that they logged on from home, while only 7% of SRLs indicated that they were at an office or workplace when participating in a hearing. Interestingly, an additional 7% indicated that they were in other locations, including cars, shelters, prisons, and boats.

When asked whether they believed they were able to participate effectively from these locations, most individuals indicated yes (48%), with a significant minority indicating otherwise (26%).



Effective Participation from Location



with a significant minority indicating otherwise (26%).

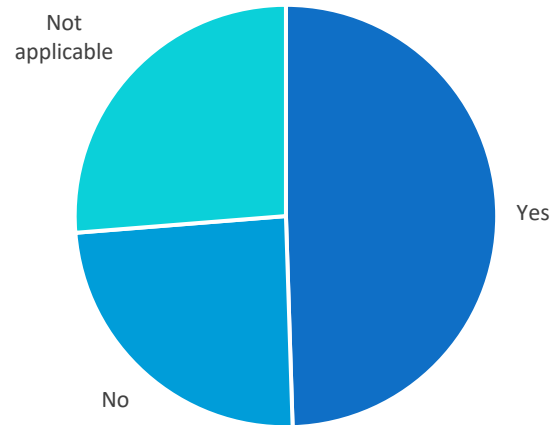
We found certain recurring themes in the SRLs' written answers regarding why they did not feel they could participate effectively from their location, including interruptions from family members (such as children), an inability to address disability accommodations, and interruptions associated with having a shared office space.

In terms of safety and privacy, many of the respondents indicated that they felt that these were protected (49%), while a

significant percentage did not feel that their safety or privacy was protected during the virtual hearing (24%).

In explaining why they did not feel protected, SRLs raised several themes within the written answers. Some SRLs expressed concern about who was able to log in, listen to, or record the hearing. In reply to whether they felt secure, one individual responded, “[n]o, because I did not know who was online or in the rooms with the other participants...” Another SRL posed the question, “how do I know who is attending when in a truck on a cellphone[?]”

Safety and Privacy Respected



“I didn’t even know who was in all the rooms of people who logged in.”

“It would have been easy for the other party to record (although it is prohibited) the matter without the knowledge of the courts.”

To a much lesser extent, but still raising an interesting point, there was a concern expressed by some participants about the close proximity of neighbours, though there was also a recognition that physical courtrooms are open to the public, and as such, privacy concerns are less an issue in those spaces.

Participation in Telephone Hearings

While the majority of hearings reported on in this study were held virtually, there were a number of SRLs who indicated that they participated in hearings via telephone (meaning audio only). Hearings by way of telephone are not a pandemic-related phenomenon, as prior to 2020, teleconferences were being held in a variety

of adjudicative contexts and jurisdictions. In fact, 20% of our survey participants indicated that they had previously participated in telephone hearings. However, our research raises some concern about when and how telephone hearings have been used since the pandemic.³⁴ Our concern is grounded in issues of procedural justice, and more particularly, perceptions of fairness. Previous research has recognized that individuals' perceptions of fairness are generally tied to, among other things, notions of having a voice.³⁵

Crucial to the assessment of voice is the individual's belief that they have been heard, while a pre-condition to being heard is the ability to participate in the decision-making process. Thus, part of a litigant's assessment of whether they had a voice in the decision-making process is, in turn, impacted by the informal as well as formal cues and directions reflected back to them by other parties and the adjudicator. In this respect, telephone hearings raise difficult questions about participants' perception of voice, and correspondingly, whether they feel they have been heard. Additionally, taking account of the typical unequal distribution of resources, experience, and knowledge among represented versus self-represented parties, a scenario in which an SRL participates via phone (audio) while adjudicators and/or the legal representatives of other parties are either present in-person or on video, is likely to intensify concerns about voice. When self-represented litigants often already feel like outsiders in hearings, participating via telephone when the other parties are visible and can see each other is likely to reinforce this negative perception. This, in turn potentially undermines SRLs' perceptions of fairness. Because of these concerns, we felt it was important to better understand SRLs' experiences with participating via audio only.

In our data, it would appear that SRLs were participating in hearings via audio when they did not have the ability to participate via video due to a lack of an appropriate device, and/or access to reliable (or any) internet. As a result, some SRLs were forced to 'call in' to a virtual hearing using the audio-only function. As a 'second best' option in many cases, the result was that SRLs generally felt dissatisfied with their participation via telephone. For instance, SRLs who participated in the survey

³⁴ Of particular concern is the situation in which an individual with a disability is compelled to participate via telephone.

³⁵ Tyler, T., "[What is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures,](#)" *Law & Society Review* (1988).

and focus groups indicated that they found teleconferences “de-stabilizing” and “stressful.”

“I can’t see people’s faces... I don’t know [who’s] there... don’t know where they are calling from.”

Being on the phone was described by the above participant as hearing a, “disembodied male voice” who ultimately made a decision about them that was life-altering, but whom they never saw.

“I have never seen the face or image of the Master who struck my claim.”

