

Session 5: Where Does Information Technology Fit in a World of Proportionality?

**Moderators: Elizabeth Nastasi, SJTO – Human Rights Tribunal of Ontario
Bob Butterworth, ELTO – Assessment Review Board**

**Speakers: Shane Crymble, Financial Services Commission of Ontario
Benjamin Dolin, Immigration Appeal Division – Immigration and Refugee Board
Horace McPherson, Ministry of Community Safety and Correctional Services
Paul Muldoon, ELTO – Environmental Review Tribunal
Jack Walker QC, Walker Poole Nixon LLP**

This session focused on distant hearings through the use of video conference and web conference. Two Panels participated, one live and one remotely. The discussion centred on the issue of the use of technology to enhance efficiency. The use of technology is a creative way to keep the quality of services with the use of fewer resources.

Benjamin Dolin

Mr. Dolin talked about his role as a remote adjudicator. He has had extensive experience conducting hearings via video conference. He normally conducts hearings from his office in Ottawa, while the parties are in Toronto. He indicated that conducting hearings remotely can be as good as in person.

He explained that the Immigration Appeal Division of the Immigration and Refugee Board deals with sponsorship appeals, removal order appeals, and residency obligation appeals. In sponsorship appeals, video conferencing is especially useful because it allows for the sponsored person, who is overseas, to give testimony.

The legal basis for being able to conduct remote hearings is found in sections 162 and 164 of the *Immigration and Refugee Protection Act*. These sections give the IRB inherent jurisdiction to control their own procedures. Some cases that also help establish the legal basis include *M.E.I. v. Cookson* (FCA) and *Gonzales v. MCI* (FC).

The technology used for conducting hearings through video conferences includes HD videoconferencing equipment, telephone dial-in from Ottawa to a hearing room in Toronto and remote control of volume and screen images.

Mr. Dolin addressed the question of whether the remote appearance of witnesses is treated the same as if the witness were physically in the same room as the adjudicator. He indicated that studies have found that there is no statistically significant differences

in verdicts when the witnesses appear via video conference or in person. He further stated that there are some technical advantages to using video conferencing. For example you can zoom in on witnesses and turn up the volume. In addition, appellants often feel less intimidated. He further indicated that in the immigration context it is dangerous to rely on eye contact to judge demeanor due to cultural differences.

Other benefits of using video conference are that it is administratively efficient and it reduces costs.

He also pointed out some concerns with video conferencing. These included:

- Is testifying via video conference less persuasive or alienating?
- “The medium is the message”
- Technical glitches
- The remote remote witness
- Late disclosure and examination of documents.

Jack Walker

Mr. Walker talked about his personal experience with video conferencing. In one of his cases, an expert witness from a remote location was going to give testimony. Issue was taken with his qualifications. It was decided to hold a voir dire remotely. This worked very well from the defence lawyer’s perspective. However, because there was a 2 second delay, the cross-examiner could not interrupt the witness.

Paul Muldoon

Mr. Muldoon spoke about the first appeal under the *Green Energy Act, 2009*. This appeal involved a great amount of expert testimony from all over the world. They had to deal with the issue of whether expert witnesses could testify via video conference. It came down to an issue of access to justice. Expert witnesses were allowed to testify via video conference to allow the appellants to present their best case in a cost effective manner. In Mr. Muldoon’s view, it worked very well. There were no technical glitches or delays. He did not see any advocacy, evidentiary, or technological advantages or disadvantages (it was neutral). He also pointed out that for it to work flawlessly, you need good technical support staff and the cooperation of the parties.

He also pointed out some questions that still need to be answered with regards to video conferencing. These included:

- Who should pay for the technology?

- Should there be a trigger of when technology should be used or should it be left to the discretion of the decision-maker?
- Why not have a cable station dedicated to these hearings? Would this be good?
- What if someone videotaped the hearing?

Horace McPherson

Mr. McPherson talked about the Justice Video Network. He talked about the different technologies available such as desktop units which are used for bail hearings, telemedicine which is used for autopsies, and Coroner Field Cameras which are used at crime scenes to do work before removing the body from the scene, among others.

Justice Video Network (JVN) is in the process of being implemented in personal computers, tablets and smart phones. With JVN mobile video conferencing the clients get high definition video quality, compatibility with both Mac and PC, and the ability to have a videoconference from anywhere.

Shane Crymble

Mr. Crymble discussed web conferencing. With web conferencing there are several cameras that show a panoramic view of the room. There are also several microphones that activate as soon as someone speaks. Web conferencing connects several participants over the internet for the purpose of collaboration.

For web conferencing you need a client, a computer, internet connection, a web cam, the software, and host services. The quality of your internet connection might affect the quality of your video.

The advantages of web conferencing include:

- increased productivity;
- reduced cost;
- it is weather proof;
- it is non-proprietary; and
- allows for ease of collaboration

The disadvantages include:

- technological failure can happen;
- the environment can impact it (lightning, sound, etc)
- You have to ensure that you are using the same software as the other participants in the web conference.

Question 1:

What are the security risks of web conferencing?

Answer:

Mr. Crymble – You are using the internet as opposed to a secure connection between two points.

Question 2:

There is a concern that testimony lacks effect when you put a screen in the middle. How is this being dealt with?

Answer:

Mr. McPherson – Studies are being conducted to investigate this concern.