



# American College of Trial Lawyers

## Information and Resources regarding Mode of Hearings

Post pandemic, courts globally are developing rules and practices impacting the mode of adjudicative hearings. At least to some extent, virtual proceedings are here to stay. The pandemic transition to virtualization forced some courts to modernize, impacted access by participants and created efficiencies.

While there may be trends to presumptive virtualization in many jurisdictions, courts retain discretion regarding mode of hearing. Counsel may argue “good cause” has been shown or otherwise advocate for an exercise of discretion by the court regarding mode of proceeding: in-person, virtual or hybrid proceedings. A multitude of factors may be considered by courts making such orders. Those will vary case to case.

Counsel advocating for the most effective means of participation for their clients will consider the effect of the mode of proceeding on the litigants and other participants. This document refers counsel to some North American resources discussing relevant considerations. These resources are applicable cross jurisdiction. That is, they are not court or jurisdiction dependent.

The *Canadian Action Committee on Court Operations in Response to COVID-19* is a national leadership body co-chaired by the Chief Justice of Canada, the Right Honourable Richard Wagner, and the Minister of Justice and Attorney General of Canada. In 2023, the Action Committee released two significant documents which may assist counsel and courts as they consider the use of virtual hearings, including strategies to mitigate the challenges those hearings present:

[Virtual Hearings: Operational Considerations – Benefits and Challenges](#)

[Virtual Hearings: Checklist of Considerations](#)

Additionally, The Advocates’ Society published [The Right to be Heard: The Future of Advocacy in Canada](#) in June 2021, addressing at III.2 “Modes of Hearing in Canada and Beyond.”

The National Center for State Courts (US) published a [Remote Proceeding Toolkit](#) in the fall of 2022 which many states have been building on as they release guidelines for remote proceedings. Also available at The National Center for State Courts website is the 2023 publication [Measuring Access and Fairness in Remote Court Proceedings](#). The document includes data and data collection considerations given the importance of understanding user experiences in remote hearings.