“Mine were phone hearings. At the time, I didn’t mind phone/audio-only but in retrospect I think video would’ve been better, as it felt like being a victim of ‘internet-anonymity’ (where people can more easily bully without consequence); landlords being seen might’ve hindered their so easily making false claims (that were withdrawn 10 months later), for example.”

In contrast to these concerns, a very small minority of SRLs expressed a preference for telephone hearings because in this context they did not have to face the opposing party and could remain calmer and more focused on what was being said and what they needed to respond to.

Despite this unique consideration, the use of telephone hearings generally in cases involving SRLs engages issues of perceived fairness linked to the disparity in resources and experience of represented parties versus self-represented parties. Overall, the research participants raised a variety of concerns about participating in hearings via audio only, and this is reflected in the low number of individuals (2%) who indicated that they would prefer telephone hearings in the future.

Support from Courts: Instructions and Procedures Provided

During the survey and focus group period, considering the answers we were receiving from SRLs, and in an effort to understand what instructions and support were available from Canadian courts regarding virtual proceedings, we decided to include a small, informal survey of provincial and supreme court websites as part of our research study. The purpose of this review was to canvass a sample of the scope of directions available to SRLs regarding virtual hearings. An undergraduate student volunteer³⁶ searched select court websites for any available information on virtual hearings, including descriptions of the technologies used by courts, the circumstances in which a case might be heard virtually, how to access and log on to hearings, trouble-shooting tech information, tips for participating effectively, and/or etiquette and conduct guidelines. The student noted whether and how such information was available, as well as how easy or difficult it was to find information on each court website (in other words, would an individual need to navigate various drop-down menus or pages before finding the requisite information). The results were uneven, and ran the gamut between some courts providing a great deal of easily locatable and practical plain language information, and others providing none at all. (See Appendix C for a full list of the courts whose websites were surveyed.)

British Columbia, Alberta, Ontario, and Quebec courts seem to do the most to make such information publicly available and easily accessible on their websites; in particular, the BC Provincial Court, Alberta Court of King's Bench, Ontario Court of Justice, and Quebec Superior Court websites appear to make such resources a priority. On these sites, the student had no trouble locating information on virtual processes, with tabs or links located prominently and high up on the main page.

The student noted in particular that:

- The BC Provincial Court website has an entire tab devoted to “Attending Court Remotely,” which includes information and instruction on court policies about remote attendance, help with

³⁶ We felt that someone untrained in law and unfamiliar with court websites would more appropriately reflect attempts by a non-lawyer to access information about virtual hearings.

Microsoft Teams or phone appearances, observing court remotely, and rules around recording and publishing court proceedings;

- The Quebec Superior Court website has a separate, prominent tab for information on virtual hearings, and includes guidelines on conduct for remote litigants.

The student also found that some other courts do a good job providing helpful information, but make it somewhat, and in some cases very, difficult to find, with resources buried and requiring multiple ‘clicks,’ or located in places that were easy to miss, such as at the bottom of pages. Still, if litigants can locate these resources, they provide helpful information. Noteworthy courts in this category include:

- The Ontario Superior Court of Justice website pages on “Virtual Courtroom Etiquette Rules,” and “Best Practices for Remote Hearings;”
- The New Brunswick Court of King’s Bench website provides a 14-page document, “Guide to Virtual Proceedings,” which explains how to use Microsoft Teams, and a guide for appearing virtually;
- The Nova Scotia Supreme Court includes information on what virtual court is, what technology the Court uses, and resources for virtual litigants (e.g., best practices for remote hearings); it is noteworthy as well that the Court also reflects on the impact of virtual court proceedings on marginalized communities, and its work spearheading a project on the future of virtual courts in Canada post-pandemic;
- The Yukon Territory Supreme Court website contains a PDF document, “Best Practices for Videoconferencing,” which explains how videoconferences can be requested, what devices can be used to connect to meetings, and virtual court decorum.

At the time of the student’s review, court websites surveyed in Saskatchewan, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, and Nunavut provided little or no information or instructions regarding virtual processes. Where courts provided no information at all, the student reached out via publicly available email addresses, and had varying levels of success gaining

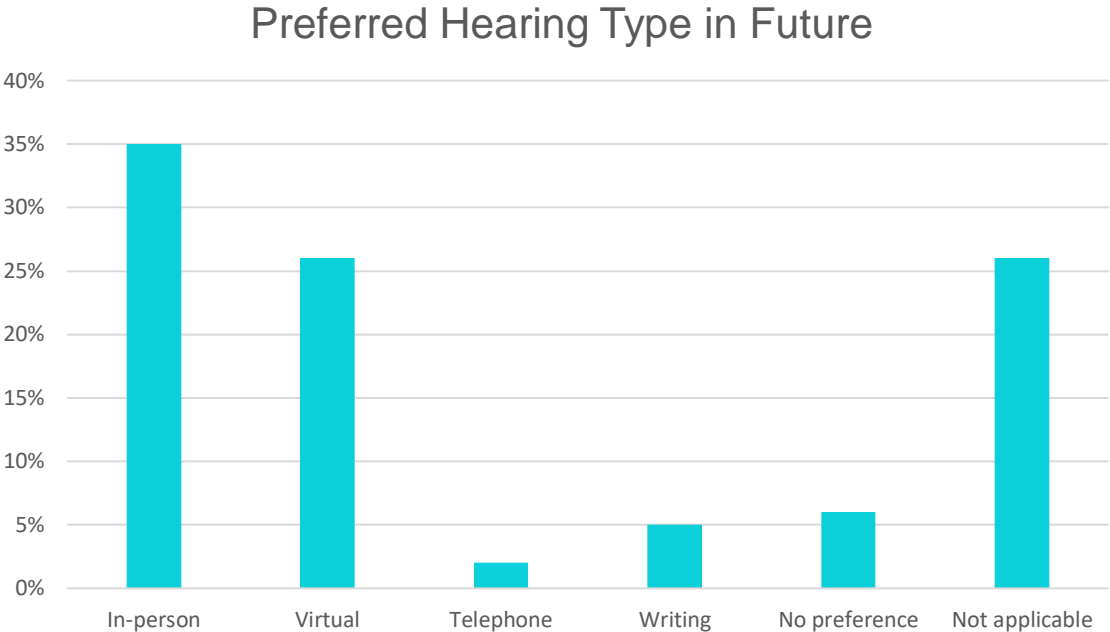
responses and information from the court administrators. In these cases, it was sometimes difficult for the student to even determine if the court offered virtual hearings at all.

While this survey of websites and resources was brief and informal, it paints an interesting picture of what kinds of supports are provided by the courts around virtual processes, as well as the unevenness of their existence, availability, and user-friendliness. Clearly, some courts are working to ensure that there are accessible resources on virtual hearings, while others are falling behind, or may not be considering the question of virtual hearings at all.

One of the conclusions that can be drawn from this informal survey of resources is that litigants across the country are likely having very different experiences when attempting to access court resources and directions for virtual hearings. While it is beyond the scope of this current project, we believe that a more thorough examination of this issue is warranted – it would be, for instance, very helpful to conduct a more systematic and thorough examination of all court websites in Canada, as well as tribunal websites, and depending on the results, to be able to share best practices and resources to ensure that all courts and tribunals across the country are able to offer effective and useful information respecting virtual hearings.

Recommendations for Moving Forward

The data generated by this research project provides an opportunity to think about the organization and administration of virtual hearings going forward. The graph below illustrates responses to the survey question, "If given the option in the future, would you prefer an in-person hearing, a virtual hearing, a telephone hearing, or a hearing in writing?"



Approximately 35% of individuals who participated in the survey indicated that they preferred in-person to any other form of hearing. In an attempt to more fully understand this preference, the survey also included an option for participants to elaborate on whether they believe the outcome of their hearing would have been different if it had been in-person. In the context of this question certain themes evolved. Firstly, while many individuals expressed a preference for in-person hearings, they did not always feel that this would have resulted in a different outcome. While this may be reassuring in some respects (namely that different processes generate the same outcomes), interpreted in another light, it suggests a potential resignation on the part of SRLs who might feel that regardless of the forum, the process is unfavourable to SRLs. Additionally, those who suggested that the outcomes might have been different tended to focus on certain benefits to being in-person, including the ability to access supports such as duty counsel, and

the perceived benefit of being able to read the body language of judges, witnesses, and other parties.

However, the responses also reflect that many SRLs (26%) prefer virtual hearings over in-person and other types of hearings. Thus, in addition to understanding SRLs' challenges preparing for and participating in virtual hearings, we also sought out examples of positive assistance and best practices adopted by various adjudicative forums. It is worth noting that as the pandemic extended beyond its first year, various forums adjusted policies and practices in virtual hearings in accordance with stakeholders' experiences, thus improving future participants' experiences. (See Ontario Superior Court of Justice: Guidelines to Determine the Mode of Proceeding in Civil, Family, Criminal and Small Claims Court). But our research also suggests that the adoption of best practices and procedures is far from uniform across adjudicative settings and jurisdictions. We therefore believe that examples of best practices ought to be shared among different adjudicative settings, with the goal of improving the experiences of SRLs in virtual hearings across Canada.

Moreover, since virtual hearings are likely to remain and develop further as a component of the civil and criminal justice system, it is important that the obstacles and challenges impacting SRLs when they participate in in-person hearings not be replicated in the virtual setting. We take the advent of virtual hearings as an opportunity to consider new approaches and processes that reflect certain realities within the Canadian legal system. Given the positive aspects of virtual hearings associated with their accessibility and flexibility (essentially allowing individuals to access processes on their own terms to a greater degree, and without the traditional trappings of adversarial processes), and that these elements serve to reduce certain barriers to justice for many SRLs, there is a need for further research specifically exploring the use of technology as a tool to facilitate user-focused processes. Consistent with a more relaxed and flexible approach to dispute resolution processes, several of the SRLs who participated in the study expressed an interest in a dispute resolution platform that would allow them to submit and respond to claims in their own time, followed by judicial engagement as needed. This type of process is exemplified in systems such as BC's Civil Resolution Tribunal (CRT), where, "user-focused justice design is to bring public justice processes to where people are [and] [t]oday, people are overwhelmingly online."³⁷ Following

³⁷ Salter, S. & Thompson, D., "[Public-Centred Civil Justice Redesign: A Case Study of the British Columbia Civil Resolution Tribunal](#)," *McGill Journal of Dispute Resolution* (2017), p. 135.

the CRT's lead, future inquiries must include an exploration of different technologies and procedural arrangements beyond traditional in-person hearings or the online version of such hearings. And as with the CRT, such an exploration requires the gathering and deployment of the best available evidence, user-informed design, testing of design by users, and further revisions and redevelopments.³⁸

The following discussion of best practices is divided into two sections. We will first discuss potential responses to some of the challenges based on the SRLs' experiences, as well as examples of useful practices adopted by different adjudicative settings across the country. Second, we will discuss lines of future research inquiries that have emerged over the course of this project.

Responses to Current Challenges

The following discussion seeks to explore some potential responses to the challenges SRLs face in participating in virtual hearings; in undertaking this discussion, we wish to center SRLs' voices when considering solutions addressable by court administrators, lawyers, and policymakers.

Transparency and Accountability

One theme that arose in a variety of survey answers involved SRLs' concerns about accountability – namely who was (and was not) legitimately entitled to participate in the proceeding. Unlike in-person hearings where the adjudicator is able to inquire about participants in the physical courtroom, virtual hearings allow for the possibility of individuals being off-screen. In this context, SRLs often expressed a sense of suspicion over who might be listening in, and who might be recording the hearing. We believe this is consistent with a broader sense of distrust that is often grounded in SRLs' unfamiliarity with court processes, and more general feelings of being 'outsiders' in the justice system. Responding to this issue requires a concerted and express delineation of all hearing participants, including their names, titles, and roles throughout the hearing, and a commitment by all participants to appear on video, as much as possible. This should be reinforced by screens clearly identifying all participants, including their names, and titles or roles within the hearing. While it might have been assumed that this would currently be

³⁸ Ibid, p. 136.

the standard practice in virtual hearings, survey responses from SRLs suggests this remains an issue in their lived experiences.

Addressing the Digital Divide

While concerns about the digital divide among different socio-economic groups pre-existed this research project, our data reflects the ways in which virtual hearings exacerbate the barriers created by the digital divide for individuals accessing justice. Thus, to the extent that virtual hearings are being incorporated as a regular procedural option in courtrooms across Canada (and in some contexts have become the default), it is necessary to take seriously the particular challenges faced by certain individuals attempting to access justice virtually. Litigants who have limited or no access to appropriate electronic devices or reliable internet, and/or who lack the necessary experience, training, or skill to engage effectively with the technology in use, are disproportionately impacted when they are compelled to participate virtually.

As illustrated by certain SRLs in this study, individuals living in rural or remote communities, individuals in the lowest socio-economic groups (including those living below or close to the poverty line), as well as elderly individuals and those living with disabilities, represent categories of litigants particularly impacted by the digital divide. The experiences of SRLs within these categories are not uniform, however there tend to be certain intersecting factors that make particular litigants disproportionately vulnerable to the impacts of a digital divide. For instance, elderly people living in remote areas are especially vulnerable, as are people living with cognitive disabilities and facing poverty. In such cases, a triage system allowing for the consideration of certain stand-alone as well as intersecting life experiences could assist in ensuring that virtual hearings are not simply reinforcing or replicating barriers to justice, especially for the most vulnerable people.

Adaptability and Commitment to User Experience

In these examples and others, the question that must be asked is, whether virtual hearings are appropriate, and if so, under what conditions and with what resources? What makes this issue more challenging to address is the fact that the very presence of certain factors might, in theory, make virtual hearings more useful to specific individuals. For instance, litigants in extremely remote areas might find electronic document swearing and filing, as well as virtual court appearances, easier to navigate if they are able to access appropriate technology and reliable

internet connections. The problem remains, however, that accessing the requisite technology and internet may be beyond their control. Such an individual might have traditionally been able to arrange travel to an in-person hearing through public transportation and other means,³⁹ but they do not have control over internet access in their area.

Additionally, people with disabilities may find it easier to participate virtually for a variety of reasons, but to do so first requires appropriate technical supports and specific accommodations. These supports might to some degree be accessible in a physical courtroom, but in the virtual context, there is no one to assist, nor are necessary technical supports consistently understood or made available. (We note that since the commencement of this project, some technical supports have been developed in certain jurisdictions. However, based on our observations, significant additional effort is required in this context.) While we recognize that an expenditure of public funds is required to ensure that SRLs in these particular circumstances have the resources, supports, and assistance necessary to participate, to the extent that government and court administrations continue to hold virtual hearings in a broad array of contexts (and again in some instances, default to virtual hearings), it is incumbent on them to ensure that all litigants are enabled to participate effectively, and to ensure that old barriers are not reinforced, replaced, or compounded with new barriers. We believe this also requires specialized research on different virtual hearing forums that can take account of the issues at stake, as well as the nature and needs of the litigants that appear in such forums. This underscores the recognition that access to justice solutions are not monolithic but should be tailored to the needs and barriers faced by the diversity of SRLs in the wide variety of forums existing in the justice system. Thus, for example, research that identifies the specific barriers facing SRLs in an administrative tribunal hearing is different than the research undertaken to understand SRLs participating in appellate courts.

Addressing Technical Breakdowns and Providing Support

Another theme in the data involved court and tribunal responses to technical issues, including loss of visual or audio connection, loss of internet connection, and inability to access documents or databases. We believe that there are a variety of potential responses to these challenges. First and foremost, there should be access

³⁹ One of the frontline legal workers who participated in the focus group acknowledged that she regularly sees her clients hitch-hiking to court appearances.

for SRLs to support persons before and during hearings. We believe this support could take the form of a ‘navigator,’ who would, in addition to providing IT support, be able to effectively explain and guide SRLs through the virtual hearing process. Several of the focus group participants as well as survey respondents noted the benefits associated with having virtual hearing navigators participate in their hearings. One frontline worker described navigators as administrative staff of the court or tribunal who are present in the hearing, and able to assist with its running, as well as any issues (technical or user error) that arise. We note that court registrars may fulfill some of these roles. However, we envisage that a navigator could undertake a variety of responsibilities (in addition to the role traditionally played by court registrars), including troubleshooting technical issues, walking litigants through the virtual hearing process, making sure documents are displayed correctly and appropriately, and controlling the video conference logistics – including the identification and labelling of participants.

In some cases where SRLs have participated in a hearing by phone, judges have placed the responsibility on the court to re-establish contact by calling participants back if calls were dropped during the hearing. This serves to alleviate some of the stress placed on SRLs who may experience difficulty in accessing the hearing on their phone, and is another role that could be filled by a navigator. In evaluating when and where court navigators might be deployed, it would be helpful to start with cases involving SRLs who are predominantly logging on from home without any access to technical assistance. Again, if it is assumed that both judges and lawyers are likely able to access technical assistance before or during the hearing, in the interest of fairness, such services should be made available to SRLs as well. And while it may be assumed that many SRLs are proficient in the various virtual meeting platforms typically used by court systems, there is always the potential for unfamiliarity, and of course for hardware/software/internet problems to arise for which expert assistance would be helpful. Providing technical and user support is likely to assist in ensuring that the hearing is not delayed or adjourned, runs more smoothly, and allows for the meaningful participation of all parties.

Providing Information Resources

It would be helpful for courts to more uniformly distribute plain language information packages appropriate for audiences that may have a broad range of cognitive, language, and technology abilities in a variety of formats (text, video, etc.). We also recommend that technical resources and information be proactively

sent to litigants in advance of hearings, rather than simply accessible on court websites that may be difficult to navigate or have information buried within drop-down menus. As discussed above, a canvass of court websites across the country, as well as first-hand accounts from SRLs who participated in this study, suggest that there is broad discrepancy in terms of the information available to litigants regarding the operation of virtual hearings. Such information should include clear instructions for logging on, information for trouble-shooting common problems, contact information for a navigator or tech helpline, and information on how the proceeding will generally unfold (it being noted that in the virtual context SRLs are less able to access open courts in advance of their hearing, to get a sense of how hearings flow). Working effectively to develop and improve these resources may require a more extensive review of examples of helpful material that might be replicated and refined in various adjudicative settings. We believe that jurisdictions which have clearly spelled out plain language information and instructions for participating virtually can share these exemplary materials with those jurisdictions that have not undertaken such an exercise. The NSRLP believes it can play an important role in this regard by developing and disseminating useful template resources among different jurisdictions.

Allowing for Support Persons

We note from our research that SRLs have faced challenges when they sought to include support persons or McKenzie Friends in their virtual hearings. In answer to the question of whether the participants believed that the outcome of their hearing would have been different had they been in-person, one participant said, “Yes. It would have much harder to dismiss the friend of an SRL because of the open court principle. On Zoom they can just cut you off and end your attendance.” This poses a significant challenge for SRLs in the virtual context. As such, we believe that courts across the country need to make explicit their policies around support persons and include within such policies a direction to court administrators to allow audio and visual access to SRLs’ support persons.

Early Support and Intervention

Our research sought to identify some best practices adopted by individual courts or judges across the country focused on ‘trouble-shooting’ challenges before they arise, or working to address them early on in a hearing. In one example reported by an SRL, an appellate court scheduled ‘dry-runs’ of virtual hearings in advance of the actual hearing in order to ensure that all participants were able to log on,

access, and navigate the platform. This brief exercise allowed the participants to work out any issues and get comfortable with the platform in advance of the hearing date. In addition to ensuring that the hearing runs in a more efficient and productive manner, undertaking a ‘practice-run’ works to reduce the stress and anxiety that SRLs may otherwise experience if they face an unfamiliar platform or technical issues for the first time on the day of the hearing. While we recognize that a ‘dry-run’ may not be possible in advance of every virtual hearing (nor necessary in certain contexts), we believe that criteria could be developed to help courts determine when such an exercise might be appropriate.

We believe there is much work to be done to develop best practices regarding virtual hearings across a variety of adjudicative settings. As such, there is a need for more research seeking to canvass best practices (both within and outside of Canada) as they relate to SRLs’ participation in a variety of virtual hearing formats. This understanding would help to ensure that the future practice of virtual hearings is undertaken in a deliberate and thoughtful manner.

Future Lines of Inquiry

There is good reason to suspect that the factors that make some SRLs vulnerable to a decline in access to justice in the context of virtual hearings are more complex and intersectional than the specific factors related to geography, socio-economic status and/or disability that this preliminary research has revealed. Research designed to take an intersectional approach to understanding potential inequities in these emergent practices is needed to guide the modernization of the justice system in a direction that improves access to justice across the uneven landscape of SRLs whose ability to participate is not on par with those of represented parties, or the expectations and objectives of the justice system.

Some of the more challenging issues to address among apparent and potential inequities within the transition to virtual hearings are those that are also among the least readily observable and quantifiable: namely, challenges related to needed shifts in behavioural expectations and etiquette, as well as perceptions of fairness and transparency. This research reveals that the experiences of SRLs with virtual hearings have raised new and different questions about certain of these persistent concerns, questions that demand further research in the context of the virtual forum. Attention to these matters in the form of support for research into the

effects of virtual hearings on SRLs bolsters a commitment on behalf of the justice system and relevant stakeholders to develop inclusive research methodologies that meaningfully support efforts toward justice system innovation.

In terms of immediate lines of inquiry, one avenue is suggested by the data gathered and reviewed here indicating a significant number of SRLs participating in virtual hearings identify as having a disability (38%). The data further suggests that many of these individuals are struggling to access resources prior to and during hearings. While we suspect this is the result of a series of factors, we believe it is important that further and more specific research be undertaken to understand the nature of these individuals' challenges across a variety of forums. There is a need for more focused research that clearly identifies the factors at play, the challenges faced, and the potential resolutions that can promote accessibility. In conjunction with this avenue of inquiry, we feel that there is an urgent need to identify appropriate accommodations, and to deploy such accommodations in a more consistent and detailed manner.

We also feel that there is a need for comparative work across jurisdictions isolating efforts to support effective participation by individuals in rural and remote communities. This requires an examination of technical supports, as well as allocation of resources to those living in rural or remote areas. This work cannot be undertaken without direct input from the users accessing justice from rural and remote areas regarding their particular challenges and needs.

In the context of virtual hearings likely being a permanent feature of the Canadian legal system, the data gathered in this project also highlight the need for further inquiry into:

- intersectional equity impacts;
- perceptions of fairness and access within the context of virtual hearings;
- timeliness of virtual hearings as a more efficient means of reducing backlogs in court;
- reforms to processes and court conduct post-pandemic;
- the particular challenges of SRLs in administrative tribunals;
- and the overall development of a culture of evaluation that includes the voices of justice-system users.

Pursuing all of these lines of inquiry would serve to develop a robust and innovative set of insights that should inform the development of thorough and practical access to justice policies and initiatives.

Moving Forward

Reflecting on the data gathered throughout this research project, we believe there is a demonstrated need to address the shortcomings of current virtual court processes in Canada for self-represented litigants, and that this can be at least partially accomplished by examining and replicating the positive experiences of SRLs in virtual hearing contexts, of which there are many. The data gathered in this project also highlights the need to develop further inquiries into the nuanced experiences of SRLs in virtual courtrooms across a vast variety of jurisdictions and types of law.

That virtual hearings provide greater access to justice for a large proportion of self-represented litigants is undeniable, and laudable. The necessity of ‘moving online’ due to the pandemic has forced a major and important sea-change in a slow-moving system, and we are glad to see the ways in which this is positively impacting the experiences of so many SRLs. But any such major movement is, by definition, complicated, and leaves in its wake many litigants whose experiences may be made worse, not better, by rushed and unthinking rollouts of new systems processes. We would advocate for courts and governments to place the experiences and concerns of the most vulnerable system users at the forefront when designing and implementing virtual processes. Prioritizing them will inevitably lead to better experiences for all stakeholders.

Appendix A: Survey Questions

(*Asterisks denote mandatory questions)

Demographic Information

1. What is your town/city of residence? *
(write-in response)
2. What is your province/territory of residence? *
(drop-down menu options: all Canadian provinces and territories)
3. What is your age? *
(drop-down menu options: 19 or younger, 20-29, 30-39, 40-49, 50-59, 60-69, 70+)
4. What is your gender? *
(multiple choice options: Female, Male, Non-binary, Prefer not to say, Prefer to self-describe with write-in response)
5. How would you describe your ethnicity? *
(multiple choice options: Asian or East Asian, Black, Caucasian, First Nations, Inuit, Latinex, Metis, Middle Eastern or Arabic, South Asian, Prefer to self-describe with write-in response)
6. What is your first language? *
(multiple choice options: English, French, Other – please specify)
7. Are you a newcomer to Canada? (arrived in the last 5 years) *
(yes/no)
8. Do you identify as a member of the LGBTQIA2S+ community? *
(yes/no)
9. Do you identify as a person with a disability? *
(multiple choice options: No, Yes I am cognitively disabled, Yes I am

physically disabled, Yes other – write-in response)

10. What is your annual income? *

(multiple choice options: \$29,000 or less, \$30,000-\$49,000, \$50,000-\$74,000, \$75,000-\$99,000, \$100,000+)

11. What is your highest level of education? *

(multiple choice options: No high school diploma, High school diploma, Community college, University, Other – please specify)

12. Do you work remotely? *

(multiple choice options: Yes, Sometimes, No)

13. Do you live alone in your household, or with others? *

(multiple choice options: Live alone, Live with others)

14. Do you have easy access to a secure and stable internet connection? *

(yes/no)

Virtual Hearing Experience

15. What was your legal matter about? *

(multiple choice options: Criminal/provincial offence, Debt, Disability benefits, Employment, Family (divorce, custody, etc.), Housing, Human rights/discrimination, Personal injury, Personal property dispute, Sale of goods or services, Tax, Other – please specify)

16. Court or tribunal conducting the virtual hearing *

(multiple choice options: Provincial Court, Superior or Supreme Court, Court of Appeal, Administrative tribunal – please identify)

17. Did you request a virtual hearing, or was it a directive from the court? *

(multiple choice options: Requested, Directed by the court)

18. If you requested a virtual hearing, were you charged a fee? *

(multiple choice options: Yes I was charged a fee, No I wasn't charged a fee,

I didn't request a virtual hearing)

19. What type of hearing was it? *

(multiple choice options: Unsure, Motion or application, Case conference, Trial, Settlement conference, Appeal hearing, Administrative or registrar hearing – please identify type of hearing)

20. Have you participated in other hearings in the past? *

(check all that apply options: No, Yes in-person, Yes virtually, Yes over the phone, Yes in writing)

21. What, if any, instructions did you receive in advance of your virtual hearing? *

(write-in response)

22. If you received instructions, did you find them helpful? *

(multiple choice options: Yes they were helpful, No they weren't helpful, I didn't receive instructions)

23. If you did not receive instructions, did you attempt to find information about the hearing? *

(multiple choice options: Yes, No, Not applicable)

24. If you found information, where did you find it, and was this information helpful?

(write-in response)

25. How many participants (including parties, lawyers, judge, adjudicator, court or technological support staff) were in your hearing? *

(multiple choice options: 1-4, 5-9, 10+)

26. Did you know who everyone in the meeting was, and/or what their role was? *

(yes/no)

27. Were you able to hear and see all participants? *
(yes/no)
28. If you were unable to hear and see all participants, how did this affect your experience?
(write-in response)
29. What platform was used for the virtual hearing? *
(multiple choice options: Zoom, Microsoft Teams, GoTo Meeting, Webex, Skype, Google Meet, Other – please specify)
30. Were you familiar with this platform before the virtual hearing? *
(yes/no)
31. Is there a virtual meeting platform that you prefer? *
(multiple choice options: I don't have a preference, Zoom, Microsoft Teams, GoTo Meeting, Webex, Skype, Google Meet, Other – please specify)
32. If you have a platform you prefer, why do you prefer it? *
(check all that apply options: I don't have a preferred platform, Have used it in the past, Find it easier to operate, Other – please specify)
33. Where were you physically when you accessed the virtual hearing? *
(multiple choice options: At home, At an office or workplace, In a public space, Other location such as your car for example – please specify)
34. Did you feel you were able to participate effectively in the hearing while in this particular space? (For example, were you in a quiet, private space?) *
(multiple choice options: Yes, No because... please elaborate)
35. Did you feel that your safety and privacy were protected during the virtual hearing? *
(multiple choice options: Yes, No because... please elaborate)
36. Did you have any difficulties accessing the hardware and software you needed to participate in the hearing? (laptop, tablet, internet connection, etc.) *

(multiple choice options: No, Yes – please elaborate)

37. Did you encounter any technical difficulties **while logging in** to the virtual hearing? *

(yes/no)

38. If you had difficulties logging in, what was the nature of the problem? *

(check all that apply options: Didn't have difficulties, Poor connection, Difficulty joining the meeting, Other – please specify)

39. Were these difficulties resolved? *

(multiple choice options: Yes, No, Didn't have difficulties)

40. Did anyone assist you in resolving these difficulties? *

(multiple choice options: Yes, No, Didn't have difficulties)

41. Did you encounter any technical difficulties **during** the virtual hearing? *

(yes/no)

42. If you had technical difficulties during the virtual hearing, what was the nature of the problem? *

(check all that apply options: Didn't have difficulties, Poor connection, Problems using or navigating the platform, Other – please specify)

43. Were these difficulties resolved? *

(multiple choice options: Yes, No, Didn't have difficulties)

44. Did anyone assist you in resolving these difficulties? *

(multiple choice options: Yes, No, Didn't have difficulties)

45. Were you made aware of any rules or guidelines about how to conduct yourself during the hearing? *

(yes/no)

46. If you were made aware of any rules or guidelines about conduct, were they followed by all participants in the hearing? *

(multiple choice options: Wasn't made aware of rules or guidelines, Yes

everyone followed the rules, No people did not follow the rules – please elaborate)

47. Overall, were you satisfied or dissatisfied with your virtual hearing experience? *
- (multiple choice options: I was satisfied, I was dissatisfied, Neither satisfied nor dissatisfied)
48. Why were you satisfied or dissatisfied with your virtual hearing experience?
(write-in response)
49. Do you think that the outcome of your hearing would have been different had it been in-person? Why or why not? *
- (write-in response)
50. If given the option in the future, would you prefer an in-person hearing, a virtual hearing, a telephone hearing, or a hearing in writing? *
- (multiple choice options: In-person, Virtual, Telephone, Writing, Don't have a preference)
- What is the reason for your preference?
(write-in response)
51. Please feel free to share any additional thoughts about your experience with your virtual hearing.
(write-in response)

Appendix B: Demographic Data from Survey

Variable	Case	Count	Proportion
Sample		188	
Gender	Male	77	41%
	Female	100	53%
	Non-Binary	1	1%
	Prefer to self-describe	3	2%
	NA	7	4%
Age	0-19	3	2%
	20-29	10	5%
	30-39	20	11%
	40-49	36	19%
	50-59	57	30%
	60-69	42	22%
	70+	20	11%
Province/Territory	Alberta	22	12%
	British Columbia	37	20%
	Manitoba	7	4%
	New Brunswick	1	1%
	Newfoundland and Labrador	9	5%
	Nova Scotia	11	6%
	Ontario	87	46%
	Prince Edward Island	1	1%
	Québec	3	2%
	Saskatchewan	8	4%
Yukon	2	1%	
Ethnicity	Asian or East Asian	11	6%
	Black	4	2%
	Caucasian	139	74%
	First Nations	6	3%
	Indigenous	1	1%
	Latinex	2	1%
	Metis	1	1%
	Middle Eastern or Arabic	4	2%
	Prefer to self-describe	15	8%
	South Asian	5	3%

Language	English	157	84%
	Non-English	22	12%
	French	9	5%
Disability	Cognitive Disability	42	22%
	Physical Disability	21	11%
	Cognitive and Physical Disability	6	3%
	Unspecified Disability	4	2%
	No Disability	115	61%
Education	No High School Diploma	9	5%
	High School Diploma	13	7%
	Trade School	9	5%
	Community College	48	26%
	University	86	46%
	Graduate Degree	14	7%
	Other	9	5%
Newcomer	Yes (<5 years)	7	4%
	No	181	96%
LGBTQ2IAS+	Yes	16	9%
	No	172	91%
Income	\$0 - \$29,000	71	38%
	\$30,000 - \$49,000	40	21%
	\$50,000 - \$74,000	39	21%
	\$75,000 - \$99,000	19	10%
	\$100,000+	19	10%
Work Remote	Yes	40	21%
	No	148	79%
Live Alone	Yes	55	29%
	No	133	71%
Have WIFI	Yes	164	87%
	No	24	13%

Appendix C: Court Websites Reviewed

The following courts' websites were reviewed for publicly available virtual hearing procedures and instructions, and for ease of finding such resources.

- British Columbia Supreme Court
- British Columbia Provincial Court
- Alberta Court of King's Bench
- Alberta Court of Justice
- Saskatchewan Court of King's Bench
- Manitoba Court of King's Bench
- Ontario Superior Court of Justice
- Ontario Court of Justice
- Quebec Superior Court
- Newfoundland and Labrador Supreme Court
- New Brunswick Court of King's Bench
- Nova Scotia Supreme Court
- Prince Edward Island Supreme Court
- Yukon Supreme Court
- Northwest Territories Supreme Court
- Nunavut Court of Justice